

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

Wednesday, January 2, 2019

Hearing Room 301

9:30 AM

1:18-12295 Mark Fisher

Chapter 7

#1.00 Motion for relief from stay [UD]

GOLDEN LINK INVESTMENT, 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 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):

Mark Fisher

Pro Se

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

Wednesday, January 2, 2019

Hearing Room 301

9:30 AM

CONT... Mark Fisher

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 2, 2019

Hearing Room 301

9:30 AM

1:18-12603 Lori Ingrassia

Chapter 7

#2.00 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.

Party Information

Debtor(s):

Lori Ingrassia

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, January 2, 2019

Hearing Room 301

9:30 AM

1:18-12721 David Chavez

Chapter 7

#3.00 Motion for relief from stay [PP]

AMERICAN HONDA FINANCE 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.

Party Information

Debtor(s):

David Chavez

Represented By
Francis Guilardi

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

Wednesday, January 2, 2019

Hearing Room 301

9:30 AM

CONT... David Chavez

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 2, 2019

Hearing Room 301

9:30 AM

1:18-12524 Debbie Sue Eddy

Chapter 7

#4.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

Docket 12

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):

Debbie Sue Eddy

Represented By
Larry D Simons

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

Wednesday, January 2, 2019

Hearing Room 301

9:30 AM

CONT... Debbie Sue Eddy

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, January 2, 2019

Hearing Room 301

9:30 AM

1:18-12901 Taylor Demel

Chapter 13

#5.00 Motion for relief from stay [UD]

VERA GREGOR
VS
DEBTOR

Docket 10

***** VACATED *** REASON: Order entered on 12/21/18 dismissing case.
Motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Taylor Demel	Pro Se
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Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, January 2, 2019

Hearing Room 301

9:30 AM

1:18-10942 Amy B Grofsky and Gabriel A. Flores

Chapter 13

#6.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC
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 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):

Amy B Grofsky

Represented By
R Grace Rodriguez

Joint Debtor(s):

Gabriel A. Flores

Represented By

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

Wednesday, January 2, 2019

Hearing Room 301

9:30 AM

CONT...

Amy B Grofsky and Gabriel A. Flores

Chapter 13

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, January 2, 2019

Hearing Room 301

9:30 AM

1:18-11667 Christopher Michael Niblett

Chapter 13

#7.00 Motion for relief from stay [PP]

ACAR LEASING LTD, INC. DBA GM FINANCIAL LEASING
VS
DEBTOR

Docket 35

Tentative Ruling:

The Court will grant the motion pursuant to 11 U.S.C. § 362(d)(1) on the terms requested unless the parties agree to an adequate protection agreement.

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

Party Information

Debtor(s):

Christopher Michael Niblett

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 2, 2019

Hearing Room 301

9:30 AM

1:18-11667 Christopher Michael Niblett

Chapter 13

#8.00 Motion for relief from stay [RP]

BROKER SOLUTIONS, INC.
VS
DEBTOR

Docket 32

Tentative Ruling:

The Court will grant the motion pursuant to 11 U.S.C. § 362(d)(1) on the terms requested unless the debtor is current on postpetition payments by the hearing.

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

Party Information

Debtor(s):

Christopher Michael Niblett

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 2, 2019

Hearing Room 301

9:30 AM

1:18-12821 Diana G Corpus

Chapter 13

#9.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 11

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.

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

Wednesday, January 2, 2019

Hearing Room 301

9:30 AM

CONT... Diana G Corpus

Chapter 13

Party Information

Debtor(s):

Diana G Corpus

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 2, 2019

Hearing Room 301

9:30 AM

1:17-12919 Margot Ortiz

Chapter 13

#10.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
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.

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):

Margot Ortiz

Represented By

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

Wednesday, January 2, 2019

Hearing Room 301

9:30 AM

CONT... Margot Ortiz

William G Cort

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 2, 2019

Hearing Room 301

9:30 AM

1:17-13103 Steven Joseph Dombrovsky

Chapter 13

#11.00 Motion for relief from stay [RP]

SETERUS, INC.
VS
DEBTOR

Docket 59

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.

Party Information

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

Wednesday, January 2, 2019

Hearing Room 301

9:30 AM

CONT... Steven Joseph Dombrovsky

Chapter 13

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, January 8, 2019

Hearing Room 301

9:30 AM

1: -

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 8, 2019

Hearing Room 301

10:30 AM

1:18-11857 Robert Winn, Jr

Chapter 13

#34.00 Debtor's motion to avoid junior lien on principal residence
with Specialized Loan Servicing LLC

fr. 12/11/18

Docket 32

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, 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):

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, January 8, 2019

Hearing Room 301

10:30 AM

1:18-11857 Robert Winn, Jr

Chapter 13

#35.00 Debtor's motion to avoid junior lien on principal residence
with Nationstar Mortgage and Real Time Resolutions

fr. 12/11/18

Docket 31

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, 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):

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, January 8, 2019

Hearing Room 301

11:00 AM

1:14-10894 Traci L. Scher and Craig Scher

Chapter 13

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

fr. 9/18/18; 11/6/18;

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 8, 2019

Hearing Room 301

11:00 AM

1:14-11542 Andrea Nicole Williams-Hart

Chapter 13

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

fr. 7/10/18; 9/18/18; 11/6/18;

Docket 135

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 8, 2019

Hearing Room 301

11:00 AM

1:15-12949 Veronica Nunez

Chapter 13

#38.00 Trustee's motion to dismiss case due to expiration of plan
fr. 12/11/18

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 8, 2019

Hearing Room 301

11:00 AM

1:16-10495 Indira LaRoda

Chapter 13

#39.00 Trustee's motion to dismiss case for failure to make plan
fr. 9/18/18 ; 10/9/18; 11/6/18; 12/11/18;

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, January 8, 2019

Hearing Room 301

11:00 AM

1:16-12786 Mirna Del Carmen Lopez

Chapter 13

#40.00 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;
12/11/18

Docket 51

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 8, 2019

Hearing Room 301

11:00 AM

1:17-11860 Juan Morales and Maria Morales

Chapter 13

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

fr. 11/6/18; 12/11/18

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 8, 2019

Hearing Room 301

11:30 AM

1:16-12647 Freddy Benjamin Castro

Chapter 13

#42.00 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) ;
12/11/18 (stip);

Docket 52

***** VACATED *** REASON: Order ent 1/7/19 approving settlement**

Tentative Ruling:

- NONE LISTED -

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, January 8, 2019

Hearing Room 301

11:30 AM

1:18-11288 Neli Maria Negrea

Chapter 13

#43.00 Motion re: objection to claim number 8 by claimant Ellen Orsa,
request for attorney's fees and costs

fr, 12/11/18

Docket 32

Tentative Ruling:

The Court will continue this hearing to **11:30 a.m. on January 22, 2019** (to take place before the chapter 13 matters scheduled for February 12, 2019).

Appearances on January 8, 2019 are excused.

Party Information

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 8, 2019

Hearing Room 301

11:30 AM

1:18-11560 Elizabeth Roberts

Chapter 13

#44.00 Order to show cause why debtors' counsel should not be sanctioned for failure to appear at confirmation hearing

fr. 12/11/18

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 8, 2019

Hearing Room 301

11:30 AM

1:18-11734 Helen Galope

Chapter 13

#45.00 Application of attorney for debtor for allowance of fees and expenses following dismissal or conversion of Chapter 13 case subject to a rights and responsibilities agreement (RARA) [11 U.S.C. Section 330(a)(4)(B); LBR 3015-1(q)(6)]

Docket 49

Tentative Ruling:

Grant. The Court approves fees of \$3,810.00.

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

Note: No response has been filed. Accordingly, no court appearance by applicant is required.

Party Information

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, January 8, 2019

Hearing Room 301

11:30 AM

1:18-12349 Chinweike Okonkwo

Chapter 13

#46.00 Chapter 13 Trustee's objection to homestead exemption

Docket 26

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 \$28,225.00 under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(5) in the debtor's real property located at 20616 Covello St., Winnetka, California 91306 [doc. 30]. The debtor is no longer claiming a homestead exemption pursuant to C.C.P. § 703.140(b)(1).

Party Information

Debtor(s):

Chinweike Okonkwo

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, January 9, 2019

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; 11/14/18

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, January 9, 2019

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
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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

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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.

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

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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*

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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

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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

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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

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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

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1:14-14009 Michele Amy Schneider

Chapter 13

#2.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY FSB
VS
DEBTOR

fr. 11/7/18; 12/5/18; 12/12/18

Docket 55

***** VACATED *** REASON: Order ent 1/8/19 approving stip for A/P**

Tentative Ruling:

- NONE LISTED -

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

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1:17-10880 LaFaye Francisco

Chapter 13

#3.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

fr. 12/12/18

Docket 44

*** VACATED *** REASON: APO entered on 12/19/18 [doc. 52].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

LaFaye Francisco

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-12694 Sergio Martinez Gomez and Maria T. Alvarado

Chapter 7

#4.00 Motion for relief from stay [PP]

HONDA LEASE TRUST
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 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):

Sergio Martinez Gomez

Represented By
Stephen Parry

Joint Debtor(s):

Maria T. Alvarado

Represented By
Stephen Parry

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CONT... Sergio Martinez Gomez and Maria T. Alvarado

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Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:18-12589 Katherine Oliai

Chapter 13

#5.00 Motion for relief from stay [RP]

US BANK N.A. AS TRUSTEE, ON BEHALF OF THE HOLDERS
OF THE JPMORGAN MORTGAGE ACQUISITION TRUST
2006-WMC4
VS
DEBTOR

Docket 18

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.

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CONT... Katherine Oliai

Chapter 13

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):

Katherine Oliai

Represented By
Michael D Kwasigroch

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-12902 Farhad Besharati

Chapter 13

#6.00 Motion for relief from stay [RP]

CIT BANK, N.A.
VS
DEBTOR

Docket 33

Tentative Ruling:

On December 14, 2018, the debtor filed an amended chapter 13 plan [doc. 22], which apparently provides for payments to cure prepetition deed of trust arrears in the approximate amount of \$73,000. To better assess the allegations in the motion, the Court will continue the hearing to take into account whether the debtor timely makes his January 2019 chapter 13 plan payment and the January 2019 deed of trust payment regarding his residence (together, the "January Payments").

The Court will continue the hearing to **9:30 a.m. on February 6, 2019**. On or before **January 23, 2019**, the debtor must file a declaration demonstrating that he has made the January Payments.

Party Information

Debtor(s):

Farhad Besharati

Represented By
Dennis A Rasmussen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:13-11215 Cindy M Montano

Chapter 7

Adv#: 1:17-01111 Melendrez v. Montano

#7.00 Pretrial conference re complaint for determination
of the dischargeability of a claim

from: 2/14/18; 8/22/18; 9/5/18; 10/10/18; 11/14/18

Docket 1

Tentative Ruling:

Contrary to the Court's instructions from the prior status conference, the parties did not timely file a joint pretrial stipulation, and the plaintiff did not timely file a unilateral pretrial stipulation and a declaration asserting the failure of the defendant's counsel to respond. Consequently, the Court intends to dismiss this adversary proceeding for failure to prosecute.

Party Information

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

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1:16-13382 Christopher Sabin Nassif

Chapter 11

Adv#: 1:18-01114 Nassif et al v. THE BANK OF NEW YORK MELLON fka THE BANK OF

- #8.00** Status conference re: complaint for:
1. Violation of California homeowner bill of rights;
 2. Breach of written agreement;
 3. Breach of covenant of good faith and fair dealing;
 4. Negligence;
 5. Unlawful business practices

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: 4/12/19.

Deadline to complete one day of mediation: 4/30/19.

Deadline to file pretrial motions: 5/17/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 5/22/19.

Pretrial: 1:30 p.m. on 6/5/19.

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.

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CONT... Christopher Sabin Nassif

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).

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

Defendant(s):

THE BANK OF NEW YORK

Pro Se

Nationstar Mortgage LLC, A

Pro Se

Bank of America, N.A, a National

Pro Se

Aztec Foreclosure Corporation., a

Pro Se

Plaintiff(s):

Christopher Sabin Nassif

Represented By

Matthew D. Resnik

Robin Nassif

Represented By

Matthew D. Resnik

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1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01069 Seror v. Muennichow et al

- #9.00** 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), 9/12/18(stip)

Docket 1

***** VACATED *** REASON: Order continuing pretrial conference to 4/3/19 [doc. 69].**

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

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Plaintiff(s):

David Seror

Represented By
Nina Z Javan

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

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1:18-10762 Jaime R Lara

Chapter 7

Adv#: 1:18-01100 Weil, Chapter 7 Trustee v. Greater La Escrow, Inc., a California corporation

- #10.00** 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), fr. 11/21/18 (2nd stip)

Docket 1

Tentative Ruling:

In light of the *Chapter 7 Trustee's Notice of Settlement and Request that Status Conference be Continued for 60 Days* [doc. 14], the Court will continue this status conference to **1:30 p.m. on March 6, 2019.**

Appearances are excused on January 9, 2019.

Party Information

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

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1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01081 Albini et al v. Zuckerman

#11.00 Status conference re first amended complaint based upon fraud
to determine nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A)

fr. 10/3/18; 10/17/18, 11/7/18

Docket 24

Tentative Ruling:

The Court will set the defendant's motion to dismiss [doc. 26] for hearing at **2:30 p.m. on February 6, 2019**. The defendant must file and serve notice of the hearing on the motion to dismiss and the deadline to file a response.

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

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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 Spiridonoff Represented By
Edward McCutchan

Greg Vernon Represented By
Edward McCutchan

Carmen Violin Represented By
Edward McCutchan

We Care Animal Rescue Represented By

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Chapter 11

	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
Henry P Crigler	Represented By Edward McCutchan

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CONT... Robert Edward Zuckerman

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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

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1:18-11150 Robert Edward Zuckerman
Adv#: 1:18-01086 Abel v. Zuckerman et al

Chapter 11

- #12.00** 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)
- fr. 11/14/18 (stip)

Docket 11

Tentative Ruling:

The Court will set the defendants Sunderland McCutchan, Inc., Sunderland McCutchan, LLP and B. Edward McCutchan, Jr.'s motion to dismiss [doc. 24] for hearing at **2:30 p.m. on February 20, 2019**. The defendants must file and serve notice of the hearing on the motion to dismiss and the deadline to file a response.

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

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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
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
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Adv#: 1:18-01087 Liebling and June Liebling individually and on beh v. Goodrich et al

#13.00 Creditor's Motion to strike debtor's notice of removal and/or remand

fr. 9/12/18; 10/3/18; 10/17/18, 11/7/18

Docket 8

Tentative Ruling:

To the extent this action is still pending, the Court will remand this action to state court.

I. BACKGROUND

On August 25, 2009, 97 plaintiffs ("Plaintiffs") filed a complaint against Robert Edward Zuckerman ("Debtor") and 27 other defendants (collectively, "Defendants"), asserting state law claims for, among other things, intentional misrepresentation, concealment, conspiracy to defraud and elder abuse. Declaration of Richard Abel ("Abel Declaration"), ¶¶ 1, 3; Declaration of Sandford L. Frey ("Frey Declaration"), ¶ 3. Plaintiffs filed the complaint in Sonoma County Superior Court, initiating the action entitled *Hyam Liebling, et al. v. Charlene Goodrich, et. al*, Case No. SCV-245738 (the "State Court Action"). Abel Declaration, ¶ 1; Frey Declaration, ¶ 3.

On October 6, 2016, the state court entered a judgment against Debtor (the "Judgment"). Frey Declaration, ¶ 4, Exhibit A. In the Judgment, the state court noted that Debtor appeared at trial in this State Court Action. *Id.* The state court also held, in relevant part:

After plaintiffs' presentation of the evidence with respect to their third amended complaint which specifically seeks \$34,752,028.00 in damages against [Debtor]... this court renders judgment against [Debtor] who engaged in a joint venture to intentionally, purposefully and maliciously defraud each of the plaintiffs in this matter finding

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damages under the plaintiffs' third amended complaint's causes of action for intentional misrepresentation, concealment, promise without intent to perform and elder abuse (Welfare & Institutions Code § 15610.30 et seq. as to those named plaintiffs 65 years or older as of the date of their respective loans).

Id. In light of the above, the state court entered a total judgment against Debtor 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." *Id.*

On March 3, 2017, the state court entered an amended judgment against Debtor (the "Amended Judgment"). Frey Declaration, ¶ 4, Exhibit B. 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

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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). Subsequently, Debtor appealed the Amended Judgment, which was denied by the appellate court. Abel Declaration, ¶¶ 8-9. On June 20, 2017, the California appellate court issued a remittitur, noting that the appellate court's decision was final. Abel Declaration, ¶ 9, Exhibit A.

On November 9, 2017, Richard Abel, one of the Plaintiffs, filed a motion for an assignment order in the state court. Frey Declaration, ¶ 6. 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; (4) Denying Motion for Order Charging Interest; and (5) Denying Motion for Foreclosure Order* (the "Assignment Order"). Frey Declaration, ¶ 6. There is no significant activity reflected on the state court docket after entry of the Assignment Order.

On May 4, 2018, Debtor filed a voluntary chapter 11 petition. On August 2, 2018, Debtor removed the State Court Action to this Court. On August 8, 2018, Mr. Abel filed a motion to strike the Notice of Removal (the "Motion") [doc. 8]. On August 29, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 17]. On September 5, 2018, Mr. Abel filed a reply to the Opposition [doc. 20] and evidentiary objections to the Frey Declaration [doc. 21].

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

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this title.

- (b) The court to which such claim or cause of action is removed my 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 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.

i. Arising Under Jurisdiction

"A matter arises under the Bankruptcy Code if its existence depends on a substantive

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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:

[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)).

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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)).

Here, the state court entered the Amended Judgment and all appeals of the Amended Judgment concluded almost a year before Debtor filed his chapter 11 petition. Debtor does not articulate what exactly this Court can adjudicate at this time. Debtor notes that Mr. Abel is pursuing enforcement of the Amended Judgment in state court. However, as of the petition date, the automatic stay bars enforcement of any prepetition judgments as against Debtor or property of the estate. Given that such enforcement is stayed, what enforcement activity did Debtor contemplate removing to this Court for adjudication?

Debtor also argues that the Amended Judgment may be void. However, this Court does not have the power to alter or nullify the state court's Amended Judgment. Pursuant to 28 U.S.C. § 1738, federal courts must give full faith and credit to judgments of state courts. *See also Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 485, 102 S.Ct. 1883, 1899, 72 L.Ed.2d 262 (1982) ("In our system of jurisprudence the usual rule is that merits of a legal claim once decided in a court of competent jurisdiction are not subject to redetermination in another forum.").

Debtor asserts that the Amended Judgment is subject to either direct or collateral attack because the Amended Judgment is void on its face. Debtor cites *OC Interior Servs., LLC v. Nationstar Mortg., LLC*, 7 Cal.App.5th 1318, 1327 (Ct. App. 2017), *reh'g denied* (Feb. 27, 2017), *review denied* (May 10, 2017). In *OC Interior*, the court provided a helpful summary of judgments that are "void on the face of the record:"

A judgment that is void on the face of the record is subject to either

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direct or collateral attack at any time. To prove that the judgment is void, the party challenging the judgment is limited to the judgment roll, i.e., no extrinsic evidence is allowed.

OC Interior, 7 Cal.App.5th at 1327. Cal. Code of Civ. Proc. ("CCP") § 670 governs what is included in a judgment roll:

In superior courts the following papers, without being attached together, shall constitute the judgment roll:

- (a) In case the complaint is not answered by any defendant, the summons, with the affidavit or proof of service; the complaint; the request for entry of default with a memorandum indorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment; if defendant has appeared by demurrer, and the demurrer has been overruled, then notice of the overruling thereof served on defendant's attorney, together with proof of the service; and in case the service so made is by publication, the affidavit for publication of summons, and the order directing the publication of summons.
- (b) In all other cases, the pleadings, all orders striking out any pleading in whole or in part, a copy of the verdict of the jury, the statement of decision of the court, or finding of the referee, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment; if there are two or more defendants in the action, and any one of them has allowed judgment to pass against him or her by default, the summons, with proof of its service, on the defendant, and if the service on the defaulting defendant be by publication, then the affidavit for publication, and the order directing the publication of the summons.

CCP § 670. Here, Debtor attacks the Amended Judgment on the basis that the notice to appear at trial was allegedly deficient under CCP § 594(a). Opposition, p. 9. Because Defendant apparently appeared on the day of trial (via his counsel), CCP § 670(b) governs the issue. *See* Amended Judgment, pp. 4-5.

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Pursuant to CCP § 670(b), the judgment roll includes: (1) the pleadings; (2) all orders striking out any pleading in whole or in part; (3) a copy of the verdict of the jury; (4) the statement of decision of the court, or finding of the referee; (5) a copy of any order made on demurrer, or relating to a change of parties; and (6) a copy of the judgment. The judgment roll does *not* include a notice to appear at trial.

The Amended Judgment does not demonstrate a defect in notice. Under CCP § 594(a)—

In superior courts either party may bring an issue to trial or to a hearing, and, *in the absence of the adverse party*, unless the court, for good cause, otherwise directs, may proceed with the case and take a dismissal of the action, or a verdict, or judgment, as the case may require; provided, however, if the issue to be tried is an issue of fact, proof shall first be made to the satisfaction of the court that the adverse party has had 15 days' notice of such trial....

(emphasis added). Here, the Amended Judgment reflects that Debtor *did* appear at trial through counsel. *See Colony Bancorp of Malibu, Inc. v. Patel*, 204 Cal.App.4th 410, 418 (Ct. App. 2012) ("Formal notice of trial [under CCP § 594(a)] is not an issue because [the defendant] appeared through counsel, at the commencement of trial on the morning of June 8. Further, actual notice, however acquired, is sufficient.") (internal citation and quotation omitted). As in *Colony Bancorp*, the Amended Judgment here reflects that Debtor appeared at trial through counsel and argued his own motion in limine. As such, the Amended Judgment does not demonstrate an issue that would render it void on its face.

Because the Amended Judgment is not deficient on its face, and the judgment roll does not include notices to appear at trial (which are not even before this Court), the Amended Judgment here is not void on its face. Where a judgment is not void on its face, it is *not* subject to collateral attack:

In contrast, a judgment that is valid on the face of the record is generally *not* subject to collateral attack. In other words, a judgment that is valid on the face of the record *must be challenged by direct*

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attack, such as a motion in the original action, an appeal in the original action, or an independent equitable action. A judgment valid on the face of the record may be set aside under Code of Civil Procedure section 473, subdivision (b) within a reasonable time after the party learns of the judgment, or it may be set aside in an independent equitable action without time limit.

OC Interior, 7 Cal.App.5th at 1328 (emphasis added). As to independent equitable actions, it is the trial court that presided over the subject action that "retains the inherent power to vacate a... judgment or order on equitable grounds where a party establishes that the judgment or order was void for lack of due process or resulted from extrinsic fraud or mistake." *Cty. of San Diego v. Gorham*, 186 Cal.App.4th 1215, 1228 (Ct. App. 2010).

Consequently, this Court does not have the power to deem the Amended Judgment void. To attack the Amended Judgment, Debtor must file a motion in the state court, appeal the Amended Judgment before the proper appellate court or file an equitable action before the state court, and this Court is bound to give full faith and credit to the Amended Judgment.

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) (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:

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- (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).

Here, remand to state court is appropriate. The State Court Action involves exclusively state law issues, all of issues have been finally decided by the state court; there is no jurisdictional basis, if any, other than 28 U.S.C. § 1334. Further, the State Court Action involved 97 plaintiffs with different amounts awarded to each plaintiff (some of which judgments have already allegedly been assigned to other parties). The state court already held trial on the matter, and all of the plaintiffs and third-party assignees will be greatly prejudiced by a change of forum at this time. Moreover, the State Court Action is not "core," in that it does not arise under the Bankruptcy Code or arise in the bankruptcy case. Overall, the factors overwhelmingly favor remand.

III. CONCLUSION

The Court will remand this action to state court.

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The Court will prepare the Order.

Tentative ruling regarding Mr. Abel's evidentiary objections to the identified paragraphs in the Declaration of Sandford L. Frey set forth below:

paras. 2, 8: overrule
paras. 3, 5, 6-7: sustain

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
Steven K. Talbot	Pro Se
John Paul Hanson	Pro Se
Eric Reddenkopp	Pro Se
Ronald Reddenkopp	Pro Se

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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
Elizabeth Ross on behalf of Betty P	Represented By Edward McCutchan
Cathy Ripple	Represented By

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	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 Edward McCutchan
Mary Lou Schmidt individually and	Represented By Edward McCutchan

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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

Jerry Strickler and Linda M. Represented By
Edward McCutchan

Ryan Strickler Represented By

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	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 Edward McCutchan
John Cleary and Kathleen J. Cleary	Represented By Edward McCutchan

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

Wednesday, January 9, 2019

Hearing Room 301

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CONT... Robert Edward Zuckerman

Chapter 11

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
Suki Ferl	Represented By Edward McCutchan
Jacinda Duval	Represented By

**United States Bankruptcy Court
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CONT... Robert Edward Zuckerman

Chapter 11

	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 Edward McCutchan
John Hightower and Polly Ann	Represented By Edward McCutchan
Kerry L Nord individually and on	Represented By Edward McCutchan

**United States Bankruptcy Court
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CONT... Robert Edward Zuckerman

Chapter 11

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
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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 Status Conference and Order to Show cause re remand

fr. 10/3/18; 10/17/18, 11/7/18

Docket 1

Tentative Ruling:

See cal. no. 13.

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

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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

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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
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San Fernando Valley
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Hearing Room 301

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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

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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
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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
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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 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

**United States Bankruptcy Court
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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
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1:18-11243 Jeff Davani

Chapter 7

Adv#: 1:18-01098 Johnson v. Davani an individual, doing business as Arina Buil

#15.00 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)

fr. 12/5/18; 12/12/18

Docket 8

Tentative Ruling:

On August 29, 2018, the plaintiff filed a demand for jury trial [doc. 4]. However, 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).

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: 4/1/19.

Deadline to complete one day of mediation: 4/19/19.

Deadline to file pretrial motions: 4/30/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 5/22/19.

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CONT... Jeff Davani

Chapter 7

Pretrial: 1:30 p.m. on 6/5/19.

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):

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
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1:30 PM

1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01116 Bars v. Sheikh

#16.00 Status conference re complaint to determine dischargeability
and in objection to discharge [11 U.S.C. §§727(a)(4)(A)' 523(a) (2)

Docket 1

Tentative Ruling:

In the complaint, the plaintiff requests a jury trial. However, parties do not have a right to a jury trial in a nondischargeability action under 11 U.S.C. § 523 or an action objecting to the debtor's discharge under 11 U.S.C. § 727. *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 Schmidt*, 188 B.R. 36, 38 (Bankr. D. Nev. 1995).

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: 4/15/19.

Deadline to complete one day of mediation: 5/1/19.

Deadline to file pretrial motions: 5/17/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 5/29/19.

Pretrial: 1:30 p.m. on 6/12/19.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after

**United States Bankruptcy Court
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1:30 PM

CONT... Atif Sheikh

Chapter 7

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):

Atif Sheikh

Represented By
Steven M Gluck

Defendant(s):

Atif Sheikh

Pro Se

Joint Debtor(s):

Naureen Sheikh

Represented By
Steven M Gluck

Plaintiff(s):

Candace Marie Bars

Represented By
David C Bernstein

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**

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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

#17.00 Motion to Dismiss Adversary Complaint for Failure to State a Claim for Which Relief May Be Granted (FRBP 7012 / FRCP 12(b)(6))

Docket 15

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion without leave to amend.

I. BACKGROUND

On January 7, 2016, Duane Daniel Martin ("Duane") and Tisha Michelle Martin ("Tisha," and together with Duane, "Debtors") filed a voluntary chapter 7 petition. David. K. Gottlieb ("Plaintiff") was appointed chapter 7 trustee. On November 14, 2016, Debtors received a discharge [doc. 128].

On September 17, 2018, Plaintiff filed a complaint (the "Complaint") against Roxe, LLC ("Roxe"), Derek Folk and Michael Martin ("Michael") seeking to quiet title to real property located at 22401 Summitridge Circle, Chatsworth, California 91311 (the "Property") and for turnover of the Property under 11 U.S.C. § 542. In relevant part, the Complaint alleges:

On October 30, 2012, Mr. Folk and Michael formed Roxe at the direction of Duane to conceal Duane's ownership interest in the Property. Duane is the alter ego of Roxe. Mr. Folk served as Roxe's accountant from its origination through at least February 28, 2018, when Mr. Folk resigned, leaving Michael as the sole member of Roxe. Michael is Duane's brother. Mr. Folk and Michael did not invest any money in Roxe. Mr. Folk and Michael have been the only entities to hold a legal interest in Roxe since its inception.

On March 1, 2006, Duane purchased the Property for \$900,000, of which \$650,000 was financed with a loan. On July 3, 2007, Duane borrowed the

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CONT...

Duane Daniel Martin

Chapter 7

additional sum of \$1,950,000 to construct a home on the Property (together with the \$650,000 loan, the "Loans"). On September 23, 2009, Duane quitclaimed the Property to the Campbell-Martin Family Trust. After September 23, 2009, Duane intentionally caused the Loans to go into default in order to negotiate a short sale of the Property.

Duane negotiated with the bank a short sale of the Property to Roxe for an amount less than owing on the Loans. The purchase was financed through a loan arranged by Duane from his friends, Will Smith and Jada Pinkett Smith, through their company, TB Properties, LLC (the "Friendly Loan"). On November 30, 2012, through a double escrow at Beverly Hills Escrow: (i) TB Properties, LLC recorded a deed of trust on the Property in the sum of \$1,407,651.00, with Roxe named as the borrower; (ii) the Loans were satisfied for the discounted sum of \$1,380,000.00; and (iii) Roxe obtained title to the Property via a grant deed from Debtors.

On December 1, 2012, Debtors and Roxe purported to enter into a residential lease (the "Lease") whereby Debtors leased the Property from Roxe for \$5,000.00 per month [doc. 1, Exh. A]. The Lease was a sham which was never intended by the parties to be performed and Debtors have not made all payments as required by the Lease because of the Friendly Loan.

Debtors lived in the Property until January 2018, when Tisha filed for divorce from Duane, and Tisha moved to another residence. Duane continues to reside at the Property.

On July 25, 2018, at the direction of Duane, the Property was listed for sale for \$2,695,000.00. Duane intends to retain the sale proceeds in excess of the Friendly Loan.

On October 22, 2018, Plaintiff filed a request for entry of default against Mr. Folk [doc. 8]. On the same day, the Court entered default against Mr. Folk [doc. 9]. On October 24, 2018, Plaintiff filed a *Notice of Voluntary Dismissal of Derek Folk Pursuant to Federal Rule of Bankruptcy Procedure 7041 and Federal Rule of Civil Procedure Rule 41(a)(1)(A)(i)* (the "Dismissal") [doc. 11]. As a result, Roxe and Michael (together with Roxe, "Defendants") are the only remaining defendants in this

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CONT... **Duane Daniel Martin**
adversary proceeding.

Chapter 7

On November 20, 2018, Defendants filed a motion to dismiss the Complaint (the "Motion") [doc. 15] and a request for judicial notice in support of the Motion [doc. 16]. In the Motion, Defendants argue: (i) that Roxe is the legal owner of the Property; (ii) that Plaintiff cannot show the essential element of ownership for an alter ego claim; (iii) any fraudulent transfer claim is time barred; and (iv) Plaintiff cannot seek turnover of property that is not owned by Debtors or part of the bankruptcy estate.

On November 30, 2018, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 17]. On December 26, 2018, Plaintiff filed a declaration of Tisha in support of the Opposition [doc. 26]. On January 2, 2018, Defendants filed a reply to the Opposition (the "Reply") [doc. 27].

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 (2007); and

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CONT... Duane Daniel Martin

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Ashcroft v. Iqbal, 556 U.S. 662, 678 (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).

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).

B. Quiet Title

Pursuant to California Code of Civil Procedure ("CCP") § 760.020(a), an action for quiet title "may be brought under this chapter to establish title against adverse claims to real or personal property or an interest therein." Pursuant to CCP § 760.010(a), a "[c]laim' includes a legal or equitable right, title, estate, lien, or interest in property or cloud upon title."

"In an action to quiet title, the complaint should allege, *inter alia*, the interest of the plaintiff in the property at the time the action is commenced." *Stafford v. Ballinger*, 199 Cal. App. 2d 289, 292 (Ct. App. 1962). "If plaintiff owns the property in fee, a

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Duane Daniel Martin

Chapter 7

general allegation of ownership of the described property is sufficient." *Id.* "However, a general allegation of ownership is treated as a conclusion if the detailed facts upon which the claim of ownership is predicated are also alleged, and in such case, the specific facts will control rather than the general allegation in determining whether the complaint states sufficient facts to constitute a cause of action." *Id.* "Accordingly, if the specifically pleaded facts affirmatively reveal the absence of an essential element in a plaintiff's claim of title, no cause of action is stated." *Id.*

"Since there is no statute of limitations governing quiet title actions as such, it is ordinarily necessary to refer to the underlying theory of relief to determine which statute applies." *Muktarian v. Barmby*, 63 Cal. 2d 558, 560 (1965). Plaintiff's quiet title action could be based on three different theories: (i) fraud on the Court and the continuing concealment doctrine; (ii) alter ego liability; and/or (iii) fraudulent conveyance.

1. Fraud on the Court and the Continuing Concealment Doctrine

In the Opposition, Plaintiff purports that the quiet title action is predicated upon the fact that Duane is alleged to have perpetrated a fraud upon the Court through his scheme to hide a key asset in a sham entity and conceal that fact from the Court and Plaintiff by failing to disclose the Property in Debtors' schedules or any time thereafter. Plaintiff contends that the quiet title cause of action is based on fraud on the court and the continuing concealment doctrine. Plaintiff cites *In re Roussos*, 541 B.R. 721, 738 (Bankr. C.D. Cal. 2015) and *In re Lawson*, 122 F. 3d 1237, 1241 (9th Cir. 1997) in support of his contention.

The legal authority relating to "fraud on the court" stems from the court's power under Federal Rule of Civil Procedure ("Rule") 60. Pursuant to Rule 60, applicable to bankruptcy courts through Federal Rule of Bankruptcy Procedure 9024,

(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:

...

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

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Duane Daniel Martin

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...

(d) This rule does not limit a court's power to:

...

(3) set aside a judgment for fraud on the court.

Rule 60(b)(3) and (d)(3). In *Roussos*, the chapter 7 trustee brought a complaint to, among other things, vacate 21-year old bankruptcy sale of real property for fraud on the court pursuant to Rule 60(d)(3) and to quiet title to the real property. 541 B.R. at 724-27. In approving the sale of the real property, the bankruptcy court relied upon declarations submitted by the debtors, which falsely stated that the sale was an arms-length transaction, that neither of the debtors held any interest in the entities purchasing the real property and that the real property was over-encumbered. *Id.* at 726. The chapter 7 trustee's quiet title action was predicated upon the action to vacate the sale for fraud on the court. *Id.* at 738. The defendants filed a motion to dismiss the chapter 7 trustee's adversary complaint. *Id.* at 727-28. In ruling on the motion to dismiss, the bankruptcy court found that the chapter 7 trustee's complaint, among other things, stated claims for relief to vacate the sale order for fraud on the court under Rule 60(d)(3) and to quiet title under CCP 761.010. *Id.* at 738.

Roussos is inapposite. In *Roussos*, the chapter 7 trustee's quiet title action was predicated upon the action to vacate the sale for fraud on the court under Rule 60. Here, Plaintiff has not asked the Court to vacate an order or judgment under Rule 60(b) or (d). Even if Plaintiff had, there are no orders or judgments that the Court could vacate relating to the Property. Plaintiff cites no authority, and the Court could not independently find any authority, that permits a quiet title action based on fraud on the court that is not in the context of a Rule 60 motion. Fraud on the court is not an independent cause of action. As Plaintiff has not stated a claim under Rule 60, the Complaint does not state a claim for quiet title based on fraud on the court that is plausible on its face.

Similarly, the "continuing concealment doctrine" is also not applicable to the allegations in the Complaint. The continuing concealment doctrine applies to nondischargeability claims under 11 U.S.C. § 727(a). Pursuant to § 727,

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(a) The court shall grant the debtor a discharge, unless—

...

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition.

11 U.S.C. § 727(a)(2)(A). Under the continuing concealment doctrine, adopted by the United States Court of Appeals for the Ninth Circuit in *Lawson*, "a transfer made and recorded more than one year prior to filing may serve as evidence of the requisite act of concealment where the debtor retains a secret benefit of ownership in the transferred property within the year prior to filing." *Lawson*, 122 F. 3d at 1240. In *Lawson*, the bankruptcy court denied the debtor a discharge pursuant to § 727(a)(2)(A) based on the continuing concealment doctrine. *Id.* at 1239-40. The United States Court of Appeals for the Ninth Circuit upheld the bankruptcy court's ruling. *Id.* at 1242.

Here, the Complaint does not state a claim for nondischargeability under § 727(a)(2)(A). Further, even if the continuing concealment doctrine did apply to this case, it would not bring the Property into Debtors' bankruptcy estate. Plaintiff presented no legal authority for the proposition that a quiet title action can be based on the continuing concealment doctrine. As such, the Complaint does not state a claim for quiet title based on the continuing concealment doctrine that is plausible on its face.

2. Alter Ego Liability

In the Opposition, Plaintiff purports that the quiet title action is predicated upon the fact that Duane is an alleged alter ego of Roxe. Plaintiff contends that Roxe is a sham entity and that Debtors are the true owners of the Property.

"In determining whether alter ego liability applies, [courts] apply the law of the forum state." *In re Schwarzkopf*, 626 F. 3d 1032, 1037 (9th Cir. 2010). "We 'must follow the

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decision of the intermediate appellate courts of the state unless there is convincing evidence that the highest court of the state would decide differently.'" *Id.*, at 1038 (quoting *Owen By and Through Owen v. United States*, 713 F. 2d 1461, 1464 (9th Cir.1983)).

"The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests. In certain circumstances the court will disregard the corporate entity and will hold the individual shareholders liable for the actions of the corporation." *Mesler v. Bragg Management Co.*, 39 Cal. 3d 290, 300 (1985) (internal citations omitted). "[T]he corporate form will be disregarded only in narrowly defined circumstances and only when the ends of justice so require." *Neilson v. Union Bank*, 290 F. Supp. 2d 1101, 1115 (C.D. Cal. 2003) (internal quotations omitted); *see also Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523, 539 (Ct. App. 2000) ("Alter ego is an extreme remedy, sparingly used.").

In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and its shareholders do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone.

Id. at 526. "Conclusory allegations of 'alter ego' status are insufficient to state a claim. Rather, a plaintiff must allege specifically both of the elements of alter ego liability, as well as facts supporting each." *Neilson*, at 1116.

Here, Defendants correctly contend that Plaintiff cannot show an essential element of alter ego liability—ownership. *See SEC v. Hickey*, 322 F. 3d 1123, 1128 (9th Cir. 2003) ("Ownership is a prerequisite to alter ego liability, and not a mere 'factor' or 'guideline'"); *Firstmark Capital Corp. v. Hempel Financial Corp.*, 859 F. 2d 92, 94 (9th Cir. 1998) ("Ownership of an interest in the corporation is an essential part of the element of unity of ownership and interest."). The Complaint does not allege that Debtors have any ownership interest in Roxe. As such, the Complaint fails to allege enough facts to state a claim to relief that is plausible on its face for alter ego liability.

Plaintiff cites to *In re Turner*, 345 B.R. 674 (Bankr. N.D. Cal. 2006), for the proposition that although Debtors are not formally identified as owners of Roxe, the

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Court can still find that Roxe is Debtors' alter ego. In *Turner*, after a trial, the court issued a decision which held, among other things, that the transfer of certain real property by a limited partnership to the defendant was avoidable as a fraudulent transfer pursuant to 11 U.S.C. § 548 because the limited partnership was the debtor's alter ego. *Id.* at 675. The defendant and the debtor moved for reconsideration and/or a new trial (the "Reconsideration Motion"). *Id.* at 675-76. The court issued a memorandum of decision on the Reconsideration Motion. In relevant part, the court stated,

The Court concludes that the [defendants] have failed to provide any compelling or persuasive authority causing the Court to modify its conclusion that [the limited partnership] was the [d]ebtor's alter ego. In the Reconsideration Motion, they appear to contend that, because [the debtor] was not named as the owner of [the limited partnership] he cannot be held it its alter ego (even if the evidence persuades the Court that he actually is its owner). The Court does not read the law in this limiting fashion.

As stated in *Hickey*, under California law, only two things must be established to support a finding of alter ego: (1) a unity of interest and ownership such that the person and the entity cannot fairly be considered separate and (2) adherence to the fiction of the separate existence of the entity and the individual would work an injustice. 322 F.3d at 1128–29. The evidence presented during at trial satisfied both of these prongs. As a result, the Court denies the Turners' request to reconsider its conclusion or to conduct a new trial on this issue.

However, on appeal, the United States Bankruptcy Panel of the Ninth Circuit (the "BAP") held that alter ego liability cannot be imposed absent ownership. *In re Turner*, No. 02-44874, 2007 WL 7238117, at *5-6 (B.A.P. 9th Cir. Sept. 18, 2007) ("While there is evidence to support a unity of interest finding, there is no evidence that [d]ebtor was an owner or shareholder of [the limited partnership]—a pre-requisite for alter ego liability."). Here, the Complaint alleges that Michael owns a 100% membership interest in Roxe. The Complaint does not allege that Debtors are an owner, shareholder or member of Roxe. As such, the Complaint does not state a claim for quiet title, based on alter ego liability, which can survive a Rule 12(b)(6) motion.

3. *Fraudulent Conveyance*

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In the Motion, Defendants argue that the Complaint is a veiled attempt to recover the Property through a fraudulent transfer theory. The Complaint alleges that as of the petition date, Debtors are the true owners of the Property, but for Duane's diversion of title to Roxe. Plaintiff claims that Debtors' bankruptcy estate has the right to the Property because it was transferred to Roxe, which was purportedly formed by Duane to conceal his interest in the Property. However, a claim to quiet title to the Property on the grounds that the Property was fraudulently transferred is time barred.

i. 11 U.S.C. § 544

Pursuant to 11 U.S.C. § 544(b), "the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim." To succeed on the § 544(b) (1) claim, Plaintiff must demonstrate that: 1) the transferred property was an interest of debtor in property; 2) the transfers are voidable under applicable state law; and 3) a creditor holding an allowable unsecured claim could bring the state law avoidance action. *Smith v. Suarez*, 417 B.R. 419, 432-33 (Bankr. S.D. Tex. 2009). The Trustee bears the burden of establishing the alleged fraudulent transfer by a preponderance of the evidence. *Id.*

Here, among other things, Plaintiff cannot show that the transfer of the Property from the Campbell-Martin Family Trust to Roxe is voidable under applicable state law. Pursuant to Cal. Civ. Code § 3439.04(a)—

A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor.
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either:
 - (A) Was engaged or was about to engage in a business or a transaction

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for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

- (B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

Cal. Civ. Code § 3439.04(a). An action under § 3439.04(a)(1), for actual fraud, must be brought "within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant." Cal. Civ. Code § 3439.09(a). An action under § 3439.04(a)(2), for constructive fraud, must be brought within four years after the transfer was made. Cal. Civ. Code § 3439.09(b).

Pursuant to 11 U.S.C. § 108(a)—

If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only 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) two years after the order for relief.

11 U.S.C. § 108(a). Here, the Property was transferred from the Campbell-Martin Family Trust to Roxe on November 30, 2012. Debtors filed their chapter 7 petition on January 7, 2016, which was before the expiration of the four-year statute of limitations under Cal. Civ. Code § 3439.09. As such, under § 108(a), Plaintiff had until two years after Debtors filed their chapter 7 petition to commence this action. Two years after Debtors filed their petition would have been January 7, 2018. Plaintiff did not file the Complaint until September 17, 2018, which was outside the two-year window. Accordingly, any action based on a fraudulent transfer under § 544 is time barred.

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ii. 11 U.S.C. § 548

Pursuant to 11 U.S.C. § 548(a)—

- (1) The trustee may avoid any transfer . . . of an interest of the debtor in property, or any obligation . . . incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—
 - (A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
 - (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
 - (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
 - (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
 - (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
 - (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

11 U.S.C. § 548(a)(1). Here, among other things, the transfer of the Property from the Campbell-Martin Family Trust to Roxe occurred more than two years prior to Debtors filing their chapter 7 petition. As stated above, the transfer occurred on November 30, 2012, and Debtors filed their chapter 7 petition on January 7, 2016. As such, any action based on a fraudulent transfer under § 548 is time barred.

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C. 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 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.

"Thus, in order to prevail in a turnover action [a party] must prove the following elements under section 542(a): (1) the property [is] in the possession, custody, or control of an entity, (2) the property can be used in accordance with 11 U.S.C. § 363; and (3) the property has more than inconsequential value or benefit to the estate." *Matter of Alofs Mfg. Co.*, 209 B.R. 83, 91 (Bankr. W.D. Mich. 1997).

"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).

Here, Plaintiff has not established a claim for relief under Rule 12(b)(6). As noted

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above, 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 definitively property of the estate. Here, it has not been established that the estate has an undisputed interest in the Property. As a result, Plaintiff is not entitled to turnover of the Property. Accordingly, the Complaint is insufficient on its face.

D. 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 v. Carey*, 353 F. 3d 750 (9th Cir. 2003). It appears that the deficiencies in the Complaint cannot be cured by amendment. As such, the Court will grant the Motion without leave to amend.

III. CONCLUSION

The Court will grant the Motion without leave to amend.

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

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Defendant(s):

Roxe, LLC, a California limited

Represented By
Dawn M Coulson

Michael Martin an individual

Represented By
Dawn M Coulson

Doe 1 through DOE 10, inclusive

Pro Se

Joint Debtor(s):

Tisha Michelle Martin

Represented By

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Chapter 7

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

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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

- #18.00** 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); 12/5/18; 12/12/18

Stipulation to continue filed 12/10/18

Docket 1

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

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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

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1:00 PM

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

Chapter 11

#1.00 Third amended disclosure statement hearing

fr. 7/19/18; 12/6/18

Docket 91

Tentative Ruling:

The Court will approve for the solicitation of votes the "Third Amended Disclosure Statement Describing the Third Amended Chapter 11 Plan of Reorganization" [doc. 91].

Proposed dates and deadlines regarding "Proposed Third Amended Chapter 11 Plan of Reorganization" (the "Plan") [doc. 93]:

Hearing on confirmation of the Plan: **March 7, 2019 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: **January 18, 2019.**

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 debtors: **February 15, 2019.**

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: **February 25, 2019.** 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.

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CONT... Roger Ronald Steinbeck and Stannis Veronica Steinbeck

Chapter 11

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

Party Information

Debtor(s):

Roger Ronald Steinbeck

Represented By
Michael R Totaro

Joint Debtor(s):

Stannis Veronica Steinbeck

Represented By
Michael R Totaro

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1:18-11243 Jeff Davani and Nadia Davani

Chapter 7

#2.00 Trustee's motion for disgorgement of fees against bankruptcy
petition preparer L.J. Fay

Stipulation resolving motion filed 12/6/18.

Docket 48

***** VACATED *** REASON: Order resolving matter entered 12/7/18 [doc.
56].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeff Davani

Represented By
Michael H Raichelson

Joint Debtor(s):

Nadia Davani

Represented By
Michael H Raichelson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays

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1:18-11729 Richard Philip Dages

Chapter 11

#3.00 Status conference re Chapter 11 case

fr. 8/16/18

Docket 0

Tentative Ruling:

Although the debtor timely filed a status report, contrary to the Court's ruling on August 16, 2018, the status report was not supported by evidence in the form of declarations and supporting documents.

On November 30, 2018, the Court entered an order extending the deadline for the debtor to file a chapter 11 plan and related disclosure statement to March 1, 2019. In light of the extension, the Court will continue this status conference to **March 14, 2019 at 1:00 p.m.** to see if the debtor has timely filed a chapter 11 plan and related disclosure statement. **No later than February 28, 2019**, the debtor must file an updated status report **supported by evidence in the form of declarations and supporting documents.**

Appearances on January 10, 2019 are excused.

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

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1:18-12325 12 Cumpston Partnership

Chapter 11

#4.00 Disclosure Statement Describing Chapter 11 Plan of Reorganization

Docket 35

***** VACATED *** REASON: Order ent 1/7/19 approving stip to cont to
2/21/19 at 1:00 pm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

12 Cumpston Partnership

Represented By
Mark E Goodfriend

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1:18-12325 12 Cumpston Partnership

Chapter 11

#5.00 Status conference re chapter 11 case

fr. 11/15/18

Docket 1

Tentative Ruling:

The debtor has not filed its November 2018 monthly operating report ("MOR"). Further, the debtor did not include bank statements in its October 2018 MOR.

Contrary to the Court's ruling on November 15, 2018, the debtor has not filed an updated status report, supported by evidence in the form of declaration and supporting documents.

On January 2, 2019, the debtor and Citimortgage, Inc., as servicer for Citigroup, etc. ("Creditor"), entered into a stipulation to continue the hearing on the adequacy of the debtor's chapter 11 disclosure statement (the "Stipulation"). In the Stipulation, the parties represent that Creditor completed an appraisal of the debtor's sole real property, *i.e.*, a single family home, and provided a copy of the appraisal to the debtor.

What is the value of the real property, according to Creditor's appraisal?

What is the status of the debtor's efforts to obtain a current appraisal of the real property?

Party Information

Debtor(s):

12 Cumpston Partnership

Represented By
Mark E Goodfriend

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1:18-12785 Elizabeth Y. Zaharian

Chapter 11

#6.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

Contrary to the Court's *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* [doc. 14], the debtor did not support her status report with evidence. No later than **January 17, 2019**, the debtor must file and serve a declaration in support of the status report.

In her schedule I, the debtor states that she receives no income; in her schedule J, the debtor lists \$16,754.35 in monthly expenses. In her Statement of Financial Affairs, the debtor indicates that she has not received any income in 2016 or 2017, with the exception of \$52,000 distributed from an IRA. In the debtor's schedule A/B, the debtor indicates that she owns an IRA with a value of \$1,958.57, as of the petition date. Is this the IRA which generated the \$52,000 in distributions?

In her Statement of Financial Affairs, the debtor indicates that she is married; in her schedule H, the debtor indicates that her spouse resides at the debtor's address. However, the debtor has not included her spouse's income in her schedule I, which requires information about a debtor's non-filing spouse if the spouse lives with the debtor.

The debtor lists multiple liens against her residence (5 of which arise from deeds of trust), totaling \$1,984,964.25. Only two of these liens are described as disputed.

Based on the debtor's valuation of her residence, it does not have any non-exempt equity. How will the debtor pay for her monthly living expenses, post-petition? How does the debtor intend to fund a chapter 11 plan?

In her declaration to be filed in support of the status report, the debtor must discuss the debtor's ability to fund her post-petition living expenses, as well as to fund payments required to confirm and to implement a chapter 11 plan.

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Elizabeth Y. Zaharian

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No later than **January 17, 2019**, the debtor must file and serve an amended schedule I to include information about her spouse's income, and an amended schedule J to account for her spouse's expense contributions. The debtor also must file her 2017 tax returns with the Court.

If the debtor does not timely file her declaration, her amended schedules and her 2017 tax returns, the Court may convert or dismiss the debtor's case with a 180-day bar pursuant to 11 U.S.C. §§ 105(a), 349 (a) and 1112(b).

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

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1:18-12811 Desert Fairways 30, LLC

Chapter 11

#7.00 Status Conference re: Chapter 11 Case

Docket 0

Tentative Ruling:

On December 4, 2018, the Court entered an *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* (the "Order") [doc. 10]. Contrary to the Order, the debtor has not filed a case status report. The debtor also has not filed a monthly operating report for November 2018.

The debtor's only asset, a single family residence, is located in Scottsdale, Arizona. The only claims set forth in the debtor's schedules are secured and tax claims.

Pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1112(b)(1), (4)(E) and (F), this case will be dismissed with 180-day bar to the debtor's filing of another petition under any chapter of the Bankruptcy Code. Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, filed on November 19, 2018, the Court concludes that it is in the best interest of creditors and the estate to dismiss this case.

If this case is not dismissed, the Court will transfer this case to Arizona, where the debtor's only asset is located.

The Court will prepare the order.

Party Information

Debtor(s):

Desert Fairways 30, LLC

Represented By
Stephen Parry

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

Thursday, January 10, 2019

Hearing Room 301

2:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#8.00 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

fr. 12/20/18

Docket 98

Tentative Ruling:

What is the status of the sale and the consensual resolution of the pending objection?

12/20/18 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, January 10, 2019

Hearing Room 301

2:00 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

#9.00 Creditor's motion for leave to serve requests for production and requests for admissions upon debtor Exotic Euro Cars, Kain Kumar MD, Inc., Antelope Medical Group Leasing Inc., and Antelope Medical Group, Inc., and for an order granting creditor leave to conduct an examination of Exotic Euro Cars, Kain Kumar MD. Inc., antelope Medical Group Leasing, Inc., and Antelope Medical Group, Inc.

Docket 61

***** VACATED *** REASON: Order denying amended version of this motion entered 12/20/18 [doc. 68].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

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

Thursday, January 10, 2019

Hearing Room 301

2:00 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

#10.00 Party in interest's motion to convert case to chapter 7
nunc pro tunc as of May 4, 2018

Docket 102

*** VACATED *** REASON: Order ent 1/7/19 approving stip to cont to
1/17/19 at 2:00 pm

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, January 15, 2019

Hearing Room 301

8:30 AM

1:18-12511 Bianca Louise Caceres

Chapter 7

**#1.00 Reaffirmation Agreement Between Debtor and
American Honda Finance Corporation**

Docket 10

Party Information

Debtor(s):

Bianca Louise Caceres

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, January 15, 2019

Hearing Room 301

8:30 AM

1:18-12639 Carlos Chipres Martinez

Chapter 7

#2.00 Reaffirmation Agreement Between Debtor and TD Auto Finance LLC

Docket 17

Party Information

Debtor(s):

Carlos Chipres Martinez

Represented By
Lee M Linson

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 15, 2019

Hearing Room 301

8:30 AM

1:18-12758 Diana Isabel Olvera Avila

Chapter 7

#3.00 Reaffirmation Agreement Between Debtor and Logix Federal Credit Union

Docket 8

Party Information

Debtor(s):

Diana Isabel Olvera Avila

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**

Wednesday, January 16, 2019

Hearing Room 301

9:30 AM

1:18-11900 Maryam Hadizadeh

Chapter 7

#1.00 Motion for relief from stay [AN]

DANNY PAVEHZADEH
VS
DEBTOR

fr. 10/31/18

Docket 23

Tentative Ruling:

Deny relief from the automatic stay.

The prior hearing on this matter was continued to allow the chapter 7 trustee to conduct an investigation. The chapter 7 trustee filed a supplemental opposition on January 2, 2019 [doc. 65], and on January 9, 2019, movant filed a supplemental reply [doc. 68]. After considering the supplemental briefing, 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.

On August 3, 2018, the debtor filed a notice of the automatic stay in the state court action [doc. 23, Exh. 4]. The bar date for filing a proof of claim in the debtor's case was October 9, 2018. Mr. Ebrahimi did not timely file a proof of claim. On October 9, 2018, movant filed proof of claim no. 5-1 based on, among other things, the debtor's alleged unauthorized transfer of movant's funds. The deadline for filing a nondischargeability action was November 6, 2018. Mr. Ebrahimi did not timely file a nondischargeability action against the debtor.

The cross-complaint against the debtor alleges fraud, intentional infliction of emotional distress and negligence. The prayer for relief is for damages. Movant has not shown cause for lifting the automatic stay to litigate an action for damages, against debtor, in state court.

Notwithstanding the foregoing, movant may proceed against the non-debtor defendants in the nonbankruptcy forum, and Mr. Ebrahimi may proceed in the

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Judge Victoria Kaufman, Presiding
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9:30 AM

CONT... Maryam Hadizadeh
nonbankruptcy forum against movant.

Chapter 7

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

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, January 16, 2019

Hearing Room 301

9:30 AM

1:13-16706 Hector Cahuantzi Gutierrez

Chapter 13

#2.00 Motion for relief from stay [RP]

US BANK N.A.
VS
DEBTOR

fr. 11/14/18; 12/12/18

Docket 80

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 16, 2019

Hearing Room 301

9:30 AM

1:15-10295 Adolph Earl Jones and Katherine Johnson Jones

Chapter 13

#3.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 11/7/18; 12/12/18

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, January 16, 2019

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, January 16, 2019

Hearing Room 301

9:30 AM

1:18-11849 Leticia E. Donis Duran

Chapter 13

#4.00 Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING LLC
VS
DEBTOR

fr. 12/5/18; 12/12/18

Docket 19

***** VACATED *** REASON: APO entered 1/15/19 [doc. 35] jc**

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 303 Calendar**

Wednesday, January 16, 2019

Hearing Room 303

9:30 AM

1:18-12606 Marcelo Alejandro Cabrera

Chapter 13

#5.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 11/21/18; 12/19/18

Docket 9

***** VACATED *** REASON: Order entered on 12/17/18, dismissing chapter 13 case for failure to make required payments [doc. 18].**

Tentative Ruling:

- NONE LISTED -

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, January 16, 2019

Hearing Room 301

9:30 AM

1:18-12872 Eric Beau Hannah

Chapter 7

#6.00 Motion for relief from stay [UD]

7918 RESEDA BLVD. APARTMENTS OWNER, LLC
VS
DEBTOR

Docket 19

Tentative Ruling:

The Court will grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Effective September 28, 2018, Eric Beau Hannah ("Debtor") and 7918 Reseda Blvd. Apartments Owner, LLC ("Movant") entered into a lease contract [doc. 19, Exh. A], whereby Movant leased to Debtor real property located at 7918 Reseda Blvd., Unit 114, Reseda, California 91335 (the "Property"). On November 5, 2018, Movant served a three-day notice to quit on Debtor [doc. 19, Exh. B]. On November 15, 2018, Movant filed a complaint for unlawful detainer against Debtor [doc. 19, Exh. C].

On November 29, 2018, Debtor filed a voluntary chapter 7 petition. On his petition, Debtor listed the Property as his residence [doc. 1, p. 2]. On December 26, 2018, Movant filed a motion for relief from the automatic stay to proceed with the unlawful detainer action in state court (the "Motion") [doc. 19].

On January 3, 2019, Debtor filed an opposition to the Motion (the "Opposition") [doc. 21]. However, Debtor did not include a proof of service of the Opposition as required by Local Bankruptcy Rule ("LBR") 9013-1(e). Further, Debtor did not include a declaration or other written evidence regarding the factual contentions in the Opposition as required by LBR 9013-1(i). Finally, Debtor did not submit evidence showing that he made his lease payments that became due post-petition.

It appears that there is cause to grant the Motion pursuant to 11 U.S.C. § 362(d)(1)

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CONT... Eric Beau Hannah

Chapter 7

and (d)(2). The state court is a specialized tribunal that has been established to hear unlawful detainer actions and has the expertise to hear such cases. If Debtor wishes to oppose the grounds for the unlawful detainer action, Debtor can do so in the state court.

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.

Party Information

Debtor(s):

Eric Beau Hannah

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
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Hearing Room 301

9:30 AM

1:18-11318 Marcin Lambirth LLP

Chapter 7

#7.00 Motion for relief from stay [AN]

NANCY LEE ANN PARROTT, IND. AND AS SUCCESSORS OF
THE PAROTT FAMILY TRUST AND JUANITA COHODAS, THEIR
SUCCESSORS AND ASSIGNS

Docket 42

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. **If recovery from applicable insurance requires that the Second Amended Complaint be served upon the chapter 7 trustee**, movant has relief from the automatic stay to effectuate such service.

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.

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 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

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**

Wednesday, January 16, 2019

Hearing Room 301

9:30 AM

CONT... Marcin Lambirth LLP

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Represented By
Christopher Celentino

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

Wednesday, January 16, 2019

Hearing Room 301

9:30 AM

1:18-12944 Luis Exequiel Barillas

Chapter 7

#8.00 Motion for relief from stay [PP]

TD AUTO FINANCE LLC
VS
DEBTORS

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):

Luis Exequiel Barillas

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
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Wednesday, January 16, 2019

Hearing Room 301

9:30 AM

1:18-11488 Christopher Anderson

Chapter 7

#9.00 David K. Gottlieb, Chapter 7 Trustee's motion for relief from, and to vacate, order granting motion for relief from the automatic stay [Dkt #57]

Docket 75

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion.

I. BACKGROUND

On June 12, 2018, Christopher Anderson ("Debtor") filed a voluntary chapter 7 petition. Prior to Debtor filing the petition, Debtor and his former spouse were parties to a dissolution action in state court [Declaration of David K. Gottlieb ("Gottlieb Decl."), doc. 75, ¶ 3]. Lindsay Nielson ("Receiver") was appointed as receiver in the dissolution action to, among other things, sell the real property located at 10000 Nita Avenue, Chatsworth, California 91311 (the "Property"). *Id.*

In his petition, Debtor listed the Property as his residence [doc. 1, at p. 2]. In his Schedule A/B, Debtor indicated that he alone owns the Property and that its fair market value is \$1,349,000.00. *Id.* at p. 11. In his Schedule D, Debtor represented the following secured claims against the Property: (1) \$525,000.00 to Jerome Biddle for a "hard money loan;" (2) \$1,300,000.00 to Jerry Hancock for a judgment lien from a lawsuit; and (3) \$117,612.20 to Plummer Group, LLC (the "Plummer Group") for a judgment lien from a lawsuit. *Id.* at pp. 19-20. In his Statement of Financial Affairs, Debtor represented that litigation against Mr. Hancock and litigation involving the Plummer Group were concluded. *Id.* at p. 34.

The initial section 341(a) meeting of creditors was scheduled for July 20, 2018 [doc. 5]. The chapter 7 trustee (the "Trustee") was not able to examine Debtor because Debtor failed to produce all required identification and other documents [Gottlieb Decl., ¶ 6]. The 341(a) meeting was continued to August 31, 2018 [doc. 16]. On August 31, 2018, the Trustee was again not able to examine Debtor because Debtor failed to produce certain identification and other documents [Gottlieb Decl., ¶ 7]. The

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341(a) meeting was continued to September 28, 2018 [doc. 39].

On September 28, 2018, the Trustee was able to examine Debtor and requested that Debtor produce certain documents [Gottlieb Decl., ¶ 8]. The 341(a) meeting has been continued several times so that Debtor can produce the requested documents [docs. 55, 72]. As of the filing of the Motion, the Trustee had not received all requested documents from Debtor, and the 341(a) has not concluded [Gottlieb Decl, ¶ 9].

On October 5, 2018, Jerome Biddle and Susan Biddle (together, the "Biddles") filed a motion for relief from the automatic stay (the "Biddle RFS Motion") [doc. 50], alleging that no equity existed in the Property. Specifically, the Biddles alleged that the Property was encumbered by three separate deeds of trust: (1) \$525,000.00 to the Biddles, et al; (2) \$1,300,000.00 to Mr. Hancock; and (3) \$117,612.20 to the Plummer Group. *Id.* at p. 8. The Biddle RFS Motion stated that the total debt against the property was \$1,945,052.09 and that the fair market value of the Property was \$1,349,000.00. *Id.* The Biddles attached Debtor's Schedule D as evidence of the three deeds of trust against the Property and Debtor's Schedule A as evidence of the Property's fair market value. *Id.* at Exh. 3.

On October 17, 2018, Mr. Hancock filed an opposition to the Biddle RFS Motion [doc. 53]. The Trustee did not file an opposition to the Biddle RFS Motion. On November 8, 2018, the Court entered an order granting the Biddle RFS Motion pursuant to 11 U.S.C. § 362(d)(2) *i.e.* lack of equity (the "RFS Order") [doc. 57].

On November 16, 2018, the Trustee filed an application to employ general bankruptcy counsel to assist him in investigating assets of the estate which could be monetized for the benefit of creditors (the "Employment Application") [doc. 62]. On December 17, 2018, the Court entered an order granting the application to employ general bankruptcy counsel [doc. 77].

As part of the investigation, the Trustee's counsel studied the factual assertions made in the Biddle RFS Motion [Gottlieb Decl., ¶ 16]. From this investigation, the Trustee has learned that Mr. Hancock's lien is actually an attachment lien (the "Attachment Lien") [doc. 75, Exh. A]. The Attachment Lien was recorded on April 27, 2018, which is within ninety days of Debtor filing his petition. Additionally, Mr. Hancock obtained

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a temporary protective order recorded on March 22, 2018, which expired on April 11, 2018. *Id.* at Exh. B. The Plummer Group's lien is a judgment lien (the "Judgment Lien"), not a consensual deed of trust. *Id.* at Exh. C. The Judgment Lien was recorded on May 23, 2018, which is within ninety days of Debtor filing his petition. On November 30, 2018, the Trustee filed an adversary complaint against Plummer Group seeking to avoid the Judgment Lien as a preferential transfer [Case no. 1:18-ap-01123-VK].

On December 14, 2018, the Trustee filed a *Motion to Relief from, and to Vacate, Order Granting Motion for Relied from the Automatic Stay [DKT #57]* (the "Motion") [doc. 75]. On January 2, 2019, the Biddles filed a limited opposition to the Motion (the "Limited Opposition") [doc. 82]. On January 8, 2019, the Trustee filed a reply to the Limited Opposition [doc. 86].

In the Motion, the Trustee alleges that the Attachment Lien was extinguished by operation of law when Debtor filed his petition pursuant to California Code of Civil Procedure ("C.C.P.") § 493.030(b). Accordingly, the Attachment Lien did not constitute an encumbrance against the Property at the time of the Biddle RFS Motion. The Trustee further alleges that the Judgment Lien is avoidable as a preferential transfer and the Trustee has already filed an adversary proceeding seeking to avoid and recover the lien. Accordingly, the Trustee contends that there is a \$500,000.00 to \$600,000.00 equity cushion in the Property.

In the Limited Opposition, the Biddles state that they do not object to the Trustee's efforts to sell the Property, provided that sale efforts be diligent, and that the sale be conducted expeditiously, with sale proceeds resulting in a full payoff to the Biddles.

II. DISCUSSION

The Trustee states that he seeks relief under Federal Rule of Civil Procedure ("Rule") 60(b)(1), (b)(3) and (b)(6). Rule 60(b), applicable via Federal Rule of Bankruptcy Procedure 9024, provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

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- (1) mistake, inadvertence, surprise, or excusable neglect;
- ...
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- ...
- (6) any other reason that justifies relief.

Rule 60(b).

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 (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 FRCP 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 Ninth Circuit Court of Appeals has made clear that it is an abuse of that discretion to deny a FRCP 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 FRCP 60(b)(1) motion because the trial court did not consider one of the four factors); *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1224 (9th Cir. 2000) (reversing trial court's denial of FRCP 60(b)(1) motion for failure to mention and consider the test in *Pioneer* and *Briones*). The Court in *Lemoge* also 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

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neglect.'" *Lemoge*, 578 F.3d at 1195.

Here, the Trustee argues that he did not file an opposition to the Biddle RFS Motion because he is not an attorney and he relied on the misleading statements in the Biddle RFS Motion and Debtor's schedules that the Property had no equity. The question is whether the Trustee's neglect in filing an opposition is excusable under Rule 60(b) and *Pioneer*.

a. Prejudice to Creditors

Granting the Motion would not prejudice the Biddles. Once the Attachment Lien is terminated, based on the valuation of the Property in the Biddle RFS Motion, there is approximately a \$700,000.00 equity cushion. Thus, the Biddles are adequately protected. Further, the Biddles have not recorded a notice of default against the Property. Accordingly, the Biddles are no less than 121 days away from being able to foreclose under California law. The Trustee has filed an application to employ a broker and obtained an order from this Court requiring the Receiver to turn over the Property to the Trustee. Thus, the Trustee may be able to sell the Property before 121 days, and the Biddles would receive payment of their security interest sooner. As such, this factor weighs in favor of granting the Motion.

b. Length of Delay and its Potential Impact on Judicial Proceedings

On November 8, 2018, the Court entered the RFS Order. On December 14, 2018, the Trustee filed the Motion. This is not a long delay and granting the Motion will not impact judicial proceedings. The Biddles have not recorded a notice of default against the Property. As such, this factor weighs in favor of granting the Motion.

c. Reason for the Delay/Delay in Reasonable Control of the Movant

The Trustee contends that as a non-attorney, and based on the representations made in the Biddle RFS Motion, he thought that he had no basis to object. Although the Biddles labeled the Attachment Lien and the Judgment Lien as deeds of trust in the Biddle RFS Motion, they also attached Debtor's schedules to the motion, which clearly state that the Attachment Lien and the Judgment Lien are liens from judgments. Accordingly, the Trustee was on notice that the Attachment Lien and

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CONT... Christopher Anderson

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Judgment Lien were not deeds of trust.

The Trustee appears correct that the Attachment Lien terminated when Debtor filed his petition. Pursuant to C.C.P. § 493.030(b), "[t]he filing of a petition commencing a voluntary or involuntary case under Title 11 of the United States Code (Bankruptcy) terminates a lien of a temporary protective order or of attachment if the lien was created within 90 days prior to the filing of the petition." Here, the Attachment Lien was recorded on April 27, 2018, and Debtor filed his petition on June 12, 2018. Accordingly, the Attachment Lien was created within 90 days prior to the filing of the petition, and thus, terminated by operation of law when Debtor filed his petition. As such, when the Biddles filed the Biddle RFS Motion, based on the valuation of the Property in the motion, there was a \$706,387.80 equity cushion in the Property.

On November 16, 2018, the Trustee filed the Employment Application. This was after the RFS Order was entered. Accordingly, the Trustee was not represented by counsel when opposition was due for the Biddle RFS Motion. Being a non-attorney and relying on the representation in Debtor's schedules that the Attachment Lien was a judgment lien, it is understandable that the Trustee would not oppose the Biddle RFS Motion. As such, this factor weighs in favor of granting the Motion.

d. Whether Movant Acted in Good Faith

In determining whether a movant acted in good faith, the court should look at whether the "errors resulted from negligence and carelessness," or from "deviousness or willfulness." *Bateman*, 231 F.3d at 1225. Here, there are no facts that suggest that the Trustee acted in bad faith. It appears that the Trustee did not learn of a basis to object to the Biddle RFS Motion until he hired counsel. As such, this factor weighs in favor of granting the Motion.

e. Prejudice to Movant

As noted by the Ninth Circuit in *Lemoge*, prejudice to the movant may be a relevant factor when ruling on a FRCP 60(b) motion. *Lemoge*, 578 F.3d at 1195. If the Court denied the Motion, the Trustee may be prejudiced. If the Biddles continue to pursue foreclosure, under California law, they must record a notice of default. This will alert potential buyers that the Trustee has limited time to consummate a sale of the

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CONT... Christopher Anderson

Chapter 7

Property, which may frustrate the Trustee's broker's efforts to obtain the highest and best price for the Property. Further, it is in the best interest of the estate and its creditors for the Trustee to sell the Property. As such, this factor weighs in favor of granting the Motion.

The factors weigh in favor of granting the Motion. Accordingly, the Court will grant the Motion pursuant to Rule 60(b)(1). Because the relief the Trustee seeks falls under Rule 60(b)(1), the Court will not consider whether relief is warranted under Rule 60(b)(3) and (b)(6).

III. CONCLUSION

For the reasons discussed above, the Court will grant the Motion.

The Trustee must submit the order within seven (7) days.

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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1:17-12522 Taghreed Yaghnam

Chapter 13

#10.00 Motion for relief from stay [PP]

CAB WEST LLC
VS
DEBTOR

RE: 2016 Ford Fusion VIN 3FA6P0H78GR281455

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):

Taghreed Yaghnam

Represented By
James Geoffrey Beirne

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CONT... Taghreed Yagham

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:17-12522 Taghreed Yaghnam

Chapter 13

#10.01 Motion for relief from stay [PP]

CAB WEST LLC
VS
DEBTOR

RE: 2017 Ford Escape VIN 1FMCU0GD3HUE55077

Docket 54

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

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CONT... Taghreed Yaghnam

Chapter 13

Movant(s):

Cab West, LLC

Represented By
Sheryl K Ith
Jennifer H Wang

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:15-14192 Maria Trinidad De Anda

Chapter 13

#11.00 Motion for relief from stay [RP]

REVERSE MORTGAGE SOLUTIONS, INC., AS
SERVICER FOR BANK OF AMERICA
VS
DEBTOR

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Trinidad De Anda

Represented By
D Justin Harelik

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#12.00 Plaintiff's motion for order compelling defendants to produce additional documents in response to requests for production of documents, and for sanctions

Docket 72

***** VACATED *** REASON: Order entering continuing hearing to 1/23/19 at 2:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

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
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By
Vahe Khojayan

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1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#13.00 Plaintiff's motion to compel defendants to appear at deposition and for sanctions

Docket 77

***** VACATED *** REASON: Order entering continuing hearing to 1/23/19 at 2:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

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
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By
Vahe Khojayan

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1:14-10097 Rodney M Mojarro

Chapter 11

#1.00 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, 8/2/18

Docket 1

Tentative Ruling:

On August 2, 2018, the reorganized debtor ("Debtor") filed a motion for order closing case on interim basis [doc. 234]. Debtor filed a declaration of non-opposition to the motion as required by Local Bankruptcy Rule ("LBR") 9013-1(3)(A). However, Debtor never delivered a judge's copy of the motion, notice and declaration of non-opposition as required by LBR 9013-1(3)(C). Moreover, Debtor did not lodge a proposed order as required by LBR 9013-1(3)(B).

On November 29, 2018, the United States Trustee filed a motion to dismiss or convert the case [doc. 238]. In the motion, the United States Trustee states that Debtor failed to provide a post-confirmation quarterly report for the third quarter of 2018 and failed to pay the United States Trustee quarterly fees in the amount of \$1,302.39 for the second and third quarters of 2018.

What is the status of these pending motions?

Party Information

Debtor(s):

Rodney M Mojarro

Represented By
Michael J Jaurigue

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1:18-10417 Deborah Lois Adri

Chapter 11

#2.00 Status conference re: chapter 11 case

from: 3/29/18; 4/12/18; 11/15/18; 12/6/18

Docket 1

Tentative Ruling:

The debtor has failed to comply with the *Order Setting Deadline for the Debtor to File Amended Monthly Operating Reports* [doc. 212]. Moreover, the debtor has not filed monthly operating reports for November 2018 and December 2018.

In accordance with 11 U.S.C. § 1112(b)(1) and (4)(E) and (F), this constitutes cause for conversion of this case to chapter 7, or dismissal of this case, whichever is in the best interests of creditors and the estate, unless the Court determines that the appointment under 11 U.S.C. § 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

In light of the debtor's significant post-petition expenditures, the Court is inclined to convert the case, in order for a chapter 7 trustee to be appointed. A chapter 7 trustee could assess, among other things, whether the debtor's post-petition expenditures resulted in assets that can be recovered or liquidated for the benefit of creditors.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Robert M Yaspan

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1:00 PM

1:18-11125 Marcelo Martinez

Chapter 11

#3.00 Status conference re chapter 11 case

fr. 6/21/18; 10/11/18; 11/15/18; 12/13/18

Docket 1

Tentative Ruling:

On January 7, 2019, the debtor timely filed a chapter 11 plan [doc. 78] and related disclosure statement [doc. 77]. The Court will continue this status conference to **March 7, 2019 at 1:00 p.m.** to be held in connection with the hearing on the adequacy of the debtor's proposed disclosure statement.

Appearances on January 17, 2019 are excused.

Party Information

Debtor(s):

Marcelo Martinez

Represented By
Matthew D Resnik

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1:00 PM

1:18-11580 Kaliston Jose Nader

Chapter 11

#4.00 Status conference re: chapter 11 case
from: 8/2/18

Docket 1

Tentative Ruling:

Has the debtor come current with the fees payable to the Office of the United States Trustee?

Party Information

Debtor(s):

Kaliston Jose Nader

Represented By
Onyinye N Anyama

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2:00 PM

1:10-17214 Darin Davis

Chapter 7

#5.00 Trustees Objection to Proof of Claim No. 8 filed by Murneck Holdings, Inc. and Amanda Patricia Cortez

Docket 254

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):

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

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1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#6.00 Motion for a protective order to (1) Have depositions occur only after the Court determines an evidentiary hearing is necessary on defendants claim objection and (2) Bar plaintiff from attending defendants depositions

Docket 69

Tentative Ruling:

The Court intends to stay this adversary proceeding pending resolution of the defendants' objection to the plaintiff's claim.

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
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By
Vahe Khojayan

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1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan

Chapter 11

**#7.00 Debtor's Motion to strike untimely and belated declarations
of Samvel Ispiryan (Doc. 114) and Akop Tashyan (Doc. 115)**

fr. 11/15/18

Docket 118

Tentative Ruling:

Deny. Because the Court granted the debtors' *ex parte* application to continue the hearing on the debtors' objection to claim, the Court will not strike the declarations of Samvel Ispiryan and Akop Tashyan as untimely.

Creditor Pogos Araik Melkonian must submit an order within seven (7) days.

Party Information

Debtor(s):

Yegiya Kutyan

Represented By
Sheila Esmaili

Joint Debtor(s):

Haykush Helen Kutyan

Represented By
Sheila Esmaili

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1:17-12214 **Yegiya Kutyan and Haykush Helen Kutyan**

Chapter 11

#8.00 Motion re: Objection to Claim Number 5 by
Claimant Pogos Araik Melkonian. Debtors

fr. 11/15/18

Docket 94

Tentative Ruling:

The parties should be prepared to discuss if they would like to cross examine declarants on the statute of limitations issues *only*, i.e., the date of default and whether the debtors agreed to an oral condition to the written acknowledgments signed by Yegiya Kutyan. If the parties waive cross examination, the Court will rule on this dispositive issue based on the current record.

The Court intends to stay the adversary proceeding and the hearing on confirmation of the debtors' proposed chapter 11 plan pending resolution of this matter. If the parties elect to cross-examine declarants, the parties should be prepared to discuss their availability for an evidentiary hearing during the week of **February 25, 2019**. The Court will not require further briefing from the parties.

Debtors' Evidentiary Objections to the Declaration of Pogos Araik Melkonian

paras. 7, 11, 14, 17, 18, 51, 52: overrule

paras. 5, 23, 35, 36, 37, 38, 39, 40, 45, 54: sustain

para. 4: sustain as to "At the time of the introduction Samvel Ispiryan was employed by Custom Wood Furnishings, a company owned and operated by Debtor Yegiya Kutyan"

para. 47: sustain as to "Debtors inexplicably filed for bankruptcy protection naming me as their biggest unsecured creditors"

exs. E, F, G, H: overrule

The Court will not strike this Declaration as a sham declaration.

Debtors' Evidentiary Objections to the Declaration of Samvel Ispiryan

para. 7: overrule

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CONT... Yegiya Kutyan and Haykush Helen Kutyan

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Debtors' Evidentiary Objections to the Declaration of Akop Tashyan
paras. 4-8: overrule

Debtors' Evidentiary Objections to the Declaration of Hasmik Hovhannisyan
paras. 4, 8: overrule

Party Information

Debtor(s):

Yegiya Kutyan

Represented By
Sheila Esmaili

Joint Debtor(s):

Haykush Helen Kutyan

Represented By
Sheila Esmaili

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1:18-10417 Deborah Lois Adri

Chapter 11

**#9.00 Motion for an order appointing Chapter 11 Trustee or for dismissal of the case
order appr stip to cont hrg ent 01/07/19**

Docket 216

***** VACATED *** REASON: Continued to 2/7/19 per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Robert M Yaspan

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1:18-10762 Jaime R Lara

Chapter 7

#10.00 Chapter 7 Trustee's motion for order approving settlement agreement with Greater LA Escrow and Diane Lara

Docket 36

Tentative Ruling:

Grant.

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").

Prepetition, Debtor and Diane Lara were married and jointly owned a residence at 742 Andover Drive, Burbank, CA 91504 (the "Property"). Declaration of Diane C. Weil ("Weil Declaration") [doc. 36], ¶ 5. On May 5, 2017, Ms. Lara filed a petition initiating a legal separation proceeding against Debtor. *Id.* After the legal separation proceeding, Ms. Lara and Debtor sold the Property. Weil Declaration, ¶ 6.

On July 13, 2017, escrow closed on the sale of the Property. *Id.* As of the petition date, Greater LA Escrow ("Greater LA") was holding \$372,051.79 in sale proceeds pending further order from the family law court. Weil Declaration, ¶ 7. Ms. Lara contended that the proceeds had been divided by the family law court, and that the court had allocated a portion of the funds as Ms. Lara's separate property. Weil Declaration, ¶ 9. The Trustee asserted that the family law court had not made any findings as to the nature of the sale proceeds and that the proceeds were community property. Weil Declaration, ¶ 10.

On August 31, 2018, the Trustee filed an adversary proceeding against Ms. Lara and Greater LA (collectively, "Defendants") to recover the proceeds for the benefit of the estate [1:18-ap-01100-VK]. The parties have now reached an agreement (the "Agreement"). The Agreement provides, among other things, that: (A) Greater LA will reimburse itself for attorneys' fees and costs in the amount of \$7,440; (B) within 10 business days after entry of an order approving the Agreement, Greater LA will

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CONT...

Jaime R Lara

Chapter 7

transfer the funds to the Trustee; (C) the Trustee will deliver a \$150,000 check to Ms. Lara; and (D) the remaining \$210,000 will be kept for the benefit of the estate. On December 6, 2018, the Trustee filed a motion for the Court to approve the Agreement (the "Motion") [doc. 36].

On December 26, 2018, the Trustee filed a notice of receipt of an opposition, attaching a letter sent by Debtor to the Trustee opposing the Motion ("Debtor's Opposition") [doc. 37]. On December 27, 2018, the Trustee filed a notice of receipt of an opposition, attaching an email sent by Ben Lara, Debtor's son, to the Trustee opposing the Motion ("Mr. Lara's Opposition") [doc. 38]. On January 10, 2019, Debtor filed a belated supplemental opposition to the Motion (the "Supplemental Opposition") [doc. 40]. On the same day, Mr. Lara filed joinder to the belated Supplemental Opposition (the "Joinder") [doc. 41]. In the oppositions, Debtor and Mr. Lara argue that the Agreement is not as beneficial as the family court order, that Mr. Lara has a claim for improvements made to the Property and that the Agreement otherwise is not in the best interest of the estate and its creditors.

II. DISCUSSION

Federal Rule of Bankruptcy Procedure 9019(a) provides the following: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." In deciding whether to approve a compromise, courts must determine whether it is fair and equitable, and whether it is reasonable under the particular circumstances of the case. *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986).

Although "[t]he law favors compromise and not litigation for its own sake," the law requires "more than a mere good faith negotiation of a settlement by the trustee in order for the bankruptcy court to affirm a compromise agreement." *Id.* "[A]s long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed." *Id.* In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider:

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the

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complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id. (citations omitted). It is the movant's burden to establish that the settlement is reasonable and should be approved. *Id.* Courts have recognized that the court should not substitute its own judgment for that of the trustee, but rather should ensure that the trustee has exercised proper business judgment and the settlement "falls above the lowest possible point in the range of reasonableness." *In re Rake*, 363 B.R. 146, 152 (Bankr. D. Idaho 2007) (internal quotation omitted).

A. Probability of Success in Litigation

At this time, it is difficult to assess the probability of success in litigation because Defendants have not filed a responsive pleading to the complaint in the adversary proceeding (the parties stipulated to continue the response deadline while they negotiated). As such, there is no guarantee that, if the Trustee pursued litigation instead of settling, the Trustee would prevail. Notably, even if the Trustee prevails, the Trustee may not recover as much as the Trustee will recover through the Agreement; as noted by the Trustee in the Reply, if the Court were to use the family court's allocation, the estate would receive \$80,060.90 instead of the \$210,000 the estate will receive through the Agreement. This factor favors approval of the Agreement.

B. The Difficulties, If Any, to be Encountered in the Matter of Collection

There is little chance of difficulty with collection because the sale proceeds are being held in escrow. If the Court does not approve the Agreement, the parties would have to wait a much longer time prior to distribution from escrow. Through the Agreement, upon entry of an order approving the Agreement, Greater LA will release the funds to the Trustee within 10 business days. As such, this factor also weighs in favor of approving the Agreement.

C. Complexity, Expense, and Inconvenience of Litigation

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Although the claims asserted in the adversary proceeding are not particularly complex, the expense and inconvenience of pursuing the litigation is significant. The Trustee would incur a large amount of fees and costs pursuing the funds, which would deplete the estate's resources. Moreover, as noted above, litigation may result in a judgment that leaves much less for the estate, leaving minimal amounts after payment of administrative expenses. Litigation also will result in a delay in recovery of funds, if any. This factor also warrants approval of the Agreement.

D. Paramount Interest of Creditors

For the reasons stated above, the estate stands to recover more funds through the Agreement than through litigating the adversary proceeding. Thus, creditors stand to recover the most if the Agreement is approved. With respect to Mr. Lara's claim for alleged improvements to the Property, the Agreement does not prevent Mr. Lara from asserting a claim against the estate or Ms. Lara. As to all creditors of the estate, the Agreement will ensure that creditors receive a larger distribution without additional delay. Consequently, the Agreement is in the best interest of creditors, and the factors weigh in favor of approving the Agreement.

III. CONCLUSION

The Court will grant the Motion and approve the Agreement.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Jaime R Lara

Pro Se

Trustee(s):

Diane C Weil (TR)

Represented By
Elissa Miller
Claire K Wu

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1:18-11243 Jeff Davani and Nadia Davani

Chapter 7

#11.00 Motion for voluntary dismissal of chapter 7 bankruptcy

Docket 64

Tentative Ruling:

Deny.

I. BACKGROUND

On May 14, 2018, Jeff Davani and Nadia Davani ("Debtors") filed a voluntary chapter 7 petition. Debtors were not represented by counsel at the time they filed their chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

In their schedule A/B, Debtors listed an interest in real property located at 5355 Blanco Avenue, Woodland Hills, CA 91367 (the "Property") valued at \$850,000. In their schedule D, Debtors listed three encumbrances against the Property: (A) a deed of trust in favor of Chase in the amount of \$556,000; (B) a \$2,063,865 lien in favor of the Internal Revenue Service (the "IRS"); and (C) a \$563,000 lien in favor of the Franchise Tax Board (the "FTB"). Debtors also claimed a homestead exemption in the Property. In their schedule E/F, Debtors listed \$364,859.77 in unsecured debt. In their schedules I and J, Debtors listed a combined monthly net income of -\$10,732.61.

On October 3, 2018, the Trustee filed a Notice of Assets [doc. 42]. On October 31, 2018, Debtors filed a Substitution of Attorney [doc. 44], substituting Michael H. Raichelson as general bankruptcy counsel. On November 1, 2018, Debtors filed an amended schedule A/B [doc. 45]. This time, Debtors valued the Property at \$620,000 and noted that the Property is "[i]n poor condition with many structural problems" and that the Property required multiple repairs. Debtors also listed \$134,205.76 in personal property, including over \$100,000 in checking and savings accounts (the "Funds"). In their schedule C, Debtors claimed a homestead exemption in the amount of \$175,000. Debtors also claimed as exempt \$17,573.25 of their personal property.

On November 29, 2018, the U.S. Trustee (the "UST") filed a motion for disgorgement of fees and payment of finds against bankruptcy petition preparer L.J. Fay (the "BPP

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CONT... Jeff Davani and Nadia Davani

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Motion") [doc. 48]. To the BPP Motion, the UST attached a Declaration of Debtors Without an Attorney, in which Debtors stated that Ms. Fay gave Debtors advice regarding the difference between bankruptcy chapters, whether Debtors' debts would be discharged, whether Debtors would be able to retain their home or other property and whether Debtors would face tax consequences from filing bankruptcy. BPP Motion, Exhibit C.

On December 6, 2018, the UST and Ms. Fay entered into a stipulation resolving the BPP Motion, whereby Ms. Fay agreed to pay \$300 in fines and to disgorge \$200 paid by Debtors for bankruptcy preparation services (the "BPP Stipulation") [doc. 54]. On December 7, 2018, the Court entered an order approving the BPP Stipulation [doc. 56].

On December 7, 2018, the Trustee entered into a stipulation with the IRS (the "IRS Stipulation") [doc. 57]. In the IRS Stipulation, the parties noted that the Trustee's broker believes the Property is worth approximately \$810,000, that there is a first priority lien in favor of Chase in the approximate amount of \$390,000 and that the IRS filed a proof of claim against the estate in the amount of \$1,692,757.18. Through the IRS Stipulation, the IRS consented to the sale of the Property free and clear of the IRS's lien subject to the lien attaching to the proceeds of the sale.

The parties also agreed that the proceeds would be distributed as follows: (A) first, to Chase to satisfy its senior lien; (B) second, for reasonable costs of sale plus brokerage commissions not to exceed 6% of the sale price; (C) 60% of the remaining proceeds to the IRS in partial satisfaction of the debt owed to the IRS; and (D) 40% of the remaining proceeds to the Trustee as the non-exempt property of the estate. In the Stipulation, the parties also noted that, pursuant to 11 U.S.C. § 522(c), none of the sale proceeds will be distributed to Debtors because the IRS's lien has priority over Debtors' homestead exemption. On December 11, 2018, the Court entered an order approving the IRS Stipulation [doc. 60].

On December 18, 2018, the Trustee filed an application to employ real estate brokers [doc. 62]. On December 20, 2018, Debtors filed a motion to dismiss their case (the "Motion") [doc. 64], asserting that they received bad advice from Ms. Fay and that they would pursue resolution of creditors' claims outside of bankruptcy.

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Chapter 7

On January 3, 2019, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 66], arguing that dismissal would prejudice creditors because, among other things, unsecured creditors would lose the benefit of the IRS Stipulation. On January 10, 2019, Debtors filed a reply to the Opposition (the "Reply") [doc. 70]. In the Reply, Debtors assert that the Property is actually worth closer to \$620,000, such that liquidation will not benefit creditors, and that creditors can continue to pursue Debtors outside of bankruptcy. Currently, creditors have filed claims totaling \$2,435,119.72 against the estate, of which \$340,166.85 is unsecured.

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.

Here, Debtors did not meet their burden of proving that dismissal would not prejudice their creditors. Through this bankruptcy case, the Trustee has reached a carve-out

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agreement with the IRS. Pursuant to the IRS Stipulation, the IRS has agreed to allocate 40% of funds that would otherwise be paid to the IRS, because of its lien, to unsecured creditors. If the Court dismisses this case, the IRS Stipulation will become void, and unsecured creditors will lose the benefit of the carve-out agreement.

Debtors assert that the Property is worth closer to \$620,000. If true, this fact cautions against dismissal. If the Property is worth less than the Trustee anticipates, then maintaining the validity of the carve-out agreement with the IRS is especially important to enable unsecured creditors to receive any distribution.

Debtors also contend that they can reach a resolution with all their creditors outside of bankruptcy. There is no evidence of this. Moreover, without the benefit of the automatic stay, creditors may resume a race to the courthouse. In contrast, within the confines of bankruptcy, the Trustee will disburse funds to creditors in accordance with the statutory scheme.

Although Debtors assert they mistakenly filed a chapter 7 petition based on representations by Ms. Fay, Debtors provide no authority that dismissal is automatically warranted under these facts, without consideration of prejudice to creditors. In fact, within this circuit, bad advice that leads a debtor to file a bankruptcy petition is not grounds for dismissal, when creditors will face legal prejudice. For instance, in *Bartee*, the debtors moved to dismiss their chapter 7 case on the basis that they "received bad legal advice to file their bankruptcy petition." *Bartee*, 317 B.R. at 364. As here, the debtors in *Bartee* "also stated their intent to pay their creditors outside of bankruptcy...." *Id.* The debtors in *Bartee* proposed paying creditors in full outside bankruptcy, and provided a "Planned Course of Action" regarding how the debtors intended to pay their creditors. *Id.*, at 364-65. However, the "Planned Course of Action" was not supported by documentary evidence or affidavits. *Id.*, at 365.

The bankruptcy court denied the motion to dismiss, holding, in part, that "[t]he proposed course of action to be followed if the case is dismissed is too speculative to give this court confidence that the interests of all pertinent parties would be served with dismissal." *Id.* The Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") affirmed. *Id.*, at 364. In relevant part, the BAP stated:

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Chapter 7

This is an asset case. The trustee anticipates that there will be funds available to pay unsecured creditors. Dismissal of debtors' case would have prejudiced their creditors, because there is no guarantee that debtors will pay their debts outside of bankruptcy.

We agree with the bankruptcy court that debtors' plan for liquidating assets was too speculative to establish lack of prejudice that is a prerequisite to dismissal.

Id., at 366; *see also In re Leach*, 130 B.R. 855 (B.A.P. 9th Cir. 1991) (motion to dismiss under § 707(a) denied where debtor moved for dismissal based, in part, on the fact that "original counsel incorrectly advised him that his tax liabilities were non-dischargeable"). Under these authorities, even if Debtors received bad advice in connection with filing their chapter 7 petition, Debtors must prove that creditors will not suffer legal prejudice upon dismissal.

III. CONCLUSION

The Court will deny the Motion.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Jeff Davani

Represented By
Michael H Raichelson

Joint Debtor(s):

Nadia Davani

Represented By
Michael H Raichelson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#12.00 Motion of creditor Vitavet Labs, Inc. for appoint of chapter 11 examiner per 11 U.S.C. Section 1104

Order appr stip to cont ent 1/7/19

Docket 92

***** VACATED *** REASON: Rescheduled for 1/24/19 per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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1:18-12356 Harmony Blossom

Chapter 7

#13.00 Order to show cause re: dismissal for failure to comply with Rule 1006(b)

Docket 11

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 timely and complete installment payments.

The Court will prepare the order.

Party Information

Debtor(s):

Harmony Blossom

Pro Se

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:18-11150 Robert Edward Zuckerman

Chapter 11

#14.00 Party in interest's motion to convert case to chapter 7
nunc pro tunc as of May 4, 2018

fr. 1/10/19

Docket 102

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion in part, and deny in part.

I. BACKGROUND

A. Debtor's Schedules

On May 4, 2018, Robert Edward Zuckerman ("Debtor") filed a voluntary chapter 11 petition. In his schedule A/B [doc. 25], Debtor listed real property located at 24756 Eilat Street, Woodland Hills, California 91367 (the "Property"). Debtor valued the Property at \$2,000,000.00.

In his amended schedule A/B [doc. 51], Debtor also listed interests in Continental Communities, LLC ("Continental"), Valley Circles Estates Realty ("Valley Circle"), Zuckerman Building Company ("Zuckerman Building"), Continental San Jacinto, LLC ("Continental San Jacinto"), San Jacinto Z, LLC ("San Jacinto"), Rezinate San Jacinto, LLC ("Rezinate"), Maravilla Center, LLC ("Maravilla") and Phoenix Holdings, LLC ("Phoenix"). Debtor valued each business at \$0.00. Debtor indicated that he has a 100% interest in Continental, a 100% interest in Valley Circle, a 100% interest in Zuckerman Building, an 80% interest in Continental San Jacinto, a 0% interest in San Jacinto, a 100% interest in Rezinate, a 0% interest in Maravilla and a 5% interest in Phoenix. With respect to Zuckerman Building, Debtor indicated that the profits are split as follows: 90% to Debtor, 10% to Adam Zuckerman and 10% to Jason Zuckerman. With respect to San Jacinto, Debtor indicated that entities controlled by Debtor own approximately 65% and that Continental San Jacinto is the managing member and Valley Circle is a member. With respect to Maravilla, Debtor

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CONT... Robert Edward Zuckerman

Chapter 11

indicated that Debtor is the "CFO" and control approximately 50% through other entities.

In his amended schedule A/B, Debtor also listed that he is trustee of a trust for his deceased brother (the "Trust"). Debtor valued the Trust as \$0.00. Debtor listed that he has a real estate license and a general contractors' license and valued the licenses at \$0.00. Debtor listed that he has a claim for malpractice against former attorney Raul Garcia and valued the claim as unknown. Debtor also listed contingent and unliquidated claims that he indicated are uncollectible for Valley Circle in the amount of \$566,419.99, Zuckerman Building in the amount of \$11,680.27, Continental San Jacinto in the amount of \$176,368.07 and Maravilla in the amount of \$622,630.52.

In total, in Debtor's amended schedule A/B, Debtor listed \$29,605.00 in personal property. In his schedule C [doc. 25], Debtor claimed a \$175,000 exemption in the Property. Debtor otherwise claimed as exempt \$23,255.00 of the \$29,605.00 listed in personal property. Moreover, in his amended schedule D [doc. 52], Debtor listed a \$1,538,399.43 secured claim in favor of Select Portfolio Servicing, Inc., secured by the Property. Debtor also listed 48 secured claims from judgment liens from lawsuits totaling \$15,271,285.02. Debtor indicated that these claims are contingent, unliquidated and disputed. In his amended schedule E/F [doc. 52], Debtor listed 54 general unsecured claims, totaling \$118,242.32. As of January 11, 2019, there are \$29,326,149.93 of claims on Debtor's claim register.

In his amended schedule I [doc. 51], Debtor indicated that he receives \$15,000.00 per month, as compensation for his work as a consultant. In his schedule J [doc. 25], Debtor listed \$13,862.56 in expenses, resulting in a monthly net income of \$1,137.44.

In his Statement of Financial Affairs ("SOFA") [doc. 25], Debtor indicated that he did not receive any income from employment or from operating a business during the year he filed his petition or the two previous calendar years. He also indicated that he did not receive any other income during the year he filed his petition or the two previous calendar years. Debtor indicated that within one year before he filed his petition, he was a party in 7 different lawsuits, court actions or administrative proceedings. As of his petition date, Debtor indicated that three of those lawsuits were still pending. Debtor also listed that Steven Reeder paid Debtor's attorney \$15,000.00 prior to Debtor filing his petition.

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On June 15, 2018, Debtor filed a disclosure of compensation of attorney for Debtor ("Compensation Disclosure") [doc. 25]. In the Compensation Disclosure, Debtor's attorney states that he has agreed to accept \$51,000.00 for representing Debtor in his bankruptcy case. Debtor's attorney indicated that he received \$15,000.00 prior to Debtor filing his petition from Mr. Reeder and that he was still owed \$36,000.00. Debtor's attorney indicated that Mr. Reeder is the source of the compensation for the balance still owing.

B. Debtor's Monthly Operating Reports

Excluding the monthly operating report ("MOR") for May 2018, which reflected income and expenses for a small part of the month, Debtor's monthly operating reports from June 2018 through November 2018 (the most recent MOR on file) reflect the following income and expenses:

MONTH	RECEIPTS	DISBURSEMENTS	BALANCE
June 2018	\$100.00	\$0.00	\$100.00
July 2018	\$2,611.09	\$341.09	\$2,370.00
August 2018	\$41.09	\$1,333.41	\$1,077.68
September 2018	\$151.00	\$1,227.75	\$0.93
October 2018	\$1,000.00	\$930.00	\$70.93
November 2018	\$0.00	\$0.00	\$70.93

Debtor's average monthly income as reflected in his MORs is \$650.53. In all of Debtor's MORs, Debtor's disbursements are mostly on dry cleaning, gardening, pool cleaning, house maintenance/labor and United States Trustee fees. [docs. 61, 90, 91, 97]. Debtor's MORs show only one disbursement for groceries in September 2018. [doc. 91]. His MORs do not show disbursements for other basic necessities. Further, in Debtor's untimely filed November 2018 MOR shows no disbursements at all [doc.

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113]. On all of his filed MORs, Debtor indicates "N/A" in the petty cash transaction section.

C. The Adversary Proceedings

On June 18, 2018, Edward P Albin, et al. filed claim no 6-1, asserting a secured claim in the amount of \$15,135,096.00 based on a state court judgment (the "State Court Action"). Mr. Albin, et al. attached an amended judgment (the "State Court Judgment") and an abstract of judgment to their proof of claim. On July 20, 2018, Mr. Albin, et al. filed a complaint against Debtor, initiating adversary proceeding 1:18-ap-01081-VK, requesting nondischargeability of their claim pursuant to 11 U.S.C. § 523(a)(2).

On August 2, 2018, Richard Abel filed a complaint against Debtor, among other defendants, initiating adversary proceeding 1:18-ap-01086-VK, requesting declaratory relief, injunctive relief, turnover of property pursuant to 11 U.S.C. § 542 and nondischargeability of his claim pursuant to 11 U.S.C. § 523(a)(2) and (a)(6). Among other things, Mr. Abel attached the State Court Judgment to his complaint. Mr. Abel was assigned some of the plaintiffs' claims from the State Court Judgment. With respect to the turnover cause of action, Mr. Abel alleges that preferential transfers were made to Sunderland McCutchan, LLP and Nikki B. Allen, Debtor's former attorney. From August 15, 2018 to August 20, 2018, Mr. Abel filed claim nos. 10-1, 11-1, 12-1, 13-1 and 14-1, totaling \$1,744,190.20.

On August 2, 2018, Debtor removed the State Court Action to this Court, initiating adversary proceeding 1:18-ap-01087-VK. On January 9, 2019, the Court remanded the State Court Action to the state court.

On October 17, 2018, the Court issued orders in all three adversary proceedings assigning the matter to mediation (the "Global Mediation") [1:18-ap-01081-VK, doc. 17; 1:18-ap-01086-VK, doc. 26; 1:18-ap-01087-VK, doc. 27]. On December 12, 2018, the mediator filed a mediator's certificate in all three adversary proceedings stating that the parties did not reach a settlement during mediation [1:18-ap-01081-VK, doc. 29; 1:18-ap-01086-VK, doc. 52; 1:18-ap-01087-VK, doc. 28].

D. The Relief from Stay Motion

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On October 5, 2018, creditor Deutsche Bank National Trust Company ("Deutsche") filed a motion for relief from stay as to the Property ("RFS Motion") [doc. 88]. In the RFS Motion, Deutsche indicated that Debtor was delinquent 14 payments for a total of \$90,873.37 in arrears owing on the Property. Debtor and Deutsche entered into a stipulation for adequate protection, which was approved by the Court on November 16, 2018 (the "APO") [doc. 98]. Per the APO, on January 31, 2019, as to Deutsche, the automatic stay is terminated as to Debtor and Debtor's estate.

On December 17, 2018, Mr. Abel filed a motion to convert case to chapter 7 *nunc pro tunc* (the "Motion") [doc. 102]. On December 27, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 105]. On January 2, 2019, Mr. Abel filed a reply to the Opposition [doc. 106], a declaration in support of the Reply [doc. 107], an objection to the declaration of Sandford L. Frey [doc. 108] and an objection to the declaration of Debtor [doc. 109].

II. DISCUSSION

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;

...

(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

...

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(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;

...

(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 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. Abel bases his request for conversion on four grounds: (1) substantial or continuing loss or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; (2) unexcused failure to satisfy timely any filing or reporting requirement; (3) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by the title or by order of the court; and (4) inability to effectuate substantial consummation of a confirmed plan.

Mr. Abel argues that cause exists pursuant to § 1112(b)(4)(A). As support for his argument that Debtor is causing substantial or continuing loss to the estate, Mr. Abel asserts that Debtor cannot propose a feasible chapter 11 plan based on Debtor's MORs. However, this argument is repetitive of Mr. Abel's contention that Debtor is unable to effectuate substantial consummation of a confirmed plan. Mr. Abel does not explain how Debtor is causing any loss or diminution of the estate. For example, there is no evidence that Debtor is inappropriately using or encumbering estate assets. Further, the MORs on which Mr. Abel relies do not reflect a steady decrease in monthly income. On the contrary, Debtor's monthly income appears to fluctuate from month to month. Thus, Mr. Abel has not demonstrated cause pursuant to 11 U.S.C. § 1112(b)(4)(A).

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Mr. Abel argues that cause exists pursuant to § 1112(b)(4)(F) because Debtor did not file MORs for May 2018, November 2018 and December 2018. However, Debtor did file MORs for May 2018 and November 2018, although he filed them untimely. Mr. Abel also asserts that Debtor's MORs are incomplete because Debtor has not filed MORs for the nine companies that Debtor lists on his schedules, and he has not disclosed the amounts paid by his friends or his son for his living expenses in his MORs. In the Opposition, Debtor argues that he provided the United States Trustee with detailed financial statements for each of the nine companies. Further, he states that after consultation with the United States Trustee, he has not included the payments by his son for his living expenses because his son pays the expenses directly. As such, it does not appear that Debtor is required to report the payments on his MORs. Accordingly, Mr. Abel has not shown cause pursuant to 11 U.S.C. § 1112(b)(4)(F).

Mr. Abel argues that cause exists pursuant to § 1112(b)(4)(J) because more than seven months have passed since Debtor's filing of his petition, which is ample time for Debtor to file a chapter 11 plan and related disclosure statement, but he has failed to do so. However, the Court has not fixed a time period for Debtor to file a chapter 11 plan or related disclosure statement. The Court has not fixed a time period because the Court ordered Debtor and the parties to the adversary proceedings to mediation. Further, § 1121(e)(2) states that a "plan and disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief." Not more than 300 days have passed since Debtor filed his petition. Accordingly, Mr. Abel has not demonstrated cause pursuant to 11 U.S.C. § 1112(b)(4)(J).

Lastly, Mr. Abel asserts that Debtor is unable to effectuate substantial consummation of a confirmed plan. Mr. Abel argues that Debtor is not generating sufficient income to realistically confirm a plan. Mr. Abel appears correct in his assertion. As of January 11, 2019, there are \$29,326,149.93 of claims on Debtor's claim register. But Debtor's average monthly income accordingly to his last six MORs is only \$650.53. Based on his average income, Debtor cannot realistically fund a successful chapter 11 plan. Mr. Abel has shown cause to convert or dismiss this case pursuant to 11 U.S.C. § 1112(b)(4)(M).

In the Opposition, Debtor argues that he has retained a new job that will result in

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Chapter 11

payment of \$35,000.00 in February 2019 and \$300.00 per hour for consulting services on a construction loan. Debtor included no information about who is to pay the \$35,000.00 fee or if there will be any continuing work in the future. Even if Debtor receives the \$35,000.00 payment in February 2019 that will not be enough to fund a successful chapter 11 plan. Debtor further contends that his close personal friend, Golden Seeds Game Co., Inc. and its officer Patricia Gamboa, will be the source of funding of a chapter 11, as well as any potential settlement. However, Debtor has not provided the Court with a declaration stating the amount of any potential contribution.

In the Opposition, Debtor argues that there are unusual circumstances in this case. Debtor contends that there is uncertainty regarding the validity, extent and amount of the claims. However, this is not unusual in a chapter 11 case. Accordingly, Debtor has not provided evidence of "unusual circumstances" establishing that dismissing or converting his case would not be in the best interests of the creditors and the estate, pursuant to § 1112(b)(2).

Thus, there is cause to convert or dismiss this case pursuant to 11 U.S.C. § 1112(b)(4) (M). Conversion of Debtor's case appears to be in the best interests of the creditors and the estate. In the Opposition, Debtor argues that creditors will be harmed by conversion as the liquidation value of Debtor is not significant. Debtor only has \$6,350.00 of non-exempt personal property available to creditors, and on January 31, 2019, as to Deutsche, the automatic stay as to the Property is terminated as to Debtor and Debtor's estate. However, there are potential claims that a chapter 7 trustee could pursue *i.e.* preferential transfers; the malpractice claim; liquidate Debtor's interests in the corporations; collect debts owed to Debtor by his corporations; investigate Debtor's interest in the Trust and liquidate non-exempt property. Consequently, it appears to be in the best interest of creditors and the estate to convert this case to chapter 7.

Mr. Abel argues that this case should be converted *nunc pro tunc* to May 4, 2018. However, Mr. Abel has provided no legal authority for this position. The Court will deny this request.

III. CONCLUSION

The Court will grant the Motion in part, and deny in part.

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Mr. Abel must submit the order within seven (7) days.

EVIDENTIARY RULINGS

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

Objection to Declaration of Sanford L. Frey

para. 3 (lines 10-13): sustained

Objection to Declaration of Robert Edward Zuckerman

para. 6 (lines 17-25): sustained

para.12 (lines 27-28): overruled

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

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Tuesday, January 22, 2019

Hearing Room 301

11:30 AM

1:18-11288 Neli Maria Negrea

Chapter 13

#1.00 Motion re: objection to claim number 8 by claimant Ellen Orsa,
request for attorney's fees and costs

fr: 12/11/18; 1/8/19

Docket 32

Tentative Ruling:

Sustain.

I. BACKGROUND

On October 14, 2016, Neli Maria Negrea ("Debtor") filed a prior chapter 13 petition [1:16-bk-13051-VK]. In her Statement of Financial Affairs ("SOFA"), Debtor indicated that she had been an officer, director or managing executive of N&D Transportation, Inc. ("N&D") within four years of the petition date, but that she had not been an owner of at least 5% of the voting or equity securities of any corporation.

On March 7, 2017, Ellen Orsa filed proof of claim no. 15-1 in the amount of \$12,774.72, based on a decision by the Labor Commissioner of the State of California (the "Labor Decision") in which the Labor Commissioner held N&D liable for nonpayment of Ms. Orsa's wages. On March 14, 2017, Debtor objected to Ms. Orsa's claim (the "First Case Objection") [1:16-bk-13051-VK, doc. 29]. In the First Case Objection, Debtor asserted that she was not individually liable for Ms. Orsa's claim because "N&D and not... Debtor" was Ms. Orsa's employer. First Case Objection, p. 3. Ms. Orsa opposed the First Case Objection (the "First Case Opposition") [1:16-bk-13051-VK, doc. 34]. In the First Case Opposition, Ms. Orsa argued that Debtor was liable under a joint employer theory, citing *Martinez v. Combs*, 49 Cal.4th 35 (2010). The First Case Opposition stated that Ms. Orsa performed separate duties for Debtor personally; however, Ms. Orsa did not include a declaration in support of the First Case Opposition and did not otherwise prove that Debtor and Ms. Orsa had a separate employment agreement outside of Ms. Orsa's employment with N&D. Ms. Orsa did not present any alternative theories of recovery against Debtor.

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On February 3, 2017, Debtor filed a second amended chapter 13 plan (the "Plan") [1:16-bk-13051-VK, doc. 22]. On March 23, 2017, the Court entered an order confirming the Plan [1:16-bk-13051-VK, doc. 31].

On May 9, 2017, the Court held a hearing on the First Case Objection. At that time, the Court issued a ruling sustaining the First Case Objection (the "Ruling") [1:16-bk-13051-VK, doc. 36]. In the Ruling, the Court held that Ms. Orsa had not shown that Debtor was a joint employer liable for damages owed to Ms. Orsa by N&D, and that Ms. Orsa had not provided evidence of a separate employment agreement between Debtor and Ms. Orsa. The Court provided the following analysis regarding *Martinez* and joint employer liability:

In *Martinez*, a group of strawberry field workers (the "Field Workers") sued a farmer (the "Farmer") and several produce merchants (the "Produce Merchants") through which the Farmer sold his produce. *Martinez*, 49 Cal.4th at 42-43. The Farmer controlled the fields and made all decisions regarding harvest, packaging and sale. *Id.*, at 43. The Produce Merchants were not related to one another and the Farmer had different contractual relationships with each of them. *Id.*, at 44. Two of the Produce Merchants would advance money to the Farmer prior to the season in exchange for exclusive rights to produce. *Id.* The other Produce Merchants would either pay on delivery of the produce or remit net profits to the Farmer after paying costs. *Id.* Much of the Farmer's financial resources came from the Produce Merchants. *Id.*, at 44-45.

Nevertheless, the Farmer alone made decisions regarding hiring and firing employees, training employees, setting their work and break hours, providing equipment, setting the employees' wages, purchasing workers' compensation insurance and handling payroll and taxes. *Id.*, at 45. The Farmer and his foremen were also the ones to supervise the employees. *Id.*, at 45.

The Field Workers claimed that the Produce Merchants also supervised employees to ensure quality control. *Id.* As part of this quality control, the Produce Merchants would send field representatives to oversee the

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Field Workers and instruct the Field Workers on certain matters, such as how to pack the produce. *Id.* The contract between the Farmer and the Produce Merchants provided for this kind of supervision. *Id.*

Eventually, the Farmer was unable to pay wages to the Field Workers. *Id.*, at 46. As a result, a representative of the Field Workers filed a claim for unpaid wages with the Department of Labor Standards Enforcement (the "DLSE"). *Id.*, at 46-47. At this time, a field representative for one of the Produce Merchants told the Field Workers directly that it would be tendering a check to the Farmer that would cover the Field Workers' wages. *Id.*, at 47. In addition, a DLSE investigator met with one of the other Produce Merchants and instructed it to make checks payable to the Field Workers, not to the Farmer. *Id.* The merchant complied. *Id.*, at 47-48.

Subsequently, the Field Workers filed a lawsuit against the Farmer and the Produce Merchants, claiming that both the Farmer and the Produce Merchants were liable for unpaid minimum wages under California Labor Code ("CLC") § 1194, liquidated damages under CLC § 1194.2 and additional penalties pursuant to the CLC. *Id.*, at 48. To attach liability to the Produce Merchants, the Field Workers claimed, among other things, that the Produce Merchants and the Farmer jointly employed the Field Workers. *Id.* The question that reached the Supreme Court of California was whether the Produce Merchants could be held liable for unpaid wages under CLC § 1194. *Id.*, at 49-50.

The court held that the wage orders from the Industrial Welfare Commission (the "IWC") governed the definition of an employment relationship for purposes of CLC § 1194. *Id.*, at 52. Referring to the IWC's wage orders, the court held that "to employ" an employee meant one of three things: "(a) to exercise control over the wages, hours or working conditions, or (b) to suffer or permit to work, or (c) to engage, thereby creating a common law employment relationship." *Id.*, at 64 (emphasis in *Martinez*). As part of its analysis, the *Martinez* court distinguished its holding from a prior holding of the Supreme Court of California, in *Reynolds v. Bement*, 36 Cal.4th 1075 (2005). In

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Reynolds, the plaintiff-employee worked for a corporation and sued under CLC § 1194 to recover unpaid wages. *Reynolds*, 36 Cal.4th at 1082-83. The plaintiff named as defendants the corporation and eight of its officers and directors in their individual capacities. *Id.* The question before the court was whether the plaintiff had stated a cause of action against the individual defendants. *Id.*, at 1083. The *Reynolds* court held that the California Legislature, through CLC § 1194, did not intend to "expose to personal civil liability any corporate agent who 'exercises control' over an employee's wages, hours, or working conditions...." *Id.*, at 1088.

The *Martinez* court did not disagree with this specific holding of *Reynolds*, stating that "[t]he opinion in *Reynolds*...properly holds that the IWC's definition of 'employer' does not impose liability on individual corporate agents acting within the scope of their agency." *Martinez*, 49 Cal.4th at 66. However, the issue in *Martinez* was not whether individual agents of a corporate employer could be held jointly liable for unpaid wages; rather, the issue was whether separate, third party entities (the Produce Merchants) that were involved with supervision over the Field Workers could be held liable for unpaid wages of employees of the Farmer. Even then, the answer was no. *Id.*, at 69-77; see also *Futrell v. Payday California, Inc.*, 190 Cal.App.4th 1419, 1432 (Ct. App. 2010) ("The extension of personal liability to the agents of an employer is not reasonably derived from the language and purposes of the Labor Code wage statutes.").

Here, Debtor listed in her Statement of Financial Affairs that she was an "officer, director, or managing executive" of N&D. As an agent of N&D, Debtor is not deemed a "joint employer" under *Martinez* and *Reynolds* for purposes of CLC § 1194, and Ms. Orsa cannot hold Debtor liable under this theory.

Ruling, pp. 2-4. The Court also held that Ms. Orsa had not provided evidence of a separate employment agreement with Debtor for personal services, had not provided a different accounting of damages based on any such separate agreement and had instead based her damages on the award against N&D and had not shown that any

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personal services performed by Ms. Orsa were outside the scope of her employment with N&D. Ruling, pp. 4-5.

On May 18, 2017, the Court entered an order disallowing Ms. Orsa's claim (the "Disallowance Order") [1:16-bk-13051-VK, doc. 39]. Ms. Orsa did not timely appeal the Disallowance Order and did not timely move for relief from the Disallowance Order.

On May 9, 2017, the chapter 13 trustee filed a motion to dismiss Debtor's prior bankruptcy case for failure to make plan payments [1:16-bk-13051-VK, doc. 38]. On January 10, 2018, the Court entered an order dismissing Debtor's prior chapter 13 case (the "Dismissal Order") [1:16-bk-13051-VK, doc. 66]. Debtor did not obtain a discharge in the prior case.

On May 18, 2018, Debtor filed her current chapter 13 case. Once again, in her SOFA, Debtor indicated that she had been an officer, director or managing executive of N&D within four years of the petition date, but that she had not been an owner of at least 5% of the voting or equity securities of any corporation. On July 27, 2018, Ms. Orsa filed proof of claim no. 8-1. Ms. Orsa again claims damages in the amount of \$12,744.72, the amount awarded to Ms. Orsa against N&D by the Labor Commissioner.

On July 31, 2018, Debtor filed an objection to Ms. Orsa's claim (the "Second Case Objection"), asserting that res judicata bars Ms. Orsa's claim against the estate [doc. 32]. On August 28, 2018, Ms. Orsa filed an opposition to the Second Case Objection (the "Second Case Opposition") [doc. 37]. In the Second Case Opposition, Ms. Orsa argues that res judicata does not apply, and again asserts that *Martinez* and joint employer liability form the basis of Ms. Orsa's claim against the estate, as well as separate personal services work that Ms. Orsa did for Debtor. This time, Ms. Orsa also asserts that Debtor is liable under the federal Fair Labor Standards Act, an argument Ms. Orsa did not make in the First Case Opposition.

II. ANALYSIS

A. Res Judicata

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"Res judicata, or claim preclusion, provides that a final judgment on the merits of an action precludes the parties from relitigating all issues connected with the action that were *or could have been raised in that action.*" *Rein v. Providian Fin. Corp.*, 270 F.3d 895, 898-99 (9th Cir. 2001) (emphasis added).

Claim preclusion is appropriate where: (1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) there was a final judgment on the merits; and (4) the same claim or cause of action was involved in both suits.

Id., at 899.

Here, the parties do not dispute that the parties to the Second Case Objection are identical to the parties litigating the First Case Objection, that the Court had jurisdiction to enter the Disallowance Order, that the Disallowance Order was an order on the merits and that the same claim was at issue in the First Case Objection as with the Second Case Objection. Instead, Ms. Orsa asserts that res judicata does not apply because Debtor did not receive a discharge in her prior chapter 13 case, and, relying primarily on *In re Mirzai*, 271 B.R. 647 (C.D. Cal. 2001), contends that the Disallowance Order was not final.

In *Mirzai*, creditors Kolbe Foods, Inc. ("Kolbe"), James C. Kolbe, Jr. and Melissa Kolbe filed a fraud action against the debtor. *Mirzai*, 271 B.R. at 650. The debtor then filed a chapter 11 petition, and the creditors obtained relief from the automatic stay to litigate the pending action. *Id.* The creditors obtained a judgment against the debtor, and an appellate court affirmed the judgment. *Id.*

Kolbe filed a proof of claim against the debtor's estate. *Id.* The debtor objected to the claim on the basis that Kolbe was a suspended corporation and did not have standing to assert a claim. *Id.* The bankruptcy court sustained the debtor's objection and disallowed Kolbe's claim. *Id.* The debtor then voluntarily dismissed his bankruptcy case without discharge and without approval of a plan of reorganization. *Id.*

After dismissal of his case, the debtor brought a motion in state court attempting to void the judgment against him, arguing, among other things, that the disallowance of Kolbe's proof of claim in the debtor's dismissed bankruptcy case voided the state

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court judgment. *Id.* The state court denied the motion, and the debtor's appeals to the state appellate courts were unsuccessful. *Id.*, at 650-51. The debtor then filed another chapter 11 case, followed by an adversary proceeding through which the debtor asked the bankruptcy court to provide declaratory and injunctive relief by finding that the court's prior disallowance order barred Kolbe from having a claim against the debtor's estate and barring Kolbe from seeking to enforce its state court judgment. *Id.*, at 651. The bankruptcy court disagreed, finding that the prior disallowance order "did not have a res judicata effect so as to establish the invalidity of Kolbe's judgment" and that, because the debtor was unlikely to succeed on the merits of his claims, there was no cause for a preliminary injunction. *Id.* The debtor appealed to the district court. *Id.*

On appeal, the district court first considered 11 U.S.C. § 349(b), which provides—

Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

- (1) reinstates—
 - (A) any proceeding or custodianship superseded under section 543 of this title;
 - (B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and
 - (C) any lien voided under section 506(d) of this title;
- (2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and
- (3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

The *Mirzai* court conceded that § 349(b) does not specifically include claims allowance or disallowance orders as orders that are vacated upon dismissal, but nevertheless held that such orders are vacated if there is a dismissal without discharge:

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Section 349 governs the effect of dismissal of a bankruptcy case. Subsection (b) of section 349 provides that certain orders and judgments are vacated by a dismissal, unless preserved by the bankruptcy court for cause. A disallowance of a proof of claim under section 502(b), however, is not specifically enumerated. Here, there was no such preservation of the order disallowing Kolbe's proof of claim.

The clear intent of Congress was for section 349 "to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case." H.R.Rep. No. 95-595, at 338 (1977); S.Rep. No. 95-989, at 48 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5834, 5963, 6294. Section 349 facilitates a return to the status quo before the filing of the bankruptcy petition. The bankruptcy court, however, can exercise its equitable powers and protect rights obtained in reliance on the bankruptcy case, thereby limiting the scope of dismissal.

The dismissal of a bankruptcy case does not entitle the debtor to the "fresh start" that underlies the policy of the Bankruptcy Code. *Case*, 27 B.R. at 846. Only discharge frees the debtor, "leaving liability for as few obligations as possible." *Id.* Once discharge occurs and the case is closed, there is finality. *See* 11 U.S.C. § 350. No party may petition the court for reconsideration of orders allowing a claim. 11 U.S.C. § 502(j). However, the converse is also true; if no discharge is granted, there is no finality as to most orders entered during the pendency of the case, unless preserved by the court in the exercise of its equitable powers. *See* 11 U.S.C. § 349.

Id., at 652.

The district court noted that "there appears to be no controlling authority on point in the Ninth Circuit," but relied primarily on an out-of-circuit case from 1983: *In re Case*, 27 B.R. 844 (Bankr. D. S.D. 1983). In *Case*, prior to dismissal of their bankruptcy case, the debtors moved to preserve orders, including a claims

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disallowance order. *Case*, 27 B.R. at 845. In that context, the court decided not to preserve the orders because the debtors' case was being dismissed without discharge. *Id.*, at 846-48. However, the *Case* court did not discuss res judicata, and did not rely on any Ninth Circuit authority in reaching its decision. As such, the Court does not find *Case* helpful to the issues presented in this case. *Contra In re Kessler*, 2014 WL 2761212 (Bankr. C.D. Cal. Jun. 18, 2014) (holding that a claims disallowance order entered in a prior chapter 11 case that was dismissed without plan confirmation or discharge was final and entitled to res judicata effect in the debtors' second chapter 11 case).

As an alternative basis for refusing to apply res judicata, the *Mirzai* court also reasoned that a disallowance of a claim based on procedural grounds was not subject to res judicata, because application of res judicata requires a final judgment *on the merits*:

Moreover, it is apparent from the record that the proof of claim was denied because of the suspended status of Kolbe Foods, Inc., as this was *Mirzai's* only grounds for objection to the proof of claim. A procedural disallowance is not a judgment on the merits of the claim and should not be entitled to a preclusive effect. *See Coast Wineries*, 131 F.2d at 648-649.

Mirzai, 271 B.R. at 654; *see also Mirzai*, 271 B.R. at 654 n.6 ("Here, the bankruptcy court did not decide the merits of Kolbe's claim because that had been done by the state court. The bankruptcy court appears to have disallowed Kolbe's proof of claim on procedural grounds only."). As such, *Mirzai* is readily distinguishable from this case because this Court's prior Disallowance Order was on the merits.

In addition, other courts have disagreed with the broad holding of *Mirzai* that lack of a discharge nullifies finality of an order. As noted above, in *Kessler*, 2014 WL 2761212, although the debtors had not received a discharge or confirmed a plan in their prior chapter 11 case, the bankruptcy court held that res judicata precluded relitigation of an order disallowing a claim. *Kessler*, 2014 WL 2761212, at *5-9. *See also In re Dumontier*, 389 B.R. 890 (Bankr. D. Mont. 2008) (holding that neither 11 U.S.C. § 349 nor the fact that the debtor did not receive a discharge in her prior case prevented the court from applying res judicata to a claims order entered in the debtor's

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prior case).

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The Ninth Circuit Court of Appeals has addressed similar issues. In *In re Siegel*, 143 F.3d 525 (9th Cir. 1998), the debtor defaulted on two notes secured by real property. *Siegel*, 143 F.3d at 527-28. The debtor then filed for bankruptcy protection. *Id.*, at 528. Federal Home Loan Mortgage Corp. ("Freddie Mac") filed two claims against the estate to collect on a deficiency judgment. *Id.* The debtor did not object. *Id.* Subsequently, the debtor received a discharge, and the debtor's bankruptcy case was closed. *Id.*

Freddie Mac moved for summary judgment against the debtor, arguing in a separate action that it was entitled to judgment on all its claims based on the res judicata effect of the allowance of Freddie Mac's claims in the debtor's bankruptcy case. *Id.* The district court agreed, and the debtor appealed. *Id.*

On appeal, the debtor argued that the proofs of claim filed by Freddie Mac were not final judgments giving rise to res judicata. *Id.*, at 529. The Ninth Circuit Court of Appeals disagreed:

"A claim ..., proof of which is filed under section 501 of this title [Title 11], is *deemed allowed*, unless a party in interest ... objects." 11 U.S.C. § 502(a) (emphasis added). If there is an objection, the court must hold a hearing and then it "shall *allow* " the claim to the extent proper. 11 U.S.C. § 502(b) (emphasis added). Of course, if the court formally actually allows the claim, there can be little doubt about the ultimate res judicata effect of that allowance. But it is equally clear that when a claim is "deemed allowed" it has the same effect. Consider: what else can "deemed allowed" mean? It must mean deemed allowed by the court. In other words, it is deemed that the court has acted on the claim and ordered allowance. Congress has relieved the court of the task of actually endorsing its allowance of the claim on that document or on a separate form of order. It has saved the court from that burdensome and almost ministerial task when no interested party demands it. It would be most peculiar if the effect was that uncontested and allowed claims had less dignity for res judicata purposes than a claim which at least one party in interest thought was invalid or contestable in whole or in

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part. We see no reason to embrace that rather peculiar result. Rather, we see § 502(a) as a recognition of the fact that people can raise objections and litigate them, if they see something wrong with a claim, but if they do not, the claim will be treated in all respects as a claim allowed by the court itself. In short, the validity of the claim has been determined on the merits, and attacks upon it that "could have been asserted" cannot be raised in later proceedings. *In re Intl. Nutronics*, 28 F.3d at 969.

Id., at 530. The Court of Appeals did not hold that a debtor must receive a discharge for res judicata to apply to claims orders entered during a bankruptcy case. Rather, the *Siegel* court held that res judicata applied to bar the debtor from relitigating an issue that had been decided in the debtor's closed bankruptcy case *even where*: (1) the bankruptcy court had not adjudicated Freddie Mac's entitlement to a claim; and (2) the claim was only deemed allowed (because the debtor did not object). If a "deemed" allowed claim is entitled to preclusive effect, then disallowance of a claim, which was *actually adjudicated, on the merits*, should be entitled to preclusive effect, whether or not the debtor has received a discharge.

Other cases have indicated that res judicata applies to an order on allowance or disallowance of a claim, even if the debtor's case was dismissed and/or the debtor did not receive a discharge. In *In re Bevan*, 327 F.3d 994 (9th Cir. 2003), the debtors filed a chapter 13 petition. After paying off the Internal Revenue Service's lien against the debtors' real property, a secured lender filed a proof of claim, asserting that the lender was equitably subrogated to the rights of the Internal Revenue Service. *Bevan*, 327 F.3d at 996.

The debtors objected to the lender's claim. *Id.* The bankruptcy court agreed with the lender, as did the district court on appeal. *Id.* By the time the case reached the Ninth Circuit Court of Appeals, the debtors had voluntarily dismissed their case. *Id.* As such, the debtors argued that the appeal was moot, including the issue regarding whether the bankruptcy court properly allowed the lender's claim. *Id.* The Court of Appeals disagreed:

It is true that if an issue is closely connected to the reorganization process itself, it will be mooted when the proceeding is dismissed. *See Spacek v.*

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Thomen (In re Universal Farming Indus.), 873 F.2d 1334, 1335 (9th Cir.1989). But that is far from saying that all decisions of the bankruptcy court are mooted simply because they touch on the bankruptcy proceeding or were adjudicated in it. Indeed, we have declared that even contentions about priority of claims on bankruptcy property are not mooted by dismissal. *Id.* And, perhaps more to the purpose, we have decided that "the allowance or disallowance of 'a claim in bankruptcy is binding and conclusive on all parties or their privies, and being in the nature of a final judgment, furnishes a basis for a plea of res judicata.'" *Siegel v. Fed. Home Loan Mortgage Corp.*, 143 F.3d 525, 529 (9th Cir.1998) (citation omitted); *see also Florida Peach Corp. v. Comm'r*, 90 T.C. 678, 684, 1988 WL 31439 (1988). Were we to affirm, the bankruptcy court's decision would have a res judicata effect that the Bevans would have to confront now that their estate has reverted in them. *See Armel Laminates, Inc. v. Lomas & Nettleton Co. (In re Income Prop. Builders, Inc.)*, 699 F.2d 963, 965 (9th Cir.1982). Thus, the case is not moot, and we retain jurisdiction over it.

Id., 327 F.3d at 996–97. The Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") also has noted the continuing impact of a claims allowance or disallowance order, following the dismissal of a case. In *In re Latin*, 2009 WL 7751424 (B.A.P. 9th Cir. Feb. 11, 2009), a chapter 13 debtor objected to a claim filed by the California State Board of Equalization. *Latin*, 2009 WL 7751424 at *1. The court overruled the objection and the debtor appealed. *Id.*, at *2-3. During the pendency of the appeal, the bankruptcy court dismissed the debtor's case for failure to make plan payments. *Id.*, at *3. In addressing whether the appeal was moot, the BAP explained:

Our primary inquiry in all mootness questions is whether we can give the appellant any effective relief if we decide the matter on the merits in his favor. If we can grant relief, the matter is not moot. *Burrell*, 415 F.3d at 998.

Here, the resolution of the merits could affect debtor's rights because "the allowance ... of 'a claim in bankruptcy is binding and conclusive on all parties or their privies, and being in the nature of a final judgment, furnishes a basis for a plea of res judicata.'" *Bevan*, 327 F.3d at 997. If we affirm, the bankruptcy court's decision would have a res

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judicata effect that debtor would have to confront since his estate has revested in him. Therefore, we can give debtor effective relief if we decide the matter on the merits in his favor.

We conclude this appeal is not moot, and we retain jurisdiction over it.

Id. In a footnote, the BAP added: "Additionally, if debtor files another chapter 13, our failure to rule would preclude him from challenging any claim filed by the SBE based on Reg. § 1702.5 since the bankruptcy court's order would be final." *Id.*, at *4 n.9.

The facts in *Latin* are similar to the facts here. As in *Latin*, Debtor filed a chapter 13 petition and objected to a creditor's claim. The Court ruled on that objection and later confirmed Debtor's chapter 13 plan. The Court dismissed Debtor's prior case for failure to make plan payments. Debtor now filed a second chapter 13 case. As noted in *Bevan* and *Latin*, the Disallowance Order is to be afforded preclusive effect.

In light of these cases, the Court finds that the Disallowance Order is entitled to preclusive effect. Because the Disallowance Order was a decision on the merits, has not been vacated by statute and is no longer subject to appeal or reconsideration, the Disallowance Order stands as a final order. Debtor's receipt of a discharge does not impact the finality of the Court's decision to disallow Ms. Orsa's claim in the prior case. In fact, to hold otherwise would provide a windfall to a debtor who may lose on the merits of an objection to a creditor's claim, voluntarily dismiss his or her bankruptcy case prior to confirmation or discharge and file a new case, hoping to relitigate allowance of the claim with new arguments. Allowing such relitigation of an issue previously decided on the merits would deplete judicial and party resources. In conclusion, the doctrine of res judicata precludes repetitive litigation regarding the allowance of Ms. Orsa's claim.

B. Joint Employer Liability

In the Second Case Opposition, Ms. Orsa questions the Ruling and again asserts that Debtor was a joint employer with N&D. Although res judicata bars any argument by Ms. Orsa in this case, the Court will briefly discuss the merits of Ms. Orsa's claim.

In the Ruling (quoted above), the Court discussed why *Martinez*, 49 Cal.4th 35, is

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inapplicable to this case. In the Second Case Opposition, Ms. Orsa cites a new case, *Castaneda v. Ensign Group, Inc.*, 229 Cal.App.4th 1015 (Ct. App. 2014). In *Castaneda*, the plaintiff filed a class action complaint against defendant The Ensign Group, Inc. ("Ensign"), seeking damages for nonpayment of minimum and overtime wages. *Castaneda*, 229 Cal.App.4th at 1018. The plaintiff alleged that Ensign was the alter ego of Cabrillo Rehabilitation and Care Center ("Cabrillo"), a nursing facility where the plaintiff worked. *Id.* Ensign owned Cabrillo as a parent company. *Id.* The *Castaneda* court held that both Ensign and Cabrillo qualified as employers of the debtor. *Id.*, at 1019-22. As explained by that court:

An entity that controls the business enterprise may be an employer even if it did not "directly hire, fire or supervise" the employees. (*Guerrero v. Superior Court, supra*, 213 Cal.App.4th at p. 950, 153 Cal.Rptr.3d 315.) Multiple entities may be employers where they "control different aspects of the employment relationship." (*Martinez v. Combs, supra*, 49 Cal.4th at p. 76, 109 Cal.Rptr.3d 514, 231 P.3d 259.) "This occurs, for example, when one entity (such as a temporary employment agency) hires and pays a worker, and another entity supervises the work." (*Ibid.*) "Supervision of the work, in the specific sense of exercising control over how services are performed, is properly viewed as one of the 'working conditions'...." (*Ibid.*) "[C]ontrol over how services are performed is an important, perhaps even the principal, test for the existence of an employment relationship." (*Ibid.*)

Id., at 1019. On the other hand, the court *did not* hold that individual agents of either corporation could be held liable for nonpayment of wages.

In the Second Case Opposition, Ms. Orsa quotes language from *Castaneda* but includes her own bracketed language as follows: "Our Supreme Court said [the definition of employer] also includes a proprietor who knows that persons are working in his or her business without having been formally hired, or while being paid less than the minimum wage, [as such individual] clearly suffers or permits that work *by failing to prevent it, while having the power to do so.*" Second Case Opposition, p. 7 (citing *Castaneda*, 229 Cal.App.4th at 1019) (emphasis in *Castaneda*). However, the *Castaneda* court never referred to individuals in its decision, and did not hold that

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individual agents could be liable for a corporate debt for nonpayment of wages.

Moreover, the *Castaneda* court's holding was based in part on the fact that Ensign owned Cabrillo and exercised control over its operations and employees. Here, nothing in the record indicates that Debtor owns N&D or is the only corporate agent exercising control over employees of N&D. As noted above, Debtor's schedules from both this case and the prior case indicate that Debtor did not own at least 5% of the voting or equity securities of a corporation during the dates that N&D violated California's wage requirements.

Ms. Orsa also includes a passing citation to *Michael Hat Farming Co. v. Agricultural Labor Relations Bd.*, 4 Cal.App.4th 1037 (Ct. App. 1992), a decision about whether an entity qualifies as an *agricultural* employer. In any case, in *Michael Hat*, the court considered the question of whether a successor entity (which entity was not an individual) had a duty to bargain with a previously certified union. *Michael Hat*, 4 Cal.App.4th at 1043-46. The court did not make any findings as to whether individual agents of a corporate entity may be held liable for nonpayment of wages.

Ms. Orsa has not cited any authority that corporate agents may be held liable for nonpayment of wages *under a joint employer theory*. As noted above, in the First Case Opposition, Ms. Orsa relied on *Martinez* and joint employer liability to impose liability on Debtor for the damages asserted. Ms. Orsa did not present any alternative theories of recovery at the time.

The Court reaffirms its prior holding that joint employer liability does not apply to Debtor as an individual agent of N&D. However, alternative theories of recovery may have been available to Ms. Orsa. For instance, as thoroughly discussed in *Atempa v. Pedrazzani*, 238 Cal.Rptr.3d 465 (Ct. App. 2018), two California statutes provide for *civil penalties* assessed against "*other person[s] acting on behalf of an employer* who violate[], or cause[] to be violated" certain wage and hour laws, "*or other person[s] acting either individually or as an officer, agent, or employee of another person*" who violate minimum wage laws. *Atempa*, 238 Cal.Rptr.3d at 470 (citing Cal. Labor Code §§ 558(a), 1197.1(a)) (emphasis in *Atempa*). However, these statutes empower the Labor Commissioner to recover the penalties. *Id.*, at 479. *Employees* who wish to recover civil penalties must seek relief through California's Private Attorney General Act ("PAGA"). *Id.*, at 479-80 (citing Cal. Labor Code § 2699(a)).

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To bring suit under PAGA, employees must comply with the notice requirements of the Labor Code. Cal. Labor Code § 2699.3. Under the Labor Code, aggrieved employees must: (1) give written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and the employer of the specific provisions of the code violation; and (2) the agency must then notify the employer and employee by certified mail that it does not intend to investigate within 30 days. *Id.*

Here, Ms. Orsa did not move for recovery of such civil penalties. Moreover, even if Ms. Orsa sought relief through PAGA, she would not be entitled to the full amount of damages requested in her claims against Debtor's prior and current estates; under PAGA, 75% of the penalties are paid to the LWDA and 25% of the penalties are paid to the aggrieved employee. *Atempa*, 238 Cal.Rptr.3d at 480 (citing Cal. Labor Code § 2699(i)).

In *Atempa*, the defendant argued that the superior court erred by holding the defendant, an agent of a corporation, personally liable for *civil penalties* pursuant to Cal. Labor Code §§ 558(a) and 1197.1(a). *Id.*, at 467-68. According to the defendant, the corporate agent could not be held liable for the corporation's wages short of an alter ego finding. *Id.* The *Atempa* court found that, because the statutes at issue explicitly provided for liability by a "person acting on behalf of an employer," Cal. Labor Code § 558(a), or by a "person acting either individually or as an officer, agent, or employee of another person," Cal. Labor Code § 1197.1(a), the superior court appropriately held the defendant liable for civil penalties. *Id.*, at 471-73.

The *Atempa* court distinguished its case from *Reynolds* and *Martinez*, and provides additional support for this Court's holding that joint employer liability does not apply to Debtor:

In *Reynolds*,... [t]he court held: "Under the common law, corporate agents acting within the scope of their agency are not personally liable for the corporate employer's failure to pay its employees' wages." (*Id.* at p. 1087, 32 Cal.Rptr.3d 483, 116 P.3d 1162.) In part, the *Reynolds* court reasoned: "Had the Legislature meant in section 1194 to expose to personal civil liability any corporate agent who 'exercises control' over an employee's wages, hours, or working conditions, it would have

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manifested its intent more clearly than by mere silence[.]" (*Id.* at p. 1088, 32 Cal.Rptr.3d 483, 116 P.3d 1162.)

In contrast, in both of the statutes at issue here, in the language of the *Reynolds* opinion, the Legislature *did* "manifest[] its intent more clearly than by mere silence." (See *Reynolds, supra*, 36 Cal.4th at p. 1088, 32 Cal.Rptr.3d 483, 116 P.3d 1162.)...

Five years after *Reynolds*, in *Martinez, supra*, 49 Cal.4th 35, 109 Cal.Rptr.3d 514, 231 P.3d 259, our Supreme Court revisited the issue of how to determine the responsible party for unpaid wages under section 1194. (*Martinez*, at p. 42, 109 Cal.Rptr.3d 514, 231 P.3d 259.) The court again limited liability for section 1194 wage claims to the actual employer (not the employer's agent)—this time basing the decision on court deference to the IWC's interpretation of one of its own wage orders, No. 14-2001: Because "an employee who sues to recover unpaid ... wages under section 1194 actually sues to enforce the applicable [IWC] wage order[.]" courts should defer to the commission's wage orders' definition of "employer." (*Martinez*, at p. 62, 109 Cal.Rptr.3d 514, 231 P.3d 259.) In *Martinez*, the court first acknowledged that, in *Reynolds* it had "looked to the common law rather than the applicable wage order to define employment in an action under section 1194 seeking to hold a corporation's directors and officers personally liable for its employees' unpaid overtime compensation." (*Martinez*, at p. 62, 109 Cal.Rptr.3d 514, 231 P.3d 259.) The court then disapproved of its prior ruling, concluding that the applicable wage order, not the common law, "properly defines the employment relationship ... under section 1194." (*Martinez*, at p. 62, 109 Cal.Rptr.3d 514, 231 P.3d 259; see *id.* at p. 50, fn. 12, 109 Cal.Rptr.3d 514, 231 P.3d 259 [*Reynolds* "spoke too broadly in concluding that the common law defines the employment relationship in actions under section 1194".].)

Thus, in both *Reynolds* and *Martinez*, a former employee was seeking *wages* from a defendant agent of the corporate employer; the statute under consideration (§ 1194) allowed the former employee to

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recover such *wages*, but did not identify who might be liable; and the issue was how to determine the identity of the "employer" for purposes of the former employee's private right of action for such *wages*. (*Reynolds, supra*, 36 Cal.4th at pp. 1083, 1085-1089, 32 Cal.Rptr.3d 483, 116 P.3d 1162; *Martinez, supra*, 49 Cal.4th at p. 42, 109 Cal.Rptr.3d 514, 231 P.3d 259.) In contrast, here, the claims are for *civil penalties* from an officer/agent of the corporate employer; the statutes under consideration expressly allow for the recovery of such *civil penalties* from an officer/agent of the corporate employer (upon a sufficient showing that the officer/agent was responsible for the underlying wage violation); and, for purposes of recovering such *civil penalties* from the employer's agent, the identity of the employer—including the employer's business structure—is irrelevant.

Id., at 475–77. Thus, *Atempa* strengthens the Court's prior holding that joint employer liability, as set forth in *Martinez*, did not apply to Debtor. *See also Cordell v. PICC Lines Plus, LLC*, 2016 WL 4702654 (N.D. Cal. Sep. 8, 2016) (discussing why individual corporate agents are not liable for nonpayment of wages under various theories pursuant to California law). Instead, Ms. Orsa had different avenues for relief, such as moving through PAGA or arguing for alter ego liability. [FN1].

Ms. Orsa also may have been able to impose liability on Debtor under the Fair Labor Standards Act ("FLSA"). *Boucher v. Shaw*, 572 F.3d 1087 (9th Cir. 2009). In *Boucher*, the Ninth Circuit Court of Appeals explained the definition of "employer" for purposes of the FLSA:

We have held that the definition of "employer" under the FLSA is not limited by the common law concept of "employer," but "is to be given an expansive interpretation in order to effectuate the FLSA's broad remedial purposes." *Lambert v. Ackerley*, 180 F.3d 997, 1011-12 (9th Cir.1999) (en banc) (quoting *Bonnette v. California Health & Welfare Agency*, 704 F.2d 1465, 1469 (9th Cir.1983)). *See also Real v. Driscoll Strawberry Assocs.*, 603 F.2d 748, 754 (9th Cir.1979).

Where an individual exercises "control over the nature and structure of the employment relationship," or "economic control" over the

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relationship, that individual is an employer within the meaning of the Act, and is subject to liability. *Lambert*, 180 F.3d at 1012 (internal quotation marks and citations omitted). In *Lambert*, we upheld a finding of liability against a chief operating officer and a chief executive officer where the officers had a " 'significant ownership interest with operational control of significant aspects of the corporation's day-to-day functions; the power to hire and fire employees; [the power to] determin[e] [] salaries;[and the responsibility to] maintain [] employment records.'" *Lambert*, 180 F.3d at 1001-02, 1012 (quoting the district court's jury instruction).

Id., at 1090-91. "We have found at least two cases holding that individual managers can be held liable under the FLSA even after the corporation has filed for bankruptcy." *Id.*, at 1093-94 (citing to *Donovan v. Agnew*, 712 F.2d 1509, 1511, 1514 (1st Cir. 1983) and *Chung v. New Silver Palace*, 246 F.Supp.2d 220, 226 (S.D.N.Y. 2002)).

However, in the First Case Opposition, Ms. Orsa did not assert a claim against Debtor under the FLSA or under any federal law. Ms. Orsa exclusively relied on a theory of joint employer liability, citing *Martinez* as the only authority in support of her claim. Because Ms. Orsa's current claim is barred by res judicata, and res judicata also bars any claims that could have been brought in the original proceeding, Ms. Orsa is barred from relitigating her claim, including under new theories presented for the first time in connection with this case. *See Rein*, 270 F.3d at 898-899 (res judicata bars any claims that "could have been raised" in the prior action).

C. Separate Employment Agreement with Debtor

Ms. Orsa again asserts she performed personal services for Debtor separate and apart from Ms. Orsa's employment agreement with N&D. First, the Court already addressed this argument in the Ruling by finding that Ms. Orsa did not include a separate accounting for any work done for Debtor personally; based the amount of her claim on the wages owed by N&D as opposed to calculating a different claim based on the alleged separate employment; did not provide evidence of a separate employment agreement; and did not show that the "personal services" she performed for Debtor were outside the scope of her employment with N&D as an executive

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assistant. In light of the Court's findings, Ms. Orsa's claim that Debtor owes Ms. Orsa wages based on a different employment agreement also is barred by res judicata. In any event, the same issues are present in this case as in the prior case; Ms. Orsa again has not provided any evidence that would disturb the Court's prior finding that Ms. Orsa's claim was based on an award to N&D and that Ms. Orsa did not otherwise show entitlement to compensation based on personal services performed for Debtor outside the scope of Ms. Orsa's employment with N&D.

III. CONCLUSION

The Court will sustain the Second Case Objection.

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

FOOTNOTES

1. Recently, the California Legislature passed Cal. Labor Code § 558.1, which provides that "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the [IWC], or violates, or causes to be violated, Sections...1194..., may be held liable as the employer for such violation." Cal. Labor Code § 558.1(a). The statute specifies that a "person acting on behalf of an employer" includes "a natural person who is an owner, director, officer, or managing agent of the employer..." Cal. Labor Code § 558.1(b). However, this statute applies only to violations occurring on or after January 1, 2016. *See Roush v. MSI Inventory Service Corp.*, 2018 WL 3637066, at *2-3 (E.D. Cal. Jul. 30, 2018). Here, the violations occurred in 2015, and Cal. Labor Code § 558.1 would not have applied to Ms. Orsa's claim.

Party Information

Debtor(s):

Neli Maria Negrea

Represented By
Stella A Havkin

Trustee(s):

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CONT... **Neli Maria Negrea**
Elizabeth (SV) F Rojas (TR)

Pro Se

Chapter 13

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9:30 AM

1:18-12721 David Chavez

Chapter 7

#1.00 Motion for relief from stay [PP]

AMERICAN HONDA FINANCE CORPORATION
VS
DEBTOR

fr. 1/2/19

Docket 7

***** VACATED *** REASON: APO entered 1/10/19 [doc. 14].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Chavez

Represented By
Francis Guilardi

Trustee(s):

David Seror (TR)

Pro Se

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9:30 AM

1:15-10931 James Tomas and Imelda Tomas

Chapter 13

#2.00 Opposition to declaration re default under adequate protection
fr. 12/19/18

Docket 78

*** VACATED *** REASON: Order approving stipulation entered on
1/14/19 [doc. 86].

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

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:18-12592 Mario Alberto Cerritos

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 6

Tentative Ruling:

At the prior hearing, the Court ordered the debtor to file a declaration evidencing that he made his chapter 13 plan payments and postpetition deed of trust payments through December 2018.

On January 7, 2019, the debtor filed a declaration stating that he has made deed of trust payments for November and December 2018, in the amount of \$1,800.00 [doc. 27]. In contrast, on January 17, 2018, Wells Fargo Bank, N.A. ("Wells Fargo") filed a motion for relief from the automatic stay, regarding Debtor's real property located at 8037 Mammoth Avenue, Los Angeles, CA 91402, in which Wells Fargo asserts that the debtor has made only *one* postpetition deed of trust payment, received on December 17, 2018, in the amount of \$1,800.00. [doc. 32].

The debtor has not filed a declaration to establish that he made his chapter 13 plan payments for November and December 2018.

Ruling from 11/14/18

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.

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CONT... Mario Alberto Cerritos

Chapter 13

Party Information

Debtor(s):

Mario Alberto Cerritos

Represented By
Jaime A Cuevas Jr.

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

#4.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 12/19/2018;

Docket 12

Tentative Ruling:

The debtor has not filed a declaration regarding whether she made her chapter 13 plan payment for January 2019.

The notice of the continued hearing, served on December 20, 2018, did not set forth a deadline for filing a response to the motion [doc. 22].

Ruling from 12/19/18

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

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CONT... Kathleen Magdaleno

Chapter 13

(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 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].

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CONT... Kathleen Magdaleno
Discussion

Chapter 13

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.

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

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Kathleen Magdaleno

Chapter 13

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

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:18-11667 Christopher Michael Niblett

Chapter 13

#5.00 Motion for relief from stay [PP]

ACAR LEASING LTD, INC. DBA GM FINANCIAL LEASING
VS
DEBTOR

fr. 1/2/19

Docket 35

Tentative Ruling:

Absent movant and the debtor's entry into an adequate protection agreement, the Court will grant the motion pursuant to 11 U.S.C. § 362(d)(1), on the terms requested.

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

Party Information

Debtor(s):

Christopher Michael Niblett

Represented By
Elena Steers

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-11667 Christopher Michael Niblett

Chapter 13

#6.00 Motion for relief from stay [RP]

BROKER SOLUTIONS, INC.
VS
DEBTOR

fr. 01/02/19

Stip approving adequate protection entered 01/15/2019

Docket 32

*** VACATED *** REASON: Order approving apo entered 01/15/2019

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Michael Niblett

Represented By
Elena Steers

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#7.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 99

*** VACATED *** REASON: Withdrawal of motion filed 1/18/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Efrem Rosenberg

Represented By
Richard Mark Garber

Movant(s):

Toyota Motor Credit Corporation as

Represented By
Stephanie R Lewis

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

1:30 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

Adv#: 1:17-01017 Weil v. Cazares et al

- #8.00** Pretrial 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; 3/14/18

Docket 78

***** VACATED *** REASON: Continued to 2/20/19 @ 1:30 p.m. per order**

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
C John M Melissinos

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CONT... Dean Albert Maury Cazares

Chapter 7

Trustee(s):

Diane Weil (TR)

Represented By
C John M Melissinos

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Hearing Room 301

1:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#9.00 Pretrial 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/ 8/1/18

Docket 42

*** VACATED *** REASON: Continued to 4/3/19 at 2:30 p.m.

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**

Wednesday, January 23, 2019

Hearing Room 301

1:30 PM

1:17-13375 Adir Setton

Chapter 7

Adv#: 1:18-01035 Kessler v. Setton

#10.00 Show cause hearing why this adversary proceeding should not be dismissed for failure to prosecute

Docket 28

Tentative Ruling:

The Court will dismiss this adversary proceeding for failure to prosecute.

On March 22, 2018, Avigdor Kessler ("Plaintiff") filed a complaint against Adir Setton, initiating this adversary proceeding.

On July 27, 2018, the Court entered a scheduling order [doc. 19], ordering the parties to file a joint pretrial stipulation no later than October 17, 2018. On October 26, 2018, the parties belatedly filed a joint pretrial stipulation (the "JPS") [doc. 23]. On October 31, 2018, the Court held a pretrial conference. As noted by the Court at that time, the JPS did not conform to the Local Bankruptcy Rules [see doc. 31]. The Court instructed Plaintiff to file an amended JPS or a unilateral pretrial statement no later than November 30, 2018.

On December 12, 2018, the Court held a continued pretrial conference. The parties did not file an amended JPS. The Court again informed Plaintiff that he must file an amended JPS or a unilateral pretrial statement no later than December 19, 2018. The Court also issued an Order to Show Cause why this adversary proceeding should not be dismissed for failure to prosecute (the "OSC") [doc. 28]. In the OSC, the Court instructed Plaintiff to file a written response to the OSC no later than January 9, 2019.

As of January 18, 2019, Plaintiff has not filed an amended JPS or a unilateral pretrial statement, and has not filed a response to the OSC. Consequently, the Court will dismiss this adversary proceeding.

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, January 23, 2019

Hearing Room 301

1:30 PM

CONT... Adir Setton

Chapter 7

Debtor(s):

Adir Setton

Represented By

Stephen S Smyth

William J Smyth

Andrew Edward Smyth

Defendant(s):

Adir Setton

Represented By

Andrew Edward Smyth

Plaintiff(s):

Avigdor Kessler

Represented By

Martin S Wolf

Andrew Edward Smyth

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 23, 2019

Hearing Room 301

1:30 PM

1:17-13375 Adir Setton

Chapter 7

Adv#: 1:18-01035 Kessler v. Setton

#11.00 Pretrial conference re: complaint of Avigdor Kessler

from: 5/16/18; 6/20/18; 10/31/18; 12/12/18

Docket 1

Tentative Ruling:

See calendar no. 10.

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, January 23, 2019

Hearing Room 301

1:30 PM

1:18-11470 Asif Sheikh

Chapter 7

Adv#: 1:18-01094 Karimzad v. Sheikh et al

#12.00 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; 11/21/18

Docket 1

Tentative Ruling:

The Court will set the defendants' motion to dismiss [doc. 23] for hearing at **2:30 p.m. on March 6, 2019**. The defendants must file and serve notice of the hearing and the deadline to file a response. The status conference will be continued to that time and date.

Appearances on January 23, 2019 are excused.

Party Information

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

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

Wednesday, January 23, 2019

Hearing Room 301

1:30 PM

CONT...

Asif Sheikh

Farbood Majd

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, January 23, 2019

Hearing Room 301

1:30 PM

1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01096 Karimzad v. Sheikh et al

#13.00 Status conference re: amended 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; 11/21/18

Docket 21

Tentative Ruling:

The Court will set the defendants' motion to dismiss [doc. 23] for hearing at **2:30 p.m. on March 6, 2019**. The defendants must file and serve notice of the hearing and the deadline to file a response. The status conference will be continued to that time and date.

Appearances on January 23, 2019 are excused.

Party Information

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

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

Wednesday, January 23, 2019

Hearing Room 301

1:30 PM

CONT...

Atif Sheikh

Farbood Majd

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, January 23, 2019

Hearing Room 301

1:30 PM

1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01116 Bars v. Sheikh

#13.01 Status conference re complaint to determine dischargeability
and in objection to discharge [11 U.S.C. §§727(a)(4)(A)' 523(a) (2)

fr. 1/9/2019;

Docket 1

*** VACATED *** REASON: Scheduling order entered 1/14/19 [doc. 7]
and mediation order entered 1/18/19 [doc. 9].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Atif Sheikh

Represented By
Steven M Gluck

Defendant(s):

Atif Sheikh

Pro Se

Joint Debtor(s):

Naureen Sheikh

Represented By
Steven M Gluck

Plaintiff(s):

Candace Marie Bars

Represented By
David C Bernstein

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 23, 2019

Hearing Room 301

1:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:18-01123 Gottlieb v. Plummer Group, LLC

#14.00 Status conference re: complaint to avoid preferential transfer
and recover transfer for estate

Docket 1

Tentative Ruling:

The defendant not yet having filed a response, and the deadline for doing so having been extended, the Court will continue this status conference to **1:30 p.m. on February 13, 2019**. No later than **February 4, 2019**, the parties must file a joint status report including *both* parties' proposed dates and deadlines.

Appearances on January 23, 2019 are excused.

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Plummer Group, LLC

Pro Se

Plaintiff(s):

David K. Gottlieb

Represented By
Peter A Davidson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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

Wednesday, January 23, 2019

Hearing Room 301

1:30 PM

1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:18-01131 Goldman v. Pavehzadeh et al

- #15.00** Status conference re complaint:
(1) for declaratory relief;
(2) sale of interest of co-owner in property of the estate;
(3) turnover of property of the estate
[11 U.S.C. sec 363(h) and 542]

Docket 1

***** VACATED *** REASON: Correct summons issued setting status
conference for 1:30 p.m. on 2/20/19.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Hadizadeh

Represented By
Stella A Havkin

Defendant(s):

Houshang Pavehzadeh

Pro Se

Mona Soleimani

Pro Se

Plaintiff(s):

Amy L. Goldman

Represented By
Todd A Frealy

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Anthony A Friedman

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

Wednesday, January 23, 2019

Hearing Room 301

1:30 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

Adv#: 1:18-01114 Nassif et al v. THE BANK OF NEW YORK MELLON fka THE BANK OF

- #15.01** Status conference re: complaint for:
1. Violation of California homeowner bill of rights;
 2. Breach of written agreement;
 3. Breach of vovenant of good faith and fair dealing;
 4. Negligence;
 5. Unlawful business practices

fr. 1/9/19;

Docket 1

***** VACATED *** REASON: Scheduling order entered 1/10/19 [doc. 7]
and mediation order entered 1/18/19 [doc. 10].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

Defendant(s):

THE BANK OF NEW YORK

Pro Se

Nationstar Mortgage LLC, A

Pro Se

Bank of America, N.A, a National

Pro Se

Aztec Foreclosure Corporation., a

Pro Se

Plaintiff(s):

Christopher Sabin Nassif

Represented By

Matthew D. Resnik

Robin Nassif

Represented By

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

Wednesday, January 23, 2019

Hearing Room 301

1:30 PM

CONT...

Christopher Sabin Nassif

Matthew D. Resnik

Chapter 11

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

Wednesday, January 23, 2019

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

#15.02 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; 12/12/18; 1/9/19;

Docket 8

***** VACATED *** REASON: Scheduling order entered 1/15/19 [doc. 20] and mediation order entered 1/18/19 [doc. 24].**

Tentative Ruling:

- NONE LISTED -

Party Information

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, January 23, 2019

Hearing Room 301

2:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#16.00 Plaintiff's motion for order compelling defendants to produce additional documents in response to requests for production of documents, and for sanctions

fr. 1/16/19

Docket 72

***** VACATED *** REASON: Order entered 1/22/19 continuing hearing to 4/3/19 @ 2:30 PM**

Tentative Ruling:

- NONE LISTED -

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
Sheila Esmaili

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, January 23, 2019

Hearing Room 301

2:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#17.00 Plaintiff's motion to compel defendants to appear at deposition
and for sanctions

fr. 1/16/19

Docket 77

*** VACATED *** REASON: Order entered 1/22/19 continuing hearing to
4/3/19 @ 2:30 PM

Tentative Ruling:

- NONE LISTED -

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
Sheila Esmaili

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**

Thursday, January 24, 2019

Hearing Room 301

9:30 AM

1:15-10931 James Tomas and Imelda Tomas

Chapter 13

#1.00 Opposition to declaration re default under adequate protection

fr. 12/19/18

Docket 78

*** VACATED *** REASON: Rescheduled for 01/23/2019 at 9:30 a.m.

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

Trustee(s):

Elizabeth (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, January 24, 2019

Hearing Room 301

10:30 AM

1:14-14742 BaseNet, LLC

Chapter 7

#2.00 Trustee's final report and applications for compensation

David K. Gottlieb - Chapter 7 Trustee

Sulmeyer Kupetz - Attorney for Trustee

Crowe Horwath LLP - Accountant for Trustee

Faucher Law and Edward P. Kerns - Attorney's for Debtor

Docket 243

Tentative Ruling:

The Court will continue this hearing to **February 7, 2019 at 10:30 a.m.**

Appearances on January 24, 2019 are excused.

Party Information

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, January 24, 2019

Hearing Room 301

10:30 AM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#3.00 Application for payment of interim fees and/or expenses
for Reorganization Counsel to Debtor in Possession

Docket 90

Tentative Ruling:

Contrary to LBR 2016-(a)(1)(J), Law Offices of David A. Tilem ("Applicant") did not include a declaration by the debtor or describe the steps that were taken to obtain the debtor's consent to the application. Second, although the application includes a resume for Mr. Tilem (Exh. 1), it does not contain the information required by LBR 2016-1(a)(1)(H) with respect to the other billing individuals. Third, contrary to LBR 2016-1(a)(1)(A)(iii), the application does not discuss the estimated amount of other accrued expenses of administration.

Finally, contrary to LBR 2016-1(a)(1)(A)(iii), the application does not discuss the amount of cash on hand in the estate. If the requested fees and expenses are allowed, it is unclear how the debtor would pay the allowed fees and expenses.

Applicant requests allowance and payment of \$60,691.67 in attorneys' fees and costs; according to Applicant, a prepetition retainer in the amount of \$10,787.00 remains available to pay approved fees and expenses. Based on the debtor's most recent monthly operating report, as of November 30, 2018, the debtor had an ending balance of \$25,037.65 in its general account and \$9,715.39 in its cash collateral account. If all funds in the debtor's general account are used to pay Applicant's allowed fees and expenses (net the prepetition retainer), the Court is concerned about the debtor having sufficient cash reserves to continue to operate. For example, in the *Motion for Order Authorizing Debtor to Assume Nonresidential Real Property* [doc. 84], the debtor states that it will pay \$7,875.00 to cure lease obligation defaults immediately upon entry of an order granting that motion.

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, January 24, 2019

Hearing Room 301

1:00 PM

1:17-13142 Amir Elosseini

Chapter 11

#4.00 Status conference re: chapter 11 case

fr. 2/8/18; 8/16/18; 11/15/18

Docket 1

Tentative Ruling:

On January 15, 2019, the debtor filed a chapter 11 plan [doc. 84] and related disclosure statement [doc. 85]. The Court intends to set a hearing on the adequacy of the debtor's proposed disclosure statement on **March 14, 2019 at 1:00 p.m.** In accordance with Local Bankruptcy Rule 3017-1, **no later than January 31, 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.

The Court will continue this status conference to **March 14, 2019 at 1:00 p.m.** to be held in connection with the hearing on the adequacy of the debtor'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 January 24, 2019 are excused.

Party Information

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, January 24, 2019

Hearing Room 301

1:00 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

#5.00 Status conference re: chapter 11 case
from: 8/2/18; 12/6/18

Docket 1

Tentative Ruling:

The Court will continue this chapter 11 status conference to **March 7, 2019 at 2 p.m.** to be held in connection with the *Party in Interest's Motion to Convert Case to Chapter 7 Nunc Pro Tunc as of May 4, 2018* [doc. 102]. 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 24, 2019 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, January 24, 2019

Hearing Room 301

1:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#6.00 Status conference re chapter 11 case

fr. 11/8/18

Docket 1

Tentative Ruling:

On December 26, 2018, the debtor filed an application to employ an accountant [doc. 64] and an application to employ general business counsel [doc. 66]. In both applications the debtor is requesting approval of employment *nunc pro tunc* as of September 21, 2018.

"Both § 327 and Bankruptcy Rule 2014 explicitly require attorneys [and other professionals] to seek the approval of the court before they commence employment for the estate." *In re Downtown Inv. Club III*, 89 B.R. 59, 63 (B.A.P. 9th Cir. 1988). "The Ninth Circuit allows retroactive (*nunc pro tunc*) awards of fees for services rendered without prior court approval where: (1) the applicant has a satisfactory explanation for the failure to receive prior judicial approval; and (2) the applicant has benefitted the estate in some significant manner." *In re Mehdipour*, 202 B.R. 474, 479 (B.A.P. 9th Cir. 1996), *aff'd*, 139 F.3d 1303 (9th Cir. 1998). "These strict requirements are not to be taken lightly 'lest it be too easy to circumvent the statutory requirement of prior approval.'" *Id.* (quoting *In re B.E.S. Concrete Prods., Inc.*, 93 B.R. 228, 231 (Bankr.E.D.Cal.1988)). "A retroactive authorization order should not be issued where the lateness in seeking court approval of employment is accompanied by inexcusable or unexplained negligence." *Downtown*, 89 B.R. at 63–64.

Under Local Bankruptcy Rule 2014-1(b)(E), "an application for the employment of counsel for a debtor in possession should be filed as promptly as possible after the commencement of the case, and an application for employment of any other professional person should be filed as promptly as possible after such person has been engaged."

Here, the debtor has not explained in either application what circumstances exist such that the Court should approve employment *nunc pro tunc*.

Party Information

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

Thursday, January 24, 2019

Hearing Room 301

1:00 PM

CONT... MidiCi Group, LLC

Chapter 11

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, January 24, 2019

Hearing Room 301

1:00 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 11

#6.10 Status conference re: chapter 11 case

fr. 1/10/19

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline for debtor and/or debtor in possession to file proposed plan and related disclosure statement: **July 31, 2019.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on August 15, 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.

1/10/2019 Tentative:

Contrary to the Court's *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* [doc. 14], the debtor did not support her status report with evidence. No later than **January 17, 2019**, the debtor must file and serve a declaration in support of the status report.

In her schedule I, the debtor states that she receives no income; in her schedule J, the debtor lists \$16,754.35 in monthly expenses. In her Statement of Financial Affairs, the debtor indicates that she has not received any income in 2016 or 2017, with the exception of \$52,000 distributed from an IRA. In the debtor's schedule A/B, the

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

Thursday, January 24, 2019

Hearing Room 301

1:00 PM

CONT...

Elizabeth Y. Zaharian

Chapter 11

debtor indicates that she owns an IRA with a value of \$1,958.57, as of the petition date. Is this the IRA which generated the \$52,0000 in distributions?

In her Statement of Financial Affairs, the debtor indicates that she is married; in her schedule H, the debtor indicates that her spouse resides at the debtor's address. However, the debtor has not included her spouse's income in her schedule I, which requires information about a debtor's non-filing spouse if the spouse lives with the debtor.

The debtor lists multiple liens against her residence (5 of which arise from deeds of trust), totaling \$1,984,964.25. Only two of these liens are described as disputed.

Based on the debtor's valuation of her residence, it does not have any non-exempt equity. How will the debtor pay for her monthly living expenses, post-petition? How does the debtor intend to fund a chapter 11 plan?

In her declaration to be filed in support of the status report, the debtor must discuss the debtor's ability to fund her post-petition living expenses, as well as to fund payments required to confirm and to implement a chapter 11 plan.

No later than **January 17, 2019**, the debtor must file and serve an amended schedule I to include information about her spouse's income, and an amended schedule J to account for her spouse's expense contributions. The debtor also must file her 2017 tax returns with the Court.

If the debtor does not timely file her declaration, her amended schedules and her 2017 tax returns, the Court may convert or dismiss the debtor's case with a 180-day bar pursuant to 11 U.S.C. §§ 105(a), 349 (a) and 1112(b).

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

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

Thursday, January 24, 2019

Hearing Room 301

2:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#7.00 Motion for order authorizing debtor to assume nonresidential real property

Docket 84

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):

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, January 24, 2019

Hearing Room 301

2:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#8.00 Motion for order extending exclusivity under sec 1121 for a period of 4 month

Docket 86

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion.

I. BACKGROUND

On August 22, 2018, Integrated Dynamic Solutions, Inc. ("Debtor") filed a voluntary chapter 11 petition. Debtor provides internet and software consulting services, including the development of custom software. Nasrollah Gashtili is Debtor's only shareholder. Mr. Gashtili is currently a debtor and debtor-in-possession in his own chapter 11 case pending before the Court [1:18-bk-10715-VK].

On December 18, 2018, Debtor filed the *Motion for Order Extending Exclusivity Under § 1121 for a Period of 4 Months* (the "Motion") [doc. 86]. In the Motion, Debtor requests an extension of the plan filing exclusivity period to April 22, 2019, and the plan confirmation date to June 21, 2019. On January 10, 2019, VitaVet Labs, Inc. ("Creditor") filed an opposition to the Motion (the "Opposition") [doc. 104]. On January 17, 2019, Debtor filed a reply to the Opposition [doc. 113].

II. DISCUSSION

Pursuant to 11 U.S.C. § 1121—

(b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.

...

(d)(1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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increase the 120-day period or the 180-day period referred to in this section.

(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

"The key question...is whether [an] extension of exclusivity function[s] to facilitate movement towards a fair and equitable resolution of the case, taking into account all the divergent interests involved." *In re Henry Mayo Newhall Mem'l Hosp.*, 282 B.R. 444, 453 (B.A.P. 9th Cir. 2002). Relevant factors showing cause include:

(1) a first extension; (2) in a complicated case; (3) that had not been pending for a long time, relative to its size and complexity; (4) in which the debtor did not appear to be proceeding in bad faith; (5) had improved operating revenues so that it was paying current expenses; (6) had shown a reasonable prospect for filing a viable plan; (7) was making satisfactory progress negotiating with key creditors; (8) did not appear to be seeking an extension of exclusivity to pressure creditors; and (9) was not depriving [creditors] of material or relevant information.

Id., at 452 (citing to *In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996)).

"The party seeking...an extension or reduction must establish that there is cause for the court to do so based upon the facts and circumstances of the particular case." *In re New Meatco Provisions*, 2014 WL 917335, at *2 (Bankr. C.D. Cal. Mar. 10, 2014) (unpublished disposition).

Here, this is Debtor's first extension. Debtor asserts that the complexity in this case has to do with interrelationship between this estate and that of Mr. Gashtili, as well as their joint liability to Creditor. The case has not been pending for a long time.

It does not appear that Debtor is proceeding in bad faith. Debtor has attempted to

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negotiate with creditors and is in compliance with the Office of the United States Trustee. Further, Debtor has increased its revenue and is able to pay its regular operating bills as they come due. Debtor has shown a reasonable prospect for filing a viable plan. Debtor has successfully completed settlement negotiations with one secured creditor [*See* doc. 106.] Finally, the extension is not for the purpose of pressuring creditors.

In the Opposition, Creditor argues that Debtor has not shown cause to extend the exclusivity period. However, based on the application of the *Dow Corning* factors, Debtor has shown sufficient cause to extend the exclusivity period.

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

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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1:18-12156 Integrated Dynamic Solutions, Inc.

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#9.00 Motion for order authorizing use of cash collateral

Docket 88

Tentative Ruling:

The Court will grant the motion, except with respect to the monthly payments from Automated Systems America, Inc. ("ASAI").

I. BACKGROUND

On July 30, 2014, Integrated Dynamic Solutions, Inc. ("Debtor") and ASAI entered into a licensing agreement (the "Agreement") [doc. 88, Exh. C]. Under the terms of the Agreement, Debtor granted ASAI the non-exclusive right and license to use its software. *Id.* at sec. 1.1. In return, ASAI is to pay Debtor a *one-time* license fee in the aggregate amount of \$2,200,000.00. *Id.* at sec. 1.3. ASAI was to pay \$200,000.00 by August 1, 2014, and to pay the remaining \$2,000,000.00 in monthly installments of \$16,666.67 for 120 months. *Id.*

On August 22, 2018, Debtor filed a voluntary chapter 11 petition. On September 6, 2018, Debtor filed an emergency motion order authorizing interim and final use of cash collateral (the "First CC Motion") [doc. 18]. VitaVet Labs, Inc. ("Creditor") opposed the First CC Motion. The Court held several hearings on the First CC Motion and allowed the parties to submit supplemental briefing.

On December 7, 2018, the Court entered an order on the First CC Motion granting it in part, and denying in part (the "CC Order") [doc. 81]. Specifically, the Court prohibited Debtor from using the \$16,666.67 received each month from ASAI. The Court noted in relevant part in ruling on the First CC Motion,

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."

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Doc. 105, Exh. A.

On December 19, 2018, Debtor filed a second motion for use of cash collateral (the "Motion") [doc. 88]. In the Motion, Debtor argues that the monthly payments from ASAI are not cash collateral. On January 10, 2019, Creditor filed an opposition to the Motion (the "Opposition") [doc. 105]. In the Opposition, Creditor argues that the ASAI payments are an account receivable subject to Creditor's judgment lien on personal property ("JLPP"). On January 17, 2019, Debtor filed a reply to the Opposition (the "Reply") [doc. 112].

II. DISCUSSION

Pursuant to 11 U.S.C. § 363(a):

In this section, "cash 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 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(e):

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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).

The debtor in possession "has the burden of proof on the issue of adequate protection." 11 U.S.C. § 363(p)(1).

Here, Creditor holds a JLPP over Debtor's personal property. A JLPP extends to the types of property listed in California Code of Civil Procedure ("C.C.P.") § 697.503.

C.C.P. § 697.503 provides in relevant part,

(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 state.

C.C.P. § 680.130 defines "accounts receivable" as used in C.C.P. § 697.503, as "account" as defined in paragraph (2) of subdivision (a) of Section 9102 of the Commercial Code."

California Commercial Code § 9102 states in relevant part,

(2) "Account," except as used in "account for," 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. . .

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CONT... **Integrated Dynamic Solutions, Inc.**
(emphasis added).

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Here, Debtor granted ASAI a non-exclusive right and license to use its software. In the Reply, Debtor argues that until a license fee is due, the licensee has no obligation to pay it and the licensor has no right to payment. Debtor contends that until a right to payment exists, there can be no lien. Debtor argues that ASAI's obligation to make the monthly payments is contingent on: (1) ASAI having the right to continue using the software; and (2) Debtor being available to maintain the software.

Under California Commercial Code § 9102, the definition of "account receivable" includes the right to payment of a monetary obligation for property that has been licensed. Under the terms of the Agreement, ASAI is to pay Debtor a *one-time* license fee, payable in installments. Debtor has a right to the entire amount. If ASAI defaults on the agreement, Debtor can demand 150% of any remaining balance due at the time of the default. Agreement, art. 11. Accordingly, it appears that the payments from ASAI are an account receivable under C.C.P. § 697.503, and therefore, subject to Creditor's JLPP.

Moreover, 11 U.S.C. § 365(n) applies to the Agreement, and the provisions of § 365(n) further support the characterization of the ASAI payments as an "account," subject to Creditor's JLPP, and as cash collateral.

Pursuant to 11 U.S.C. § 365(n):

- (1) If the trustee rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect—
 - (A) to treat such contract as terminated by such rejection if such rejection by the trustee amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable nonbankruptcy law, or an agreement made by the licensee with another entity; or
 - (B) to retain its rights (including a right to enforce any exclusivity provision of such contract, but excluding any other right under applicable

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nonbankruptcy law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for—

- (i) the duration of such contract; and
 - (ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.
- (2) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, under such contract—
- (A) the trustee shall allow the licensee to exercise such rights;
 - (B) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (1)(B) of this subsection for which the licensee extends such contract; and
 - (C) the licensee shall be deemed to waive—
 - (i) any right of setoff it may have with respect to such contract under this title or applicable nonbankruptcy law; and
 - (ii) any claim allowable under section 503(b) of this title arising from the performance of such contract.
- (3) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, then on the written request of the licensee the trustee shall—
- (A) to the extent provided in such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the trustee; and

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- (B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment) including any right to obtain such intellectual property (or such embodiment) from another entity.
- (4) Unless and until the trustee rejects such contract, on the written request of the licensee the trustee shall—
 - (A) to the extent provided in such contract or any agreement supplementary to such contract—
 - (i) perform such contract; or
 - (ii) provide to the licensee such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law) held by the trustee; and
 - (B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.

Even if Debtor were to reject the Agreement, ASAI has the right to continue to exploit the license, under § 365(n). If it does so, ASAI must pay the licensing fee to the bankruptcy estate.

In light of the provisions of the Agreement, and CCP §§ 697.503 and 680.130, as well as the application of 11 U.S.C. § 365(n), the ASAI installment payments under the Agreement constitute cash collateral.

As the Court noted previously, the monthly installments from ASAI are a finite sum of money. Debtor has not demonstrated the existence of adequate protection for its proposed, ongoing use of the monthly installment payments.

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III. CONCLUSION

The Court will grant the Motion in part, and deny with respect to use of the monthly installments made by ASAI under the Agreement.

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

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#10.00 Motion of creditor Vitavet Labs, Inc. for appointment of chapter 11 examiner per 11 U.S.C. section 1104

Order appr stip to cont ent 1/7/19

fr. 1/17/19;

Docket 92

Tentative Ruling:

Deny. Movant has not established that the appointment of an examiner in this case "is in the interests of creditors, any equity holders, and other interests of the estate." 11 U.S.C. § 1104(c).

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

Evidentiary Rulings

Debtor's Objections to the Declaration of Matt Simpson [doc. 92]

paras. 3-9: sustained.

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#11.00 Application for payment of interim fees and/or expenses
for David A Tilem, Debtor's Attorney

Docket 90

***** VACATED *** REASON: Hearing advanced to 10:30 a.m. per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

**United States Bankruptcy Court
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Monday, January 28, 2019

Hearing Room 301

9:30 AM

1:11-11603 Kevan Harry Gilman

Chapter 7

#1.00 Evidentiary hearing on the issues on remand

from: 6/13/18; 6/17/18; 10/10/18, 11/7/18, 12/19/18

Docket 577

Tentative Ruling:

On December 20, 2018, the Court entered a pretrial order instructing the parties to file a joint witness schedule no later than January 21, 2019 [doc. 648]. On January 21, 2019, the creditors filed "Creditors' Tentative 'Joint' Witness Schedule" (the "Witness Schedule") [doc. 658]. To the Witness Schedule, the creditors attached what appears to be an email by the debtor's counsel agreeing that the first three witnesses will be the debtor, Wendy Gilman and Amy Goldman. Apparently the parties have not agreed on whether Charles Jakob or Shirlee Bliss will be the next to testify, after the first three witnesses.

On January 22, 2019, the creditors filed the *Creditors' Motion in Limine 1 re: Burden of Proof and Order of Trial* (the "Motion in Limine") [doc. 662]. In the Motion in Limine, the creditors ask the Court to "announce" that the debtor has the burden of proof in this matter and to order the debtor to present his case-in-chief first.

Regarding the burden of proof, the Ninth Circuit Bankruptcy Appellate Panel recently held that California's burden of proof applies to claims of exemptions by debtors. Pursuant California Code of Civil Procedure § 703.580(b), "[a]t a hearing under this section, the exemption claimant has the burden of proof." "[W]here a state law exemption statute specifically allocates the burden of proof to the debtor, [Federal Rule of Bankruptcy Procedure] 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016); *see also Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000) (holding that the burden of proof is a substantive element of state law applicable when federal courts apply state law). As such, the debtor bears the burden of proof in this matter.

As to the order of trial, because the debtor did not respond to the Witness Schedule or the Motion in Limine, or file a different schedule for witnesses, the Court anticipates

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CONT... Kevan Harry Gilman Chapter 7

that the parties will use the order set forth in the Witness Schedule, with the exception that the parties should be prepared to discuss if Mr. Jakob or Ms. Bliss will next follow after the debtor, Ms. Gilman and Ms. Goldman.

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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9:30 AM

1:11-11603 Kevan Harry Gilman

Chapter 7

#1.00 Evidentiary hearing on the issues on remand

from: 6/13/18; 6/17/18; 10/10/18, 11/7/18

Docket 577

Tentative Ruling:

Pursuant to Federal Rule of Civil Procedure ("Rule") 32(a)(1)—

At a hearing or trial, all or part of a deposition may be used against a party on these conditions:

- (A) the party was present or represented at the taking of the deposition or had reasonable notice of it;
- (B) it is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying; and
- (C) the use is allowed by Rule 32(a)(2) through (8).

Pursuant to Rule 32(a)(3), "[a]n adverse party may use for any purpose the deposition of a party...."

In light of Rule 32(a)(1) and (a)(3), the debtor's marked deposition excerpts (of statements made by the debtor) are admissible subject to the Federal Rules of Evidence, as if the debtor made those statements during the trial.

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Trustee(s):

Amy L Goldman (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:11-11603 Kevan Harry Gilman

Chapter 7

#1.00 Evidentiary hearing on the issues on remand
from: 6/13/18; 6/17/18; 10/10/18, 11/7/18

Docket 577

***** VACATED *** REASON: Evid. hearing concluded on 1/29/19**

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, February 6, 2019

Hearing Room 301

9:30 AM

1:15-14192 Maria Trinidad De Anda

Chapter 13

#1.00 Motion for relief from stay [RP]

REVERSE MORTGAGE SOLUTIONS, INC., AS
SERVICER FOR BANK OF AMERICA
VS
DEBTOR

fr. 1/16/19;

Docket 33

Tentative Ruling:

Since the last hearing, has the debtor paid \$2,500 to movant? If so, what is the debtor's proposal for how to cure the balance owed?

Party Information

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
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Wednesday, February 6, 2019

Hearing Room 301

9:30 AM

1:17-12919 Margot Ortiz

Chapter 13

#2.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

fr. 1/2/19

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.

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

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CONT... Margot Ortiz

Chapter 13

Debtor(s):

Margot Ortiz

Represented By
William G Cort

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, February 6, 2019

Hearing Room 301

9:30 AM

1:18-12902 Farhad Besharati

Chapter 13

#3.00 Motion for relief from stay [RP]

CIT BANK, N.A.
VS
DEBTOR

fr. 1/9/19;

Docket 33

Tentative Ruling:

At the prior hearing, the Court ordered the debtor to file a declaration evidencing that he made his January 2019 chapter 13 plan payment and January 2019 postpetition deed of trust payment.

On January 14, 2019, the debtor filed a declaration stating that he has made deed of trust payment for January 2019, in the amount of \$3,585.31 [doc. 38]. On January 30, 2019, secured creditor CIT Bank, N.A. ("Creditor") filed a supplemental reply to the debtor's response (the "Supplemental Reply") [doc. 53]. In the Supplemental Reply, Creditor states that the debtor made his January 2019 postpetition deed of trust payment.

The debtor has not filed a declaration to establish that he made his January 2019 chapter 13 plan payment. If the debtor did not timely make his January 2019 chapter 13 plan payment according to his first amended plan [doc. 22] in the amount of \$1,888.91, the Court will grant the motion, including § 362(d)(4) relief.

Ruling from 1/9/19

On December 14, 2018, the debtor filed an amended chapter 13 plan [doc. 22], which apparently provides for payments to cure prepetition deed of trust arrears in the approximate amount of \$73,000. To better assess the allegations in the motion, the Court will continue the hearing to take into account whether the debtor timely makes his January 2019 chapter 13 plan payment and the January 2019 deed of trust payment

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CONT... Farhad Besharati

Chapter 13

regarding his residence (together, the "January Payments").

The Court will continue the hearing to **9:30 a.m. on February 6, 2019**. On or before **January 23, 2019**, the debtor must file a declaration demonstrating that he has made the January Payments.

Party Information

Debtor(s):

Farhad Besharati

Represented By
Dennis A Rasmussen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:19-10031 William Allen Holmquist

Chapter 7

#4.00 Motion for relief from stay [AN]

ASHLEY MORRIS, JUSTIN MORRIS
VS
DEBTOR

Stip for relief filed 1/30/19

Docket 8

Tentative Ruling:

Despite movant's counsel having been informed to do so, movant has not yet uploaded a stipulated order for relief from the automatic stay, using the mandatory form.

Party Information

Debtor(s):

William Allen Holmquist

Represented By
David S Hagen

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, February 6, 2019

Hearing Room 301

9:30 AM

1:18-11488 Christopher Anderson

Chapter 7

#5.00 Motion for relief from stay [PP]

JPMORGAN CHASE BANK, N.A.
VS
DEBTOR

Docket 83

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):

Christopher Anderson

Represented By
Daniel King

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson

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Christopher Anderson

Howard Camhi

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9:30 AM

1:18-12752 Victor Velasquez and Jovita Velasquez

Chapter 7

#6.00 Motion for relief from stay [PP]

AMERICAN HONDA FINANCE CORPORATION
VS
DEBTOR

Docket 18

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):

Victor Velasquez

Represented By
Raymond Perez

Joint Debtor(s):

Jovita Velasquez

Represented By
Raymond Perez

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CONT... Victor Velasquez and Jovita Velasquez

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, February 6, 2019

Hearing Room 301

9:30 AM

1:18-12944 Luis Exequiel Barillas

Chapter 7

#7.00 Motion for relief from stay [PP]

THE GOLDEN 1 CREDIT UNION
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.

Party Information

Debtor(s):

Luis Exequiel Barillas

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, February 6, 2019

Hearing Room 301

9:30 AM

1:18-11849 Leticia E. Donis Duran

Chapter 13

#8.00 Motion for relief from stay [PP]

CAPITAL ONE AUTO FINANCE
VS
DEBOR

Docket 31

*** VACATED *** REASON: No chamber copy of motion provided.
Motion is off calendar.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Leticia E. Donis Duran

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, February 6, 2019

Hearing Room 301

9:30 AM

1:18-10575 Aviva Rachel Harris

Chapter 13

#9.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 50

Tentative Ruling:

- NONE LISTED -

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**

Wednesday, February 6, 2019

Hearing Room 301

9:30 AM

1:18-11574 Carlos Velapatino

Chapter 13

#10.00 Motion for relief from stay [RP]

U.S. 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 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):

Carlos Velapatino

Represented By
Kevin Tang

Trustee(s):

Elizabeth (SV) 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 6, 2019

Hearing Room 301

9:30 AM

1:19-10039 Keith Tatsukawa

Chapter 13

#11.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 13

Tentative Ruling:

The debtor attached a proof of service to the motion. However, the proof of service fails to indicate the date the parties were served.

Party Information

Debtor(s):

Keith Tatsukawa

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, February 6, 2019

Hearing Room 301

9:30 AM

1:19-10097 Henry Salih

Chapter 13

#12.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 5

*** VACATED *** REASON: Case dismissed on 1/31/19 for failure to file schedules [doc. 12]. The motion is moot.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Henry Salih

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, February 6, 2019

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

#13.00 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); 2/14/18

Docket 95

*** VACATED *** REASON: Order dismissing adversary entered 6/18/18 [doc. 410].

Tentative Ruling:

- NONE LISTED -

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
Kevin W Coleman

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, February 6, 2019

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1:30 PM

CONT... Marilyn S. Scheer

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 6, 2019

Hearing Room 301

1:30 PM

1:16-10045 Duane Daniel Martin

Chapter 7

Adv#: 1:18-01122 David K. Gottlieb, Chapter 7 Trustee v. Martin

- #14.00** Status conference re: complaint for:
(1) Revocation of discharge pursuant to 11 U.S.C. sec 727(d)(2)
and (3) and sec 727(e)(2) and
(2) Recovery of property of the estate

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on March 20, 2019**, to be held with the hearing on the defendant's motion to dismiss [doc. 7].

Appearances on February 6, 2019 are excused.

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Defendant(s):

Duane Daniel Martin

Pro Se

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley
Joseph R Dunn

Plaintiff(s):

David K. Gottlieb, Chapter 7 Trustee

Represented By
Monica Y Kim
Beth Ann R Young

Trustee(s):

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 301 Calendar**

Wednesday, February 6, 2019

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1:30 PM

CONT...

Duane Daniel 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**

Wednesday, February 6, 2019

Hearing Room 301

1:30 PM

1:17-12434 Robin DiMaggio

Chapter 7

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

#15.00 Plaintiff's motion for default judgment

fr. 12/5/18; 12/12/18

Docket 60

Tentative Ruling:

Grant motion for default judgment pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(4), as to embezzlement, and 11 U.S.C. § 727(a)(4) only as to the false oath regarding the debt owed to the plaintiff. Deny as to request for default judgment as to the plaintiff's remaining claims. Movant will be awarded a judgment for the principal amount of \$259,525.

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT within seven (7) days.

Movant's appearance on February 6, 2019 is excused.

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, February 6, 2019

Hearing Room 301

1:30 PM

1:17-12434 Robin DiMaggio

Chapter 7

Adv#: 1:17-01107 Forum Entertainment Group, Inc. v. DiMaggio

#16.00 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; 12/5/18; 12/12/18

Docket 1

Tentative Ruling:

See calendar no. 15.

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, February 6, 2019

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

#17.00 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

fr. 12/19/18

Docket 10

Tentative Ruling:

In light of the joint status report filed by the parties [doc. 29], the Court will continue this hearing to **1:30 p.m. on June 5, 2019.**

Appearances on February 6, 2019 are excused.

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, February 6, 2019

Hearing Room 301

1:30 PM

CONT... LOST COAST RANCH INC.

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, February 6, 2019

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

#18.00 Status conference re notice of removal and order to show
cause re remand

fr. 10/31/18; 12/19/18

Docket 1

Tentative Ruling:

In light of the joint status report filed by the parties [doc. 29], the Court will continue this status conference to **1:30 p.m. on June 5, 2019.**

Deadline to submit joint status report: **May 22, 2019.**

Appearances on February 6, 2019 are excused.

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

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

Wednesday, February 6, 2019

Hearing Room 301

1:30 PM

CONT...

LOST COAST RANCH INC.

Richard Burstein

Chapter 7

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

Wednesday, February 6, 2019

Hearing Room 301

1:30 PM

1:18-10982 Gabriel Medina

Chapter 13

Adv#: 1:18-01126 Medina v. Strunzo Development Corp., a California Corporatio

- #19.00** Status conference re complaint for equitable relief:
1. Cancellation of instrument/deed of trust;
2. Declaratory relief

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: 5/17/19.

Deadline to complete one day of mediation: 5/31/19.

Deadline to file pretrial motions: 6/14/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 7/3/19.

Pretrial: 1:30 p.m. on 7/17/19.

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
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Wednesday, February 6, 2019

Hearing Room 301

1:30 PM

CONT... Gabriel Medina

Chapter 13

Debtor(s):

Gabriel Medina

Represented By
Anthony Obehi Egbase
Sedoo Manu

Defendant(s):

Strunzo Development Corp., a

Pro Se

Does 1-50 Inclusive

Pro Se

Plaintiff(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, February 6, 2019

Hearing Room 301

1:30 PM

1:18-11914 William G Hill

Chapter 7

Adv#: 1:18-01121 Fields et al v. Hill et al

#20.00 Status conference re complaint objecting to discharge pursuant to 11 U.S.C. sec 727(a)(2), 727(a)(4)(A), 727(a)(4)(C) and 727(a)(4)(D); and for monetary judgment per FRBP 7001(1) and 11 U.S.C. sec 542

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on March 13, 2019**, to be held with the hearing on the defendant's motion to dismiss [doc. 6].

Appearances on February 6, 2019 are excused.

Party Information

Debtor(s):

William G Hill

Represented By
Gary S Saunders

Defendant(s):

William G Hill

Pro Se

KLYDA M HILL

Pro Se

Plaintiff(s):

Johnnie L Fields

Represented By
Bruce V Rorty

Scott D Carlton

Represented By
Bruce V Rorty

Carmen S. Ortiz

Represented By
Bruce V Rorty

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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CONT... William G Hill

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
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Wednesday, February 6, 2019

Hearing Room 301

2:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01081 Albini et al v. Zuckerman

#21.00 Motion to dismiss first amended complaint based upon fraud to determine dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)(A)

Docket 26

Tentative Ruling:

For the reasons discussed below, the Court will grant in part, and deny in part the defendant's motion to dismiss the first amended complaint.

I. BACKGROUND

The Court provided additional background in its ruling on October 17, 2018 (the "2018 Ruling"). Some facts are repeated here.

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).

The Complaint was based on a state court 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"). The state court entered a total judgment against Defendant in the amount of \$14,545,001.00 (the "Judgment") [doc. 24, Exh. 1]. Subsequently, the state court entered an amended judgment against Defendant (the "Amended Judgment") [doc. 24, Exh. 2]. The state court did not alter any of its relevant findings in the Amended Judgment, but added to the total \$14,545,001.00 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.*

On August 22, 2018, Defendant filed a motion to dismiss the Complaint (the "First Motion to Dismiss") [doc. 4]. On October 26, 2018, the Court entered an order

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

Wednesday, February 6, 2019

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 11

granting the First Motion to Dismiss with leave to amend (the "Dismissal Order") [doc. 23]. Attached to the Dismissal Order is the 2018 Ruling. In relevant part, the Court noted,

[T]he 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).

The Dismissal Order provided that Plaintiffs must file and serve an amended complaint no later than October 31, 2018. On October 31, 2018, Plaintiffs timely filed and served a first amended complaint against Defendant (the "FAC"), seeking nondischargeability of the debt owed to them pursuant to 11 U.S.C. § 523(a)(2)(A) [doc. 24].

In the FAC, Plaintiffs make the same allegations regarding Defendant's misconduct as they did in the Complaint. The central thrust of these allegations is that Defendant induced investments fraudulently from Plaintiffs. However, Plaintiffs do assert new allegations and facts, as detailed below.

Plaintiffs were induced by intentional misrepresentations by Defendant in writing to invest a collective \$6,435,000.00 in 13 short term, high interest, fractionalized hard money loans that were represented to them as high-end, equestrian estate development on 13 parcels of coastal land in the Malibu

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CONT...

Robert Edward Zuckerman

Chapter 11

region of Los Angeles County ranging in size from 3.6 acres to more than 30 acres. FAC, ¶ 13. The interest-only loans promised a return of 12% to 13.5% for a one-year investment. *Id.*

The loans made by Plaintiffs were secured by overvalued land, which Defendant, and the other defendants in the State Court Action, knew when the loans were made. *Id.* at ¶ 15. Defendant falsely represented that there were 13 legal parcels of land under California law. *Id.* at ¶ 16(e). Defendant failed to disclose that between October 2004 and June 2005 the parcels were sold for approximately \$2,500,000.00. *Id.* at ¶ 17(b).

Between April 2005 and December 2005, Defendant engaged a licensed California appraiser to appraise all of the parcels. *Id.* at ¶ 26. Defendant fraudulently concealed from Plaintiffs that he had the appraiser purposely overvalue the parcels. *Id.* at ¶ 17(a). The appraiser valued the parcels at nearly twice the value of appraisals done a year prior, which Defendant had copies of such appraisals and failed to disclose them to Plaintiffs. *Id.* at ¶ 28. Based on the appraiser's valuation, Defendant stated that the appraised values for the 13 parcels totaled \$12,475,000.00, which was approximately five to six times what was paid for them a year earlier. *Id.*

Between June 2005 and May 2006, using the appraiser's values, Defendant sought "safe" loans with a loan-to-value ratio of 50% of the appraised value of the parcels. *Id.* at ¶ 30. Instead of the typical loan disclosures and documents, before they made their separate loans to Defendant, Defendant presented each Plaintiff his Curriculum Vitae [doc. 24, Exh. 3]. FAC, at ¶ 14. Defendant's Curriculum Vitae states that he had a net worth of \$11,186,470.00 and had extensive real estate development experience in 36 real estate projects valued at more than \$500,000,000.00. *Id.* at ¶ 16. Defendant also made material written representations to Plaintiffs before they made their separate loans that Plaintiffs' loan monies would be used to develop the parcels. *Id.* Defendant used this to entice each and every Plaintiff into making their separate loans to Defendant. *Id.* at ¶ 14. Defendant obtained loans from Plaintiffs totaling \$6,435,000.00 for the parcels. *Id.* at ¶ 28.

The majority of Plaintiffs had no formal training or sophistication in real estate

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CONT...

Robert Edward Zuckerman

Chapter 11

loans, escrow or title matters of investment and entered into their loans only under the false representations of Defendant, who was at all times a licensed California real estate broker. *Id.* at ¶ 41. Plaintiffs justifiably relied on Defendant's fraudulent intentional misrepresentations that their loans would be adequately secured by the land. *Id.* at ¶ 17(a).

While Plaintiffs were secured parties on their loans to Defendant, the parcels never had any improvements made to them. *Id.* at ¶ 15. In late 2006 and early 2007, Defendant, and the other defendants in the State Court Action, defaulted on the loans to Plaintiffs. *Id.* at ¶ 32. After Defendant defaulted on Plaintiffs' loans, Plaintiffs recorded notices of default and commenced the process of foreclosing their security under the deeds of trust. *Id.* at ¶ 32.

Between November 2007 and April 2008, Plaintiffs acquired title to all of the subject properties, and thereafter, engaged a real estate broker to attempt to market the parcels to recoup some of their losses. *Id.* at ¶ 34. In May of 2009, Plaintiffs discovered that the parcels were illegally divided into 13 lots. *Id.* at ¶ 35. Instead of 13 legal separate and developable parcels, Plaintiffs collectively and fractionally held title to only four legal, very large and undevelopable parcels with existing violations of the California Coastal Act with values substantially less than Plaintiffs' investments in them. *Id.* at ¶ 36.

Defendant had actual knowledge of the falsity of his statements or conducts when he: (1) purposefully overvalued the security for Plaintiff's initial loans; and (2) represented that the parcels could be developed, when they could not. *Id.* at ¶ 38. Defendant also knew of the falsity of the statement at the time that he made it to Plaintiffs that the parcels were 13 legal separate parcels. *Id.* at ¶ 39.

On November 27, 2018, Defendant filed a motion to dismiss the FAC (the "Motion") [doc. 26]. In the Motion, Defendant asserts that: (1) the FAC fails to set forth sufficient facts to state a claim for relief under 11 U.S.C. § 523(a)(2)(A); (2) the doctrine of collateral estoppel should not apply in this case because Plaintiffs failed to properly plead that the issue of Debtor's fraud was actually litigated in the State Court Action; and (3) alternatively, the FAC should be dismissed as to twenty-two of the forty-six Plaintiffs due to lack of standing. On January 11, 2019, Plaintiffs filed an

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CONT... **Robert Edward Zuckerman**

Chapter 11

opposition to the Motion (the "Opposition") [doc. 34]. On January 30, 2019, Defendant filed a reply to the Opposition [doc. 41].

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, 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)

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Robert Edward Zuckerman

Chapter 11

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 conduct;
- (3) an intent to deceive;

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- (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 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.

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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 FAC. As such, for purposes of a Rule 12(b)(6) motion, the Court may consider the FAC and Amended Judgment in determining whether dismissal is proper. Plaintiffs allege that Defendant committed fraud. Because Plaintiffs are alleging fraud, the FAC must also meet the heightened pleading standard in Rule 9(b).

As the Court noted in the ruling on the First Motion to Dismiss, the facts and findings in the Amended Judgment are sufficient to satisfy the first, third and fifth element of 11 U.S.C. § 523(a)(2)(A). Regarding the second and fourth elements, the FAC contains sufficient factual allegations to state a claim to relief that is plausible on its face.

Regarding the second element, Plaintiffs allege that Defendant knew at the time he made the representations to Plaintiffs that the parcels were not 13 legal parcels under California law, that the parcels were not developable and that the appraisal values were purposefully overstated.

Regarding the fourth element, Plaintiffs allege that they justifiably relied on Defendant's Curriculum Vitae, which stated that he had extensive real-estate

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development experience and over \$11,000,000.00 net worth. Plaintiffs allege that they also justifiably relied on the appraiser's valuation of the parcels.

The FAC also contains sufficient factual allegations relating to: (1) the circumstances constituting fraud; and (2) whether each and all Plaintiffs justifiably relied on Defendant's statements or conduct to meet the heightened pleading standard in Rule 9(b). Thus, Plaintiffs have 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

In the Motion, Defendant argues that the Amended Complaint is premised on the doctrine of collateral estoppel. Defendant contends that it would be inequitable and highly prejudicial to apply the doctrine of collateral estoppel under the specific facts of the case. Defendant asserts that Plaintiffs failed to properly plead that the issue of Defendant's fraud was actually litigated in the State Court Action because Defendant was allegedly abandoned by his attorney at the outset of trial.

At the Court set forth in the 2018 Ruling, the Court will not determine whether collateral estoppel applies at this stage. 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. In determining the Motion, the Court must accept factual allegations in the FAC and the attachments thereto as true and construe the pleadings in the light most favorable to Plaintiffs. As discussed above, the FAC and the attachments thereto contain sufficient allegations to state a claim to relief that is plausible on its face under 11 U.S.C. § 523(a)(2)(A).

D. Dismissed Plaintiffs

Defendant argues that the Court should dismiss the FAC with prejudice as to twenty-two of the forty-six Plaintiffs. Defendant asserts that twenty-two 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.

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Regarding Plaintiffs that were allegedly previously dismissed from the State Court Action, the Court will not dismiss the FAC as to these Plaintiffs. The Amended Judgment explicitly lists and awards damages to 46 plaintiffs. Amended Judgment, pp. 13-16. All of the plaintiffs in this action are explicitly listed in the Amended Judgment and awarded an individual, specific amount of damages.

Defendant attached a request for dismissal to the Opposition (Exh. A). The request for dismissal does not overcome the finality of the Amended Judgment. The request for dismissal was four years prior to the Judgment and five years prior to the Amended Judgment. For purposes of this Motion, the Court will not dismiss any Plaintiffs for lack of standing, due to the request for dismissal.

Regarding the plaintiffs that assigned their interest in the Amended Judgment to Richard Abel, the Court will dismiss the FAC as to these Plaintiffs. As shown in the claims register, Mr. Abel has filed the following proofs of claim in Defendant's bankruptcy case: (1) 10-1, assignee from Ronald Lapham, whose interest was assigned to Mr. Abel on June 27, 2018; (2) 11-1, assignee from Charlotte Pitois, whose interest was assigned to Mr. Abel on June 27, 2018; (3) 12-1, assignee from We Care Animal Rescue, whose interest was assigned to Mr. Abel on May 18, 2017; (4) 13-1, assignee from John Hightower, whose interest was assigned to Mr. Abel on July 6, 2018; (5) 14-1, assignee from Carl Barnes, whose interest was assigned to Mr. Abel on July 18, 2018; (6) 19-1, assignee from Dolores Abel, whose interest was assigned to Mr. Abel on August 11, 2018; (7) 20-1, assignee from Dale Barnes, whose interest was assigned to Mr. Abel on August 6, 2018; and (8) 22-1, assignee from Eileen Boyle, whose interest was assigned to Mr. Abel on May 18, 2017.

These eight Plaintiffs assigned their interests in the Amended Judgment to Mr. Abel after the Amended Judgment was entered. As such, it appears that Mr. Abel is the real party in interest. The Court will dismiss the FAC as to these eight Plaintiffs.

III. CONCLUSION

For the reasons discussed above, the Court will grant the Motion with respect to the eight Plaintiffs that assigned their interests in the Amended Judgment to Mr. Abel. Specifically, the Court will dismiss the FAC as to the following Plaintiffs: (1) Ronald Lapham; (2) Charlotte Pitois; (3) We Care Animal Rescue; (4) John

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Hightower; (5) Carl Barnes; (6) Dolores Abel; (7) Dale Barnes; and (8) Eileen Boyle.
The Court will deny all other requests in the Motion.

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

Plaintiffs' Evidentiary Objections

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declaration of Sandford L. Frey set forth below:

exhibits A and B: sustained

paras. 5 and 6: overruled

"Any reference to dismissed plaintiffs in the October 6, 2016 and March 20, 2017 judgment in Sonoma Court Superior Court Case no. SCV-245738": sustained

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declaration of Robert Edward Zuckerman set forth below:

para. 3: sustain hearsay objection as to "I had been advised by several physicians that I should not participate in litigation due to my medical condition and the extensive medication I was being prescribed," and overrule as to the balance of this paragraph

para. 4: overrule

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey

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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 Edward McCutchan

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Chapter 11

Lindy Sinclair

Represented By
Edward McCutchan

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

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Chapter 11

	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	Pro Se
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 Edward McCutchan
Bill Hing	Represented By

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Edward McCutchan

K Owyong Crigler

Represented By
Edward McCutchan

Jim Nord (Patrick Family Trust)

Represented By
Edward McCutchan

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1:18-11150 Robert Edward Zuckerman

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Adv#: 1:18-01081 Albini et al v. Zuckerman

#22.00 Status conference re first amended complaint based upon fraud to determine nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A)

fr. 10/3/18; 10/17/18, 11/7/18; 1/9/2019;

Docket 24

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to comply with FRBP 7026 and FRCP 26(a)(1), (f) and (g): 2/20/19.

Deadline to submit joint status report: 2/27/19.

Continued status conference 3/6/19 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the 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):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

Robert Edward Zuckerman

Pro Se

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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 Edward McCutchan

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Lindy Sinclair	Represented By Edward McCutchan
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

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Ken Bowerman	Represented By Edward McCutchan
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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

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Bill Hing

Represented By
Edward McCutchan

K Owyong Crigler

Represented By
Edward McCutchan

Jim Nord (Patrick Family Trust)

Represented By
Edward McCutchan

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1:14-14742 BaseNet, LLC

Chapter 7

#0.01 Trustee's final report and applications for compensation
David K. Gottlieb - Chapter 7 Trustee
Sulmeyer Kupetz - Attorney for Trustee
Crowe Horwath LLP - Accountant for Trustee
Faucher Law and Edward P. Kerns - Attorney's for Debtor
fr. 1/24/19

Docket 243

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$81,544.68 and reimbursement of expenses of \$198.05, pursuant to 11 U.S.C. § 330, on a final basis.

SulmeyerKupetz (“Sulmeyer”), counsel to chapter 7 trustee – approve fees of \$189,395.50 and reimbursement of expenses of \$1,969.87, pursuant to 11 U.S.C. § 330, on a final basis. Sulmeyer is authorized to collect 100% of the approved fees and 100% of the approved reimbursement of expenses. The Court will not approve \$8,161.50 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

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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. § 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

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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 by Sulmeyer 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	Description	Time	Fee
Case Administration	4/7/15	DAL	Preparation of motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code	3.00	\$1,755.00
Case Administration	4/7/15	DAL	Preparation of declaration of David Gottlieb in support of motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code	0.20	\$117.00
Case Administration	4/7/15	DAL	Preparation of notice of motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code	0.40	\$234.00
Case Administration	4/7/15	DAL	Correspondence to Mr. Gottlieb, trustee, re proposed motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code and manner of proceeding re same	0.10	\$58.50
Case Administration	4/7/15	DAL	Review and analyze correspondence from Mr. Gottlieb, trustee, re proposed revisions re motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code and manner of proceeding re same	0.10	\$58.50
Case Administration	4/7/15	DAL	Review and revise proposed proposed motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code per comments of Mr. Gottlieb	0.10	\$58.50
Case Administration	4/7/15	DAL	Correspondence to Mr. Gottlieb, trustee, re revised motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code and manner of proceeding re execution of declaration in support of same	0.10	\$58.50

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Case Administration	4/7/15	DAL	Review and analyze correspondence and documents from Mr. Gottlieb, trustee, re execution of declaration in support of motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code and manner of proceeding re filing of same	0.10	\$58.50
Case Administration	4/7/15	DAL	Review and revise motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code	0.30	\$175.50
Case Administration	4/7/15	DAL	Review and revise notice of motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code	0.30	\$175.50
Case Administration	4/27/15	DAL	Preparation of declaration of Daniel Lev re non-opposition re motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code	0.40	\$234.00
Case Administration	4/27/15	DAL	Review and revise declaration of Daniel Lev re non-opposition re motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code	0.10	\$58.50
Case Administration	4/27/15	DAL	Preparation of order granting motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code	0.40	\$234.00
Case Administration	4/27/15	DAL	Review and revise order granting motion for order authorizing abandonment of vehicles pursuant to Section 554(a) of the Bankruptcy Code	0.10	\$58.50
Case Administration	8/5/15	DAL	Review and analyze multiple correspondence from Mr. Baer, field agent, re issues re turnover of books and records and accounting records and manner of proceeding re motion for turnover re same	0.10	\$58.50
Case Administration	8/5/15	DAL	Multiple correspondence to Mr. Baer, field agent, re issues re turnover of books and records and accounting records and manner of proceeding re motion for turnover re same	0.20	\$117.00

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Case Administration	8/5/15	DAL	Review and analyze multiple correspondence from Mr. Gottlieb, trustee, re issues re turnover of books and records and accounting records and manner of proceeding re motion for turnover re same	0.10	\$58.50
Case Administration	8/5/15	DAL	Multiple correspondence to Mr. Gottlieb, trustee, re issues re turnover of books and records and accounting records and manner of proceeding re motion for turnover re same	0.10	\$58.50
Case Administration	8/7/15	DAL	Review and analyze multiple correspondence from Mr. Baer, field agent, re issues re turnover of books and records and accounting records and manner of proceeding re motion for turnover re same	0.10	\$58.50
Case Administration	8/7/15	DAL	Multiple correspondence to Mr. Baer, field agent, re issues re turnover of books and records and accounting records and manner of proceeding re motion for turnover re same	0.20	\$117.00
Case Administration	8/7/15	DAL	Correspondence to Mr. Gottlieb, trustee, re issues re turnover of books and records and accounting records and manner of proceeding re motion for turnover re same	0.20	\$117.00
Case Administration	9/7/17	DAL	Review and analyze correspondence from Mr. Faucher re issues re administration of chapter 7 estate and status of trustee's final report and account re final application for compensation of fees and reimbursement of expenses re professionals of estate and manner of proceeding re same	0.10	\$59.50
Case Administration	9/7/17	DAL	Correspondence to Mr. Faucher re issues re administration of chapter 7 estate and status of trustee's final report and account re final application for compensation of fees and reimbursement of expenses re professionals of estate and manner of proceeding re same	0.20	\$119.00
Case Administration	9/7/17	DAL	Telephone conference with Mr. Faucher re issues re administration of chapter 7 estate and status of trustee's final report and account re final application for compensation of fees and reimbursement of expenses re professionals of estate and manner of proceeding re same	0.20	\$119.00

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CONT... BaseNet, LLC

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Case Administration	9/12/17	DAL	Review and analyze multiple correspondence and documents from Mr. Faucher re issues re notice to professions, administration of chapter 7 estate and status of trustee's final report and account re final application for compensation of fees and reimbursement of expenses re professionals of estate and manner of proceeding re same	0.20	\$119.00
Case Administration	9/12/17	DAL	Multiple correspondence to Mr. Faucher re issues re notice to professionals, administration of chapter 7 estate and status of trustee's final report and account re final application for compensation of fees and reimbursement of expenses re professionals of estate and manner of proceeding re same	0.30	\$178.50
Claims Admin. & Objections	3/30/17	DAL	Continued review of claims register, proofs of claim, and books and records re potential motion objecting to claims	2.00	\$1,190.00
Fee/Employment Applications	1/26/15	DAL	Preparation of application for order authorizing employment of SulmerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee	2.00	\$1,170.00
Fee/Employment Applications	1/26/15	DAL	Preparation of declaration of Daniel Lev in support of application for order authorizing employment of SulmerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee	0.50	\$292.50
Fee/Employment Applications	1/26/15	DAL	Preparation of notice of application for order authorizing employment of SulmerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee	0.50	\$292.50
Fee/Employment Applications	1/28/15	DAL	Correspondence to Mr. Gottlieb, trustee, re proposed application for order authorizing employment of SulmerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee and manner of proceeding re execution of filing of same	0.10	\$58.50
Fee/Employment Applications	1/28/15	DAL	Review and analyze correspondence from Mr. Gottlieb, trustee, re proposed application for order authorizing employment of SulmerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee and manner of proceeding re execution of filing of same	0.10	\$58.50

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Fee/Employment Applications	2/19/15	DAL	Preparation of declaration of Daniel Lev re non-opposition re application for order authorizing employment of SulmerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee	0.40	\$234.00
Fee/Employment Applications	2/19/15	DAL	Review and revise declaration of Daniel Lev re non-opposition re application for order authorizing employment of SulmerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee	0.10	\$58.50
Fee/Employment Applications	2/19/15	DAL	Preparation of order granting application for order authorizing employment of SulmerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee	0.40	\$234.00
Fee/Employment Applications	2/19/15	DAL	Review and revise order granting application for order authorizing employment of SulmerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee	0.10	\$58.50

Crowe Horwath, LLP (“Crowe”), accountant to chapter 7 trustee – approve fees of \$64,883.50 and reimbursement of expenses of \$101.95, pursuant to 11 U.S.C. § 330, on a final basis. Crowe is authorized to collect 100% of the approved fees and 100% of the approved reimbursement of expenses.

Faucher & Associates (“Faucher”), general counsel to chapter 11 debtor and debtor in possession – approve fees of \$38,680.00 and reimbursement of expenses of \$1,807.70, pursuant to 11 U.S.C. § 330, on a final basis. Faucher is authorized to collect 100% of the approved fees and 100% of the approved reimbursement of expenses. The Court will not approve \$800.00 in fees for the reasons stated below.

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

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CONT... BaseNet, LLC

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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 Faucher for the services identified below:

Date	Timekeeper	Description	Time	Rate	Fee
10/30/14	John D. Faucher	Receive D. Tredway signature on employment app, forward to M. Brasier	0.1	\$400.00	\$40.00
11/14/14	John D. Faucher	Print petition draft and forward to client for review in preparation for conference call	0.20	\$400.00	\$80.00
11/16/14	John D. Faucher	Receive and review signed documents from client, prepare schedules for filing with court	1.1	\$400.00	440.00
11/25/14	John D. Faucher	Receive signed RFS opposition from client, put together motion for filing	0.4	\$400.00	240.00

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):

BaseNet, LLC

Represented By
John D Faucher

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Edward P Kerns

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Daniel A Lev

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1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#0.02 Application for payment of interim fees and/or expenses
for Reorganization Counsel to Debtor in Possession

fr. 1/24/19

Docket 90

Tentative Ruling:

Law Offices of David A. Tilem ("Applicant"), counsel to the debtor and the debtor in possession – approve fees in the amount of \$58,396.00 and reimbursement of expenses in the amount of \$1,126.67, pursuant to 11 U.S.C. § 331, for the period between August 22, 2018 through November 30, 2018, on an interim basis. Applicant may collect 100% of the approved expenses at this time.

At this time, it remains unclear how the debtor is able to pay the approved fees (aside from those fees that can be satisfied with the prepetition retainer). As of December 31, 2019, the debtor's general debtor in possession account had an ending balance of \$11,105.58. Although the cash collateral account had an ending balance of \$43,048.73, the Court has not approved use of \$16,667.00 per month which the debtor receives from Automated Systems America, Inc. These funds may not be used to pay Applicant's interim allowed fees.

In order to assess the debtor's ability to pay the approved fees, the Court will continue this hearing to April 25, 2019 at 10:30 a.m., by which time the debtor will have filed its proposed plan and disclosure statement.

The Court will not approve \$1,260.00 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

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CONT... Integrated Dynamic Solutions, Inc.

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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.

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 will not approve the fees billed by Applicant for the services identified below:

Category	Date	Timekeeper	Description	Time	Rate	Fee
Chapter 11 General	9/5/18	JJF	Prepare and file deficiencies	0.80	\$150.00	\$120.00
Office of U.S. Trustee Matters	8/27/18	JJF	Prepare 7-day package	1.00	\$150.00	\$150.00

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Office of U.S. Trustee Matters	8/27/18	JJF	Prepare and assemble 7-day package	1.00	\$150.00	\$150.00
Office of U.S. Trustee Matters	8/28/18	JJF	Prepare updates to 7-day packages	1.50	\$150.00	\$225.00
Office of U.S. Trustee Matters	8/29/18	JJF	Prepare and assemble 7-day package	3.00	\$150.00	\$450.00
Cash Collateral Issues	9/17/18	JJF	Redact bank statements for discovery	0.80	\$150.00	\$120.00
Cash Collateral Issues	9/17/18	JJF	Prepare and assemble reply to VitaVet	0.30	\$150.00	\$45.00

Appearances on February 7, 2019 are excused.

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

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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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; 10/4/18(stip); 11/8/18

Stip to continue filed 1/23/19

Docket 114

***** VACATED *** REASON: Order entered 1/24/19 continuing hearing to
5/16/19 at 1:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes
Roksana D. Moradi

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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; 10/4/18(stip); 11/8/18

Stip to continue filed 1/23/19

Docket 1

***** VACATED *** REASON: Order entered 1/24/19 continuing hearing to
5/16/19 at 1:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes

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1:00 PM

1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan

Chapter 11

#3.00 Confirmation hearing re: Individual Debtors Second Amended
Modified Chapter 11 Plan Of Reorganization

fr. 12/13/18

Docket 105

Tentative Ruling:

As discussed at the hearing on January 17, 2019, regarding the pending objection to claim, the Court will continue this hearing to **1:00 p.m. on April 4, 2019.**

Appearances on February 7, 2019 are excused.

Party Information

Debtor(s):

Yegiya Kutyan

Represented By
Sheila Esmaili

Joint Debtor(s):

Haykush Helen Kutyan

Represented By
Sheila Esmaili

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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; 9/13/18; 10/18/18; 11/1/18; 12/13/18

Docket 1

Tentative Ruling:

In connection with the pending objection to claim, and the pending plan of reorganization, the Court will continue this status conference to **1:00 p.m. on April 4, 2019**.

Appearances on February 7, 2019 are excused.

Party Information

Debtor(s):

Yegiya Kutyan

Represented By
Sheila Esmaili

Joint Debtor(s):

Haykush Helen Kutyan

Represented By
Sheila Esmaili

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1:00 PM

1:18-11181 Rowena Benito Macedo

Chapter 11

#5.00 Confirmation hearing re Debtor's chapter 11 plan of reorganization

Docket 52

Tentative Ruling:

On May 8, 2018, Rowena Benito Macedo ("Debtor") filed a voluntary chapter 11 petition. In her schedule D, Debtor listed two secured debts totaling \$489,285.96. In her schedule E/F, Debtor listed four unsecured debts totaling \$8,377. Debtor disputed all of the scheduled unsecured claims.

On June 21, 2018 at 1:00 p.m., the Court held an initial status conference. At that time, the Court instructed Debtor to mail notice of the deadline for creditors to file a proof of claim (the "Bar Date") by June 29, 2018. To date, Debtor has not filed proof of timely service of the notice of Bar Date.

On October 23, 2018, Debtor filed a proposed chapter 11 plan of reorganization (the "Plan") [doc. 51]. The Plan contains three impaired classes. Classes 5(b) and 5(c) consist of the claims of secured creditors Bank of America and Real Time Resolutions, Inc. Both these classes have voted to accept the Plan.

The final impaired class, class 6(b), consists of the claims of general unsecured creditors. Although Debtor indicated that all of the scheduled unsecured claims are disputed, Debtor may not have timely served a notice of the Bar Date on all creditors. As such, the unsecured creditors may not have received sufficient notice of the opportunity to file proofs of claim, before the Bar Date.

Assuming Debtor did not timely serve unsecured creditors with notice of the Bar Date, and the Court extends the deadline for creditors to file proofs of claim, there may be allowed claims within class 6(b). Under the Plan, Debtor proposes to pay members of class 6(b) an amount equal to 3% of their claims totaling approximately \$8,377. No member of unsecured class 6(b) has returned ballots. Because no member of class 6(b) voted, class 6(b) is deemed to have rejected the plan. *In re M. Long Arabians*, 103 B.R. 211, 215–16 (B.A.P. 9th Cir. 1989) ("[T]he failure or inability of a creditor to vote on confirmation of a plan is not equivalent to acceptance

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CONT... Rowena Benito Macedo
of the plan.").

Chapter 11

Because not all impaired classes voted to accept the Plan, the Court may not confirm the Plan under § 1129(a) alone. However, the Court may confirm the Plan if it complies with all applicable requirements under § 1129(a) (except for § 1129(a)(8)) and if Debtor shows that the Plan does not discriminate unfairly and is fair and equitable with respect to each impaired class of claims or interests that has rejected the Plan. 11 U.S.C. § 1129(b)(1) provides:

Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

The Plan satisfies § 1129(b)(1) to the extent that the Plan does not discriminate unfairly among members of an impaired, non-accepting class. Under the Plan, all members of class 6(b) will receive an amount equal to 3% of their claims.

Under § 1129(b)(1), a plan may be confirmed despite non-accepting classes if the plan is fair and equitable as to impaired, non-accepting classes. Under § 1129(b)(2), a plan is fair and equitable as to unsecured creditors if such creditors (i) receive an amount equivalent to the full value of their claim on the effective date of the plan; or (ii) no junior claim or interest receives or retains any property under plan, except for post-petition income in individual chapter 11 cases.

Assuming there will be allowed unsecured claims, the Plan violates the absolute priority rule, which applies in individual chapter 11 cases. "[A]n individual debtor may not cram down a plan that would permit the debtor to retain prepetition property that is not excluded from the estate by § 541, but may cram down a plan that permits the debtor to retain only postpetition property." *Zachary v. California Bank & Trust*, 811 F.3d 1191, 1196 (9th Cir. 2016).

Here, the unsecured class 6(b) claims will not be paid in full under the Plan as of the effective date. In addition, Debtor proposes to retain prepetition property while

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CONT... Rowena Benito Macedo

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paying unsecured creditors less than the full value of their claims. Accordingly, the Plan is not fair and equitable as to class 6(b) under § 1129(b)(2). Under the current circumstances, the Court cannot confirm the Plan.

Debtor must be prepared to discuss these issues. If Debtor has not timely served notice of the Bar Date, the Court intends to extend the Bar Date deadline to give creditors an opportunity to file proofs of claim and to continue the hearing on plan confirmation until after that deadline. In that case, Debtor should be prepared to discuss whether conversion to a chapter 13 case is preferable to continued incurrence of costs in a chapter 11 case.

Because Debtor is under the debt limit set forth in 11 U.S.C. § 109(e), in connection with any request for approval of attorneys' fees and costs, Debtor's counsel must explain why this case was filed and prosecuted as a chapter 11 case, instead of being commenced as a chapter 13 case.

Party Information

Debtor(s):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

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1:18-11181 Rowena Benito Macedo

Chapter 11

#6.00 Status conference re: chapter 11 case

fr. 6/21/18; 10/18/18; 11/1/18; 12/13/18

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

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1:00 PM

1:18-12325 12 Cumpston Partnership

Chapter 11

#7.00 Status conference re chapter 11 case

fr. 11/15/18; 1/10/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **February 21, 2019 at 1:00 p.m.** to be held in connection with the hearing on the adequacy of the debtor's disclosure statement.

Appearances on February 7, 2019 are excused.

Party Information

Debtor(s):

12 Cumpston Partnership

Represented By
Mark E Goodfriend

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1:11-10734 Nancy Jakeline Campos

Chapter 7

#8.00 Debtor's motion to avoid lien under 11 U.S.C. sec. 522(f)

Docket 18

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):

Nancy Jakeline Campos

Represented By
Peter M Lively

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:17-12030 Herbert Simmons

Chapter 11

#9.00 Debtor's motion for entry of final decree in chapter 11 case

Docket 161

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):

Herbert Simmons

Represented By
Kevin Tang

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1:18-10417 Deborah Lois Adri

Chapter 11

#10.00 Motion for an order appointing Chapter 11 Trustee or for dismissal of the case
fr. 1/17/19 (stip)

Docket 216

Tentative Ruling:

Grant.

I. BACKGROUND

On February 16, 2018, Deborah Lois Adri ("Debtor") filed a voluntary chapter 11 petition. Within a month before filing her petition, Debtor received a \$626,000.00 distribution from the Albert Family Trust (the "Trust") [doc. 216, Exh. 3, pp. 38-45]. Debtor assigned this distribution (the "2018 Trust Distribution") to her attorney, Robert Yaspan, who put the funds in his client trust account. *Id.* at p. 43. Of the \$626,000.00, Mr. Yaspan: (1) retained \$25,000.00 in the trust account as his retainer; (2) transferred \$100,000.00 to Gold Girls, Inc. ("Gold Girls"), allegedly "[f]or working capital to be used by LLC" [doc. 1, p. 45]. and (3) transferred \$501,000.00 to the debtor in possession ("DIP") general account [doc. 216, Exh. 3, pp. 43-44].

A. Debtor's Schedules

On February 16, 2018, Debtor filed her schedules and statements [doc. 1]. In her schedule A/B ("Original Schedule A/B"), Debtor indicated that she has an interest in real property located at 4023 Woodman Canyon, Sherman Oaks, California 91423 (the "Property"). *Id.* at p. 19. Debtor indicated that the fair market value of the Property was \$1,300,000.00. *Id.*

In her schedule D [doc. 1], Debtor listed a deed of trust against the Property in the amount of \$630,000.00. *Id.* at p. 27. Debtor also listed two secured tax claims against the Property held by the State of California Franchise Tax in the aggregate amount of \$302,390.00. *Id.* at p. 28. In total, Debtor listed \$1,072,030.00 in secured claims. *Id.* In her schedule C, Debtor claimed an exemption in the Property in the amount of

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CONT... **Deborah Lois Adri**
\$175,000.00. *Id.* at p. 25.

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In her Original Schedule A/B, Debtor listed personal property totaling \$1,058,600.00. *Id.* at p. 17. Included in her personal property, Debtor listed a 50% interest in Ride on Autos, LLC ("ROA") valued at \$5,000.00 and a 100% interest in Gold Girls valued at \$100,000.00 (the amount of funds transferred to Gold Girls from the 2018 Trust Distribution). *Id.* at p. 22. Also included in her personal property assets was \$501,000.00 in the DIP general account and claims against third parties totaling \$327,800.00. *Id.* at pp. 21 and 23.

On January 16, 2019, Debtor filed amended schedules and statements [doc. 243]. In her amended schedule E/F ("Amended Schedule E/F"), Debtor listed three priority unsecured claims: (1) \$34,213.00 in favor of the California Department of Tax and Fee Administration; (2) \$581,336.00 in favor of the Internal Revue Service; and (3) \$15,000 in favor of the State Board of Equalization. *Id.* at pp. 28-29. In her Amended Schedule E/F, Debtor listed thirteen nonpriority unsecured claims totaling \$3,322,702.46. *Id.* at pp. 30-34. Included in the nonpriority general unsecured claims, Debtor listed a \$1,353,853.48 claim in favor of Moshe Adri ("Creditor"). *Id.* at p. 32.

In her schedule G [doc. 1], Debtor listed two leases, one with Mercedes-Benz Financial Services and one with Robin Sab for the lease of real property. *Id.* at p. 36. Debtor did not list an interest in any other executory contracts. Debtor's amended schedule G [doc. 243], filed on January 16, 2019, also lists only these two leases.

In her schedule I [doc. 1], Debtor represented that she has been employed as a manager of ROA for two years. *Id.* at p. 38. Debtor scheduled \$5,000.00 net income from operating a business, \$500.00 in monthly payments of interest and dividends and \$1,300.00 in monthly payments of pension or retirement income. *Id.* at 39.

Debtor's original schedules and amended schedules, filed almost a year into her chapter 11 case, vary drastically. Below is chart illustrating the differences.

Category	Schedules and SOFA filed on February 16, 2018 [doc. 1]	Schedules and SOFA filed on January 24, 2019 [doc. 248]
Schedule A/B – cash	<ul style="list-style-type: none"> • Cash on Hand - \$1,100.00 • Cash at Robert M Yaspan Client Trust Account on day of filing - \$501,000.00 	Cash on Hand - \$1,100.00

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Schedule A/B – deposits of money	None	<ul style="list-style-type: none"> • Cash at Robert M Yaspan Client Trust Account on day of filing - \$501,000.00 • Bank of America, Gold Girls - \$125,614.62 • Bank of America, ROA ending in 5494 - \$51.87 • Bank of America, Street Resources, LLC ("Street Resources") - \$17.93 • Bank of America, Debtor's personal account ending in 5973 - \$772.27 • Bank of America, Debtor's personal account ending in 8188 - \$993.68 • Bank of America, ROA ending in 2708- \$8,396.20
Schedule A/B – property owed from someone who has died	None	Funds on hand in Trust - \$25,000.00; estate entitled to 42% distribution when it comes due
Schedule A/B – inventory	None	Toyota Sienna - \$2,335.00
SOFA – income from 2016	None	Distribution from Trust - \$210,000.00
SOFA – income from 2017	<ul style="list-style-type: none"> • Operating a business - \$60,000.00 • Social security - \$15,600.00 	<ul style="list-style-type: none"> • Operating a business - \$60,000.00 • Social Security - \$15,000.00 • Distribution from Trust - \$125,000.00
SOFA – income from 2018	<ul style="list-style-type: none"> • Operating a business - \$10,000.00 • Social security - \$1,300.00 	<ul style="list-style-type: none"> • Operating a business - \$10,000.00 • Social security - \$1,500.00 • Distribution from Trust - \$627,500.00
SOFA – within four years of petition, businesses Debtor owned	<ul style="list-style-type: none"> • Gold Girls – retail clothing; store closed • ROA – used car lot; still open 	<ul style="list-style-type: none"> • Gold Girls – retail clothing; store closed • ROA – used car lot; still open • M & D Resources, LLC – real estate; 2001 – 2016 • Reseda Chase Plaza, LLC – real estate; 2005 – 2014 • Street Resources – real estate (ownership in dispute with Creditor); 2001 – present • Prime Property Management Corporation – real estate management; 2004 – 2016
SOFA – property kept in storage	None	Property has been kept in storage for over five years

B. Debtor's Monthly Operating Reports

On December 6, 2018, the Court held a continued status conference in Debtor's

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chapter 11 case. In reviewing Debtor's monthly operating reports ("MORs") prior to the status conference, the Court noticed that Debtor was 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 IV – regarding United States Trustee quarterly fees. Further, in her October 2018 monthly operating report, Debtor did not properly complete Section XI.

On December 7, 2018, the Court entered an order requiring Debtor to file amended MORs, properly completing the sections discussed above and with attached bank statements, by no later than December 31, 2018 (the "Order to Amend") [doc. 212]. Debtor did not timely file amended MORs.

On January 11, 2019, Debtor filed only three amended MORs for February 2018, March 2018 and April 2018 [docs. 238, 239 and 240]. On January 25, 2019, Debtor filed bank statements for May 2018, June 2018, July 2018, August 2018, September 2018 and October 2018 (the "Bank Statements") [docs. 254, 255, 256, 257, 258 and 259]. On January 31, 2019, Debtor filed second amended MORs for February 2018, March 2018 and April 2018 [docs. 264, 265 and 266]. On February 4, 2019, Debtor filed an amended MOR for May 31, 2018 [doc. 267]. The Bank Statements and the bank statements attached to the amended MORs are partially redacted.

Debtor's original MORs include information for her general DIP bank account, a payroll account and a tax account. In contrast, Debtor's second amended MORs include information for her general DIP account, a money market account, a tax account and bank statements for Gold Girls' bank account. Debtor's second amended February 2018 and March 2018 MORs also include bank statements and an accounting for the two prepetition personal bank accounts that Debtor did not disclose in her schedules until January 16, 2019 (the "Omitted Personal Accounts"). In January and February 2018, Debtor transferred a significant amount of funds into the Omitted Personal Accounts [doc. 230, Exhs. 5 and 6]. Consequently, it appears highly unlikely that Debtor "inadvertently" excluded the Omitted Personal Accounts from her original schedules.

The amended MORs show that Debtor has been using previously undisclosed accounts to pay her personal living expenses. The second amended February 2018 and March 2018 MORs show that Debtor used the Omitted Personal Accounts for her

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personal expenses after her petition date. The amended MORs also show that Debtor has been using Gold Girls' bank account to pay personal living expenses. In February 2018, Debtor spent \$14,526.11 from the Gold Girls' account on personal disbursements, including, among other things, pet care, parking, car inventory, groceries and a \$5,000.00 transfer on her petition date to one of the Omitted Personal Accounts [doc. 264]. From March 2018 to May 2018, Debtor spent \$11,421.42 from Gold Girls' bank account on personal living expenses.

In her second amended March 2018 MOR, Debtor indicates, for the first time, that she distributed \$22,000.00 to ROA as a loan for operating expenses [doc. 265]. Debtor did not seek or obtain Court approval to make such a loan and, to date, has not described the terms of such a loan.

In the second amended February 2018 MOR, Debtor indicates that the aggregate ending balance in all her disclosed accounts was \$506,178.73 [doc. 264]. As of December 31, 2018, Debtor's ending balance in her general DIP account, money market account and tax account had dramatically declined to \$12,261.54 [doc. 244]. Further, the ending balance of Gold Girls' bank account (which is not an operating business and held approximately \$125,000.00 on February 16, 2018) declined to \$10,926.83. *Id.* Based on all of Debtor's MORs, from February 16, 2018 to December 31, 2018, in connection with ROA, Debtor has spent **\$534,279.28**.

Debtor's original MORs contain no information about the vehicles she has allegedly purchased (in her name, or in another name). Debtor's second amended MORs filed for February, March and April 2018 and amended MOR filed for May 2018 include a sheet that supposedly represents "inventory" as of the end of each month, including the date acquired, the type of vehicle and the amount spent.

On December 7, 2018, Creditor filed a motion to appoint a chapter 11 trustee or to dismiss the case (the "Motion") [doc. 216]. In the Motion, Creditor requests the appointment of a chapter 11 trustee because: (1) cause exists for the appointment of a trustee under 11 U.S.C. § 1104(a)(1), based on Debtor's prepetition and postpetition conduct and mismanagement; (2) appointment of a trustee under 11 U.S.C. § 1104(a)(2) is in the best interest of creditors of the estate; and (3) cause exists to dismiss or convert this case under 11 U.S.C. § 1112(b), but appointment of a chapter 11 trustee is in the best interest of creditors of the estate. On December 28, 2018, Creditor filed a

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supplement to the Motion [doc. 230].

On January 24, 2019, Debtor filed an opposition to the Motion (the "Opposition") [doc. 249]. On January 31, 2019, Creditor filed a reply to the Opposition [doc. 261].

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' 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. Debtor has not provided the Court

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with a complete or accurate picture of her assets, liabilities and transactions. Moreover, Debtor has grossly mismanaged the assets of this estate. In addition, appointment of a chapter 11 trustee is in the best interests of creditors.

Debtor violated the Order to Amend by not amending her MORs by December 31, 2018. As of February 4, 2019, Debtor still had not filed completed MORs for June 2018 to December 2018. Debtor did not file amended schedules and an amended statement of financial affairs ("SOFA"), which differ significantly from her original schedules and SOFA, until after Creditor filed the Motion.

Debtor has not been forthcoming regarding the vehicles she has purchased postpetition. Debtor has provided no documentary evidence of the alleged car purchases. It is unclear how title to the vehicles is held, if and how the vehicles are insured and how many have been sold. Further, if Debtor is selling vehicles with title in her name, Debtor may have tax liabilities from those sales. Since she filed her petition, Debtor has not indicated any tax liabilities on her MORs.

In the Opposition, Debtor represents that she "owns" the vehicles that were purchased from her use of the 2018 Trust Distribution. However, in January 2019, during her examination under Federal Rule of Bankruptcy Procedure 2004, Debtor represented that the vehicles remained in the registered owner's name [Declaration of Alan W. Forsley, doc. 261].

Debtor also has not provided any documentary evidence of a consignment agreement with ROA, or of the terms of the alleged consignment agreement. Nor has Debtor presented documentary evidence of the loan to ROA, or the loan terms. If there is a dispute with ROA regarding payment of the loan or the consignment agreement, Debtor apparently has no security in the vehicles and has no written agreement to enforce.

In the Opposition, Debtor argues that her purchase of vehicles to sell on consignment with ROA is not a new business. However, it is unclear when Debtor commenced this business of acquiring used vehicles for sale, on consignment or otherwise. In her Original Schedule A/B, Debtor indicated that she did not have any inventory. Even in her Amended Schedule A/B, Debtor listed only one car as inventory, with a value of only \$2,335.00.

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Assuming that Debtor's provision of cars, or acquisition financing, to ROA is within the ordinary course of her business, Debtor has grossly mismanaged the assets of the estate. In February 2018, Debtor had \$506,718.73 combined in her disclosed bank accounts. As of December 31, 2018, Debtor only had \$12,261.54 combined in these accounts. In less than one year, according to her MORs, Debtor has spent \$534,279.28, on "car inventory." She also loaned an additional \$22,000.00 to ROA postpetition. Debtor's MORs do not show that the estate is receiving profit in connection with these significant postpetition expenditures. Since 2016, the majority of Debtor's income has come from distributions from the Trust. Debtor has rapidly dissipated these distributions, and Debtor has represented that the Trust is almost depleted.

Debtor has not been forthcoming regarding the Trust. Within two years of filing her petition, Debtor received \$961,700.00 in distributions from the Trust. Even though the SOFA specifically states that the *debtor must disclose all income whether taxable or not*, Debtor failed to disclose the receipt of those monies in her original SOFA. Debtor did not file an amended SOFA, that includes the distributions she received from the Trust, until after Creditor filed the Motion.

Debtor has also not been forthcoming regarding her bank accounts. In her Original Schedule A/B, Debtor excluded the Omitted Personal Accounts. Debtor did not disclose these bank accounts in her schedules or MORs until January 11, 2019, *i.e.* nearly a year after filing her chapter 11 petition. After her petition date, Debtor continued to use the Omitted Personal Accounts for personal expenses. Debtor also did not disclose the Street Resources account, which Debtor repeatedly accessed for deposits and withdrawals from June 2018 to November 2018 [doc. 230, Exh. 4; *see also* Declaration of Deborah Adri, doc. 250, FN 1].

Given the repetition and significance of Debtor's undisclosed assets and expenditures, the Court concludes that the bulk of the inaccuracies in, and omissions from, Debtor's schedules, statements and MORs were not inadvertent. Rather, they represent Debtor's intentional decision to hide information from the Court and her creditors. Alternatively, Debtor's haphazard and extensive use of undisclosed bank accounts and her inability to account on a timely and accurate basis for postpetition transactions is demonstrative of incompetence and/or gross mismanagement.

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After the status conference hearing on December 6, 2018, during which the Court noted the deficiencies in Debtor's MORs, Debtor apparently engaged TIXE Consulting, Inc. ("TIXE") to prepare and amend the MORs pursuant to the Order to Amend [Declaration of Carolyn Feinstein, doc. 251, ¶ 2] [FN1]. TIXE is a corporation that offers monthly operating report preparation for debtors in possession in chapter 11 bankruptcies and bookkeeping services. *Id.* at ¶ 2.

This belated engagement of TIXE does not eliminate the immediate need for appointment of a chapter 11 trustee. Debtor has failed to comply with her duties of accurate and timely disclosure as a debtor in possession and has spent hundreds of thousands of dollars, in less than a year, from the now nearly depleted Trust. A chapter 11 trustee must be appointed to assess how the monies were spent, the value of any assets acquired as a result, and the possibility of any distribution, or recovery of transferred funds and assets, for the benefit of the estate and its creditors.

III. CONCLUSION

For the reasons discussed above, the Court will grant the Motion and order the appointment of a chapter 11 trustee.

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

FOOTNOTES

1. Debtor never sought Court approval for the retention of TIXE. Nor has Debtor disclosed the terms of TIXE's engagement.

Evidentiary Objection Rulings

Debtor's objections to the Declaration of Alan W. Forsley [doc. 216]

paras. 4, 5, 6, 7:25-26, 10:10-12, 11, 12, 15, 18:6-7, 19: sustained

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paras. 8; 14:24-28: overruled

Debtor's objections to the Declaration of Alan W. Forsley [doc. 230]

paras. 3, 4, 5:20-21, 7:5-7, 9, 10:18-21, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21:
sustained

para. 6:24-27 and p.8:2 "show Debtor's and her entities' financial transactions":
sustained

Creditor's Objections to the Declaration of Deborah Adri [doc. 250]

paras. 14:10-17, 19:3, 22:25-26, 22:28-1, 22:1-3, 23:8-10, 24:11: sustained

paras. 15:21-22, 16:24-28, 16:1-4, 17, 18, 19:2-3; 19:3-4, 20, 22:26-28, 23:5-8, 24:12:
overruled

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Robert M Yaspan

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1:18-10417 Deborah Lois Adri

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#11.00 Status conference re: chapter 11 case

from: 3/29/18; 4/12/18; 11/15/18; 12/6/18; 1/17/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Robert M Yaspan

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1:18-10715 Nasrollah Gashtili

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#12.00 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

fr. 12/20/18; 1/10/19

Docket 98

Tentative Ruling:

I. BACKGROUND

On March 20, 2018, Nasrollah Gashtili ("Debtor") filed a voluntary chapter 11 petition. In his schedule A/B, Debtor listed real property located at 23311 Park Soldi, Calabasas, California 91302 (the "Property") [doc. 1, p. 16]. In his schedule C, Debtor claimed a \$100,000 exemption in the Property pursuant to California Code of Civil Procedure § 704.730 [doc. 1, p. 23].

In his schedule D, Debtor listed three secured creditors with liens against the Property: (1) a first priority \$650,000 lien in favor of Specilalized Loan Servicing ("Specialized"); (2) a \$360,000 second priority lien in favor of Abra Management, Inc. ("Abra"); and (3) a \$2,456 statutory lien in favor of Park Verdi Homeowners Association ("Park Verdi") for unpaid HOA dues [doc. 1, pp. 25-27].

In addition, there are two judgment liens against the Property. The first judgment lien is in favor of First National Bank of Omaha ("First National") in the principal amount of \$13,191.73 plus interest [doc. 98, Exh. G]. The second judgment lien is in favor of VitaVet Labs, Inc. ("VitaVet"). VitaVet's judgment lien arises out of an arbitration award against Debtor and his corporation Integrated Dynamic Solutions, Inc. [doc. 98, Exh. H]. Lastly, Debtor owes unpaid real estate property taxes on the Property in the aggregate amount of \$4,879.83 from July 1, 2018 through November 1, 2018 [doc. 98, p. 3].

On April 9, 2018, Specialized filed claim no. 4-1 in the amount of \$667,093.70. On August 17, 2018, Abra filed claim no. 8-1 in the amount of \$401,141. On May 16,

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2018, First National filed claim no. 6-1 in the amount of \$13,191.73. On August 15, 2018, VitaVet filed claim no. 7-1 in the amount of \$1,083,731.90.

On November 29, 2018, Debtor filed a *Motion of Debtor Nasrollah Gashtili for Entry of an Order Authorizing Sale of Real Property Located at 23311 Park Soldi, Calabasas, California, Free and Clear of Certain Liens, Claims and Interests; Payment of Homestead Exemption and Approval of Reimbursement of Expenses* (the "Motion") [doc. 98]. On December 5, 2018, VitaVet filed a conditional opposition to the Motion (the "Conditional Opposition") [doc. 104].

On December 13, 2018, Debtor filed a reply to the Opposition (the "Reply") [doc. 105]. In the Reply, Debtor argues that he is able to sell the property free and clear of liens under § 363(f)(2) or (f)(5). On January 28, 2019, VitaVet filed a supplemental opposition to the Reply (the "Supplemental Opposition") [doc. 107]. In the Supplemental Opposition, VitaVet objects to the sale of the Property.

II. DISCUSSION

Pursuant to 11 U.S.C. § 363(f):

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

In the Reply, Debtor argues that he is able to sell the property free and clear of liens under § 363(f)(2) or (f)(5). However, VitaVet does not

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consent to the sale. As such, Debtor cannot rely on 11 U.S.C. § 363(f)(2).

The other subsection on which Debtor relies is 11 U.S.C. § 363(f)(5). In *Clear Channel*, 391 B.R. 25 (BAP 9th Cir. 2008), the Ninth Circuit Bankruptcy Appellate Panel (the "BAP") discusses this subsection, at length. In *Clear Channel*, the debtor owned real property in Burbank, California. DB Burbank, LLC ("DB"), which had a claim of over \$40 million against the estate, held a first-priority lien on substantially all of the debtor's assets. *Id.*, at 31. After the debtor filed for bankruptcy protection, the chapter 11 trustee marketed the debtor's property for sale. *Id.* The chapter 11 trustee also entered into an agreement with DB pursuant to which DB would buy the debtor's property for the amount of its claim, if there were no overbidders during the sale. *Id.*

The chapter 11 trustee moved to sell the debtor's property free and clear of liens under 11 U.S.C. §§ 363(f)(3) and (f)(5). *Id.*, at 32. Clear Channel Outdoor, Inc. ("Clear Channel") opposed the motion on the basis that § 363(f) was not applicable. *Id.* The bankruptcy court disagreed and entered an order authorizing the sale of the debtor's property free and clear of Clear Channel's lien under 11 U.S.C. § 362(f)(5). *Id.* Clear Channel appealed. *Id.*

On appeal, the BAP first held that § 363(f)(1) did not apply, for the reasons stated above, under the discussion of 11 U.S.C. § 363(f)(1). The BAP also held that § 363(f)(2) did not apply, because Clear Channel did not consent. Furthermore, because neither party disputed the validity of Clear Channel's interest, § 363(f)(4) did not apply. *Id.*

After a discussion about § 363(f)(3), the BAP assessed whether § 363(f)(5) allowed a sale free and clear of Clear Channel's lien. *Id.*, at 41. The BAP explained that three elements must be present to satisfy § 363(f)(5): "(1) a proceeding exists or could be brought, in which (2) the nondebtor could be compelled to accept a money satisfaction of (3) its interest." *Id.* The BAP noted that Clear Channel held an "interest" for purposes of § 363(f)(5). *Id.*, at 42.

The BAP then discussed the second element: whether Clear Channel could be compelled to accept a money satisfaction. *Id.*, at 42. The bankruptcy court had ruled that § 363(f)(5) was applicable "whenever a claim or interest can be paid

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with money." *Id.* The BAP disagreed. *Id.* The BAP read § 363(f)(5) as referring to "a legal and equitable proceeding in which the nondebtor could be compelled to take less than the value of the claim secured by the interest." *Id.* (emphasis in *Clear Channel*). Under this view, the BAP held "that the bankruptcy court must make a finding of the existence of such a mechanism and the trustee must demonstrate how satisfaction of the lien could be compelled." *Id.*, at 45.

The BAP then addressed whether there was the possibility of "some proceeding, either at law or at equity, in which the nondebtor could be forced to accept money in satisfaction of its interest." *Id.* In *Clear Channel*, the chapter 11 trustee asserted that cramdown under 11 U.S.C. § 1129(b)(2) qualified as a legal or equitable proceeding through which Clear Channel could be compelled to take less than the value of its claim. *Id.*, at 46. The BAP disagreed, holding that if the proceeding authorizing a sale through 11 U.S.C. § 363(f)(5) could be "found elsewhere in the Bankruptcy Code, then an estate would not need § 363(f)(5) at all; it could simply use the other Code provision." *Id.* The BAP then remanded the action "to allow the parties to attempt to identify a qualifying proceeding under nonbankruptcy law (if one exists) that would enable them to strip Clear Channel's lien and make the sale of [the debtor's] property to DB free and clear under § 363(f)(5)." *Id.*, at 47.

Few post-*Clear Channel* cases discuss whether a judicial foreclosure is the type of proceeding that may satisfy 11 U.S.C. § 363(f)(5). Debtor cites *In re Hassen Imports Partnership*, 502 B.R. 851, 859 (C.D. Cal. 2013), as one such case. *Hassen* involved contractual and covenant rights held by the City of West Covina, and whether the City of West Covina could preclude a chapter 7 trustee's sale of properties to a particular buyer. In *Hassen*, the district court held that a hypothetical foreclosure did not qualify as a "legal and equitable" proceeding compelling the City of West Covina to accept a money satisfaction of an operating covenant. The district court noted that, if there were a foreclosure sale, the City of West Covina would not receive anything—money or otherwise—in exchange for the operating covenant.

In *Hassen*, the district court cited *In re Jolan, Inc.*, 403 B.R. 866 (Bankr. W.D. Wash. 2009), for the proposition that a foreclosure may qualify as a "legal or equitable" proceeding under § 363(f)(5). In *Jolan*, the debtor operated a café, bar and restaurant in Seattle. *Jolan*, 403 B.R. at 867. After filing, the chapter 7 trustee

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entered into a sale agreement to sell the debtor's personal property to the debtor's landlord. *Id.* Several entities and the Internal Revenue Service asserted liens against the debtor's personal property. *Id.* The parties objected to the sale based on, among other things, "that the court may not authorize a sale free and clear over the objection of a secured party unless the secured claim is being paid in full, citing *Clear Channel*." *Id.*

The *Jolan* court noted that, in *Clear Channel*, the BAP did not address "non-contractual mechanisms whereby a lienholder might get less than full payment yet lose the lien." *Id.*, at 869. The court then listed several mechanisms, under Washington law, through which a junior lienholder could be compelled to accept a money satisfaction. *Id.*, at 869-70. The *Jolan* court mentioned that a senior lienholder could foreclose on the subject property, or any "part[y] having interests in less than all of a debtor's property" may commence a receivership, or the subject property may be sold through a tax sale. *Id.* Given the existence of these mechanisms, the *Jolan* court held that the sale could proceed under 11 U.S.C. § 363(f)(5).

In *Jolan*, the court apparently did not consider whether the available proceedings it listed actually applied to the facts of that case; rather, it listed several mechanisms under Washington law that would allow extinguishment of a lien, despite paying the lienholder less than the total amount of its claim.

The majority of courts disagree with this expansive view and narrow the scope of the applicable question to whether *the debtor or the trustee* could compel a sale of the property. See *In re Love*, 553 B.R. 54, 59 (Bankr. D. S.C. 2016); *Dishi & Sons v. Bay Condos LLC*, 510 B.R. 696, 710-11 (S.D.N.Y. 2014) ("[T]he narrow interpretation provides a limited role for paragraph (5), but avoids rendering the remaining paragraphs mere surplusage.") (citing *Clear Channel*, 391 B.R. at 44); *In re Ricco*, 2014 WL 1329292, at *3-4 (N.D. W.V. Apr. 1, 2014) (finding that there was no mechanism under West Virginia law through which the trustee or the debtor could compel extinguishment of the lien); *In re Smith*, 2014 WL 738784, at *3 (Bankr. D. Or. Feb. 26, 2014) ("As the Trustee has not directed the Court to a specific *available* proceeding by which a court could compel [the lienholder] to release its lien for payment of an amount that is less than the full amount of its claim," a sale free and clear of that lien could not be authorized under § 363(f)(5));

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and In re Haskell, L.P., 321 B.R. 1, 9 (Bankr. D. Mass. 2005) ("[T]he only logical interpretation of the language of § 363(f)(5) is that the statute requires that the trustee or the debtor be the party able to compel monetary satisfaction for the interest which is the subject of the sale.")

Most of these cases hold that the debtor in possession or the trustee, as the party causing the sale of the property, must show that, under applicable state law, they would be able to compel extinguishment of the lien for less than the amount of the secured claim. As such, these cases hold that judicial foreclosure proceedings, when neither the trustee nor the debtor may effectuate them, do not qualify as the type of legal or equitable proceeding contemplated by § 363(f)(5).

These narrower interpretations of 11 U.S.C. § 363(f)(5) appear to be more in line with the mandate in *Clear Channel*. If courts need only find hypothetical mechanisms under state law through which lienholders may be compelled to take less than the full amount of their claim, then nearly every sale would qualify under § 363(f)(5). The Court concludes that the narrower interpretations better fit the spirit of 11 U.S.C. § 363(f)(5).

Here, Debtor has not proposed a mechanism under state law through which *Debtor* may extinguish VitVet's lien without full satisfaction of its claim. Debtor refers to receiverships, judicial foreclosures and marshaling actions as the qualifying proceedings, but all of these proceedings are initiated by courts or creditors, not debtors. *See* Cal. Code of Civ. Proc. ("CCP") § 564 (listing limited circumstances under which *courts* may appoint receiver); *Marsch v. Williams*, 23 Cal.App.4th 238, 248 (Ct. App. 1994) (finding that courts are not at liberty to create or recognize a nonstatutory receiver, even by agreement of the parties); *see also* Cal. Civ. Code § 2931 and CCP §§ 701.510-701.680 (non-judicial and judicial foreclosures initiated by mortgagee or judgment creditor, respectively). As such, Debtor has not satisfied § 363(f)(5).

III. CONCLUSION

For the reasons discussed above, the Court will deny the Motion.

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

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CONT... Nasrollah Gashtili

Chapter 11

Party Information

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

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1:18-11243 Jeff Davani and Nadia Davani

Chapter 7

#13.00 Chapter 7 Trustee's motion for order regarding priority of homestead exemption

Docket 67

Tentative Ruling:

Grant.

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

Note: The sole response to the motion has been withdrawn. 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):

Jeff Davani

Represented By
Michael H Raichelson

Joint Debtor(s):

Nadia Davani

Represented By
Michael H Raichelson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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1:18-11243 Jeff Davani and Nadia Davani

Chapter 7

#14.00 Motion for voluntary dismissal of chapter 7 bankruptcy
[Hearing re: homestead exemption]

fr. 1/17/19

Docket 64

*** VACATED *** REASON: Voluntary dismissal of motion filed on
1/24/19 [doc. 76].

Tentative Ruling:

Party Information

Debtor(s):

Jeff Davani

Represented By
Michael H Raichelson

Joint Debtor(s):

Nadia Davani

Represented By
Michael H Raichelson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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1:18-12356 Harmony Blossom

Chapter 7

#15.00 Debtor's motion to vacate dismissal

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harmony Blossom

Pro Se

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:19-10051 Rockin Artwork, LLC

Chapter 11

#1.00 Hendrix creditors' motion for order appointing chapter 11 trustee pursuant to Bankruptcy Code section 1104(a) or converting debtor's case to chapter 7 pursuant to Bankruptcy Code section 1112

Docket 9

Tentative Ruling:

For the reasons discussed below, the Court will order the appointment of a chapter 11 trustee.

I. BACKGROUND

On January 9, 2019, Rockin Artwork, LLC ("Rockin") filed a voluntary chapter 11 petition, initiating case 1:19-bk-10051-VK. That day, Purple Haze Properties, LLC ("PH Properties," and together with Rockin, "Entity Debtors") also filed a voluntary chapter 11 petition, initiating case 1:19-bk-10052-VK. On January 11, 2019, Andrew Marc Pitsicalis (together with Entity Debtors, "Debtors") filed a voluntary chapter 11 petition, initiating case 1:19-bk-10062-VK. On January 18, 2019, the Court entered an order approving of joint administration of Entity Debtors' cases [1:19-bk-10051-VK, doc. 18].

According to Mr. Pitsicalis, Mr. Pitsicalis and Leon Hendrix ("Leon") own Entity Debtors [Declaration of Andrew Pitsicalis ("Pitsicalis Decl."), ¶ 6]. Mr. Pitsicalis is the managing member, chief executive officer and sole employee of Entity Debtors, and Leon is a member of the board of directors. *Id.* Entity Debtors allegedly hold licensing, ownership and other rights to certain intellectual property rights related to deceased rock artist Jimi Hendrix and his brother, Leon. *Id.*

A. The Washington Action and California Action

In March 2009, Experience Hendrix, LLC and Authentic Hendrix, LLC (together, "Movants") filed suit against Mr. Pitsicalis, among others, in the United States District Court for the Western District of Washington for federal trademark infringement,

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CONT... Rockin Artwork, LLC

Chapter 11

false designation of origin/federal unfair competition, violation of the Washington consumer protection act, contributory infringement and unjust enrichment (the "Washington Action") [Declaration of Jason Strabo "Strabo Decl.," Exh. 1; Pitsicalis Decl., ¶ 14].

On July 24, 2015, Mr. Pitsicalis and Movants entered into a settlement agreement and stipulated judgment (the "Agreement"). Strabo Decl., Exh. 1. Under the Agreement, Mr. Pitsicalis agreed to pay Movants \$500,000.00 in installments. *Id.* Mr. Pitsicalis defaulted on required installment payments under the Agreement, which lead to default being entered in the Washington Action on August 24, 2017, in the amount of \$482,500.00 (the "Judgment"). *Id.*

On September 28, 2017, Movants registered the Judgment with the United States District Court for the Central District of California (the "California Action"). *Id.* On March 19, 2018, Movants filed an application for a charging order for the membership interest of Mr. Pitsicalis in Entity Debtors and the appointment of a receiver. *Id.* On April 23, 2018, the district court entered an order granting that application and appointed a receiver (the "Charging Order"). *Id.* In the Charging Order, the district court noted, in relevant part:

[Movants] have submitted evidence to the Court showing that Judgment Debtors [FN1] have used Rockin Artwork and Purple Haze Properties (in conjunction with other corporate entities) to make financial transactions on the Judgment Debtor's [*sic*] behalf. For example, in November 2016, while defaulting on his settlement payments, Pitsicalis transferred title to a house that he owned in Las Vegas (the "Las Vegas Home") to Rockin Artwork for \$1. Pitsicalis, as the controlling member of Rockin Artwork, then took out a loan on the Las Vegas Home and used that money as a down payment to purchase a \$2.8 million home in Lake Sherwood, California (the "Lake Sherwood Home"). The Lake Sherwood Home is being used by Pitsicalis and his family.

...

Pitsicalis also stopped using his personal checking account after he depleted it of funds. Instead of using his personal funds, Pitsicalis uses Purple Haze Properties and Rockin Artwork to pay for the Lake Sherwood Home's

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mortgage and many of Pitsicalis's living expenses. [Pitsicalis] has also made numerous transfers between these entities and with other companies that he controls.

...

Furthermore, Pitsicalis has failed to file tax returns for himself and his companies, obscuring the existence of records that would reflect his income and the assets under his control ("I have not filed federal, state, or local taxes for any of my companies or for me personally for the past five years.").

...

Pitsicalis used various corporate entities to pay for multi-million dollar properties and continues to use these entities for other personal expenses. Pitsicalis has also failed to pay taxes for himself or the companies he controls, failed to maintain corporate records, and has failed to notify the Court of newly-created corporate entities. The record also shows that Pitsicalis frequently transfers money back and forth between his various companies, and continues to form new entities. This record indicates that there is a probability of fraudulent conduct, a danger that Pitsicalis's assets are in imminent danger of being concealed, and that the legal remedies attempted thus far have been inadequate.

...

Given this record,...the Court finds that appointment of a receiver is appropriate.

Charging Order, pp. 1-11.

In the California Action, the district court appointed a receiver. "The receiver was to (1) have full access to the business records of the Charged Entities [FN2]; (2) review and approval **all expenditures** by the Charged Entities; (3) make any necessary inquiries to ensure Movants are paid; and (4) demand, collect, receive and distribute to Movants all distributions by the Charged Entities that would otherwise be paid to Mr. Pitsicalis." Strabo Decl., Exh. 2 (emphasis in original).

In the California Action, on January 3, 2019, the district court entered an order holding Mr. Pitsicalis in civil contempt for violating the Charging Order (the

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"Contempt Order"). Strabo Decl., Exh. 3. The court found that Mr. Pitsicalis violated the Charging Order by: "(1) failing to secure approval from the appointed Receiver ... for all expenditures by charged entities [Purple Haze Properties, LLC] and [Rockin Artwork, LLC] as required by the [Charging Order]; failing to provide to [Movants] distributions to which [Movants] were entitled; and failing to deliver to the Receiver all books, records, and other reports to which the Receiver is entitled under the terms of the Charging Order." *Id.* Pursuant to the Contempt Order, in addition to being held in civil contempt, Mr. Pitsicalis was to, among other things, transfer financial control over Entity Debtors to the appointed receiver, deliver to Movants all funds disbursed from or expended by either Entity Debtor that were not approved, either expressly or retroactively, by the receiver and to pay Movants' reasonable fees and costs. *Id.*

Six days after the Contempt Order was entered, Entity Debtors filed their bankruptcy petitions; eight days after the Contempt Order was entered, Mr. Pitsicalis filed his bankruptcy petition.

B. The New York Action

In March 2017, Movants filed suit against Debtors, among others, in the United States District Court for the Southern District of New York (the "New York Action"). Pitsicalis Decl., ¶ 15. Movants alleged that Debtors were improperly exploiting the intellectual property rights of Jimi Hendrix.

During the pendency of the New York Action, Movants brought a motion to sanction Debtors, among others, for spoliation of evidence and discovery abuses (the "Motion for Sanctions"). Strabo Decl., Exh. 9. On October 26, 2018, the court held an evidentiary hearing on the Motion for Sanctions. *Id.* Mr. Pitsicalis testified at that hearing. *Id.* On November 27, 2018, the court entered an opinion and order granting the Motion for Sanctions. *Id.* The court granted Movants' request for an adverse inference instruction at trial and directed Debtors, among others, to pay \$77,633.87 for fees and costs incurred by Movants in bringing the Motion for Sanctions. *Id.*

The court in the New York Action found that Debtors repeatedly and intentionally breached their duty to assure the preservation and production of records by: (1) the use of cleaning software on covered computing devices, including on Mr. Pitsicalis' computer; (2) the failure to disclose the existence of a seventh computing device in

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Pitsicalis' office containing potentially relevant documents that was supposedly taken to Florida before it could be reviewed; and (3) the deletion of more than 500 relevant text messages, including nine that explicitly used the term "Jimi."

In the New York Action, on December 12, 2018, the court issued an order setting an evidentiary hearing for the week of January 7, 2019; Mr. Pitsicalis was to testify at that hearing. Strabo Decl., Exh. 10. During the New York Action, Mr. Pitsicalis and Entity Debtors maintained and used two email accounts. *Id.* During the New York Action, the contents of these accounts, predating February 2018, were permanently deleted. *Id.* The evidentiary hearing was to determine, among other things, whether the deletion of the contents of these accounts was an intentional act of spoliation, meriting further sanctions. *Id.* Debtors filed their chapter 11 petitions during the week that the evidentiary hearing was to occur.

C. Mr. Pitsicalis' Schedules and Statements

On February 4, 2019, Mr. Pitsicalis filed his schedules and statements [1:19-bk-10062-VK, doc. 30]. In his schedule A/B, Mr. Pitsicalis indicated that he does not own any interest in real property. He represented that he owns 7.5 million shares of GRCU, valued at \$37,500.00, that the value of his equity interest in Rockin is \$250,000.00, and that the value of his equity interest in PH Properties is \$375,000.00.

In his schedule E/F, Mr. Pitsicalis listed the Franchise Tax Board and the Internal Revenue Service (the "IRS") as priority unsecured creditors. *Id.* Mr. Pitsicalis listed the amount of each of their claims as "unknown."

In his schedule E/F, Mr. Pitsicalis listed nonpriority general unsecured claims totaling \$553,916.00, which included a \$500,000.00 disputed claim of Movants. Mr. Pitsicalis also listed a \$7,500.00 nonpriority general unsecured claim of Mike McLain and a \$10,500.00 nonpriority general unsecured claim of William Pitsicalis; these claims are described as arising from personal loans.

In his schedule I, Mr. Pitsicalis indicated that, for four years, he has been employed as the President of PH Properties, and is paid \$5,000.00 per month. In comparison, in his statement of financial affairs ("SOFA"), Mr. Pitsicalis stated that his gross income from operating a business from January 1, 2019 to the petition date and in 2018 and

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2017 was "unknown."

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D. Entity Debtors' Schedules

1. Rockin's Schedules and Statements

On January 23, 2019, Rockin filed its schedules and statements [1:19-bk-10051-VK, doc. 28]. In its schedule A/B, Rockin indicated that owns the real property located at 8221 Sedona Sunrise Drive, Las Vegas, Nevada 89128 (the "Las Vegas Property"). Rockin valued the Las Vegas Property at \$400,000.00. In schedule D, Rockin represented that the Las Vegas Property is encumbered by a mortgage in the amount of \$288,873.96. Rockin did not list an interest in any other real property.

In its schedule A/B, Rockin indicated that it holds an interest in various intangibles or intellectual property rights, including, royalty contracts, licensing agreements and copyrights. Rockin indicated that the value of its interests in intellectual property is "unknown." Rockin also represented that it has unused net operating losses for various tax years; Rockin described the value of those net operating losses as "unknown."

In its *List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders*, filed on January 23, 2019, Rockin identified 13 creditors and stated that each of the unsecured claims of these creditors is disputed, subject to setoff and \$0.00 in amount, or "unknown." In its schedule E/F, Rockin listed the IRS as a priority unsecured creditor and listed the amount of the IRS claim as "unknown." Rockin also listed fourteen nonpriority general unsecured claims. Rockin indicated that each of the fourteen claims, including those of Movants, relate to pending litigation and is disputed.

In Part 1 of its SOFA, Rockin indicated that its gross revenue from business for January 1, 2019 to the petition date, and in 2018 and 2017 was "unknown" and "Amount TBD."

Rockin scheduled a "potential claim for avoidance of a fraudulent conveyance of real property located at 410 Upper Lake Road, Lake Sherwood, California" to Purple Haze Designs. Rockin represented that this property (the "Lake Sherwood Property") has a value of \$2,900,000.00, and is encumbered by \$2,600,000.00 in secured debt.

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In Part 2 of its SOFA, item 4, Rockin represented that on or around June 18, 2019, the Lake Sherwood Property was transferred to Melissa Lemcke, and described Ms. Lemcke as Mr. Pitsicalis' fiancée [spelled "Finanee"] and mother of his daughters. According to Rockin's SOFA, the Lake Sherwood Property "would have been lost if the Lake Sherwood Property was not refinanced and transferred," and that Mr. Pitsicalis, the CEO of Rockin, "is the guarantor under the loan."

In Part 2 of its SOFA, item 4, Rockin indicated that it would supplement its response as to whether other payments or transfers of property, that benefitted an insider, were made within one year of filing its petition. In the meantime, Rockin described the value of any such transfers, excluding the transfer of the Lake Sherwood Property, as \$0.00.

2. PH Properties' Schedules and Statements

On January 23, 2019, PH Properties filed its schedules and statements [1:19-bk-10052-VK, doc. 22]. In its schedule A/B, PH Properties indicated that it has leasehold interests in two real properties, including the Lake Sherwood Property. PH Properties identified the value of these leasehold interests as "unknown."

In its schedule A/B, PH Properties indicated that it holds an interest in various intangibles or intellectual property rights, including, among others, royalty contracts and licensing agreements. PH Properties indicated that the value of its interest in its intellectual property is "unknown." PH Properties indicated that it also has an interest in unused net operating losses for various tax years, with a value described as "unknown."

As additional assets, PH Properties listed a \$5,197.14 lease deposit for the lease of real property located in Woodland Hills, California, \$5,762.00 in accounts receivable and "3 million shares in GRCU (Green Cures Botanical)," valued at \$12,000.00.

In its schedule E/F, PH Properties listed the IRS as a priority unsecured creditor and listed the amount of the claim as "unknown." Like Rockin, PH Properties listed various nonpriority general unsecured claims, in an "unknown" value, from pending litigation. However, PH Properties also listed, among others, the following

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nonpriority general unsecured claims: (1) \$69,000.00 in favor of Ms. Lemcke for rent pursuant to a lease; (2) \$7,500.00 in favor of Mike Mclain for amounts owed for a loan; and (3) \$10,500.00 in favor of William Pitsicalis for money borrowed and royalty commissions. The amounts allegedly owed to Mr. Mclain and William Pitsicalis are the same as the amounts that Mr. Pitsicalis allegedly owes to these individuals.

In its schedule G, PH Properties indicated that it leases the Lake Sherwood Property, that the base rent is \$20,000.00 per month and that the lease ends in April 2021. Schedule G states that Purple Haze Designs, LLC holds title to the Lake Sherwood Property.

According to its schedule G, PH Properties also leases nonresidential real property in Woodland Hills, California; the lease, which ends in February 2021, provides for a base rent of \$4,898.80 per month.

Like Rockin, in its SOFA, PH Properties indicated that its gross revenue from January 1, 2019 to the petition date, and in 2018 and 2017 was "unknown." PH Properties also indicated that it would need to supplement whether any payments or transfers of property were made, within one year of it filing its petition, to insiders. *Id.*

On January 15, 2019, Movants filed a motion, in each of Debtors' bankruptcy cases, to appoint a chapter 11 trustee or to convert the case to one under chapter 7 (the "Motions") [1:19-bk-10062-VK, doc. 8; 1:19-bk-10051-VK, doc. 9; 1:19-bk-10052-VK, doc. 7]. On January 28, 2019, Entity Debtors filed an opposition to the Motions [1:19-bk-10051-VK, doc. 18], and Mr. Pitsicalis filed a joinder [1:19-bk-10062-VK, doc. 26] in that opposition (the "Oppositions"). On February 4, 2019, Movants filed a reply to the Oppositions (the "Replies") [1:19-bk-10051-VK, doc. 43; 1:19-bk-10062-VK, doc. 28].

On February 6, 2019, Ms. Lemcke, Mr. Mclain and William Pitsicalis each filed a declaration in opposition to the Motions (the "Creditor Declarations") [1:19-bk-10051-VK, docs. 47, 48, 49]. In the Creditor Declarations, each individual states that he or she is a creditor of Entity Debtors and Mr. Pitsicalis, and that it is not in the best interest of creditors to appoint a chapter 11 trustee or to convert the cases to cases under chapter 7. In Ms. Lemcke's declaration, she states that she is "CEO of Purple

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Haze Designs" [doc. 49]. In William Pitsicalis' declaration, he states that he is "CEO of GRCU" [doc. 47].

II. DISCUSSION

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.

"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)." *In re Corona Care Convalescent Corp.*, 527 B.R. 379, 384 (Bankr. C.D. Cal. 2015). "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, 622-623 (Bankr. N.D. Ill. 1994)).

"A debtor in possession has the fiduciary duty to preserve assets for the benefits of creditors. When a debtor in possession is incapable of performing these duties a trustee is properly appointed." *In re Nautilus of New Mexico, Inc.*, 83 B.R. 784, 789 (Bankr. D. N.M. 1998).

"The parties seeking appointment of a Chapter 11 trustee under 11 U.S.C. § 1112(b)

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(1) and/or 1104(a) have the burden of proving appropriate grounds exist for such appointment by the preponderance of the evidence." *Corona Care Convalescent Corp.*, 527 B.R. at 384.

Here, there is cause to order the appointment of a chapter 11 trustee because of Debtors' prepetition wrongful conduct and the gross mismanagement of Entity Debtors' affairs, by Mr. Pitsicalis. Furthermore, appointment of a chapter 11 trustee is in the best interests of creditors.

Debtors' prepetition violations of the Charging Order and intentional spoliation of substantive evidence constitute cause to order the appointment of a chapter 11 trustee. In the California Action, eight days before Mr. Pitsicalis filed his chapter 11 petition, after presentation of evidence, the district court held Mr. Pitsicalis in civil contempt for violating the Charging Order. Strabo Decl., Exh. 3. Among other things, Mr. Pitsicalis failed to secure the receiver's approval for Entity Debtors' expenditures and failed to turn over Entity Debtors' books and records to the receiver, as required by the Charging Order. *Id.* In the New York Action, Mr. Pitsicalis and Entity Debtors were found, after an evidentiary hearing, to have breached their duty, *intentionally* and *repeatedly*, to locate and produce relevant evidence. Strabo Decl., Exh. 9.

Mr. Pitsicalis' prepetition gross mismanagement of Entity Debtors also constitutes cause for the Court to order the appointment of a chapter 11 trustee. In the California Action, after the presentation of evidence, the district court made specific findings regarding Mr. Pitsicalis' misuse of corporate assets and gross mismanagement of Entity Debtors, including failure to maintain corporate formalities and keep business records and failure to file tax returns. Strabo Decl., Exh. 1. The court also made a finding that there was a probability of fraudulent conduct and a danger that access to Mr. Pitsicalis' assets was in imminent danger. *Id.*

Debtors' transactions regarding the Las Vegas Property and the Lake Sherwood Property may constitute fraudulent transfers. Further, according to the relevant schedules, PH Properties is leasing the Lake Sherwood Property, in which Mr. Pitsicalis and Ms. Lemcke reside [FN3], at a base rent of \$20,000.00 per month. The lessor is Purple Haze Designs, *i.e.*, the entity for which Ms. Lemcke states that she is the CEO. *See* 1:19-bk-10051-VK, doc. 49. The economic legitimacy of this leasing arrangement is questionable, at best.

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An objective chapter 11 trustee is necessary to investigate such insider transactions, transfers and relationships, and to file avoidance actions, if warranted.

Finally, Debtors have not provided the Court with a complete or accurate picture of their respective estates. Debtors scheduled their income from operation of their businesses for the last three years as "unknown." Entity Debtors also scheduled the value of their interests in significant assets – their intellectual property – as "unknown." The majority of Debtors' scheduled claims concern pending litigation, and are scheduled in amount as "unknown." The appointment of a chapter 11 trustee is in the best interest of creditors, as the chapter 11 trustee will be able to investigate and assess the assets, income and liabilities of Debtors and, given the conduct of Mr. Pitsicalis, heighten the prospect of a return to creditors.

In the Oppositions, Debtors argue that they have administered their chapter 11 cases effectively, including by filing an application to employ Force 10 Partners as their investment banker [doc. 26] and by identifying a potential buyer of Entity Debtors' assets. Mr. Pitsicalis also states that he has "brought in" an individual to assist Entity Debtors in completing all outstanding tax returns. Pitsicalis Decl., ¶ 22.

These actions do not eliminate the immediate need for the appointment of a chapter 11 trustee. It appears that Entity Debtors' current management, Mr. Pitsicalis, who is the managing member, CEO and sole employee of Entity Debtors [Pitsicalis Decl., ¶ 6], is not capable of performing his fiduciary duties to creditors and has grossly mismanaged Entity Debtors.

Regarding the Creditor Declarations, one of the creditors is Mr. Pitsicalis' fiancée. Supplemental Declaration of Jason D. Strabo, doc. 43, Exh. 17. Another is a relative of Mr. Pitsicalis. Strabo. Decl., Exh. 9, p. 7. As such, these creditors' preferences that Mr. Pitsicalis stay in control of Entity Debtors are suspect and not demonstrative of the needs of non-insider creditors. In light of the above, Movants have met their burden of proving, by a preponderance of the evidence, that the Court should order the appointment of a chapter 11 trustee.

III. CONCLUSION

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For the reasons discussed above, the Court will order the appointment of a chapter 11 trustee in Debtors' respective cases.

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

FOOTNOTES

1. The district court defined "Judgment Debtors" as Mr. Pitsicalis and HendixLicensing.com, Ltd. HendixLicensing.com, Ltd. was an entity that was owned by Mr. Pitsicalis. [Supplemental Declaration of Jason D. Strabo, doc. 43, Exh. 16].
2. The district court defined "Charged Entities" as Rockin and PH Properties.
3. 1:19-bk-10062-VK, doc. 1, p. 2; *see also* Charging Order, p. 4; Declaration of Jason D. Strabo, doc. 53, Exh. 23, pp. 4-5.

Evidentiary Objections

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

Movants' Objections to Declaration of Andrew Pitsicalis

para. 20: overruled

paras. 2, 10, 12 and 13: sustained

para. 14: sustained as to "*Undeterred by the district court's ruling in the Foundation Lawsuit,*" overrule as to the balance of the paragraph

para. 15: sustained as to "*Having largely been unsuccessful in the Washington Cases (and any appeals thereof)*" and as to "*Despite the fact that the New York Lawsuit was pending, Janie engaged in malicious tactics to interfere with the Debtors' licensing*"

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2:00 PM

CONT... Rockin Artwork, LLC

Chapter 11

contracts related to their Intellectual Property Rights," overrule as to the balance of the paragraph

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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

Monday, February 11, 2019

Hearing Room 301

2:00 PM

1:19-10052 Purple Haze Properties, LLC

Chapter 11

#2.00 Hendrix creditors' motion for order appointing chapter 11 trustee pursuant to Bankruptcy Code section 1104(a) or converting debtor's case to chapter 7 pursuant to Bankruptcy Code section 1112

Docket 7

Tentative Ruling:

See calendar no. 1.

Party Information

Debtor(s):

Purple Haze Properties, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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

Monday, February 11, 2019

Hearing Room 301

2:00 PM

1:19-10062 Andrew Marc Pitsicalis

Chapter 11

#3.00 Hendrix creditors' motion for order appointing chapter 11 trustee pursuant to Bankruptcy Code section 1104(a) or converting debtor's case to chapter 7 pursuant to Bankruptcy Code section 1112

Docket 8

Tentative Ruling:

See calendar no. 1.

Party Information

Debtor(s):

Andrew Marc Pitsicalis

Pro Se

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

Monday, February 11, 2019

Hearing Room 301

2:00 PM

1:19-10051 Rockin Artwork, LLC

Chapter 11

#4.00 Motion To Strike "Supplemental Declaration [Of] Jason D. Strabo In Support Of Hendrix Creditors' Reply In Support Of Motion For Order Appointing Chapter 11 Trustee Pursuant To Bankruptcy Code Section 1104(A) Or Converting Debtor's Case To Bankruptcy Code Section 1112"

Docket 54

Tentative Ruling:

Deny.

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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

Tuesday, February 12, 2019

Hearing Room 301

9:30 AM

1:18-11560 Elizabeth Roberts

Chapter 13

#25.01 Order to show cause why debtors' counsel should not be sanctioned for failure to appear at confirmation hearing

fr. 12/11/18; 1/8/19;

Docket 32

***** VACATED *** REASON: To be held at 11:30 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 12, 2019

Hearing Room 301

10:30 AM

1:18-12940 Jason Acda and Janelle Cruz

Chapter 13

#43.00 Debtors' motion for order determining value of collateral

Docket 16

Tentative Ruling:

Grant relief to bifurcate lienholder's claim subject to completion of chapter 13 plan. The claim of this lienholder, Navy Federal Credit Union, in the amount of \$12,000 may be treated as a secured claim; the balance of the claim may be treated as a nonpriority unsecured claim, to be paid through the plan pro rata with all other nonpriority unsecured claims.

Movants must submit an 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.

Party Information

Debtor(s):

Jason Acda

Represented By
Joshua L Sternberg

Joint Debtor(s):

Janelle Cruz

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, February 12, 2019

Hearing Room 301

11:00 AM

1:13-16654 Roselle Salazar Angellano

Chapter 13

#44.00 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; 12/11/18;

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, February 12, 2019

Hearing Room 301

11:00 AM

1:14-10334 Kurt Stromer

Chapter 13

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

Docket 77

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 12, 2019

Hearing Room 301

11:00 AM

1:14-10894 Traci L. Scher and Craig Scher

Chapter 13

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

fr. 9/18/18; 11/6/18; 1/8/19;

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 12, 2019

Hearing Room 301

11:00 AM

1:14-11542 Andrea Nicole Williams-Hart

Chapter 13

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

fr. 7/10/18; 9/18/18; 11/6/18; 1/8/19;

Docket 135

***** VACATED *** REASON: Voluntary dismissal of motion filed 1/23/19**

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 12, 2019

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 122

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, February 12, 2019

Hearing Room 301

11:00 AM

1:14-14317 Daniel Arthur Abrams and Leslie Anne Abrams

Chapter 13

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

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Arthur Abrams

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Leslie Anne Abrams

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, February 12, 2019

Hearing Room 301

11:00 AM

1:15-11981 Polonia Katarina Bright Johnson and Alton Earl Johnson

Chapter 13

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

fr. 9/18/18 ; 11/6/18; 12/11/18

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, February 12, 2019

Hearing Room 301

11:00 AM

1:15-12949 Veronica Nunez

Chapter 13

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

fr. 12/11/18; 1/8/19

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 12, 2019

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 ; 10/9/18; 11/6/18; 12/11/18; 1/8/19;

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, February 12, 2019

Hearing Room 301

11:00 AM

1:16-11467 Debbie Ann Ko

Chapter 13

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

Docket 68

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Debbie Ann Ko

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 12, 2019

Hearing Room 301

11:00 AM

1:16-11630 Salena G Ellerkamp

Chapter 13

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

Docket 74

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, February 12, 2019

Hearing Room 301

11:00 AM

1:16-12523 Brent Carpenter

Chapter 13

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

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 12, 2019

Hearing Room 301

11:00 AM

1:17-10051 Glenn Alan Badgett

Chapter 13

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

fr. 9/18/18 ; 11/6/18; 12/11/18;

Docket 62

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, February 12, 2019

Hearing Room 301

11:00 AM

1:17-13039 Benjawan Rachapaetayakom

Chapter 13

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

Docket 84

Tentative Ruling:

- NONE LISTED -

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, February 12, 2019

Hearing Room 301

11:00 AM

1:18-10369 Jaime Gutierrez

Chapter 13

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

Docket 53

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, February 12, 2019

Hearing Room 301

11:00 AM

1:18-10968 Imelda Godoy

Chapter 13

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

Docket 38

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Imelda Godoy

Represented By
Kevin Tang

Trustee(s):

Elizabeth (SV) 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 12, 2019

Hearing Room 301

11:00 AM

1:18-11574 Carlos Velapatio

Chapter 13

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

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Velapatio

Represented By
Kevin Tang

Trustee(s):

Elizabeth (SV) 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 12, 2019

Hearing Room 301

11:30 AM

1:16-13190 JeanPaul Reneaux

Chapter 13

#61.00 Motion re: objection to claim number 2 by claimant Wells Fargo Bank, N.A., et al. c/o Carrington Mortgage Services, LLC.

fr. 12/11/18

Stip to continue filed

Docket 66

***** VACATED *** REASON: Order approving stipulation entered
2/11/19. Hearing is continued to 3/12/19 at 11:30 AM.**

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**

Tuesday, February 12, 2019

Hearing Room 301

11:30 AM

1:18-11680 Alba Interiano

Chapter 13

#62.00 Order to show cause why debtor's counsel should not be held in civil contempt and/or sanctioned for failure to comply with court order and ordered to disgorge fees

Docket 50

Tentative Ruling:

On July 03, 2018, the Alba Interiano (the "Debtor") filed a chapter 13 petition. On August 6, 2018, the Debtor filed a *Disclosure of Compensation of Attorney for Debtor(s)* ("Disclosure of Compensation") [doc. 14, at p. 31], which indicated that Mr. Reyes agreed to accept \$0.00 for his services in the Debtor's chapter 13 case. Also, on August 6, 2018, the Debtor filed a *Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys* ("RARA") [doc. 15]. The RARA indicated that Mr. Reyes would receive \$0.00 for his services.

On December 11, 2018, the Court held a continued chapter 13 plan confirmation hearing. Martin Weingarten appeared as an appearance attorney on behalf of the Debtor and Mr. Reyes. Based on the issues raised at the hearing, the Court determined that Mr. Reyes' personal appearance was required to facilitate confirmation of a chapter 13 plan. Accordingly, the Court continued the plan confirmation hearing to January 8, 2019 at 9:30 a.m. and issued an order requiring Mr. Reyes to appear personally at the continued confirmation hearing (the "Order to Appear") [doc. 45].

On January 8, 2019 at 9:30 a.m., the Court held a continued chapter 13 plan confirmation hearing. Contrary to the Order to Appear, Mr. Reyes did not appear, and his nonappearance was not excused by the Court. Martin Weingarten appeared as an appearance attorney on behalf of the Debtor and Mr. Reyes.

At the hearing, contrary to the Disclosure of Compensation and the RARA, someone allegedly assisting the Debtor stated that the Debtor claims that she has paid Mr. Reyes \$8,000.00. The Debtor did not disclose this payment on her Statement of Financial Affairs [doc. 14, at pp. 24-29]. The Debtor also requested that the Court dismiss her bankruptcy case. The Debtor stated that Mr. Reyes did not explain to her why she was in a chapter 13 bankruptcy case and mislead her into filing her petition.

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

Tuesday, February 12, 2019

Hearing Room 301

11:30 AM

CONT... Alba Interiano

Chapter 13

On January 9, 2019, the Court entered an order dismissing the Debtor's chapter 13 case [doc. 49].

On January 9, 2019, the Court issued an *Order to Show Cause Why Debtor's Counsel Should Not Be Held in Civil Contempt and/or Sanctioned for Failure to Comply with Court Order and Ordered to Disgorge Fees* (the "OSC") [doc. 50] on the grounds that Mr. Reyes failed to do the following: (i) comply with the Order to Appear; (ii) disclose the payments made to him by the Debtor and what services he provided to Debtor in connection with those payments; (iii) effectively communicate with the Debtor; and (iv) provide proper representation of the Debtor in her chapter 13 case.

The Debtor was ordered to file and serve on Mr. Reyes a declaration regarding the amount, timing, and rationale for any payments she made to Mr. Reyes or his law office no later than January 15, 2019. The Court further ordered that the Debtor's declaration must be supported by evidence of proof of payment. Mr. Reyes was ordered to file and serve on the Debtor a written response to the OSC no later than January 29, 2019.

On January 10, 2019, Mr. Reyes filed an *Amended Disclosure of Compensation of Attorney for Debtor(s)* [doc. 52] (the "Amended Disclosure of Compensation"), which indicated that he agreed to accept \$4,500.00 for his services in the Debtor's chapter 13 case. The Amended Disclosure of Compensation indicated that Mr. Reyes received \$1,000.00 pre-petition, and \$3,500.00 was the remaining balance. Mr. Reyes has not filed an amended RARA.

On January 14, 2019, the Debtor filed her response (the "Debtor's Response") [doc. 55]. Contrary to the OSC, the Debtor did not file a declaration signed under penalty of perjury, and she did not include proof of service on Mr. Reyes of the Debtor's Response.

Party Information

Debtor(s):

Alba Interiano

Represented By
Carlo Reyes

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

Tuesday, February 12, 2019

Hearing Room 301

11:30 AM

CONT... Alba Interiano

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, February 12, 2019

Hearing Room 301

11:30 AM

1:18-11799 Farahnaz Alvand

Chapter 13

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

fr. 10/9/18 ; 12/11/18;

Docket 33

Tentative Ruling:

On July 18, 2018, the debtor filed a chapter 13 petition, commencing this case. In September, October and December 2018, the Court has held hearings on the confirmation of the debtor's then-pending chapter 13 plan. At the last plan confirmation hearing, held on December 11, 2018, the Court continued the hearing to February 12, 2019, and informed the debtor's counsel that that continued hearing would be the last plan confirmation hearing, before the debtor's case would be dismissed, because of failure to confirm a chapter 13 plan.

The debtor has filed several versions of a chapter 13 plan [docs. 12, 14, 49, 50, 55]; on January 24, 2019, the debtor filed the most recent version, *i.e.*, the fourth amended chapter 13 plan [doc. 55]. The chapter 13 trustee and two secured creditors, including the Las Virgenes Village Community Association, have filed objections to the fourth amended chapter 13 plan.

Certain issues raised in the chapter 13 trustee's most recent objection to confirmation of the chapter 13 plan [doc. 58] are identical to issues raised in the chapter 13 trustee's prior objection to plan confirmation, filed on December 19, 2018 [doc. 54].

In her amended schedules I and J, filed on August 6, 2018 [doc. 21], the debtor indicates that she receives \$4,500 per month in income and that her expenses are \$4,133 per month, leaving monthly net income of \$367. The debtor also filed a declaration stating that she receives \$4,500 per month in income [doc. 40]. Nevertheless, the debtor's fourth amended chapter 13 plan provides for a plan payment of \$1,000 per month. Based on the debtor's amended schedules I and J, the fourth amended chapter 13 plan apparently is not feasible; the debtor does not have sufficient net income to make the required monthly plan payments.

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

Tuesday, February 12, 2019

Hearing Room 301

11:30 AM

CONT... Farahnaz Alvand

Chapter 13

It also appears that the debtor's chapter 13 plan must provide for the claim secured by the real property located at 17710 Martha Street, Encino, California 91316 (the "Encino Property"); as of now, the debtor's fourth amended chapter 13 plan does not do so.

According to the *Disclosure of Compensation of Attorney for Debtor(s) – Amended* (the "Disclosure of Compensation") [doc. 20], and the *Rights and Responsibilities Agreement Between Chapter 13 Debtors and their Attorneys* (the "RARA") [doc. 36], the debtor's counsel received \$4,500 from the debtor for his services in connection with the debtor's chapter 13 bankruptcy case.

Given the continued deficiencies in the chapter 13 plans filed by the debtor's counsel, the Court questions whether the debtor's counsel is capable of properly preparing a chapter 13 plan, and obtaining confirmation of a chapter 13 plan. Consequently, the Court may order disgorgement of a substantial portion of the fees which the debtor's counsel has received from the debtor.

The Court will prepare the order.

Party Information

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, February 12, 2019

Hearing Room 301

11:30 AM

1:18-12655 Monica Somoza

Chapter 13

#64.00 Chapter 13 trustee's objection to debtor's exemption

Docket 21

Tentative Ruling:

In response to the chapter 13 trustee's objection, the debtor filed an amended Schedule C stating the specific amount she is claiming as exempt under California Code of Civil Procedure § 704.070 in each of the three bank accounts [doc. 23]. Has this satisfied the concerns of the chapter 13 trustee?

Party Information

Debtor(s):

Monica Somoza

Represented By
Daniel King

Trustee(s):

Elizabeth (SV) 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 12, 2019

Hearing Room 301

11:30 AM

1:18-11560 Elizabeth Roberts

Chapter 13

#65.00 Order to show cause why debtors' counsel should not be sanctioned for failure to appear at confirmation hearing

fr. 12/11/18; 1/8/19;

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

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**

Wednesday, February 13, 2019

Hearing Room 301

1:30 PM

1:16-13380 Sheree Gaynelle Solieman

Chapter 7

Adv#: 1:18-01054 Goldman v. Soliemanzadeh

- #1.00** Trustee's pretrial 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)

fr. 7/18/18

Docket 1

Tentative Ruling:

On November 2, 2018, the chapter 7 trustee (the "Trustee") filed a motion to approve a compromise between the parties [Bankruptcy Docket, doc. 63] and attached the parties' settlement agreement (the "Settlement Agreement"). On November 28, 2018, the Court entered an order approving the Settlement Agreement [Bankruptcy Docket, doc. 66]. Pursuant to the Settlement Agreement, the parties agreed to stipulate to dismissal of this adversary proceeding within 10 days of the Trustee's receipt of a final payment by the defendant. Under the terms of the Settlement Agreement, the final payment is not due until approximately four months after the initial payment on the execution date of the Settlement Agreement.

The parties have not filed updates regarding the status of payments under the Settlement Agreement. However, given that the parties likely need additional time to gauge whether the defendant completes all payments under the Settlement Agreement, the Court will continue this status conference to **1:30 p.m. on May 15, 2019**. If the parties file a stipulation to dismiss this adversary proceeding prior to that date, the Court will vacate the status conference.

Appearances on February 13, 2019 are excused.

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

Wednesday, February 13, 2019

Hearing Room 301

1:30 PM

CONT... Sheree Gaynelle Solieman

Chapter 7

Party Information

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, February 13, 2019

Hearing Room 301

1:30 PM

1:17-10266 Cindy Park

Chapter 13

Adv#: 1:18-01125 Park v. New Penn Financial, LLC dba Shellpoint Mortgage Se

- #2.00** Status conference re: complaint of the plaintiff pursuant to 11 U.S.C. section 506(a),(d) and Bankruptcy Rule 3012 to determine;
- 1) The fraud upon the court,
 - 2) The validity of creditor's proof of claim,
 - 3) The value of the security, and,
 - 4) Claim for damages, sanctions and injunctive relief

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on April 24, 2019**, to be held with the hearing on the defendants' motion to dismiss [doc. 6].

Appearances on February 13, 2019 are excused.

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

Defendant(s):

New Penn Financial, LLC dba

Pro Se

The Bank of New York Mellon fka

Pro Se

Plaintiff(s):

Cindy Park

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, February 19, 2019

Hearing Room 301

8:30 AM

1:18-12603 Lori Ingrassia

Chapter 7

#1.00 Reaffirmation agreement between debtor and Wells Fargo Auto

Docket 10

Party Information

Debtor(s):

Lori Ingrassia

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, February 19, 2019

Hearing Room 301

8:30 AM

1:18-12758 Diana Isabel Olvera Avila

Chapter 7

#2.00 Reaffirmation agreement between debtor and Toyota Motor Credit Corporation

Docket 14

Party Information

Debtor(s):

Diana Isabel Olvera Avila

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, February 19, 2019

Hearing Room 301

8:30 AM

1:18-13010 Franklin J Solis

Chapter 7

#3.00 Reaffirmation agreement between debtor and TD Auto Finance LLC

Docket 16

Party Information

Debtor(s):

Franklin J Solis

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, February 19, 2019

Hearing Room 301

8:30 AM

1:19-10008 Gerardo Remigio Banderas

Chapter 7

#4.00 Reaffirmation agreement between debtor and Wescom Central Credit Union

Docket 8

Party Information

Debtor(s):

Gerardo Remigio Banderas

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, February 20, 2019

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; 11/14/18; 1/9/19

Docket 137

*** VACATED *** REASON: Voluntary withdrawal of motion filed
2/14/19 [doc. 161].

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 20, 2019

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; 12/12/18; 1/16/19

Stip to continue filed 2/15/19

Docket 58

***** VACATED *** REASON: Order approving stip entered 2/19/19
continuing hearing to 3/20/19 at 9:30 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adolph Earl Jones

Represented By
Allan S Williams

Joint Debtor(s):

Katherine Johnson Jones

Represented By
Allan S Williams

Movant(s):

JPMORGAN CHASE BANK,

Represented By
Raymond Jereza

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

Wednesday, February 20, 2019

Hearing Room 301

9:30 AM

CONT... Adolph Earl Jones and Katherine Johnson Jones

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 20, 2019

Hearing Room 301

9:30 AM

1:13-16706 Hector Cahuantzi Gutierrez

Chapter 13

#3.00 Motion for relief from stay [RP]

US BANK N.A.
VS
DEBTOR

fr. 11/14/18; 12/12/18; 1/16/19;

Docket 80

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 20, 2019

Hearing Room 301

9:30 AM

1:18-12752 Victor Velasquez and Jovita Velasquez

Chapter 7

#4.00 Motion for relief from [PP]

MERCEDES-BENZ FINANCIAL SERVICES USA LLC
VS
DEBTOR

Docket 20

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):

Victor Velasquez

Represented By
Raymond Perez

Joint Debtor(s):

Jovita Velasquez

Represented By
Raymond Perez

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

Wednesday, February 20, 2019

Hearing Room 301

9:30 AM

CONT... Victor Velasquez and Jovita Velasquez

Chapter 7

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, February 20, 2019

Hearing Room 301

9:30 AM

1:18-12765 Marissa O'Connor

Chapter 7

#5.00 Motion for relief from stay [PP]

FINANCIAL SERVICES VEHICLE TRUST
VS
DEBTOR

Docket 22

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):

Marissa O'Connor

Represented By
Nicholas M Wajda

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 20, 2019

Hearing Room 301

9:30 AM

1:18-13037 Robert J. Christensen and Lois Marie Christensen

Chapter 7

#6.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC
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.

Party Information

Debtor(s):

Robert J. Christensen

Represented By
David R Hagen

Joint Debtor(s):

Lois Marie Christensen

Represented By
David R Hagen

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

Wednesday, February 20, 2019

Hearing Room 301

9:30 AM

CONT... Robert J. Christensen and Lois Marie Christensen

Chapter 7

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith
Jennifer H Wang

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 20, 2019

Hearing Room 301

9:30 AM

1:18-12981 Behnam Alamdari

Chapter 7

#7.00 Motion for relief from stay [RP]

US BANK NA
VS
DEBTOR

Docket 11

***** VACATED *** REASON: Order entered on 2/8/19 dismissing the debtor. The motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Behnam Alamdari

Pro Se

Movant(s):

U.S. Bank NA, successor trustee to

Represented By
Daniel K Fujimoto
Caren J Castle

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 20, 2019

Hearing Room 301

9:30 AM

1:18-12902 Farhad Besharati and HCH Limited Partnership

Chapter 13

#8.00 Motion for relief from stay [UD]

HCH LIMITED PARTNERSHIP
VS
DEBTOR

Docket 41

***** 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.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Farhad Besharati

Represented By
Dennis A Rasmussen

Trustee(s):

Elizabeth (SV) 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 20, 2019

Hearing Room 301

9:30 AM

1:19-10166 Concepcion Galeano

Chapter 13

#9.00 Motion for relief from stay [UD]

LANGDON B PROPERTY 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 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.

Party Information

Debtor(s):

Concepcion Galeano

Pro Se

Movant(s):

Langdon B Property LLC

Represented By
Helen G Long

Trustee(s):

Elizabeth (SV) 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 20, 2019

Hearing Room 301

9:30 AM

1:16-10925 Josue Soncuya Villanueva

Chapter 13

#10.00 Motion for relief from [PP]

VW CREDIT INC
VS
DEBTOR

Docket 83

*** 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.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Josue Soncuya Villanueva

Represented By
Michael F Chekian

Movant(s):

VW CREDIT, INC.

Represented By
Stephanie R Lewis

Trustee(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, February 20, 2019

Hearing Room 303

9:30 AM

1:17-10904 Kenneth Blane Forde and Tamara Armand Forde

Chapter 13

#11.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 25

***** 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.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth Blane Forde

Represented By
Allan S Williams

Joint Debtor(s):

Tamara Armand Forde

Represented By
Allan S Williams

Movant(s):

Toyota Motor Credit Corporation as

Represented By
Stephanie R Lewis

Trustee(s):

Elizabeth (SV) 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 20, 2019

Hearing Room 301

9:30 AM

1:17-12522 Taghreed Yaghnam

Chapter 13

#12.00 Motion for relief from stay [PP]

CAB WEST, LLC
VS
DEBTOR

Docket 68

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

Movant(s):

Cab West, LLC

Represented By

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

Wednesday, February 20, 2019

Hearing Room 301

9:30 AM

CONT... Taghreed Yaghnam

Chapter 13

Sheryl K Ith
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 20, 2019

Hearing Room 301

9:30 AM

1:17-12522 Taghreed Yaghnam

Chapter 13

#13.00 Motion for relief from [RP]

WILMINGTON TRUST NATIONAL ASSOCIATION
VS
DEBTOR

Docket 72

*** VACATED *** REASON: APO entered 2/12/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Taghreed Yaghnam

Represented By
James Geoffrey Beirne

Movant(s):

Wilmington Trust, National

Represented By
Dipika Parmar
Robert P Zahradka
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, February 20, 2019

Hearing Room 301

9:30 AM

1:18-12592 Mario Alberto Cerritos

Chapter 13

#14.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mario Alberto Cerritos

Represented By
Jaime A Cuevas Jr.

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, February 20, 2019

Hearing Room 301

9:30 AM

1:18-12760 Hermelindo Rocha-Vargas

Chapter 13

#15.00 Motion for relief from stay [RP]

US BANK NA
VS
DEBTOR

Docket 18

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.

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

Wednesday, February 20, 2019

Hearing Room 301

9:30 AM

CONT... Hermelindo Rocha-Vargas

Chapter 13

Party Information

Debtor(s):

Hermelindo Rocha-Vargas	Pro Se
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Movant(s):

U.S. Bank NA, successor trustee to	Represented By Jennifer C Wong
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Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, February 20, 2019

Hearing Room 301

9:30 AM

1:19-10271 Jose R. Fernandez and Esther Fernandez

Chapter 13

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

Docket 12

Tentative Ruling:

Movants have not served the motion and provided notice of the hearing thereon and the deadline to file a response in accordance with Judge Kaufman's self-scheduling procedure for motions that are set for hearing on shortened time. The notice of the motion fails to indicate that a written response must be filed and served at least two court days before the hearing.

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **March 20, 2019. No later than February 27, 2019**, the movants 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 movants must timely pay: (1) their March 2019 deed of trust payment in the amount of \$1,664.72 (as stated in their current Schedule J) as to the real property located at 16439 Jersey Street Granada Hills, California 91344; and (2) their March 2019 plan payment in the amount of \$400.00 to the chapter 13 trustee. **No later than March 18, 2019**, the movants must file a declaration to demonstrate that they timely made their required post-petition deed of trust payment and chapter 13 plan payment.

Party Information

Debtor(s):

Jose R. Fernandez

Represented By
Donald E Iwuchuku

Joint Debtor(s):

Esther Fernandez

Represented By
Donald E Iwuchuku

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

Wednesday, February 20, 2019

Hearing Room 301

9:30 AM

CONT... Jose R. Fernandez and Esther Fernandez

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 20, 2019

Hearing Room 301

1:30 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

Adv#: 1:17-01017 Weil v. Cazares et al

- #16.00** Pretrial 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;
3/14/18; 1/23/19

Order appr stip to cont ent 1/18/19

Docket 78

***** VACATED *** REASON: Continued to 5/8/2019 per order ent 1/18/19**

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

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

Wednesday, February 20, 2019

Hearing Room 301

1:30 PM

CONT... Dean Albert Maury Cazares

Chapter 7

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, February 20, 2019

Hearing Room 301

1:30 PM

1:18-10123 Fred Horiat

Chapter 7

Adv#: 1:18-01042 Ingram v. Horiat

#17.00 Pretrial conference re: complaint to determine dischargeability of debt (11 U.S.C. §523(a)(5) and (a)(15)

fr. 6/20/18; 9/5/18; 10/10/18

Stip for nondischageability of debt filed 10/31/18

Docket 1

***** VACATED *** REASON: Order approving stipulation entered 11/6/18**

Tentative Ruling:

- NONE LISTED -

Party Information

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, February 20, 2019

Hearing Room 301

1:30 PM

1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:18-01131 Goldman v. Pavehzadeh et al

- #18.00** Status conference re: complaint
(1) Declaratory relief;
(2) Sale of interest of co-owner in property of the estate;
(3) Turnover of property of the estate

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: 4/30/19.

Deadline to complete one day of mediation: 5/15/19.

Deadline to file pretrial motions: 5/22/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 6/3/19.

Pretrial: 1:30 p.m. on 6/12/19.

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, February 20, 2019

Hearing Room 301

1:30 PM

CONT... Maryam Hadizadeh

Chapter 7

Debtor(s):

Maryam Hadizadeh

Represented By
Stella A Havkin

Defendant(s):

Houshang Pavehzadeh

Pro Se

Mona Soleimani

Pro Se

Plaintiff(s):

Amy L. Goldman

Represented By
Todd A Frealy

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Anthony A Friedman

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

Wednesday, February 20, 2019

Hearing Room 301

1:30 PM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01058 Van Dyke v. Muennichow

#19.00 Motion by plaintiff to substitute John Van Dyke as defendant

fr. 8/15/18; 9/12/18; 11/21/18

Docket 55

Tentative Ruling:

- NONE LISTED -

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, February 20, 2019

Hearing Room 301

1:30 PM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01058 Van Dyke v. Muennichow

#20.00 Plaintiff's motion to substitute Helayne Muennichow
as Defendant

fr. 7/18/18; 8/15/18; 9/12/18; 11/21/18

Docket 45

Tentative Ruling:

- NONE LISTED -

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, February 20, 2019

Hearing Room 301

1:30 PM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01058 Van Dyke v. Muennichow

#21.00 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; 11/21/18

Docket 1

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**

Wednesday, February 20, 2019

Hearing Room 301

1:30 PM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01069 Seror v. Muennichow et al

- #22.00** 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; 11/21/18

Docket 1

Tentative Ruling:

Pursuant to the parties' stipulation [doc. 67], approved by the Court [doc. 69], the deadline for the parties to file a joint pretrial stipulation has been extended to March 20, 2019, and the date of the pretrial conference has been continued to **1:30 p.m. on April 3, 2019**. The parties should be prepared to proceed with these dates and deadlines.

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

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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

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1:17-10673 Hermann Muennichow

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Adv#: 1:18-01077 The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

#23.00 Status conference re: complaint for interpleader

fr. 9/12/18; 11/21/18

Docket 1

Tentative Ruling:

In the joint status report filed in *Seror v. Muennichow* [1:17-ap-01069-VK, doc. 72], defendant Helayne Muennichow indicates that she intends to file a motion to amend the consent order [doc. 11]. When can Ms. Muennichow file this motion?

Should this adversary proceeding be stayed until resolution of the dischargeability proceeding [1:17-ap-01058-VK]?

Party Information

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

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1:17-10825 Amie Suzanne Greenberg
Adv#: 1:17-01061 Rubin v. Greenberg

Chapter 7

#24.00 Motion For Summary Judgment
Filed by Plaintiff Jeff Rubin

Docket 75

Tentative Ruling:

I. BACKGROUND

A. The Divorce Decree

In 2008, Jeffrey Rubin ("Plaintiff") and Amie Greenberg ("Defendant") sought to dissolve their marriage. Declaration of Jeff Rubin ("Rubin Declaration") [doc. 75], ¶¶ 2-3, Exhibit A. On February 1, 2011, the family court entered the parties' divorce decree (the "Divorce Decree"). Rubin Declaration, ¶ 3, Exhibit A.

At the time of their divorce, Plaintiff and Defendant had two minor children. Declaration of Amie Greenberg, ¶ 12. In the Divorce Decree, the family court ordered Defendant to make monthly child support payments to Plaintiff. Rubin Declaration, ¶ 3, Exhibit A. In an attachment, the family court awarded the parties joint legal and physical custody of the children. *Id.* The Divorce Decree incorporated a settlement agreement between the parties; in relevant part, the Divorce Decree stated that child custody and visitation and child support payments would be governed by the incorporated settlement agreement. *Id.* In relevant part, the incorporated settlement agreement provided for a "custodial timeshare" during the school year of 38.5% to Defendant and 61.5% to Plaintiff and 50/50 during summer breaks. *Id.* In addition, the settlement agreement provided that "[n]either party may yell loudly at the minor children or use corporeal punishment in disciplining the minor children" (the "Corporeal Punishment Provision"). *Id.*

The settlement agreement also provided that "[e]ach party shall pay one-half the cost of future therapy with Dr. Gold for the minor children." *Id.* The family court also incorporated prior orders into the Divorce Decree, including an order which instructed the parties to "continue and participate in the minor children's counseling with Dr.

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Gold." *Id.* One of the incorporated orders also included the following language:

Neither parent shall make derogatory remarks or express anger about the other parent, persons the other parent cares about or discuss the details of this evaluation or court proceedings with or in the presence of the minor children. They also shall not allow any of their family or friends to make derogatory remarks or express anger about the other parent, persons the other parent cares about or discuss the details of this evaluation or court proceedings with or in the presence of the two minor children.

Id. The family court reiterated this provision in a joint legal custody attachment to the Divorce Decree, again ordering that "[n]either parent will make or allow others to make negative comments about the other parent or the other parent's past or present relationships, family, or friends within hearing distance of the children." *Id.* The incorporated joint legal custody attachment also provided that "the terms and conditions of this order may be added to or changed as the needs of the children and parents change." *Id.*

B. Defendant's Ex Parte Request to Modify the Divorce Decree

On July 8, 2011, five months after entry of the Divorce Decree, Defendant requested "immediate orders *modifying the previous child custody and visitation orders* and granting to her legal and physical custody" of the parties' minor children ("Defendant's Request for OSC"). Rubin Declaration, ¶ 4, Exhibit B (emphasis added). In Defendant's Request for OSC, Defendant alleged that Plaintiff had abused their children. *Id.* Defendant's Request for OSC was based, in part, on a declaration by Defendant in which Defendant referenced the Corporeal Punishment Provision in the parties' marital settlement agreement, which was incorporated into the Divorce Decree.

On September 24, 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"). *Id.* After an evidentiary hearing on Defendant's request for modification of the Divorce Decree, the family court found

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that Defendant's allegations of child abuse were not credible. *Id.*

In relevant part, the family court ordered: (a) Defendant's Request for OSC is denied; (B) given the change of circumstances since the Divorce Decree, the child custody arrangement between the parties is modified such that Plaintiff will have sole decision-making authority in the areas of medical and mental health matters and Defendant's visitation on Wednesday nights will be limited; (C) Defendant must reimburse Plaintiff for one-half of the costs of the children's therapy with Dr. Gold; (D) Defendant shall pay to Plaintiff \$5,000.00 in attorneys' fees and costs as a sanction under Family Code § 271; and (E) Defendant shall pay to Plaintiff \$38,411.66 in attorneys' fees and costs as a sanction under Family Code § 3027.1. *Id.* As to the latter sanctions, the family court set a hearing on an order to show cause why these sanctions should not be imposed against Defendant (the "Sanctions OSC"). *Id.*

On November 14, 2012, the family court held a hearing on the Sanctions OSC. Rubin Declaration, ¶ 8, Exhibit C. 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.

Declaration of Amie Greenberg [doc. 21], ¶ 21, Exh. F.

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" and, together with the \$5,000.00 awarded to Plaintiff in the September 2012 Order, the "Sanctions Awards"). *Id.* (emphasis in original).

C. Defendant's Bankruptcy Case and this Adversary Proceeding

On March 31, 2017, Defendant filed a voluntary chapter 7 petition. On June 26, 2017,

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Plaintiff filed a complaint seeking a determination that the debts owed to him by Defendant are nondischargeable pursuant to 11 U.S.C. § 523(a)(15) (the "Complaint"). 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" (the "Medical Costs"). Complaint, ¶ 10.

On February 12, 2018, Defendant filed a motion for summary judgment [doc. 19] and a supporting memorandum of points and authorities [doc. 20] (the "First MSJ"). Plaintiff opposed the First MSJ [doc. 40].

On June 13, 2018, the Court held a hearing on the First MSJ. At that time, the Court issued a ruling granting the First Motion in part, on the basis that Defendant had partially satisfied the debts owed to Plaintiff in the amount of \$6,900, and otherwise denying the First Motion (the "First MSJ Ruling") [doc. 55]. The Court held that Defendant was not entitled to judgment as to the Sanctions Awards, the Medical Costs or Plaintiff's request for interest. As to the Medical Costs, the Court stated:

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[.]" The Divorce Decree provided that... each party was to "pay one-half the cost of future therapy with Dr. Gold for the minor children." 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.

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

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implied that the cost of therapy be equally shared regardless of the therapist." 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." 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 2012 Order.

First MSJ Ruling, p. 15. As to Plaintiff's request for interest, the Court held:

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. 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. 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.

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First MSJ Ruling, p. 16. On June 27, 2018, the Court entered an order granting in part and denying in part the First MSJ [doc. 63].

On October 12, 2018, Plaintiff filed a motion for summary judgment ("Plaintiff's MSJ") [doc. 77], requesting nondischargeability of the awards from the Sanctions Awards and the Medical Costs. Plaintiff did not mention nondischargeability of accrued interest. On October 12, 2018, Defendant filed a motion for summary judgment ("Defendant's MSJ") [doc. 77], requesting judgment in her favor as to the Sanctions Awards, the Medical Costs and interest. In Defendant's MSJ, Defendant argues that: (A) the Sanctions Awards were not incurred in connection with the Divorce Decree; (B) Plaintiff is not liable for the Medical Costs because the Divorce Decree required payment of half the costs of therapy with Dr. Gold, but did not require Defendant to make any other payments related to healthcare outside of her child support payments; and (C) Plaintiff has failed to produce any evidence that Defendant is liable for interest and none of the referenced orders require Defendant to make an interest payment.

On January 28, 2019, Defendant filed an opposition to Plaintiff's MSJ [doc. 94], making mostly the same arguments as in Defendant's MSJ. On January 29, 2019, Plaintiff filed an opposition to Defendant's MSJ ("Plaintiff's Opposition") [doc. 97]. In Plaintiff's Opposition, Plaintiff states that the September 2012 Order includes language that Defendant must pay "\$4,438.28 for the children's medical, therapy and educational expenses." Plaintiff's Opposition, p. 7. Plaintiff does not cite where in the September 2012 Order the court included such language. As for interest, Plaintiff requests that the Court not enter judgment and allow the parties to return to family court to have the family court clarify whether interest is to be paid on the Sanctions Awards. In his separate statement of disputed facts ("Plaintiff's Disputed Facts") [doc. 99], Plaintiff disputes Defendant's assertion that she is not liable for interest based on three statutes: California Code of Civil Procedure ("CCP") §§ 685.010, 680.270 and 680.230.

On January 28, 2019, Defendant filed evidentiary objections to the Rubin Declaration [doc. 96]. On February 6, 2019, the parties filed replies to each other's oppositions [docs. 103, 105].

II. ANALYSIS

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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 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

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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 is no genuine issue of material fact. The only issue is one of law: whether the Sanctions Awards, the Medical Costs and Plaintiff's requested interest payments are nondischargeable debts under 11 U.S.C. § 523(a)(15).

B. Burden of Proof

"A nondebtor ex-spouse in a § 523(a)(15) action bears the burden of proof to establish by a preponderance of the evidence that the subject debt 1) is not a support obligation of the kind described in § 523(a)(5), and 2) was incurred by the debtor in a divorce or separation or under a separation agreement, divorce decree or marital dissolution judgment or order." *In re Francis*, 505 B.R. 914, 919 (B.A.P. 9th Cir. 2014).

C. 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

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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, 2015 WL 1530086, at *6 (B.A.P. 9th Cir. Apr. 6, 2015), *aff'd*, 677 F. App'x 353 (9th Cir. 2017).

The parties do not dispute that the first element of § 523(a)(15) is satisfied, namely, that the subject debts are owed to a former spouse. Defendant also does not dispute that the subject debts are not debts for alimony, maintenance or support as defined in § 523(a)(5). As such, the sole issue is whether the subject debts were "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." 11 U.S.C. § 523(a)(15). The parties discuss three different debts: the Sanctions Awards, the Medical Costs and interest accruing on the Sanctions Awards.

i. The Sanctions Awards

Both parties request judgment in their favor as to the nondischargeability of the Sanctions Awards. Plaintiff contends the "seed" of the Sanctions Awards and the Medical Costs is the Divorce Decree, from which the subsequent proceedings giving rise to the debts arose. Defendant appears to argue that the Court must consider the Sanctions Awards separately from the OSC proceedings which gave rise to the Sanctions Awards. According to Defendant, the Sanctions Awards do not relate back to the Divorce Decree because the Sanctions Awards did not arise from a violation of or dispute over the Divorce Decree; rather, Defendant asserts that the Sanctions Awards arose from Defendant's allegations of abuse against Plaintiff, which Defendant considers a separate proceeding. Defendant also notes additional factors,

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such as the fact that the Sanctions Awards were entered a year and a half after the Divorce Decree and that the Divorce Decree did not mention or incorporate the Sanctions Awards.

In support of her argument, Defendant cites several cases in which courts held various debts *nondischargeable* under § 523(a)(15). Defendant does not cite any authority where a court held a similar debt dischargeable. Instead, Defendant argues that certain cases broaden the scope of § 523(a)(15) beyond the congressional intent.

Contrary to Defendant's arguments, the authorities support a holding that the Sanctions Awards are nondischargeable under § 523(a)(15). First, several authorities stress the broad scope of § 523(a)(15), including by reference to congressional intent. "Decisions of Circuit Courts of Appeals interpreting § 523(a)(15) have been consistent in recognizing its breadth." *Francis*, 505 B.R. at 919 (collecting authorities). "Courts have acknowledged that BAPCPA's changes to § 523(a)(15) significantly expanded the scope of the debts covered by that section. Because Congress enacted § 523(a)(15) to broaden the types of marital debts that are *nondischargeable*, beyond those described in § 523(a)(5), 'by implication a § 523(a)(15) exception from discharge would also be construed more liberally than other § 523 exceptions.'" *Adam*, 2015 WL 1530086 at *5 (quoting *In re Taylor*, 478 B.R. 419, 428 (B.A.P. 10th Cir. 2012)) (emphasis added). See also *In re McLain*, 533 B.R. 735, 741 (Bankr. C.D. Ill. 2015) ("[T]he policy underlying section 523(a)(5) and (a)(15) favors the enforcement of familial obligations over a fresh start for the debtor."); and *In re Golio*, 393 B.R. 56, 61 (Bankr. E.D.N.Y. 2008) ("The enactment of subsection 523(a)(15) and the increase in the scope of the discharge exception effected by the 2005 amendments, expresses Congress's recognition that the economic protection of dependent spouses and children under state law is no longer accomplished solely through the traditional mechanism of support and alimony payments.").

In light of these authorities, Defendant's contention that Congress did not intend a broad application of § 523(a)(15) is not convincing. Using the broad and liberal interpretation offered § 523(a)(15), the Court also is not persuaded by Defendant's argument that the Sanctions Awards can be detached from the parties' Divorce Decree. Rather, the Court agrees with the reasoning in *In re Tritt*, 2014 WL 1347763 (Bankr. E.D. Tex. Apr. 4, 2014), on which the Court relied in the First MSJ Ruling. In *Tritt*, the plaintiff and the defendant obtained a divorce decree in April 2008 that

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contained provisions regarding custody of their two children. *Tritt*, 2014 WL 1347763, at *1. Over two years later, the defendant filed an "emergency motion to protect children and request for temporary restraining order." *Id.*, at *2. After a hearing, the family court issued an order denying the emergency motion and ordering the defendant to pay sanctions and the plaintiff's attorneys' fees. *Id.* The defendant did not pay these amounts or any subsequent penalties asserted against her in connection with the parties' custody disputes. *Id.*, at *2-3.

The defendant filed a chapter 7 petition. *Id.*, at *3. In response, the plaintiff filed a complaint requesting nondischargeability of the debts owed to him pursuant to 11 U.S.C. § 523(a)(5) and/or (a)(15). *Id.* The parties then filed cross-motions for summary judgment, requesting judgment in their favor under § 523(a)(15). *Id.* In ruling in the plaintiff's favor, the *Tritt* court first held that a debt may be in connection with a divorce decree even if it was entered two years later in a lawsuit to enforce or modify the divorce decree:

[T]he Defendant's contention that § 523(a)(15) cannot encompass an order arising from a suit to modify the terms of a parent-child relationship established two years earlier because it is not an original proceeding to establish such rights must be rejected. Regardless of whether the action was initiated to enforce compliance with the existing decree (enforcement), or to alter the existing decree (modification), the attorney's fees were undoubtedly awarded... "*in connection with* " a divorce decree or other order of a court of record, as that term is used in § 523(a)(15).

Id., at *7 (internal citations omitted) (emphasis in *Tritt*). The court further held that sanctions awards were not exempt from the purview of § 523(a)(15):

Equally erroneous is any contention that § 523(a)(15) is inapplicable to the Defendant's debts because of the manner in which they were engendered. 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

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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 (internal citations omitted). In support of this position, the *Tritt* court cited other courts' decisions that such sanctions awards are covered by § 523(a)(15). *See Cavagnetto v. Stoltz*, 2013 WL 5926124, at *4 (N.D. Ill. Nov. 4, 2013) (affirming bankruptcy court's ruling that sanctions for filing frivolous pleadings and a contempt judgment for falsification of documents related to childcare expenses were nondischargeable under § 523(a)(15)); and *In re Eckstrom*, 2011 WL 5591648 (Bankr. N.D. Cal. Nov. 16, 2011) (holding that sanctions awarded under California Family Code § 271 based on debtor's discovery misconduct are nondischargeable under § 523(a)(15)).

The *Tritt* court also relied on *In re Gruber*, 436 B.R. 39 (Bankr. N.D. Ohio 2010). In *Gruber*, the family court entered a dissolution judgment on October 16, 2006. *Gruber*, 436 B.R. at 40. The dissolution judgment incorporated the parties' shared parenting plan. *Id.* Approximately one year after entry of this judgment, the debtor-defendant filed a motion to modify the parties' shared parenting plan and child support payments; the plaintiff responded with her own motion to reallocate parental rights and responsibilities. *Id.* After the hearing, the family court found in favor of the plaintiff and determined it was in the best interest of the children that the shared parenting plan be terminated and the plaintiff be named the sole custodial and residential parent of the parties' children. *Id.*, at 41.

The family court also awarded the plaintiff \$5,411.25 as attorneys' fees "in light of unrefuted threats of [the defendant] to outspend the [plaintiff] in this matter in an effort to cause [the plaintiff] to dismiss her action." *Id.* The defendant then filed a chapter 7 petition and the plaintiff moved for a judgment of nondischargeability under § 523(a)(5) and/or (a)(15). *Id.* In holding the debt nondischargeable, the *Gruber* court stated that "the award of attorney fees was made in a post-divorce proceeding, thus qualifying the award as a debt incurred 'in connection' with the Parties' divorce decree." *Id.*, at 44.

Other courts have reached similar conclusions. In *In re Howerton*, 2013 WL 4505368

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(Bankr. N.D. Ga. Jul. 19, 2013), the debtor and the plaintiff divorced in February 2009. In the parties' divorce decree, the plaintiff was designated as the custodial parent and the debtor was ordered to pay child support. *Howerton*, 2013 WL 4505368 at *1. After entry of the divorce decree, the debtor filed two actions, a complaint for modification of child support and a complaint to set aside the divorce decree. *Id.*, at *2. The court entered orders dismissing both complaints. *Id.* The court also noted that "with respect to [Debtor's asserted claims,] there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept them." *Id.*

As such, the court awarded the plaintiff attorneys' fees she incurred defending the actions. *Id.* The debtor then filed a chapter 7 petition and an adversary complaint for determination of dischargeability of the debt. *Id.* The court held that the debt owed to the plaintiff was nondischargeable under § 523(a)(15):

Accordingly, after a review of the statute and relevant case law, the Court concludes that the debt is non-dischargeable because of the provisions contained in 11 U.S.C. § 523(a)(15). In this case, the Award was in connection with a divorce decree. The Debtor filed a Complaint for Modification of Child Support and a Complaint to Set Aside the Divorce Decree and Settlement Agreement. Both motions filed by the Debtor pertained to the initial decree. The Superior Court determined that the Debtor's claims were without merit and that "there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept them." Accordingly, the Superior Court awarded fees to the Respondent. Those fees were incurred in the course of upholding the provisions of the divorce decree, and as a result, they satisfy the second prong of 11 U.S.C. § 523(a)(15).

Id., at *5. *See also In re Arnold*, 2016 WL 5390114, at *4-5 (Bankr. D. Colo. Jun. 9, 2016) (holding that post-divorce decree contempt order is nondischargeable under § 523(a)(15) and noting that "[w]hile bankruptcy entitles a debtor to a 'fresh start' by allowing the discharge of certain debts..., it does not enable Debtor to disregard a contempt order issued by a state court in a marital dissolution action"); *and In re Rosenfeld*, 535 B.R. 186, 192 (Bankr. E.D. Mich. 2015), *aff'd*, 558 B.R. 825 (E.D.

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Mich. 2016), *aff'd*, 698 F. App'x 300 (6th Cir. 2017) ("It is immaterial, for purposes of § 523(a)(15), whether a divorce-related debt arises after a judgment of divorce has been entered. And it makes no difference, for purposes of § 523(a)(15), whether the claim arises out of an obligation in the divorce judgment itself or out of an order entered after entry of the divorce judgment that creates new or modified obligations between the divorcing parties. Both types of debts are made *in connection with* the divorce decree or other order of a court of record.") (emphasis in *Rosenfeld*).

There is no legally significant fact that distinguishes this case from these authorities, and Defendant has not offered any good reason to deviate from these authorities. As in these authorities, Defendant filed a request to modify the custody provisions in the Divorce Decree. The family court *did* modify the custody provisions in the Divorce Decree by providing additional decisionmaking authority to Plaintiff and limiting Defendant's visitation rights. In connection with this proceeding on modification of the custody provisions, the family court sanctioned Defendant and ordered Defendant to reimburse Plaintiff for his incurred attorneys' fees and costs.

The proceedings which gave rise to the Sanctions Awards connect directly to provisions found in the Divorce Decree, including the custodial timeshare and visitation provisions, the provisions prohibiting the parties from making derogatory comments about one another, the Corporeal Punishment Provision on which Defendant's Request for OSC was based and the provision allowing for modification of the terms and conditions of the Divorce Decree. Consequently, the Sanctions Awards were "incurred by the debtor in connection with a separation agreement, divorce decree or other order of a court of record," and Plaintiff has met his burden of proving that the sanctions are nondischargeable under 11 U.S.C. § 523(a)(15).

ii. The Medical Costs

Plaintiff does not address the Medical Costs in Plaintiff's MSJ. In Plaintiff's Opposition to Defendant's MSJ, Plaintiff again refers to language in the September 2012 Order that allegedly states that Defendant must pay "\$4,438.28 for the children's medical, therapy and educational expenses." However, there is no such language in the September 2012 Order. Both the Divorce Decree and the September 2012 Order require payment of half the costs of the children's therapy "with Dr. Gold;" none of the orders require Defendant to pay other expenses (outside her monthly child support

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payments).

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This was Plaintiff's second opportunity to present evidence that Defendant is liable for the claimed \$4,438.28 in children's expenses. Plaintiff has presented no such evidence. In contrast, Defendant has referenced the Divorce Decree and the September 2012 Order, both of which discuss Defendant's liability only for regular child support payments and half of the therapy costs for therapy with Dr. Gold. In addition, Defendant referred to the November 14, 2012 hearing transcript attached to her prior declaration filed in connection with the First MSJ. At that hearing, the family court stated "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."

Based on the record, there is no genuine dispute of fact as concerns Plaintiff's claim for \$4,438.28. Plaintiff did not meet his burden of showing that Defendant is liable for medical, therapy or educational expenses beyond her regular child support payments and half the costs of therapy with Dr. Gold. Consequently, the Court will enter judgment in favor of Defendant as to the Medical Costs.

iii. Interest

In Defendant's MSJ, Defendant asserts that judgment should be entered in her favor because Plaintiff has not presented any evidence that Defendant is liable for interest, and the December 2012 Order specifies that at least \$38,411.66 of the Sanctions Awards is without interest.

In Plaintiff's Disputed Facts, Plaintiff references three statutes: CCP §§ 685.010, 680.270 and 680.230. Pursuant to CCP § 685.010(a), "[i]nterest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied." Under § 680.270, "[m]oney judgment' means that part of a judgment that requires the payment of money." Under § 680.230, "[j]udgment' means a judgment, order, or decree entered in a court of this state." Pursuant to these statutes, Plaintiff asserts that Plaintiff is entitled to interest on the Sanctions Awards even if the family court did not award interest.

There is no dispute that the December 2012 Order specifically states that the

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\$38,411.66 is awarded without interest. However, the family court did not clarify if the court was referring to prejudgment interest or postjudgment interest under CCP § 685.010. Moreover, the December 2012 Order is silent as to any interest payable on the \$5,000.00 award from the September 2012 Order. Because CCP § 685.010 appears to apply to all judgments entered by a California court, such as the family court, there remains a genuine dispute of fact as to whether the \$5,000.00 award accrued interest. In addition, there is a genuine dispute of fact as to whether, in December 2012, the family court ordered that no *prejudgment* interest would be paid on the \$38,411.66 or if the family court intended to preclude the payment of postjudgment interest as well.

In Plaintiff's Opposition, Plaintiff requests an opportunity to ask the family court for clarification regarding the issue of interest. Because this Court is deciding only the question of nondischargeability, the Court will enter a judgment holding that any award of interest applicable to the Sanctions Awards will be nondischargeable for the same reasons the Sanctions Awards are nondischargeable. The Court will not make any findings as to whether Defendant owes interest on the Sanctions Awards or the amount of any such accrued interest. Plaintiff may obtain clarification regarding these issues from the family court.

III. CONCLUSION

The Court will enter judgment in favor of Plaintiff as to the Sanctions Awards, including that any interest accrued on the Sanctions Awards is nondischargeable for the same reasons the Sanctions Awards are nondischargeable. The Court will not make any findings as to whether Defendant is liable for interest on the Sanctions Awards or the amount of any such accrued interest. The Court will enter judgment in favor of Defendant as to the Medical Costs.

The Court will prepare an order.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

Defendant's Evidentiary Objections to the Rubin Declaration
para. 4 – sustain as to "Within 5 months after the dissolution, the Defendant

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orchestrated a scheme to gain custody of our children;" overrule as to the rest
paras. 5-6, 8 – overrule
para. 9 – sustain as to "Instead, she continued her efforts to turn the children,
specifically Matthew, against me;" overrule as to the rest
paras. 10-13 – sustain as irrelevant
exs. D, E – sustain as irrelevant

The Court also will overrule any objections to statements made in the body of
Plaintiff's MSJ, and not in the Rubin Declaration; those statements are not evidence.

Party Information

Debtor(s):

Amie Suzanne Greenberg

Represented By
Steven J Renshaw

Defendant(s):

Amie Greenberg

Pro Se

Movant(s):

Jeff Rubin

Represented By
Sevan Gorginian

Plaintiff(s):

Jeff Rubin

Represented By
Sevan Gorginian

Trustee(s):

Amy L Goldman (TR)

Pro Se

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Adv#: 1:17-01061 Rubin v. Greenberg

#25.00 Motion For Summary Judgment
Filed by Defendant Amie Greenberg

Docket 77

Tentative Ruling:

See calendar no. 24.

Party Information

Debtor(s):

Amie Suzanne Greenberg

Represented By
Steven J Renshaw

Defendant(s):

Amie Greenberg

Pro Se

Movant(s):

Amie Greenberg

Pro Se

Plaintiff(s):

Jeff Rubin

Represented By
Sevan Gorginian

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:18-11150 Robert Edward Zuckerman

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Adv#: 1:18-01086 Abel v. Zuckerman et al

#26.00 Motion by Defendants Sunderland McCutchan, Inc., a California corporation, Sunderland McCutchan LLP, a California partnership, and B. Edward McCutchan, Jr., an individual, to Dismiss Richard Abel's First Amended Adversary Complaint

Docket 24

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On May 4, 2018, Robert Zuckerman ("Debtor") filed a voluntary chapter 11 petition. The deadline to file a complaint for nondischargeability of a debt or to object to Debtor's discharge was set as August 6, 2018 (the "Dischargeability Deadline").

On August 2, 2018, Richard Abel ("Plaintiff") filed a complaint against Debtor and Sunderland/McCutchan, Inc., among others, initiating this adversary proceeding. On September 13, 2018, Plaintiff filed a first amended complaint (the "FAC") [doc. 11], adding Sunderland/McCutchan LLP and B. Edward McCutchan, Jr. as defendants (together with Sunderland/McCutchan, Inc., the "McCutchan Defendants"). As relevant to Debtor and the McCutchan Defendants, Plaintiff asserts claims for declaratory and injunctive relief, avoidance of transfers under 11 U.S.C. §§ 547 and 549 and nondischargeability of the debt owed to Plaintiff pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(2)(B) and (a)(6). [FN1]. In relevant part, the FAC includes the following allegations:

Debtor is an insider of certain corporations, including ZBCO (collectively, the "Corporations"). These entities are also listed on Debtor's schedules and named as co-defendants in the FAC.

Plaintiff has a claim against Debtor in connection with Liebling v.

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Goodrich, Sonoma County Superior Court Case No. SCV-245743 (the "State Court Action"). On June 29, 2017, in enforcing a judgment entered in favor of Plaintiff in the State Court Action, Plaintiff obtained a *Notice of Judgment Lien* (the "JL1 Lien"). On January 24, 2018, the state court issued an Order: (i) Granting Motion for Assignment Order (ii) Granting Motion for Restraining Order (iii) Granting Order to Seize (the "Assignment Order"). On January 25, 2018, the Notice of Entry of Order and the Assignment Order were served on Debtor and the McCutchan Defendants.

On January 24, 2018, Debtor's attorney, Nikki B. Allen, held funds that belonged to Debtor in Ms. Allen's Interest on Lawyer's Trust Account ("IOLTA") and additional amounts of Debtor's funds were deposited into the IOLTA after January 24, 2018. On April 10, 2018, Debtor, Ms. Allen and the McCutchan Defendants appeared in state court to discuss bench warrants issued against Debtor. At that time, Debtor directed Ms. Allen to use the funds from the IOLTA to pay one of the McCutchan Defendants \$8,135.00 for unpaid sanctions owed by Debtor.

Plaintiff was not a party to the bench warrants against Debtor, and Plaintiff was not served with any notice of the April 10, 2018 hearing, although Ms. Allen did represent in a voicemail that she would appear on that date for an *ex parte* hearing. The state court judge did not order the payment of sanctions; instead, the McCutchan Defendants requested the sanctions.

The Assignment Order transferred all title, rights and interest in Debtor's IOLTA funds to Plaintiff as of January 24, 2018. Therefore, the \$8,135.00 payment was a preferential transfer. Debtor, Ms. Allen and the McCutchan Defendants willfully and intentionally violated the Assignment Order and are in contempt of that order. Debtor's funds are now in the control of the McCutchan Defendants.

On August 1, 2018, Debtor filed amended schedules disclosing that Debtor had transferred 20% of ZBCO's profits to his sons; transferred

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20% Continental-SJ; and created a new interest in Phoenix-Holdings (the "Postpetition Transfers") after the petition date. The amended schedules also disclosed that four of the Corporations owe Debtor large amounts of money. In addition, Debtor has received prepetition and postpetition family support. Debtor also maintains an undisclosed Venmo account.

As to nondischargeability, Plaintiff obtained a judgment of fraud against Debtor in state court (the "Amended Judgment"). Debtor falsely represented in writing that he would use money advanced by Plaintiff for land development in Malibu. However, Debtor admitted that he had no documentation showing where any of the funds from Plaintiff went, and none of the parcels ever had physical improvements made upon them. Debtor also misrepresented that each separate loan obtained by different parties would be secured by its own separate first deed of trust, misrepresented the number of parcels available and never made any payments on any loans.

In addition, Debtor applied for the loans with fraudulent and inflated appraisals for the purpose of deceiving Plaintiff. Plaintiff reasonably relied on the representations made by Debtor and Plaintiff sustained damages as a proximate result of Debtor's intentional fraud.

Amended Complaint, pp. 7-24. To the FAC, Plaintiff attached the Assignment Order. FAC, Exhibit F. In the Assignment Order, the state court held, in relevant part:

PART (1) – THE ASSIGNMENT ORDER

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 business entity or person in which Cruickshank, Skarpas, 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,

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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 . . .

PART (2) – THE RESTRAINING ORDER

IT IS FURTHER ORDERED that pursuant to Code of Civil Procedure section 708.520 the judgment debtors Cruickshank, Skarpas, 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.

FAC, Exhibit F.

On October 10, 2018, the McCutchan Defendants filed a motion to dismiss the FAC (the "McCutchan Motion") [doc. 24], asserting that: (A) the FAC is untimely as to them because some of the McCutchan Defendants were added to the FAC after the Dischargeability Deadline; (B) Plaintiff does not have standing to pursue avoidance of transfers on behalf of the estate; and (C) the sanction payment by Debtor does not qualify as a preferential transfer under 11 U.S.C. § 547(b).

On January 10, 2019, Debtor filed a motion to dismiss the FAC (the "Debtor Motion") [doc. 55]. In the Debtor Motion, Debtor argues that: (A) Plaintiff did not sufficiently make allegations for declaratory relief as to the Assignment Order; (B) Plaintiff does not have standing to pursue avoidance of transfers on behalf of the estate; (C) and Plaintiff has not stated a claim for relief under 11 U.S.C. § 523(a)(2)(A), (a)(2)(B) or (a)(6). On February 05, 2019, Plaintiff filed oppositions to both motions [docs. 60, 62].

On December 17, 2018, Plaintiff filed a motion to convert Debtor's case from a chapter 11 case to a case under chapter 7 (the "Motion to Convert") [Bankruptcy Docket, doc. 102]. The Motion to Convert is set for hearing at 2:00 p.m. on March 7,

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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 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

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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).

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. Timeliness of Claims against McCutchan Defendants

In the McCutchan Motion, the McCutchan Defendants assert that the FAC is untimely as to them because some of the McCutchan Defendants were named as defendants after the Dischargeability Deadline. However, the Dischargeability Deadline pertains only to claims under 11 U.S.C. §§ 523 and 727, and the claims against the McCutchan Defendants are for declaratory relief and avoidance of a transfer under § 547(b). As such, the FAC is not untimely as to the McCutchan Defendants.

C. Standing - 11 U.S.C. §§ 547(b) and 549(a)

Both Debtor and the McCutchan Defendants assert that Plaintiff does not have standing to pursue the avoidance claims in the FAC. Pursuant to 11 U.S.C. § 547(b), "the trustee may avoid any transfer of an interest of the debtor in property" –

(1) to or for the benefit of a creditor;

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(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made -- (A) on or within 90 days before the date of the filing of the petition; or (B) between 90 days and 1 year before the date of filing of the petition, if such creditor at the time such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if -- (A) the case were a case under chapter 7 of this title; (B) the transfer had not been made; and (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

(emphasis added). Pursuant to 11 U.S.C. § 549(a), "the *trustee* may avoid a transfer of property of the estate . . . that occurs after the commencement of the case; and . . . that is not authorized under this title or by the court." (emphasis added).

Avoidance claims under the Bankruptcy Code empower a trustee in bankruptcy to avoid and recover, for the benefit of the estate, transfers of property by a debtor. A chapter 11 debtor in possession is vested with certain rights, powers and duties of a trustee, including the power to bring avoidance actions. 11 U.S.C. § 1107(a). Creditors in a bankruptcy case typically are not vested with these powers.

In re Know Weigh, L.L.C., 576 B.R. 189, 206 (Bankr. C.D. Cal. 2017) (citing *In re Curry & Sorensen, Inc.*, 57 B.R. 824, 827 (B.A.P. 9th Cir. 1986)). Nevertheless, "[i]t is well settled that in appropriate situations the bankruptcy court may allow a party other than the trustee or debtor-in-possession to pursue the estate's litigation." *In re Spaulding Composites Co.*, 207 B.R. 899, 903 (B.A.P. 9th Cir. 1997).

"The Ninth Circuit [has not] adopted a definitive standard for evaluating when a [creditor] should be granted derivative standing." *In re Catholic Bishop of N. Alaska*, 2009 WL 8412174, at *5 (Bankr. D. Alaska Sept. 11, 2009). However, two decisions from the Bankruptcy Appellate Panel of the Ninth Circuit "have indicated that the court should consider whether the proposed litigation is 'necessary and beneficial' or the failure of the debtor in possession to act is 'unjustifiable.'" *Id.* (citing *Spaulding*, 207 B.R. at 904; and *Curry*, 57 B.R. at 828). The Ninth Circuit Court of Appeals also "has indicated that derivative standing is appropriate where the debtor in possession's

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failure to bring a suit ‘does not adequately protect the creditor’s interests or the chose in action is of inconsequential value to the estate.’” *Id.* (quoting *Biltmore Assocs., LLC v. Twin City Fire Ins. Co.*, 572 F.3d 663, 674 n.41 (9th Cir. 2009)). “The Fifth Circuit has stated that bankruptcy courts generally require ‘that the claim be colorable, that the debtor-in-possession [has] refused unjustifiably to pursue the claim, and that the [creditor] first receive leave to sue from the bankruptcy court.’ These criteria have been endorsed by other courts and by *Collier*.” *Id.* (citing *Louisiana World Expo. v. Fed. Ins. Co.*, 858 F.2d 233, 247 (5th Cir. 1988); and 7 *Collier on Bankruptcy* ¶ 1103.05[6][a] at 1103-36-1103-37 (15th ed. revised 2009)).

"The requirement of court approval serves an important gatekeeping function with respect to the use of estate powers by anyone other than the trustee or debtor in possession." *Know Weigh, L.L.C.*, 576 B.R. at 209. "Although the standard and better practice is to obtain court approval before filing bankruptcy avoidance actions that are based on derivative standing, a bankruptcy court may exercise its discretion to grant such approval retroactively—after the complaint has been filed but before recovery." *Id.*, at 210 (citing *In re Hashim*, 379 B.R. 912, 922 (B.A.P. 9th Cir. 2007)).

Here, Plaintiff does not have standing to assert the avoidance claims in the FAC. Although Plaintiff may retroactively move for authorization to pursue the claims, Plaintiff has not filed a motion for authority to pursue the claims, and has not discussed why Plaintiff should be given such authority using the applicable legal standards. To the extent Plaintiff argues that he has standing because of the Assignment Order, assignments under CCP § 705.510, on which the Assignment Order is based, do not assign causes of action to assignees. *See AmeriPride Servs. Inc. v. Texas E. Overseas Inc.*, 782 F.3d 474, 491 (9th Cir. 2015) ("In California, '[a] cause of action for damages is itself personal property,' rather than a type of payment. A court therefore may assign only the right to payment due from a cause of action under section 708.510, and may not assign the cause of action directly.") (emphasis added). As such, the Assignment Order does not give Plaintiff standing.

In light of the Motion to Convert filed by Plaintiff, which is set for hearing on March 7, 2019 at 2:00 p.m., Debtor’s chapter 11 case may be converted to a chapter 7 case. If the Court converts Debtor’s case, a chapter 7 trustee will be appointed and will have exclusive standing to pursue avoidance claims on behalf of the estate. In light of this situation, the Court will continue this matter to March 7, 2019 at 2:00 p.m. At that

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San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, February 20, 2019

Hearing Room 301

2:30 PM

CONT... **Robert Edward Zuckerman**

Chapter 11

time, if the Court converts Debtor's case, the Court will dismiss Plaintiff's avoidance claims without prejudice. If the Court does not convert Debtor's case, the Court will set deadlines for Plaintiff to file a motion for authority to pursue the applicable avoidance claims.

D. Plaintiff's Avoidance Claims against Debtor

Even if Plaintiff had standing, Plaintiff has not sufficiently alleged claims under 11 U.S.C. §§ 547 and 549 against *Debtor*. Pursuant to 11 U.S.C. § 550(a), "to the extent a transfer is avoided under section 547... [or] 549..., the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from... (1) *the initial transferee* of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate transferee of such initial transferee." 11 U.S.C. § 550(a)(1), (a)(2) (emphasis added). A debtor-transferor "may not be held liable as a transferor, an initial transferee, or as the entity for whose benefit the transfer was made." *In re Wolf*, 2018 WL 6192244 (Bankr. N.D. Ill. 2018) (aggregating cases).

Because Debtor is not a *transferee*, Plaintiff has not properly alleged claims under §§ 547 and 549 as against Debtor. Plaintiff asserts that the claims against Debtor are proper because Debtor maintained "dominion" over the allegedly transferred assets. The "dominion test" referenced by Plaintiff provides that a transferee must have sufficient control or dominion over an asset to properly be considered a transferee under these statutes. *See, e.g. In re Cohen*, 300 F.3d 1097, 1102 (9th Cir. 2002). The dominion test does *not* serve to convert a transferor to a transferee. As such, even if Plaintiff had standing, Plaintiff cannot assert claims under §§ 547 and 549 against *Debtor*, and the Court will dismiss these claims against Debtor with prejudice.

E. Plaintiff's Claims for Declaratory and Injunctive Relief

Pursuant to CCP § 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*

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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.

(emphasis added). In the FAC, Plaintiff requests a declaratory judgment that, pursuant to the Assignment Order, Plaintiff is the owner of Debtor's rights to: (A) receive payment from certain corporations; (B) the IOLTA funds; (C) payment for family support; (D) payment from the Venmo account; (E) income generated from the use of Debtor's real estate license and general contractor's license; and (F) any other right to payment as of January 24, 2018. [FN2]. Plaintiff also requests a declaratory judgment that the transfer of 20% of the profits of ZBCO to Debtor's sons violated the restraining order in the Assignment Order. [FN3].

The FAC includes sufficient allegations regarding Debtor's right to payment from the corporations and Debtor's licenses. However, Plaintiff has not adequately alleged that Debtor has a *right* to payment of family support, e.g., from a court order. To the extent Debtor is receiving family support as a gift, such an interest is not an assignable interest because Debtor does not have a right to receive such payments. *Casiopea Bovet, LLC v. Chiang*, 12 Cal.App.5th 656, 661 (Ct. App. 2017) ("This section does not make any property assignable that is not already assignable.").

Moreover, Plaintiff has not made sufficient allegations as to any interest Plaintiff may have in Debtor's Venmo account. For instance, were the funds in Debtor's Venmo account from before or after January 24, 2018, the date of the Assignment Order? Are the deposits in Debtor's Venmo account gifts?

As to the IOLTA funds, Plaintiff has not sufficiently alleged that Debtor has a right to reimbursement of the IOLTA funds. Regarding Plaintiff's claims for declaratory

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relief, Plaintiff does not sufficiently allege that the IOLTA funds originated from a source covered by the Assignment Order.

As to the alleged transfer of 20% of the profits of ZBCO, the Assignment Order precluded Debtor from transferring any rights to payment. However, Debtor's amended schedules do not show a *transfer* of profits. Moreover, Plaintiff has not adequately alleged that Debtor otherwise had a right to payment of 20% of ZBCO's profits. As such, Plaintiff's allegations regarding the ZBCO "transfer" are insufficient.

Finally, Plaintiff's allegation that the Assignment Order covers "any other right to payment that Debtor had as of January 24, 2018 or in the future" is too broad. The scope of the Assignment Order is not unlimited; for instance, the assignment is effective "only to the extent necessary to satisfy the money judgment," CCP § 708.510(c), and does not give Plaintiff a right to property that is not assignable. *Casiopea*, 12 Cal.App.5th at 661.

Plaintiff also references "injunctive relief" in the same section Plaintiff asserts declaratory relief. However, Plaintiff does not make allegations regarding the elements of a permanent injunction. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S.Ct. 1837, 1839, 164 L.Ed.2d 641 (2006) (for permanent injunction, a plaintiff must show "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction"). It is unclear if Plaintiff is requesting a permanent injunction from this Court or if Plaintiff requests a declaratory judgment that the restraining order from the state court bars Debtor's transfer of certain assets. To the extent Plaintiff is requesting a permanent injunction from this Court, the Court will dismiss Plaintiff's claim for a permanent injunction with leave to amend.

F. 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

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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 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, Plaintiff incorporates the Amended Judgment into the FAC. The Amended Judgment, combined with the allegations in the FAC, sufficiently state a claim under § 523(a)(2)(A). Regarding the first element, the state court held that Debtor made the following misrepresentations: (1) Debtor purposefully overvalued the security for Plaintiff's initial loans; (2) the Malibu property could not be developed as represented by the Debtor; (3) Debtor represented there were many more parcels of land than actually available; and (4) Debtor falsely represented he would use funds loaned to develop the Malibu land, but did not.

As to the second and third elements of § 523(a)(2)(A), the state court held that Debtor had "no intent whatsoever to use the money in the Malibu land development project." Amended Judgment, p. 7. In addition, Plaintiff alleges that Debtor knew there were fewer parcels than Debtor represented at the time Debtor made those representations, and that Debtor applied for the subject loans with the intent and purpose of deceiving Plaintiff.

With respect to reliance, Plaintiff alleges that Debtor represented to Plaintiff that

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Debtor had a personal net worth of over \$10 million and that he was a highly successful and sophisticated real estate developer, builder and broker. Plaintiff also alleges that he reasonably relied on the representations made in Debtor's loan applications. As to the final element of § 523(a)(2)(A), Plaintiff alleges that, because of the intentional misrepresentations by Debtor, Plaintiff was injured and suffered damages as stated in the FAC.

Debtor argues that issue preclusion should not apply to the Amended Judgment and the state court's findings related to fraud. However, the Court is not considering issue preclusion at this time; the Court is deciding whether the FAC and the incorporated Amended Judgment contain sufficient allegations under § 523(a)(2)(A). For the reasons stated above, Plaintiff has sufficiently alleged a claim under § 523(a)(2)(A).

G. 11 U.S.C. § 523(a)(2)(B)

Pursuant to 11 U.S.C. § 523(a)(2)(B), the plaintiff must show that the debtor incurred a debt 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 money, property, services, or credit reasonably relied; and
- (iv) that the debtor caused to be made or published with intent to deceive....

Plaintiff bases his § 523(a)(2)(B) claim on appraisals provided by Debtor and his agent which falsely represented that the Malibu land included 13 separate parcels. However, Plaintiff does not allege that either Debtor or an insider of Debtor owned or had an interest in the Malibu land. As such, the allegedly fraudulent appraisals do not necessarily relate to "*the debtor's or an insider's*" financial condition, and Plaintiff has not made sufficient allegations as to the second element of § 523(a)(2)(B). Consequently, the Court will dismiss Plaintiff's claim under § 523(a)(2)(B) with leave to amend.

H. 11 U.S.C. § 523(a)(6)

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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 original).

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).

Here, Plaintiff bases his claim under § 523(a)(6) on the state court’s award of punitive damages. In the Amended Judgment, the state court awarded punitive damages pursuant to California Civil Code (“CCC”) § 3294 and found “by clear and convincing evidence that [Debtor] willfully, purposely, maliciously, intentionally, oppressively, maliciously and wrongfully engaged in fraudulent conduct....” Amended Judgment, p. 11.

Under CCC § 3294, “malice” is defined as *either*: (1) “conduct which is intended by the defendant to cause injury to the plaintiff” or (2) “despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.” CCC § 3294(c)(1). Only the former definition of malice encompasses the type of willful conduct contemplated by § 523(a)(6). *In re Plyam*, 530 B.R. 456, 465 (B.A.P. 9th Cir. 2015). Moreover, “[i]n the context of [CCC] § 3294, the term ‘willful’ refers only to the deliberate conduct committed by a person in a despicable manner. The statute, thus, employs the dictionary definition of ‘willful.’”

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Id., at 469.

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The state court did not clarify which definition of malice it employed, nor did the state court expand on its definition of willfulness. As such, the Amended Judgment alone is insufficient to plead a claim under § 523(a)(6).

I. Request for More Definite Statement

In the Debtor Motion, Debtor requests a more definite statement regarding claims from other parties that have been assigned to Plaintiff. In an amended complaint, Plaintiff must include allegations regarding the alleged assignments of claims to Plaintiff, such as the identities of the assignors, the dates of assignment and the amounts assigned to Plaintiff.

III. CONCLUSION

The Court will dismiss Plaintiff's claims under 11 U.S.C. § 523(a)(2)(B) and (a)(6) with leave to amend. The Court will deny the Debtor Motion as to Plaintiff's claim under § 523(a)(2)(A), with the exception that Plaintiff must provide a more definite statement as to the alleged assignments, such as the identity of assignors, the dates of assignment and the amounts assigned to Plaintiff.

The Court also will deny the Debtor Motion as to the claim for declaratory relief related to income derived from Debtor's businesses and professional licenses. The Court will grant the Debtor Motion as to the family support payments, the IOLTA funds, the Venmo account, the transfer of 20% of ZBCO's profits and "any other right to payment that Debtor had as of January 24, 2018," with leave to amend. If Plaintiff is requesting a permanent injunction, the Court will dismiss the request with leave to amend.

As to Plaintiff's claims under §§ 547 and 549, the Court will dismiss the claims *against Debtor* with prejudice. As to the claims against other parties, the Court will continue this matter to **2:30 p.m. on March 13, 2019**. If the Court converts Debtor's case to a chapter 7 case, the Court will dismiss the claims under §§ 547 and 549, against nondebtor parties, without prejudice. If the Court does not convert Debtor's case to chapter 7, the Court will set a deadline for Plaintiff to file a motion for

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authority to pursue the avoidance claims. At the continued hearing on March 13, 2019, the Court will set a deadline for Plaintiff to file an amended complaint.

The Court will prepare the orders.

FOOTNOTES

1. Plaintiff also asserts a claim of turnover against the corporate defendants, but not against Debtor or the McCutchan Defendants.
2. Neither Debtor nor the McCutchan Defendants request dismissal of Plaintiff's second claim for relief for declaratory judgment related to the JL1 Lien.
3. Plaintiff references the Court's ruling on a motion to restrict use of cash collateral filed by Plaintiff in Debtor's bankruptcy case [Bankruptcy Docket, doc. 75]. However, in that ruling, the Court held that Plaintiff did not have a right to assignment of businesses, licenses or litigation claims, but *may* have a right to money owed to Debtor from use of the licenses or money derived from the businesses. In contrast to the subject of that ruling, here, Plaintiff alleges a right to money generated from Debtor's businesses and licenses, among other assets the Court did not discuss in the ruling.

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

B. Edward McCutchan Jr. an

Represented By
Edward McCutchan

Sunderland/McCutchan LLP, a

Represented By
Edward McCutchan

Phoenix Holdings, LLC a California

Pro Se

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CONT... Robert Edward Zuckerman Chapter 11

DOES 1-20	Pro Se
Nickki B Allen, an individual	Pro Se
Maravilla Center, LLC, a California	Pro Se
Sunderland/McCutchan, Inc., a	Represented By Edward McCutchan
San Jacinto Z, LLC, a California	Pro Se
Contiental San Jacinto, LLC, a	Pro Se
Zuckerman Building Company, a	Pro Se
Valley Circle Estates Realty Co., a	Pro Se
Continental Communities, LLC, a	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Rezinate San Jacinto, LLC, a	Pro Se

Movant(s):

B. Edward McCutchan Jr. an	Represented By Edward McCutchan
Sunderland/McCutchan, Inc., a	Represented By Edward McCutchan
Sunderland/McCutchan LLP, a	Represented By Edward McCutchan

Plaintiff(s):

Richard Abel	Pro Se
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1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01086 Abel v. Zuckerman et al

#27.00 Motion by Debtor and Defendant Robert Edward Zuckerman to Dismiss First Amended Complaint

Docket 55

Tentative Ruling:

See calendar no. 26.

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

B. Edward McCutchan Jr. an

Represented By
Edward McCutchan

Sunderland/McCutchan LLP, a

Represented By
Edward McCutchan

Phoenix Holdings, LLC a California

Pro Se

DOES 1-20

Pro Se

Nickki B Allen, an individual

Pro Se

Sunderland/McCutchan, Inc., a

Represented By
Edward McCutchan

Maravilla Center, LLC, a California

Pro Se

San Jacinto Z, LLC, a California

Pro Se

Contiental San Jacinto, LLC, a

Pro Se

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CONT... Robert Edward Zuckerman Chapter 11

Zuckerman Building Company, a	Pro Se
Valley Circle Estates Realty Co., a	Pro Se
Continental Communities, LLC, a	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Rezinate San Jacinto, LLC, a	Pro Se

Movant(s):

Robert Edward Zuckerman	Represented By Sandford L. Frey
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Plaintiff(s):

Richard Abel	Pro Se
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1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01086 Abel v. Zuckerman et al

- #28.00** 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)

fr. 11/14/18 (stip); 1/9/2019;

Docket 11

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on March 13, 2019**, to be held with the continued hearing on the motions to dismiss.

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

Continental San Jacinto, LLC, a

Pro Se

San Jacinto Z, LLC, a California

Pro Se

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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
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1:18-10642 Eduardo Ablan Jacinto

Chapter 11

#1.00 First and Final Fee Application for compensation for legal services rendered and reimbursement of expenses incurred by attorney for Chapter 11 Debtor-in-possession

Docket 89

Tentative Ruling:

Anyama Law Firm ("Applicant"), general counsel to debtor in possession – approve fees of \$13,300.00 and reimbursement of expenses of \$609.50, pursuant to 11 U.S.C. § 330, on a final basis. Applicant may collect 100% of approved fees and 100% of approved reimbursement of expenses. The Court will not approve \$280.00 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.

In accordance with the foregoing, the Court will not approve the fees billed by

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CONT... Eduardo Ablan Jacinto

Chapter 11

Applicant for the services identified below because they were unnecessary:

Date	Timekeeper	Description	Time	Rate	Fee
3/27/18	OA	Motions: Prepared and reviewed Motion to Use Cash Collateral	0.70	\$400.00	\$280.00

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):

Eduardo Ablan Jacinto

Represented By
Onyinye N Anyama

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1:00 PM

1:13-17502 Glenroy E Day, Jr.

Chapter 11

#2.00 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; 11/15/18

Docket 1

Tentative Ruling:

In light of the United States District Court's affirmance of the *Order Regarding Debtor's Motion for Order Determining Value of Collateral* [doc. 261], how do the parties intend to proceed?

Party Information

Debtor(s):

Glenroy E Day Jr.

Represented By
Thomas B Ure

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1:14-10097 Rodney M Mojarro

Chapter 11

#2.01 U.S. Trustee Motion to dismiss or convert case

Docket 238

Tentative Ruling:

Grant.

On January 7, 2014, Rodney M Mojarro (the "Debtor") filed a voluntary chapter 11 petition. On September 9, 2015, the Court confirmed the Debtor's chapter 11 plan (the "Plan") [doc. 190].

On August 2, 2018, the Debtor filed a motion for order closing case on interim basis [doc. 234]. As required by Local Bankruptcy Rule ("LBR") 9013-1(3)(A), the Debtor also filed a declaration of non-opposition to the motion. However, contrary to LBR 9013-1(3)(C), the Debtor did not deliver a judge's copy of the motion, notice and declaration of non-opposition. Moreover, contrary to LBR 9013-1(3)(B), the Debtor did not lodge a proposed order.

On November 29, 2018, the United States Trustee filed a motion to dismiss or convert the Debtor's case (the "Motion") [doc. 238]. On February 7, 2019, the United States Trustee ("UST") filed a supplement to the Motion [doc. 244]. In violation of UST requirements, the Debtor has not filed his post-confirmation quarterly reports for the third and fourth quarters of 2018.

11 U.S.C. § 1112(b) provides in pertinent part:

(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. . . .

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CONT...

Rodney M Mojarro

Chapter 11

...

(4) For purposes of this subsection, the term ‘cause’ includes . . .

(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;

“[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).

Here, the United States Trustee has met the movant's burden to prove "cause" by preponderance of the evidence. The Debtor has not submitted post-confirmation quarterly reports for the third and fourth quarters of 2018.

It appears that conversion of this chapter 11 case to chapter 7 is in the best interest of creditors and the estate. As set forth in the Debtor’s schedules [doc. 14], as of the petition date (January 7, 2014), the Debtor held an interest in four real properties and an LLC. Based on the Debtor's most recently filed postconfirmation status report [doc. 227], as of November 30, 2017, the Debtor was current on his chapter 11 plan payments or on payments to be made in accordance with loan modification agreements. Since the petition date, the value of the Debtor's real properties and the Debtor’s interest in the LLC may have increased, and there may be nonexempt equity in those assets. A chapter 7 trustee is in the best position to investigate the assets of the estate to determine if such assets should be liquidated for the benefit of creditors. Should there be no such equity, the Debtor may be able to obtain a discharge through

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1:00 PM

CONT... **Rodney M Mojarro**
chapter 7.

Chapter 11

In light of the foregoing, pursuant to 11 U.S.C. § 1112(b)(1) and (b)(4)(F), the Court will grant the Motion and convert this case to a case under chapter 7.

The United States 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):

Rodney M Mojarro

Represented By
Michael J Jaurigue
Nam H. Le
Elaine Le
Ryan A. Stubbe

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

Thursday, February 21, 2019

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, 8/2/18; 1/17/19

Docket 1

Tentative Ruling:

- NONE LISTED -

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, February 21, 2019

Hearing Room 301

1:00 PM

1:14-15621 Edward D. Roane

Chapter 11

#4.00 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; 8/16/18

Docket 1

Tentative Ruling:

If the reorganized debtor files a declaration demonstrating that he has become current on his obligation to secured creditor Wells Fargo Bank, N.A., the Court will continue the postconfirmation status conference to **August 22, 2019**.

If the Court continues the postconfirmation status conference to that date, no later than **August 8, 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**.

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 21, 2019

Hearing Room 301

1:00 PM

1:17-12030 Herbert Simmons

Chapter 11

#5.00 Post Confirmation 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; 9/13/18

Docket 1

*** VACATED *** REASON: Order Granting Motion for Final Decree
entered 2/11/19 [Dkt. 168]

Tentative Ruling:

- NONE LISTED -

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, February 21, 2019

Hearing Room 301

1:00 PM

1:18-10417 Deborah Lois Adri

Chapter 11

#6.00 Disclosure statement hearing re: plan of reorganization

Docket 197

Tentative Ruling:

The debtor has not filed and served notice of the hearing on the adequacy of the debtor's disclosure statement [doc. 197].

In light of the appointment of a chapter 11 trustee on February 11, 2019 [doc. 285], what are the debtor's intentions regarding the debtor's proposed chapter 11 plan [doc. 196]?

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, February 21, 2019

Hearing Room 301

1:00 PM

1:18-11580 Kaliston Jose Nader

Chapter 11

#7.00 Status conference re: chapter 11 case

from: 8/2/18; 1/17/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on April 25, 2019**, to assess if the debtor has timely filed a proposed chapter 11 plan and related disclosure statement by the extended deadline of April 15, 2019. If the debtor does not timely file a proposed chapter 11 plan and related disclosure statement, no later than **April 15, 2019**, the debtor must file and serve a status report, **supported by evidence**, explaining why the debtor did not timely file the documents.

Appearances on February 21, 2019 are excused.

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, February 21, 2019

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#8.00 Status conference re chapter 11 case

fr. 10/11/18; 12/6/18

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on April 11, 2019**, to be held in connection with the hearing on the adequacy of the debtor's proposed disclosure statement [doc. 76].

Appearances on February 21, 2019 are excused.

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, February 21, 2019

Hearing Room 301

1:00 PM

1:18-12325 12 Cumpston Partnership

Chapter 11

#9.00 Disclosure statement hearing describing chapter 11 plan of reorganization

fr. 1/10/19

Docket 35

Tentative Ruling:

Deny.

The debtor has an interest in a single family home located at 12652 Cumpston Street, Valley Village, California 91607 (the "Property"). The Property is the subject of a single lease agreement and a first deed of trust securing debt payable to CitiMortgage, Inc.

The appraisal attached to the disclosure statement, as exhibit J, is dated March 29, 2017. Because that appraisal is significantly outdated, it is not sufficiently reflective of the Property's current market value. Consequently, the disclosure statement does not provide adequate information regarding the Property.

The debtor has not included in the proposed disclosure statement: (i) a statement of relevant risks to creditors; (ii) financial information, data or projections relevant to the decision to accept/reject the chapter 11 plan; or (iii) a description of the term of the current lease agreement and the debtor's historic lease information.

The disclosure statement states that payments under the chapter 11 plan will be funded by "[r]ental income from the property (currently \$2,800 per month), plus contributions from the debtor's partners of whatever funds may be required (estimated to be approximately \$3,500 per month)." The disclosure statement does not include financial statements or other documents identifying the ability of the debtor's partners to fund: (1) the difference between the payments to be made to CitiMortgage, Inc. under the plan (assuming the debtor's valuation of the Property is accurate) and the current or projected rental income from the Property and (2) plan payments to holders of unsecured claims.

In the summary of claims, and in the plan, the debtor does not account for the secured

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1:00 PM

CONT... 12 Cumpston Partnership

Chapter 11

claim in the amount of \$17,794.80 filed by the Los Angeles County Treasurer and Tax Collector.

CitiMortgage, Inc. ("Creditor") filed an objection to the disclosure statement (the "Objection") [doc. 50]. In the Objection, Creditor argues, among other things, that disclosure statement is inadequate because it does not discuss the terms of the chapter 11 plan, if Creditor makes an 11 U.S.C. § 1111(b) election.

At this point, Creditor has not made an 11 U.S.C. § 1111(b) election. Pursuant to Federal Rule of Bankruptcy Procedure 3014, Creditor has until the conclusion of the hearing on the disclosure statement to make that election. If Creditor makes a § 1111(b) election, the debtor must reformulate the chapter 11 plan and amend the disclosure statement, accordingly.

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

Party Information

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
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Thursday, February 21, 2019

Hearing Room 301

1:00 PM

1:18-12325 12 Cumpston Partnership

Chapter 11

#9.01 Status conference re chapter 11 case

fr. 11/15/18; 1/10/19; 2/7/19

Docket 1

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1112(b)(1) and (4)(E), the Court intends to dismiss this case with 180-day bar to the filing of another bankruptcy petition by 12 Cumpston Partnership ("Debtor").

Based upon the Court's review of Debtor's schedules of assets and liabilities and statement of financial affairs, filed on September 18, 2018 and the claims docket, the Court concludes that it is in the best interest of creditors and the estate to dismiss this case.

Contrary to the Court's rulings on November 15, 2018 and January 10, 2019, Debtor has not filed an updated status report, **supported by evidence**.

On September 18, 2018, Debtor filed a voluntary chapter 11 petition. In its schedule A/B, Debtor indicated that it holds a 25% interest in real property located at 12652 Cumpston Street, Valley Village, California 91607 (the "Property") [doc. 1]. Debtor valued its interest in the Property at \$185,000, "based on a 2017 appraisal." The only other asset listed in Debtor's schedule A/B is a checking account with a balance of \$12,186.

In its schedule D, Debtor listed only one secured claim. The secured claim is in favor of CitiMortgage, Inc. ("Creditor") in the amount of \$1,081,950. According to Debtor, the value of the collateral that supports this claim, *i.e.*, the Property, is \$740,000. In its schedule E/F, Debtor listed nonpriority unsecured claims totaling \$120,500.

On November 6, 2018, Creditor filed claim 2-1. Based on documentation attached to Creditor's proof of claim, Creditor is the beneficiary of a first deed of trust secured by the Property, and Zoltan Stulberger and Peshy Stulberger (together, the "Stulbergers"),

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San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, February 21, 2019

Hearing Room 301

1:00 PM

CONT... 12 Cumpston Partnership

Chapter 11

not Debtor, are the borrowers under the related loan. The original principal amount of the loan was \$785,000.

On November 29, 2018, Debtor filed a chapter 11 plan of reorganization (the "Plan") [doc. 36] and a related disclosure statement (the "Disclosure Statement") [doc. 35]. The Disclosure Statement states that the prepetition arrears on Creditor's loan are \$364,875.66 and that the postpetition arrears are \$11,726.58.

Under the Plan, Debtor proposes to bifurcate Creditor's claim secured by the Property, resulting in a \$740,000 secured claim and a \$342,349 unsecured claim. According to the Disclosure Statement, since July 1, 2018, the Property has been rented to the Stulbergers' son-in-law for \$2,800 per month. According to a Status Report filed by Debtor on November 1, 2018 [doc. 23] (which is **not** supported by evidence, contrary to the Court's order [doc. 13]), this lease expires on June 30, 2019.

Debtor's valuation of the Property apparently is based on an appraisal dated March 19, 2017, i.e., more than one year prior to the petition date. To date, Debtor has not submitted an updated appraisal of the Property.

Under the Plan, Debtor proposes to pay Creditor \$5,307.50 per month, for the secured portion of Creditor's claim, and to pay \$400 per month to holders of nonpriority unsecured claims. Even if the Property's fair market value is \$740,000 (as alleged by Debtor), the Property's rental income is woefully inadequate to make the proposed plan payments.

The Disclosure Statement represents that the Stulbergers will contribute funds to make up the difference between the Property's rental income and the aggregate monthly payments required to be made under the proposed chapter 11 plan. However, the Disclosure Statement contains no documentation evidencing the Stulbergers' ability to do so.

The Court will prepare the order.

Party Information

Debtor(s):

12 Cumpston Partnership

Represented By

**United States Bankruptcy Court
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1:00 PM

CONT... 12 Cumpston Partnership

Mark E Goodfriend

Chapter 11

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

1:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#10.00 Disclosure statement describing chapter 11 plan

Docket 68

Tentative Ruling:

Taking into account the objections to the proposed disclosure statement and the debtor's reply, it appears that the disclosure statement does not currently contain adequate information.

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, February 21, 2019

Hearing Room 301

1:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#11.00 Status conference re chapter 11 case

fr. 11/8/18, 1/24/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim

**United States Bankruptcy Court
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Thursday, February 21, 2019

Hearing Room 301

1:00 PM

1:18-13023 Hekmatjah Family Limited Partnership

Chapter 11

#12.00 Status conference re chapter 11 case

Docket 8

Tentative Ruling:

How and by when does the debtor intend to effectuate a sale of the Alcott Street property? Does the debtor intend to hire a broker?

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **April 30, 2019.**

Deadline to mail notice of Bar Date: **February 28, 2019.**

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: **July 1, 2019.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on July 18, 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

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

1:00 PM

CONT... Hekmatjah Family Limited Partnership

Chapter 11

Debtor(s):

Hekmatjah Family Limited

Represented By
Stella A Havkin

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

Thursday, February 21, 2019

Hearing Room 301

2:00 PM

1:10-17214 Darin Davis

Chapter 7

#13.00 Trustee's Objection to Proof of Claim No. 8 filed by
Murneck Holdings, Inc. and Amanda Patricia Cortez

fr. 1/17/19

Docket 254

Tentative Ruling:

I. BACKGROUND

On June 15, 2010, Darin Davis ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee").

On March 23, 2011, Murneck Holdings, Inc. ("Murneck") and Amanda Patricia Cortez filed claim no. 8 in the amount of \$420,688.74. In the proof of claim, Murneck and Ms. Cortez (together, "Claimants") indicated their claim was based on a personal guaranty. Claimants included a note secured by deed of trust with an attached guaranty (the "Fairland Guaranty") to the proof of claim. The first paragraph of the Guaranty states:

In consideration of Cactus Properties, LLC ("Cactus") purchasing the note agreement dated October 7, 2005, in the original amount of \$500,000, bearing interest at the rate of eight percent (8%) per annum between First American and Chad Evanson/Robert Blessing (herein referred to as the "Note"), you, [Debtor], hereby absolutely and unconditionally guarantee prompt payment of the Note when due, whether at stated maturity or otherwise....

Fairland Guaranty, p. 1. However, the Fairland Guaranty also stated that "the words 'you' and 'your' refer to the undersigned guarantor," and the listed guarantor by the signature block is Fairland Construction, Inc. ("Fairland"). Fairland Guaranty, pp. 1-2.

On December 13, 2018, the Trustee filed the Objection [doc. 254], arguing that the Fairland Guaranty showed that Fairland, not Debtor, was liable as a guarantor because

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2:00 PM

CONT...

Darin Davis

Chapter 7

Fairland was the undersigned entity. Claimants did not timely file a response to the Objection. In light of the lack of opposition and the identification of Fairland as the guarantor in the Fairland Guaranty, the Court issued a tentative ruling sustaining the Objection. However, Claimants appeared at the hearing on the Objection and requested a continuance to supplement their proof of claim with a guaranty agreement demonstrating that Debtor is a guarantor on the claimed debt. The Court continued the hearing on the Objection to provide Claimants an opportunity to supplement their proof of claim.

On January 22, 2019, Claimants filed a response to the Objection (the "Response") [doc. 262]. In the Response, Claimants attach another guaranty (the "Debtor Guaranty"). Response, Exhibit A. The Debtor Guaranty is not attached to Claimants' proof of claim, nor is it authenticated by a declaration. Nevertheless, the Debtor Guaranty provides that "the words 'you' and 'your' refer to the undersigned guarantor;" in the Debtor Guaranty, the "undersigned guarantor" is Debtor. *Id.* Claimants also attach discharge orders from the bankruptcy cases of the original obligors on the underlying debt to show that the original obligors are no longer personally liable on the debt. Response, Exhibits B-C. In addition, Claimants attach an order granting relief from stay for a senior lienholder to foreclose on property securing Claimants' junior debt. Response, Exhibit D.

On February 7, 2019, the Trustee filed a reply to the Response (the "Reply") [doc. 265]. In the Reply, the Trustee argues: (A) despite the fact that Debtor is listed as a guarantor, it does not appear Debtor executed a personal guaranty of the underlying debt; (B) Claimants have not shown that the original obligors listed the debt in the schedules filed in their bankruptcy cases to show that the debt was discharged as to those obligors; and (C) Claimants have not provided evidence that the property securing their debt was actually foreclosed and, if it was foreclosed, if Claimants could have received a payout from the foreclosure proceeds.

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

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CONT... **Darin Davis**

Chapter 7

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).").

Claimants have now provided two different guaranties: the Fairland Guaranty and the Debtor Guaranty. In the Fairland Guaranty, Debtor is named as a guarantor in the first paragraph, but the undersigned guarantor is Fairland. In the Debtor Guaranty, Fairland is named as a guarantor in the first paragraph, but Debtor is listed individually as the undersigned guarantor. In the Objection, the Trustee argued that Debtor is not individually liable as a guarantor because Fairland was the undersigned guarantor in the Fairland Guaranty. However, Claimants have now produced a guaranty agreement where *Debtor* is the undersigned guarantor. Other than a conclusory statement that Debtor did not personally guaranty the debt despite Debtor's signature in the Debtor Guaranty, the Trustee has not provided pertinent authority or evidence that Debtor did not actually guaranty the underlying debt. Given that Claimants did not include a declaration authenticating the Debtor Guaranty, Claimants should amend their proof of claim to attach the Debtor Guaranty. Upon such amendment, Claimants will have met their burden of showing that Debtor individually guarantied the debt.

The Trustee also argues that, if Debtor did guaranty the underlying debt, Claimants must first demonstrate that they attempted to pursue collection from the primary

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Thursday, February 21, 2019

Hearing Room 301

2:00 PM

CONT...

Darin Davis

Chapter 7

obligors or through other available remedies before pursuing a claim against Debtor's estate. However, the original obligors have obtained discharges and Claimants may no longer pursue the obligors for satisfaction of the underlying debt. *See* 1:09-bk-15656-MT; 1:07-bk-14224-GM. The dockets of both these cases reflect that the cases are no asset chapter 7 cases without a deadline for creditors to file a proof of claim. Thus, contrary to the Trustee's contention, Claimants need not show that the underlying debt was scheduled in either of these bankruptcy cases.

The Trustee further argues that, even if Claimants may no longer pursue the other obligors, Claimants should provide evidence that they can no longer foreclose on their security interest. Although Claimants attach a relief from stay order showing an intent by a senior lienholder to foreclose on Claimants' security, the Trustee contends that Claimants have not demonstrated that a foreclosure sale actually occurred and, if it did, that Claimants were unable to receive any satisfaction from the foreclosure. The Trustee cites California Civil Code ("CCC") § 2845, which states—

A surety may require the creditor, subject to Section 996.440 of the Code of Civil Procedure, to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue, and which would lighten the surety's burden; and if the creditor neglects to do so, the surety is exonerated *to the extent to which the surety is thereby prejudiced*.

(emphasis added).

CCC § 2845 only exonerates Debtor's estate "to the extent to which [the estate] is... prejudiced." CCC § 2845. In other words, if Claimants could have pursued proceeds from a foreclosure sale, the claim would only be reduced by the amount Claimants could have received from the foreclosure. CCC § 2845 would not automatically disallow the claim in its entirety. In light of these facts, the Court will continue this hearing for Claimants to provide a supplemental declaration providing evidence regarding whether the senior lienholder foreclosed on the subject property and the distribution of any proceeds from the foreclosure sale. Claimants also must amend their proof of claim to attach the Debtor Guaranty.

III. CONCLUSION

**United States Bankruptcy Court
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Hearing Room 301

2:00 PM

CONT... Darin Davis

Chapter 7

The Court will continue this hearing to **2:00 p.m. on March 14, 2019**. No later than **February 28, 2019**, Claimants must file and serve a declaration with evidence regarding whether a foreclosure sale impacting Claimants' lien occurred and any pertinent details about the foreclosure. By **February 28, 2019**, Claimants also must file an amended proof of claim attaching the Debtor Guaranty. No later than **March 7, 2019**, the Trustee may file and serve a response to the supplemental declaration.

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

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Hearing Room 301

2:00 PM

1:10-17214 Darin Davis

Chapter 7

#14.00 Trustee's objection to proofs of claim nos. 4 and 15 filed by Asphalt Professionals, Inc.

Docket 257

Tentative Ruling:

The Court's Self-Calendaring Procedure, located on the Court's website at www.cacb.uscourts.gov/judges/self-calendaring/kaufman-v, provides that "[p]arties may select their own hearing dates **if the matter to be heard will not take more than 15 minutes....**" (emphasis on website).

Given that this matter will take more than 15 minutes, the Court will continue this hearing to **2:00 p.m. on March 14, 2019.**

Appearances on February 21, 2019 are excused.

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
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Thursday, February 21, 2019

Hearing Room 301

2:00 PM

1:18-10694 Charles Hung Ngo

Chapter 7

#15.00 Motion for turnover of property of the estate

fr. 7/19/18; 9/13/18(stip); 11/15/18

Docket 18

*** VACATED *** REASON: Voluntary dismissal of motion filed (doc #63)

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
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Thursday, February 21, 2019

Hearing Room 301

2:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#16.00 Motion for an Entry of an Order Authorizing Sale of Real Properties Located at 31194 La Baya Dr., Units 203 and 207, Westlake Village CA , Free and Clear of Certain Liens, Claims and Interests

Docket 109

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

Movant(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

**United States Bankruptcy Court
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Thursday, February 21, 2019

Hearing Room 301

2:00 PM

1:19-10051 Rockin Artwork, LLC

Chapter 11

#17.00 Motion for an order: (1) Approving form of asset purchase agreement for stalking horse bidder and for prospective overbidders to use, (2) Approving auction sale format, bidding procedures, and Stalking Horse bid protections; and (3) Scheduling a court hearing to consider approval of the sale to the highest bidder

Docket 45

***** VACATED *** REASON: Hearing continued to 3/7/19 at 2:00 PM per hearing on 2/11/19.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, February 21, 2019

Hearing Room 301

2:00 PM

1:19-10051 Rockin Artwork, LLC

Chapter 11

#18.00 Application to employ Force 10 Partners as investment banker

Docket 26

***** VACATED *** REASON: Hearing continued to 3/7/19 at 2:00 PM per
hearing on 2/11/19 jj.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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

Wednesday, February 27, 2019

Hearing Room 301

9:30 AM

1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan

Chapter 11

#1.00 Motion re: Objection to Claim Number 5 by
Claimant Pogos Araik Melkonian. Debtors
[Evidentiary Hearing]

fr. 11/15/18; 1/17/19

Docket 94

Judge:

I. BACKGROUND

A. The State Court Filings

On August 21, 2017, Yegiya Kutyan and Haykush Helen Kutyan ("Debtors") filed a voluntary chapter 11 petition. Prepetition, on May 14, 2014, Pogos Araik Melkonian filed a state court action against Debtors and three other defendants: JBA Company, LLC ("JBA"), Sona Chukhyan and George Plavjian (collectively, the "Third Parties"). [FN1]. Declaration of Sheila Esmaili in Support of Debtors' Supplemental Brief [doc. 131] ("Esmaili Supplemental Declaration"), ¶ 6, Exhibit 13. In the original state court complaint (the "Original Complaint"), which is verified, Mr. Melkonian alleged, in relevant part:

In 2008 and 2009, Mr. Kutyan received loans from Mr. Melkonian in the amounts of \$165,000, \$260,000, \$100,000 and \$55,000, promising Mr. Melkonian returns from investments Mr. Kutyan was allegedly purchasing. To assure Mr. Melkonian that his money was secure, from September 2008 to May 14, 2010, in an alleged attempt to repay the loans, Debtors and Third Parties delivered various real property instruments to Mr. Melkonian and Mr. Melkonian's son, including deeds of trust and assignments of rent. Moreover, JBA issued checks to Mr. Melkonian's son, which were returned for insufficient funds.

When [Mr. Melkonian] demanded his loan back from [Debtors and Third Parties], Mr. Kutyan executed a written note, on May 14, 2010,

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acknowledging that he owed \$600,000 to Mr. Melkonian. *When in June of 2010 [Mr. Melkonian] requested [Debtors and Third Parties] to start repayment under the note, defendants filed a civil harassment suit against Mr. Melkonian.*

All conditions required for [Debtors' and Third Parties'] performance had occurred, and all defendants unfairly interfered with Mr. Melkonian's right to payment on the note by Mr. Kutyan.

Esmaili Supplemental Declaration, ¶ 6, Exhibit 13 (emphases added). On February 10, 2016, Mr. Melkonian filed a verified third amended complaint (the "State Court TAC"). Declaration of Pogos Araik Melkonian in Support of Claim ("Claim Declaration"), ¶ 2, Exhibit A. The State Court TAC includes many of the same allegations as the Original Complaint, but added the following allegations:

On December 6, 2008, Ms. Kutyan made interest only payments totaling \$14,000 to Mr. Melkonian's business. In December 2008, Debtors, through their agents, issued a check in the amount of \$25,000 to Mr. Melkonian, which was returned for insufficient funds. On January 16, 2009, and for alleged partial repayment on the [subject loans], JBA issued a check to Mr. Melkonian's son in the amount of \$160,000, which was returned for insufficient funds.

After the dishonored checks, Debtors and Third Parties represented to Mr. Melkonian that they would execute notes evidencing the debt owed to Mr. Melkonian. On September 3, 2009, Mr. Plavjian executed a note in favor of Mr. Melkonian's son, promising to repay the \$600,000 by September 3, 2011.

When [Mr. Melkonian] demanded [Debtors and Third Parties] to start making payments, on December 23, 2009, Mr. Plavjian executed another note promising to pay Mr. Melkonian's son by December 23, 2010. [Debtors and Third Parties] promised to repay the entire principal amount by December 23, 2010 if [Mr. Melkonian] agreed to forego previously agreed upon interest charges.

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On May 14, 2010, Mr. Kutyan executed two notes promising to pay the \$600,000, one in English [the "English Note"] and one in Armenian [the "Armenian Note"] [together, the "Notes"]. Upon execution of [the Notes], Mr. Kutyan assured Mr. Melkonian that he would arrange a meeting regarding repayment, and both Debtors repeatedly assured Mr. Melkonian that *the money was forthcoming*.

On June 7, 2010, Debtors filed a civil harassment suit against Mr. Melkonian *to prevent him from contacting said defendants and demanding his money back*.

Claim Declaration, ¶ 2, Exhibit A (emphases added). In the State Court TAC, Mr. Melkonian also added that "[t]he time when [the Notes were] to be paid was not expressed in the [Notes] and is payable upon demand as provided under § 3108 of California's Commercial Code. Moreover, under California law, amounts *due and owing* accrue interest at the legal rate of 10 percent (10%) per annum..." Claim Declaration, ¶ 2, Exhibit A, ¶ 73 (emphasis added). Mr. Melkonian requested interest "from May 14, 2010." Claim Declaration, ¶ 2, Exhibit A, ¶ 77. (Under California law, interest on contract claims accrue from the date of breach. Cal. Civ. Code § 3287(a); *Thompson v. Asimos*, 6 Cal.App.5th 970, 991 (Ct. App. 2016) (holding trial courts award prejudgment interest "from the first day there exists both a breach and a liquidated claim)). Once again, both the Original Complaint and the State Court TAC were verified under penalty of perjury by Mr. Melkonian.

B. The Claim Related Filings

On December 20, 2017, after Debtors filed their chapter 11 petition, Mr. Melkonian filed a proof of claim against Debtors' estate, asserting an unsecured claim in the amount of \$836,699.67. Mr. Melkonian's claim is supported the Claim Declaration and the verified State Court TAC. In addition, Mr. Melkonian provided a statement itemizing the amounts owed to him (the "Itemized Statement"). Claim Declaration, ¶ 11, Exhibit D. As in the State Court TAC, Mr. Melkonian asserted he is owed interest accumulation "*from May 2010*." Claim Declaration, ¶ 11, Exhibit D (emphasis added).

Mr. Melkonian also included the Notes as attachments to the Claim Declaration. Claim Declaration, ¶¶ 4-5, Exhibits B-C. The English Note, which is signed by Mr.

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Kutyan and Mr. Melkonian on May 14, 2010, states the following: "I [Mr. Kutyan]... ow[e] \$600,000.00 in us dollars to Pogos Araik Melkonian and promise to pay in full." *Id.* The Armenian Note states: "I, [Mr. Kutyan], *acknowledge* that I owe [Mr.] Melkonian \$600,000... USA dollars and promise to return." Claim Declaration, ¶ 5, Exhibit C (emphasis added).

In addition, in the Claim Declaration, Mr. Melkonian again stated that, upon execution of the Notes, Mr. Kutyan assured Mr. Melkonian that he would arrange a meeting to discuss repayment and that Debtors "kept reassuring [Mr. Melkonian] that repayment of [the] Loan *was forthcoming*." Claim Declaration, ¶ 6.

C. The Adversary Proceeding

Mr. Melkonian also filed a complaint against Debtors, requesting, in part, nondischargeability of the purported debt owed to Mr. Melkonian (the "Adversary Complaint") [1:17-ap-01098, doc. 1]. In the Adversary Complaint, Mr. Melkonian made many of the same allegations he made in the Original Complaint and the State Court TAC, including alleging he took several steps to obtain repayment of the subject loans prior to execution of the Notes. Adversary Complaint, ¶¶ 17-24. In his prayer for relief, Mr. Melkonian again requested "interest at the legal rate *from May 14, 2010*." Adversary Complaint, p. 13.

The Court dismissed, without leave to amend, certain claims from the Adversary Complaint [1:17-ap-01098, docs. 17, 21]. On April 2, 2018, Mr. Melkonian filed a first amended complaint (the "Adversary FAC") [1:17-ap-01098, docs. 23], again asserting, among other things, claims for nondischargeability under 11 U.S.C. § 523. In the Adversary FAC, Mr. Melkonian again alleged that he took several steps to recover his funds between late 2008 and 2010, including attempting to deposit checks issued by Third Parties in satisfaction of the debt and obtaining notes from the Third Parties. Adversary FAC, ¶¶ 19-24. The prayer for relief in the Adversary FAC also includes a request for "interest at the legal rate *from May 14, 2010*." Adversary FAC, p. 17.

D. The Objection to Mr. Melkonian's Claim

On October 11, 2018, Debtors filed an objection to Mr. Melkonian's claim (the

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"Objection") [doc. 94]. Debtors originally objected to Mr. Melkonian's claims on the following bases: (A) the subject loans were made to the Third Parties, not to Debtors; (B) Debtors never received funds from Mr. Melkonian, and Mr. Melkonian has not provided evidence of any funds advanced to Debtors, such as checks or bank statements, and as such any agreement is not supported by consideration; (C) the Notes are unenforceable because Mr. Kutyan signed them under duress; and (D) even if the Notes are enforceable, Debtors are entitled to offset because Third Parties have made payments on the loans.

On November 1, 2018, Mr. Melkonian filed an opposition to the Objection (the "Opposition") [doc. 112]. Mr. Melkonian supported the Opposition with another declaration (the "Opposition Declaration"). In the Opposition Declaration, Mr. Melkonian again testified that, between September 2008 and March 2009, and based on oral discussions with Mr. Kutyan, Mr. Melkonian loaned Mr. Kutyan \$165,000, \$260,000, \$100,000 and \$55,000. Opposition Declaration, ¶¶ 8-11. Mr. Melkonian also testified:

After making the \$14,000 payment Debtor *defaulted* and did not make any further interest or principal payments to me.

However, Debtors kept reassuring me that they would pay the debt owed to me.

In fact, several times Debtor made statements claiming that he would sell his house to repay the debts owed and even represented to me that he owned a commercial property in San Fernando Valley that was occupied by a Sit'n'Sleep store. He represented that if needed he could also sell that property to repay the debts.

...

Sometime in early May 2010, I met with Yegiya Kutyan at my grocery store.

During that meeting, Debtor reassured me, that he was still willing to repay the debts owed and even offered to provide a written document to *reaffirm* his intention to repay. At that point Debtor... handwrote

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and signed [the Armenian Note].

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...

On May 14, 2010 Debtor again met me... and signed another note in English....

...

At the time the notes were signed Debtors owed me \$600,000.

Consideration for that debt was monies that I loaned to Yegiya Kutyan in exchange for his promise to invest in real estate and return to me for profit.

Opposition Declaration, ¶¶ 16-18, 20-21, 24, 51-52 (emphases added). On November 8, 2018, Debtors filed a reply to the Opposition [doc. 121] and an *ex parte* application requesting leave to file a supplemental brief [doc. 122]. On November 9, 2018, the Court granted Debtors' *ex parte* application [doc. 125].

On November 30, 2018, Debtors filed their supplemental brief ("Debtors' Supplemental Brief") [doc. 131]. In Debtors' Supplemental Brief, Debtors assert that Mr. Melkonian's claim, to the extent there is a valid claim, is barred by the applicable statute of limitations because the Notes were merely acknowledgments of the prior oral agreements, and the acknowledgments served to extend the statute of limitations by only two years.

Debtors included Mr. Melkonian's responses to interrogatories in support of Debtors' Supplemental Brief, which were verified under penalty of perjury by Mr. Melkonian. Esmaili Supplemental Declaration, ¶ 5, Exhibit 12. In response to Debtors' interrogatories, Mr. Melkonian stated:

At various dates between September 2008 and March 2009 [Mr. Melkonian] loaned the following amounts to Yegiya Kutyan in currency \$165,000; \$260,000; \$100,000 and \$55,000. All loans were to carry 10% interest. The ENGLISH NOTE on May 4, 2010 *memorialized this arrangement by fixing the amount payable as of that date to \$600,000*. Defendants Yegiya Kutyan verbally acknowledged

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at various times that he did owe money to Plaintiff and that he would repay the \$600,000 even if it means selling his house to do so. In fact, to reassure Plaintiff, Yegiya Kutyan offered to sign a paper memorializing his debt to Plaintiff. *Afterwards* he signed the [Armenian] Note and the English Note.

Esmaili Declaration, ¶ 5, Exhibit 12 (emphases added).

On January 2, 2019, Mr. Melkonian filed a response to Debtors' Supplemental Brief (the "Supplemental Opposition") [doc. 143]. Mr. Melkonian included another declaration in the Supplemental Opposition (the "Supplemental Declaration"). For the first time during the course of the state court proceeding, the adversary proceeding and the litigation in Debtors' bankruptcy case, Mr. Melkonian testified that Debtors were not in default at the time Mr. Kutyan signed the Notes, and that the Notes were conditioned on sale of Debtors' house:

At the time when [Mr.] Kutyan signed the May 14, 2010 Note in my office, he also verbally asked me to give him additional time to repay the debt.

I agreed and asked him how much time did he need.

His response was that he would sell his house and repay me from the proceeds of the sales as soon as they became available.

Therefore, we agreed that he would repay me when his house sold.

While as of the time the May 14, 201[0] Note was signed Debtor owed me money, he was not at that time in default, because I had allowed him additional time to gather funds and repay.

In fact, Debtor and I met at the Debtors' house on June 5, 2010 and had a cordial discussion about repayment of the loan. Even during that meeting Debtor reassured me that he would pay me the monies when he sells his properties.

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Supplemental Declaration, ¶¶ 7-12. In light of this testimony, Mr. Melkonian asserted, for the first time, that Debtors had a continuing obligation towards Mr. Melkonian that had not expired at the time Mr. Melkonian filed his state court action, and that the attachment of a condition to the Notes converted the agreement into a written agreement subject to the four-year statute of limitations under California law.

E. The Evidentiary Hearing

On January 17, 2019, the Court held a hearing on the Objection. At that time, the Court asked the parties if the parties would like to cross examine the declarants "on the statute of limitations issues *only*, i.e., the date of default and whether [Debtors] agreed to an oral condition to the written acknowledgments signed by [Mr.] Kutyan." Court's Tentative Ruling Dated January 17, 2019 (emphasis in tentative ruling). Pursuant to the parties' request, the Court set an evidentiary hearing on the statute of limitations issues.

On February 26, 2019, the Court held an evidentiary hearing on the statute of limitations issue. Appearances were made as noted on the record. At the evidentiary hearing, Mr. Melkonian testified, in pertinent part, that: (A) Debtors did not make any payments to Mr. Melkonian after the \$14,000 payment in December 2008; (B) Mr. Melkonian demanded payment from Mr. Kutyan several times in 2009 but never got paid; (C) at the time Mr. Kutyan executed the Notes, Mr. Kutyan promised he would pay Mr. Melkonian "even if" it meant selling assets to satisfy the debt, including Mr. Kutyan's Sit 'N Sleep store and other properties, such as Debtors' house. Both parties testified that Mr. Kutyan signed the Armenian Note on May 10, 2010 and the English Note on May 14, 2010. [FN2].

When asked at the hearing when payments on the loans were due, Mr. Melkonian testified that the parties agreed that Mr. Melkonian's funds would be used to purchase real property, and Mr. Melkonian was to be paid when escrow closed on the sale of the investment properties. Mr. Melkonian did not mention sale of Debtors' house as a condition to payment of the loans.

II. ANALYSIS

A. General Objection to Claim Standard

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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).").

As a preliminary matter, Debtors contend that Mr. Melkonian never advanced any funds to Debtors, instead providing funds to Third Parties, and that Mr. Kutyan was forced under duress to sign the Notes. In contrast, Mr. Melkonian asserts that the subject loans were made to Debtors and that Mr. Kutyan willingly signed the Notes to acknowledge the prior debts.

In their supplemental filings, the parties briefed the issue of whether Mr. Melkonian's claim is time barred. The evidentiary hearing focused only on this issue; for the reasons set forth below, the Court holds that Mr. Melkonian's claim is barred by the applicable statute of limitations.

B. Statute of Limitations

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The parties do not dispute that the original agreements occurred between September 2008 and March 2009, and that these agreements were not based on a writing. Pursuant to California Code of Civil Procedure § 339, "[a]n action upon a contract, obligation or liability *not* founded upon an instrument of writing" is afforded a two year limitations period. Cal. Code Civ. Proc. § 339 (emphasis added). In California, "[a] cause of action for breach of contract accrues at the time of breach, which then starts the limitations period running." *Cochran v. Cochran*, 56 Cal.App.4th 1115, 1120 (Ct. App. 1997). Pursuant to California Code of Civil Procedure ("CCP") § 360—

No acknowledgment or promise is sufficient evidence of a new or continuing contract, by which to take the case out of the operation of this title, unless the same is contained in some writing, signed by the party to be charged thereby, provided that any payment on account of principal or interest due on a promissory note made by the party to be charged shall be deemed a sufficient acknowledgment or promise of a continuing contract to stop, from time to time as any such payment is made, the running of the time within which an action may be commenced upon the principal sum or upon any installment of principal or interest due on such note, and to start the running of a new period of time, but no such payment of itself shall revive a cause of action once barred.

CCP § 360. "The acknowledgment of a debt before the statute has run does not create a new obligation but merely continues the old obligation through a new statutory period. On the other hand, the acknowledgment of a debt already barred by the statute creates a new contract and a new obligation dating from the acknowledgment." *Kaichen's Metal Mart, Inc. v. Ferro Cast Co.*, 33 Cal.App.4th 8, 15 (Ct. App. 1995). "Under this rule, the acknowledgments..., if made prior to the running of the two-year period of limitation governing the original obligations, which obligations were not founded in a writing, would have served merely to extend the period *an additional two years from the date of each of such acknowledgments* or the time for payment therein prescribed and the action, not having been commenced within two years thereafter, would be barred." *Vassere v. Joerger*, 10 Cal.2d 689, 692 (1938) (emphasis added).

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Neither party provides an explicit due date for any of the oral agreements (as noted above, Debtors testify that there was never an agreement between Debtors and Mr. Melkonian). However, prior to the Supplemental Declaration, Mr. Melkonian had repeatedly asserted that Debtors had defaulted on the oral agreements sometime between September 2008 and June 2010. In fact, Mr. Melkonian's claims of interest in both the state court action and the adversary proceeding were based on a breach date of May 14, 2010. Using those dates, without a written acknowledgment, the statute of limitations would have run sometime between September 2010 and June 2012. The Notes, dated May 10, 2010 and May 14, 2010, were signed by Mr. Kutyan prior to the expiration of the statute of limitations (under any accounting above); thus, the Notes would serve to extend the statute of limitations another two years from the date of acknowledgment to, at the latest, May 14, 2012. Under these facts, Mr. Melkonian's claim would be time barred because Mr. Melkonian did not file the state court action until May 14, 2014.

However, contrary to the testimony above and for the first time during the course of the litigation between the parties, Mr. Melkonian testified in the Supplemental Declaration that Debtors were *not* in default at the time Mr. Kutyan signed the Notes. Nevertheless, at the evidentiary hearing, Mr. Melkonian testified that he stopped receiving payments by Debtors after December 6, 2008 and demanded repayment by Debtors throughout 2009. Mr. Melkonian also testified that, at the time Mr. Kutyan signed the Notes, Mr. Melkonian again told Mr. Kutyan that Mr. Melkonian "want[s] his] money back" and that Mr. Kutyan should do whatever he has to do to repay Mr. Melkonian. As such, Mr. Melkonian's testimony at the evidentiary hearing supported his prior position that Debtors were in default by the time Mr. Kutyan signed the Notes. Given this testimony and Mr. Melkonian's prior, repeated assertions that Debtors were in default by the time Mr. Kutyan signed the Notes, the Court does not find the Supplemental Declaration credible as to Mr. Melkonian's testimony that Debtors were not in default by May 14, 2010. Rather, it appears Mr. Melkonian's contention and belief was that Debtors were in default by the time Mr. Kutyan signed the Notes.

In the Supplemental Declaration, Mr. Melkonian also testified, for the first time, that the parties agreed to an oral condition that Debtors would sell their house prior to repayment of the debt. California law includes an exception to the law on acknowledgments. If a written acknowledgment is not just a general acknowledgment

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of debt, but includes new terms or conditions, the written acknowledgment is considered a new obligation, and the four-year statute of limitations applicable to written agreements applies. *Vassere*, 10 Cal.2d at 693-94. As such, if the parties did in fact condition payment of the Notes on sale of Debtors' home, the new condition would trigger a four-year statute of limitation, making the state court action timely.

Mr. Melkonian's testimony at the evidentiary hearing demonstrated that the parties did not agree to such an oral condition. Instead, Mr. Melkonian testified that Mr. Kutyan had promised Mr. Melkonian several times, including at the time Mr. Kutyan signed the Notes, that he would repay Mr. Melkonian "*even if*" Mr. Kutyan would have to sell his assets, including but not limited to Mr. Kutyan's home and business. In light of this testimony, the statements made by Mr. Kutyan did not amount to a new condition attached to the Notes; instead, these statements were reassurances by Mr. Kutyan regarding Mr. Kutyan's ability to repay Mr. Melkonian based on the value of Mr. Kutyan's assets. Taking into account this testimony, Mr. Melkonian's testimony set forth in the Claim Declaration and the Opposition Declaration, and his responses to Debtors' interrogatories, the Court concludes that the parties did not agree to an oral condition to payment of the Notes. As concerns the alleged creation of an oral condition, the Court does not find the Supplemental Declaration to be credible.

Because the parties did not agree to any new conditions or terms outside the original oral agreements at the time Mr. Kutyan signed the Notes, the Notes remain subject to the two-year extension of the statute of limitations. The statute of limitations expired on May 14, 2012. Mr. Melkonian did not file the state court action until May 14, 2014, two years after the deadline. Consequently, Mr. Melkonian's claim is time barred, and the Court will disallow the claim against Debtors' estate.

III. CONCLUSION

The Court will sustain the Objection on the basis that any claim Mr. Melkonian may have against the estate is barred by the statute of limitations.

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

FOOTNOTES

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1. Debtors dispute the date of filing because Mr. Melkonian has previously testified that the filing occurred on May 15, 2014, not May 14, 2014. However, the original state court complaint includes an "original filed" stamp indicating the complaint was filed on May 14, 2014. Esmaili Supplemental Declaration [doc. 131], ¶ 6, Exhibit 13.

2. Previously, the parties had used May 14, 2010 as the date of execution of both Notes.

Party Information

Debtor(s):

Yegiya Kutyan

Represented By
Sheila Esmaili

Joint Debtor(s):

Haykush Helen Kutyan

Represented By
Sheila Esmaili

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2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#1.00 Motion for order approving post-petition financing from members of debtor

Docket 85

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim

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1:17-12919 Margot Ortiz

Chapter 13

#1.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

fr. 1/2/19; 2/6/19

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.

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.

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Chapter 13

Debtor(s):

Margot Ortiz

Represented By
William G Cort

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-10575 Aviva Rachel Harris

Chapter 13

#2.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr: 2/6/19

Stip for adequate protection filed 2/15/19

Docket 50

***** VACATED *** REASON: APO entered 2/19/19 jj**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aviva Rachel Harris

Represented By
Jeffrey J Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-11574 Carlos Velapatino

Chapter 13

#3.00 Motion for relief from stay [RP]

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

fr. 2/6/19

Stip for adequate protection filed 2/15/19

Docket 38

*** VACATED *** REASON: APO entered 2/19/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Velapatino

Represented By
Kevin Tang

Trustee(s):

Elizabeth (SV) 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 6, 2019

Hearing Room 301

9:30 AM

1:18-12902 Farhad Besharati

Chapter 13

#4.00 Motion for relief from stay [RP]

CIT BANK, N.A.
VS
DEBTOR

fr. 1/9/19; 2/6/19

Stip resolving motion filed 2/11/19

Docket 33

***** VACATED *** REASON: Order ent 2/15/19 approving stip. jj**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Farhad Besharati

Represented By
Dennis A Rasmussen

Trustee(s):

Elizabeth (SV) 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 6, 2019

Hearing Room 301

9:30 AM

1:18-13022 John Mitchell

Chapter 7

#5.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC
VS
DEBTOR

Docket 10

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 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):

John Mitchell

Represented By
Margarit Kazaryan

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 6, 2019

Hearing Room 301

9:30 AM

CONT... John Mitchell

Chapter 7

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

Wednesday, March 6, 2019

Hearing Room 301

9:30 AM

1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

#6.00 Motion for relief from stay [PP]

TD AUTO FINANCE LLC
VS
DEBTOR

Docket 32

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):

Aurora Frias Lee-Nelson

Represented By
Ronald D Tym

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 6, 2019

Hearing Room 301

9:30 AM

1:18-10071 LOST COAST RANCH INC.

Chapter 7

#7.00 Motion for relief from stay [RP]

BOBS, LLC
VS
DEBTOR

Docket 82

*** VACATED *** REASON: Order entered 2/22/19 continuing hearing to
3/27/19 at 9:30 AM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

LOST COAST RANCH INC.

Represented By
Ronald A Norman - BK SUSPENDED -

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, March 6, 2019

Hearing Room 301

9:30 AM

1:18-12883 Kristine Rosales Pettit

Chapter 7

#8.00 Motion for relief from stay [RP]

ALAN MITCHELL ARKLES AND ARI ARKLES
VS
DEBTOR

Docket 18

Tentative Ruling:

The Court will continue this hearing to **April 3, 2019 at 9:30 a.m.** The movant did not serve the debtor. Pursuant to Local Bankruptcy Rule 4001-1(c)(1)(C)(i), movant is required to serve the debtor with the motion, notice of hearing, and all supporting documents. **No later than March 13, 2019**, the movant must serve the debtor with the motion, notice of the continued hearing, and all supporting documents.

Appearances on March 6, 2019 are excused.

Party Information

Debtor(s):

Kristine Rosales Pettit

Represented By
Kevin T Simon

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, March 6, 2019

Hearing Room 301

9:30 AM

1:18-12955 Candida Rosa Moran

Chapter 7

#9.00 Motion for relief from stay [RP]

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

Docket 11

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):

Candida Rosa Moran

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 6, 2019

Hearing Room 301

9:30 AM

1:19-10237 Renee Anis Jackson

Chapter 13

#10.00 Motion for relief from stay [UD]

MASANOBU SHIBUYA, CONSTANCE SHIBUYA
VS
DEBTOR

Docket 7

*** VACATED *** REASON: On 2/19/19, the Court entered an order dismissing the case [doc. 9]. The motion is moot.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Renee Anis Jackson

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 6, 2019

Hearing Room 301

9:30 AM

1:16-10774 Michel A. Contreras, IV and Carmen Contreras

Chapter 13

#11.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA
VS
DEBTOR

Docket 93

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):

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
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Judge Victoria Kaufman, Presiding
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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, March 6, 2019

Hearing Room 301

9:30 AM

1:18-13023 Hekmatjah Family Limited Partnership

Chapter 11

#12.00 Motion for relief from stay [AN]

MOURIS AHDOUT
VS
DEBTOR

Order appr stip to cont ent 2/28/19

Docket 22

***** VACATED *** REASON: Continued to 4/10/2019 per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hekmatjah Family Limited

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 6, 2019

Hearing Room 301

9:30 AM

1:19-10299 Paula Parisi

Chapter 11

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

Docket 14

Tentative Ruling:

If the debtor will agree to the appointment of a chapter 11 trustee or to the Court converting this case to one under chapter 7, the Court will grant the motion. Otherwise the Court will deny the motion.

On February 22, 2019, the debtor filed a motion to continue the automatic stay as to all creditors (the "Motion to Continue Stay") [doc. 14]. In the Motion to Continue Stay, the debtor represents that her financial circumstances have improved with the prospect of leasing her real property, located at 3629 Weslin Avenue, Sherman Oaks, California 91423 (the "Property"), for \$6,000.00 per month or selling the Property under improved market conditions. The debtor also represents that her career prospects are "looking up."

On March 4, 2019, U.S. Bank National Association, as legal title trustee for BCAT 2016-18TT, and its successors and/or assigns ("U.S. Bank"), filed an opposition to the Motion to Continue Stay (the "Opposition") [doc. 29]. In the Opposition, U.S. Bank details the debtor's history of bankruptcy filings.

This is the debtor's fourth bankruptcy case. Despite three prior bankruptcy filings, the debtor has yet to complete the bankruptcy process successfully and to obtain a discharge. The debtor has continued to be delinquent on her deed of trust payments for loans secured by the Property.

On February 28, 2019, U.S. Bank filed a motion for relief from the automatic stay as to the Property [doc. 24]. In that motion, U.S. Bank states that the debtor has missed 45 payments, totaling \$146,009.25 in arrears.

In her prior chapter 13 case (case no. 17-bk013399-MB), the debtor represented that

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CONT... Paula Parisi

Chapter 11

she would sell the Property to repay her creditors. The debtor has not done so.

In this chapter 11 case, the debtor's Schedules I and J indicate monthly income of \$3,218.16 and monthly expenses of \$4,910.00, leaving net monthly income of (\$1,691.83) [doc.27, at pp. 29–33]. Based on her statement of financial affairs, the debtor's aggregate income from January 1, 2017 through February 7, 2019 (excluding \$2,000.00 in family gifts) was less than \$53,000.00. Based on the debtor's representations in her schedules and statement of financial affairs, the debtor does not have sufficient income to confirm a chapter 11 plan.

In the Motion to Continue Stay, the debtor represents that she is willing to sell the Property to repay her creditors. Based on the debtor's representations in her schedules, there appears to be substantial equity in the Property. It appears that a sale of the Property in the near future would fully repay creditors.

However, the debtor has not been willing or able to effectuate a sale of the Property. Based on the debtor's prior bankruptcy cases, and the representations in her schedules, the Court cannot conclude that the pending chapter 11 case will result in a confirmed plan unless the Property is sold, *by a chapter 11 or chapter 7 trustee*.

If a chapter 11 trustee is appointed, or this case is converted to chapter 7, the chapter 11 trustee or chapter 7 trustee could sell the Property and use the non-exempt, net proceeds (after paying off liens and costs of sale) to fund a chapter 11 plan (if the case remains in chapter 11) and/or to pay creditors. The debtor will be entitled to file and prosecute objections to secured and unsecured claims, if she contests any proofs of claim. The debtor would receive her homestead exemption, and perhaps more, if there is sufficient surplus funds following the sale of the Property; the debtor could use those funds to lease or acquire a new residence. Moreover, the debtor could receive a discharge.

The Court will prepare the order.

Party Information

Debtor(s):

Paula Parisi

Pro Se

**United States Bankruptcy Court
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Wednesday, March 6, 2019

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

- #13.00** 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), fr. 11/21/18 (2nd stip); 1/9/2019;

Docket 1

*** VACATED *** REASON: Order dismissing adversary entered 2/21/19
[doc. 16].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime R Lara	Pro Se
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Defendant(s):

Greater La Escrow, Inc., a California	Pro Se
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Diane E Lara	Pro Se
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Plaintiff(s):

Diane C. Weil, Chapter 7 Trustee	Represented By Elissa Miller
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Trustee(s):

Diane C Weil (TR)	Represented By Elissa Miller Claire K Wu
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, March 6, 2019

Hearing Room 301

2:30 PM

1:18-11470 Asif Sheikh

Chapter 7

Adv#: 1:18-01094 Karimzad v. Sheikh et al

#14.00 Motion to dismiss first amended adversary complaint, or in the alternative and motion to strike immaterial and scandalous allegations.

Docket 23

Tentative Ruling:

Deny.

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, 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). On September 6, 2018, Defendants filed a motion to dismiss Plaintiff's claim under § 523(a)(2)(A) and to strike certain allegations from the complaint (the "First Motion to Dismiss") [doc. 4].

On November 21, 2018, the Court held a hearing on the First Motion to Dismiss. At that time, the Court issued a ruling granting the First Motion to Dismiss as to Plaintiff's § 523(a)(2)(A) claim, but denying the First Motion to Dismiss as to Defendants' request to strike allegations (the "Ruling") [doc. 14]. Regarding Plaintiff's § 523(a)(2)(A) claim, the Court held that Plaintiff's claim was based on alleged representations made *after* Plaintiff loaned money to Defendants and, as a result, the representations could not have been used to induce Plaintiff to extend credit. Ruling, p. 6. However, the Court noted that Plaintiff may be able to allege a claim based on forbearance if Plaintiff amends the complaint to sufficiently allege damages proximately caused by forbearance. *Id.*

On December 11, 2018, Plaintiff filed a first amended complaint (the "FAC") [doc. 22]. In relevant part, the FAC includes the following allegations:

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CONT...

Asif Sheikh

Chapter 7

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.

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 2013 through December 2013. This agreement called for payment of the principal debt in full on or before December 2013.

On February 10, 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 [p]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 repayment checks and promised they would resume paying interest.

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CONT...

Asif Sheikh

Chapter 7

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. Plaintiff withheld depositing the prepayment checks in reliance on Defendants' promise that the full amount due and owing would be paid from the sale of the Fatburger.

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.

When confronted, Defendants informed Plaintiff that they did not have the funds to pay the loans. By reason of Defendants' request to withhold depositing the prepayment checks, Plaintiff lost her opportunity to collect repayment through the prepayment checks. Had Plaintiff known Defendants did not intend to pay Plaintiff from the sale, Plaintiff would not have agreed to withhold depositing the prepayment checks and delaying collection.

FAC, pp. 2-8.

On December 18, 2018, Defendants filed a motion to dismiss the FAC (the "Motion") [doc. 23]. In the Motion, Defendants argue that the prepayment checks were nonnegotiable, and Plaintiff did not attempt to cash the checks or ascertain the value of the checks. Thus, Defendants assert that Plaintiff has not established a § 523(a)(2) (A) claim based on forbearance because, according to Defendants, Plaintiff did not adequately allege a loss of the value of the prepayment checks. Defendants also move for the Court to strike certain allegations from the FAC as immaterial or defamatory. On February 19, 2019, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 27], asserting that the Court should not consider evidence outside the FAC, such as whether the prepayment checks were nonnegotiable.

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CONT... Asif Sheikh

Chapter 7

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 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,

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Asif Sheikh

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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).

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 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

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CONT... Asif Sheikh

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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 (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)).

"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. 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*,

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Asif Sheikh

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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).

Here, Plaintiff alleges that Defendants had provided prepayment checks for the first two payments, for a total of \$100,000. Plaintiff also alleges that Defendants induced Plaintiff to withhold from collecting on the debt until Defendants sold the Fatburger, from which sale Defendants represented they would repay the loans. As a result of Defendants' representations regarding the sale of the Fatburger, and because Defendants allegedly omitted the fact that other creditors were to be paid from the sale of the Fatburger, Plaintiff agreed to forbear and did not cash the prepayment checks. Plaintiff further alleges that, when Plaintiff confronted Defendants after the sale of the Fatburger, years later, Defendants informed Plaintiff they did not have the funds to pay the loans. As such, the FAC includes sufficient allegations regarding a § 523(a)(2)(A) claim based on forbearance because Plaintiff alleges she had a valuable remedy (the \$100,000 in prepayment checks) which lost value during the period of forbearance, and Plaintiff agreed to forbear because of Defendants' allegedly fraudulent representations regarding the sale of the Fatburger.

Defendant asserts that the prepayment checks did not have value because the checks were nonnegotiable. However, Plaintiff does not allege that the checks were nonnegotiable, and the Court will not consider evidence outside of the allegations in the FAC. Even if the Court were to consider such evidence, Defendants have not provided any. Defendants also argue that Plaintiff did not allege that she attempted to deposit the checks or to ascertain the viability of the checks. The authorities above do not call for such allegations; Plaintiff alleges that she had a valuable remedy (the prepayment checks) which lost value during the forbearance period because, by the time of the Fatburger sale (the end of the forbearance period), Defendants no longer had funds to support the cashing of the checks. As such, Plaintiff's allegations establish a claim under § 523(a)(2)(A).

C. Rule 12(f)

Pursuant to Rule 12(f), "[t]he court may strike from a pleading an insufficient defense

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Asif Sheikh

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or any redundant, immaterial, impertinent, or scandalous matter." Here, Defendants request the Court strike paragraphs 7, 25-29 and 49-53 (paragraphs 25-29 and 49-53 are identical). As to paragraph 7, Defendants assert that the allegation is immaterial to the FAC. However, Plaintiff's age may be relevant to her reliance on Defendants for purposes of § 523(a)(2)(A). As to paragraphs 25-30 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 Plaintiff's claim under § 523(a)(2)(A). The Court will deny Defendants' request to strike allegations.

III. CONCLUSION

The Court will deny the Motion.

Plaintiff must submit an order within seven (7) days. Defendants must file a response to the FAC no later than **14 days** from the date of this hearing.

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

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CONT... Asif Sheikh

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Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:18-11470 Asif Sheikh

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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; 11/21/18; 1/23/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on April 24, 2019**. No later than **April 10, 2019**, the parties must file a joint status report in accordance with Local Bankruptcy Rule 7016-1-(a)(2).

Party Information

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

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Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01096 Karimzad v. Sheikh et al

#16.00 Motion to dismiss first amended adversary complaint, or in the alternative and motion to strike immaterial and scandalous allegations.

Docket 22

Tentative Ruling:

Deny.

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, 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). On September 6, 2018, Defendants filed a motion to dismiss Plaintiff's claim under § 523(a)(2)(A) and to strike certain allegations from the complaint (the "First Motion to Dismiss") [doc. 4].

On November 21, 2018, the Court held a hearing on the First Motion to Dismiss. At that time, the Court issued a ruling granting the First Motion to Dismiss as to Plaintiff's § 523(a)(2)(A) claim, but denying the First Motion to Dismiss as to Defendants' request to strike allegations (the "Ruling") [doc. 14]. Regarding Plaintiff's § 523(a)(2)(A) claim, the Court held that Plaintiff's claim was based on alleged representations made *after* Plaintiff loaned money to Defendants and, as a result, the representations could not have been used to induce Plaintiff to extend credit. Ruling, p. 6. However, the Court noted that Plaintiff may be able to allege a claim based on forbearance if Plaintiff amends the complaint to sufficiently allege damages proximately caused by forbearance. *Id.*

On December 11, 2018, Plaintiff filed a first amended complaint (the "FAC") [doc. 21]. In relevant part, the FAC includes the following allegations:

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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.

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 2013 through December 2013. This agreement called for payment of the principal debt in full on or before December 2013.

On February 10, 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 [p]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 repayment checks and promised they would resume paying interest.

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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. Plaintiff withheld depositing the prepayment checks in reliance on Defendants' promise that the full amount due and owing would be paid from the sale of the Fatburger.

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.

When confronted, Defendants informed Plaintiff that they did not have the funds to pay the loans. By reason of Defendants' request to withhold depositing the prepayment checks, Plaintiff lost her opportunity to collect repayment through the prepayment checks. Had Plaintiff known Defendants did not intend to pay Plaintiff from the sale, Plaintiff would not have agreed to withhold depositing the prepayment checks and delaying collection.

FAC, pp. 2-8.

On December 18, 2018, Defendants filed a motion to dismiss the FAC (the "Motion") [doc. 22]. In the Motion, Defendants argue that the prepayment checks were nonnegotiable, and Plaintiff did not attempt to cash the checks or ascertain the value of the checks. Thus, Defendants assert that Plaintiff has not established a § 523(a)(2) (A) claim based on forbearance because, according to Defendants, Plaintiff did not adequately allege a loss of the value of the prepayment checks. Defendants also move for the Court to strike certain allegations from the FAC as immaterial or defamatory. On February 19, 2019, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 27], asserting that the Court should not consider evidence outside the FAC, such as whether the prepayment checks were nonnegotiable.

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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 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,

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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).

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 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

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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 (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)).

"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. 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*,

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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).

Here, Plaintiff alleges that Defendants had provided prepayment checks for the first two payments, for a total of \$100,000. Plaintiff also alleges that Defendants induced Plaintiff to withhold from collecting on the debt until Defendants sold the Fatburger, from which sale Defendants represented they would repay the loans. As a result of Defendants' representations regarding the sale of the Fatburger, and because Defendants allegedly omitted the fact that other creditors were to be paid from the sale of the Fatburger, Plaintiff agreed to forbear and did not cash the prepayment checks. Plaintiff further alleges that, when Plaintiff confronted Defendants after the sale of the Fatburger, years later, Defendants informed Plaintiff they did not have the funds to pay the loans. As such, the FAC includes sufficient allegations regarding a § 523(a)(2)(A) claim based on forbearance because Plaintiff alleges she had a valuable remedy (the \$100,000 in prepayment checks) which lost value during the period of forbearance, and Plaintiff agreed to forbear because of Defendants' allegedly fraudulent representations regarding the sale of the Fatburger.

Defendant asserts that the prepayment checks did not have value because the checks were nonnegotiable. However, Plaintiff does not allege that the checks were nonnegotiable, and the Court will not consider evidence outside of the allegations in the FAC. Even if the Court were to consider such evidence, Defendants have not provided any. Defendants also argue that Plaintiff did not allege that she attempted to deposit the checks or to ascertain the viability of the checks. The authorities above do not call for such allegations; Plaintiff alleges that she had a valuable remedy (the prepayment checks) which lost value during the forbearance period because, by the time of the Fatburger sale (the end of the forbearance period), Defendants no longer had funds to support the cashing of the checks. As such, Plaintiff's allegations establish a claim under § 523(a)(2)(A).

C. Rule 12(f)

Pursuant to Rule 12(f), "[t]he court may strike from a pleading an insufficient defense

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or any redundant, immaterial, impertinent, or scandalous matter." Here, Defendants request the Court strike paragraphs 7, 25-29 and 49-53 (paragraphs 25-29 and 49-53 are identical). As to paragraph 7, Defendants assert that the allegation is immaterial to the FAC. However, Plaintiff's age may be relevant to her reliance on Defendants for purposes of § 523(a)(2)(A). As to paragraphs 25-30 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 Plaintiff's claim under § 523(a)(2)(A). The Court will deny Defendants' request to strike allegations.

III. CONCLUSION

The Court will deny the Motion.

Plaintiff must submit an order within seven (7) days. Defendants must file a response to the FAC no later than **14 days** from the date of this hearing.

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

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1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01096 Karimzad v. Sheikh et al

#17.00 Status conference re: amended 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; 11/21/18; 1/23/19

Docket 21

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on April 24, 2019**. No later than **April 10, 2019**, the parties must file a joint status report in accordance with Local Bankruptcy Rule 7016-1-(a)(2).

Party Information

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

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CONT... Atif Sheikh

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, March 7, 2019

Hearing Room 301

10:30 AM

1:11-21522 Jeffrey Martin Cane

Chapter 7

#1.00 Trustee's final report and applications for compensation

David K. Gottlieb - Chapter 7 Trustee

Ervin Cohen & Jessup LLP - Attorney for Trustee

Docket 128

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$251.21 and reimbursement of expenses of \$18.90, pursuant to 11 U.S.C. § 330, on a final basis. The chapter 7 trustee is authorized to receive a pro rata reduced amount of \$24.86 in fees and 100% of the approved reimbursement of expenses.

Ervin Cohen & Jessup LLP (“ECJ”), counsel to chapter 7 trustee – approve fees of \$6,718.00 and reimbursement of expenses of \$298.84, pursuant to 11 U.S.C. § 330, on a final basis. ECJ is authorized to receive a pro rata reduced amount of \$659.98 in fees and 100% of the approved reimbursement of expenses.

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 chapter 7 trustee will be so notified.

Party Information

Debtor(s):

Jeffrey Martin Cane

Represented By
Kevin T Simon

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson

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10:30 AM

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

Chapter 11

#2.00 Amended Motion for payment of final fees and/or expenses

Docket 106

Tentative Ruling:

The proof of service attached to the application does not include a date or manner of service. In addition, the applicant has not filed proof of service of notice of the hearing on the application, including notice of an objection deadline.

The Court will continue this hearing to **10:30 a.m. on April 11, 2019**. No later than **March 21, 2019**, the applicant must file and properly serve an amended application curing the deficiencies noted above.

Appearances are excused at 10:30 a.m. on March 7, 2019.

Party Information

Debtor(s):

Roger Ronald Steinbeck

Represented By
Michael R Totaro

Joint Debtor(s):

Stannis Veronica Steinbeck

Represented By
Michael R Totaro

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1:17-13142 Amir Elosseini

Chapter 11

#3.00 First interim application of Libertybell Law Group for allowance of fees and reimbursement of expenses

Docket 90

Tentative Ruling:

Deny without prejudice.

Contrary to LBR 2016-1(a)(2)(A), LibertyBell Law Group, P.C. ("Applicant") did not give the other professional persons employed in the bankruptcy case not less than 45 days notice of the date and time of the hearing on the application.

Contrary to LBR 2016-1(a)(2)(B), Applicant did not serve the debtor in possession or the 20 largest unsecured creditors with notice of the hearing and the application. Applicant also did not use mandatory form F 9013-3.1.PROOF.SERVICE for the proof of service.

Contrary to LBR 2016-(a)(1)(A)(i), Applicant did not include a brief narrative history and report concerning the current status of the litigation. The application discusses a trial date of November 2, 2018, yet the application does not discuss if trial went forward, any continued date for that trial or the current status of the litigation.

Contrary to LBR 2016-1(a)(1)(A)(iii), the application does not discuss the amount of cash on hand in the estate or the estimated amount of other accrued expenses of administration.

Contrary to LBR 2016-1(a)(1)(E), the application does not contain a detailed listing of all time spent by the Applicant on matter for which compensation is sought, including the identification of the person who rendered each service.

Contrary to LBR 2016-1(a)(1)(G), the application does not contain a listing of the hourly rates charged by each person whose services form a basis for the fees requested in the application.

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CONT... Amir Elosseini

Chapter 11

Although the application includes a curriculum vitae for David S. Miller, Esq. (Exh. A), it does not contain the information required by LBR 2016-1(a)(1)(H) with respect to the other billing individuals.

Contrary to LBR 2016-(a)(1)(J), Applicant did not include a declaration by the debtor or describe the steps that were taken to obtain the debtor's consent to the application.

If the requested fees and expenses are allowed, it is unclear how the debtor would pay the allowed fees and expenses. Applicant requests allowance and payment of \$19,198.44 in attorneys' fees and costs. Based on the debtor's most recent monthly operating report, as of January 31, 2019, the debtor had an ending balance of \$2,558.78 in his DIP checking account.

The Court will prepare the order.

Party Information

Debtor(s):

Amir Elosseini

Represented By
Kevin Tang
David Miller

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

Chapter 11

#4.00 Confirmation of third amended chapter 11 plan

Docket 93

Tentative Ruling:

In the *Proposed Third Amended Chapter 11 Plan of Reorganization* (the "Plan") [doc. 93], the debtors propose paying Toyota Motor Corporation ("Toyota") \$12,625, the value of Toyota's collateral, under Class 2(b) of the Plan. The \$12,625 proposed payment leaves a deficiency of \$1,206.08. However, the debtors have not provided for treatment of this unsecured portion of Toyota's claim under Class 3.

If the debtors agree to providing for full payment of Toyota's unsecured claim, within the class of nonpriority unsecured claims, and address such treatment of Toyota's unsecured claim in the confirmation order, the Court will confirm the Plan. If the Court confirms the Plan, no later than **August 29, 2019**, 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 **September 12, 2019 at 1:00 p.m.**

If the Court confirms the Plan, the debtors must submit the confirmation order within seven (7) days.

Party Information

Debtor(s):

Roger Ronald Steinbeck

Represented By
Michael R Totaro

Joint Debtor(s):

Stannis Veronica Steinbeck

Represented By
Michael R Totaro

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1:18-11125 Marcelo Martinez

Chapter 11

#5.00 Debtor's disclosure statement describing chapter 11 plan of reorganization

Docket 77

Tentative Ruling:

In connection with the debtor's chapter 11 plan confirmation, the debtor must address the following:

Family Member Contribution. The disclosure statement states that the debtor's daughter and brother will provide a combined \$3,500 per month to fund payments under the chapter 11 plan. In connection with confirmation of the chapter 11 plan, the debtor must file declarations of his daughter and brother and supporting documentation demonstrating their willingness and ability to make such contributions.

Avoidance of Liens. On August 20, 2018, the debtor filed a motion to value his real property [doc. 46]. On December 3, 2018, the debtor and JPMorgan Chase Bank, National Association ("JPMorgan") entered into a stipulation regarding that motion and treatment of JPMorgan's claim under the debtor's chapter 11 plan [doc. 72]. On December 4, 2018, the Court entered an order approving that stipulation [doc. 74].

The debtor has not submitted an order to avoid the junior liens of Jack & Sonia Martin Trust and Maria Isabel Murilo. Prior to any plan confirmation hearing, the debtor must submit such an order.

Proposed dates and deadlines regarding "Debtor's Chapter 11 Plan" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "Disclosure Statement Describing Chapter 11 Plan:"

Hearing on confirmation of the Plan: **May 16, 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

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1:00 PM

CONT... Marcelo Martinez

Chapter 11

ballots to the debtor: **March 29, 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: **April 26, 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: **May 6, 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

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, March 7, 2019

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; 12/13/18; 1/17/19

Docket 1

Tentative Ruling:

- NONE LISTED -

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, March 7, 2019

Hearing Room 301

1:00 PM

1:18-12731 Mariel Y Trufero

Chapter 7

#7.00 Motion for order compelling attorney to file disclosure of compensation and disgorgement of fees pursuant to 11 U.S.C. § 329

Docket 15

***** VACATED *** REASON: Motion withdrawn 3/1/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mariel Y Trufero

Represented By
Ali R Nader

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 7, 2019

Hearing Room 301

1:00 PM

1:19-10051 Rockin Artwork, LLC

Chapter 11

#8.00 Status conference re chapter 11 case

Docket 0

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **May 31, 2019.**

Deadline to mail notice of Bar Date: **March 25, 2018.**

The chapter 11 trustee 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 August 8, 2019.**

The chapter 11 trustee must file a status report, to be served on the debtors' 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 chapter 11 trustee 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):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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

Thursday, March 7, 2019

Hearing Room 301

1:00 PM

1:19-10052 Purple Haze Properties, LLC

Chapter 11

#9.00 Status conference re chapter 11 case

Docket 0

Tentative Ruling:

See calendar no. 8.

Party Information

Debtor(s):

Purple Haze Properties, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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

Thursday, March 7, 2019

Hearing Room 301

1:00 PM

1:19-10062 Andrew Marc Pitsicalis

Chapter 11

#10.00 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 31, 2019.**

Deadline to mail notice of Bar Date: **March 25, 2018.**

The chapter 11 trustee 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 August 8, 2019.**

The 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 chapter 11 trustee 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):

Andrew Marc Pitsicalis

Pro Se

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

Thursday, March 7, 2019

Hearing Room 301

1:00 PM

1:14-10097 Rodney M Mojarro

Chapter 11

#10.10 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, 8/2/18; 1/17/19; 2/21/19

Docket 1

***** VACATED *** REASON: Order closing case on interim basis entered
on 2/22/19 [doc. 247].**

Tentative Ruling:

- NONE LISTED -

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, March 7, 2019

Hearing Room 301

2:00 PM

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

Chapter 11

- #11.00** Debtors' motion for order:
- 1) Authorizing sale of real property free and clear of liens, encumbrances and interests;
 - 2) deeming buyer to good faith purchase pursuant to 11 U.S.C. sec 363(m);
 - 3) Authorizing disbursement of sale proceeds to pay secured claims related to the property, costs of sale, administrative fees, property taxes, priority claims, agent/broker's commission and balance of proceeds;
 - 4) Waiving the 14-day stay imposed by federal rules of bankruptcy procedure 6004

Docket 108

Tentative Ruling:

Grant.

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

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, March 7, 2019

Hearing Room 301

2:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#12.00 Motion of debtor for entry of an order extending deadline to file a plan and disclosure statement

Docket 119

Tentative Ruling:

Grant.

The Court will extend the deadline for the debtor to file a chapter 11 plan of reorganization and related disclosure statement to **April 22, 2019**.

The debtor must submit the 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):

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, March 7, 2019

Hearing Room 301

2:00 PM

1:18-11138 Hector Alejandro

Chapter 7

#13.00 Motion for order approving compromise of controversy

Docket 40

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):

Hector Alejandro

Represented By
Jasmine Firooz

Trustee(s):

Nancy J Zamora (TR)

Represented By
Wesley H Avery

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

Thursday, March 7, 2019

Hearing Room 301

2:00 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

#14.00 Party in interest's motion to convert case to chapter 7
nunc pro tunc as of May 4, 2018

fr. 1/10/19; 1/17/19

Docket 102

Tentative Ruling:

Pursuant to 11 U.S.C. § 1112(b)(1) and (4)(E), (4)(H) and (4)(J), the Court will convert this case to one under chapter 7.

I. BACKGROUND

A. Debtor's Schedules

1. Debtor's Real Property

On May 4, 2018, Robert Edward Zuckerman ("Debtor") filed a voluntary chapter 11 petition. In his schedule A/B [doc. 25], Debtor listed real property located at 24756 Eilat Street, Woodland Hills, California 91367 (the "Residence"). Debtor valued the Residence at \$2,000,000.00. In his schedule C [doc. 25], Debtor claimed a \$175,000 exemption in the Residence. The Residence is overencumbered.

The senior secured lender on the Residence is Deutsche Bank National Trust Company, as trustee, on behalf of the holders of WaMu Mortgage Pass-Through Certificates, Series 2005-AR11 ("Deutsche Bank"). On October 5, 2018, Deutsche Bank filed a motion for relief from stay as to the Property (the "RFS Motion") [doc. 88]. In the RFS Motion, Deutsche Bank states that it has a \$1,607,461.27 secured claim, secured by a first deed trust on the Residence. *Id.*

On February 19, 2019, Debtor and Deutsche Bank entered into a stipulation to provide for adequate protections payments and chapter 11 plan treatment (the "Stipulation") [doc. 118]. Pursuant to the Stipulation, Debtor is to make payments ranging from \$3,000.00 to \$5,000.00 per month from February 2019 to August 2019. Based on

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2:00 PM

CONT... Robert Edward Zuckerman

Chapter 11

Debtor's income, as reflected in his Statement of Financial Affairs ("SOFA") [doc. 25] and his monthly operating reports ("MORs"), it is unclear how Debtor will fund these adequate protection payments.

On June 27, 2018, First Citizens Bank & Trust ("First Citizens") filed claim 8-1. First Citizens indicates that it has a judgment lien against the Residence in the amount of \$5,182,677.91, based on a personal guaranty. On October 30, 2013, First Citizens recorded an abstract of judgment.

In addition, in his amended schedule D [doc. 52], Debtor listed 48 secured claims from judgment liens totaling \$15,271,285.02. Debtor indicated that these claims are contingent, unliquidated and disputed.

2. Personal Property

In Debtor's amended schedule A/B [doc. 51], Debtor listed personal property with an aggregate value of \$29,605.00. Regarding the identified personal property, Debtor claimed exemptions with an aggregate value of \$23,255.00.

In his amended schedule A/B, Debtor listed interests in Continental Communities, LLC, Valley Circles Estates Realty ("Valley Circle"), Zuckerman Building Company ("Zuckerman Building"), Continental San Jacinto, LLC ("Continental San Jacinto"), San Jacinto Z, LLC, Rezinate San Jacinto, LLC, Maravilla Center, LLC ("Maravilla") and Phoenix Holdings, LLC. Debtor valued his interest in each business at \$0.00. With respect to Zuckerman Building, Debtor indicated that the profits are split as follows: 90% to Debtor, 10% to Adam Zuckerman and 10% to Jason Zuckerman.

In his amended schedule A/B, Debtor stated that he has a claim for malpractice against former attorney Raul Garcia and valued the claim as unknown. In his *Fourth Case Status Conference Report* [doc. 120], Debtor states that he has a second potential malpractice action. Debtor indicates that he intends to retain special counsel to pursue these malpractice actions, subject to an investigation as to collectability.

In his amended schedule A/B, Debtor also listed claims which he holds against Valley Circle in the amount of \$566,419.99, Zuckerman Building in the amount of \$11,680.27, Continental San Jacinto in the amount of \$176,368.07 and Maravilla in

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Thursday, March 7, 2019

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2:00 PM

CONT... Robert Edward Zuckerman

Chapter 11

the amount of \$622,630.52. In an attachment listing the claims, Debtor indicated that these claims are uncollectable.

3. *Income*

In his amended schedule I [doc. 51], Debtor represented that he receives \$15,000.00 per month, as compensation for his work as a consultant. In his schedule J [doc. 25], Debtor listed \$13,862.56 in expenses, resulting in an alleged monthly net income of \$1,137.44.

In his SOFA [doc. 25], Debtor indicated that he did not receive any income from employment or from operating a business during the year he filed his petition or the two previous calendar years. He also indicated that he did not receive any other income during the year he filed his petition or the two previous calendar years.

4. *Unsecured Debts*

In his amended schedule E/F [doc. 52], Debtor listed 54 nonpriority unsecured claims, totaling \$118,242.32. As of January 11, 2019, there are \$29,326,149.93 of claims on Debtor's claim register.

B. Debtor's Monthly Operating Reports

Excluding the MOR for May 2018, which reflected income and expenses for a small part of the month, Debtor's monthly operating reports from June 2018 through November 2018 (the most recent MOR on file) reflect the following income and expenses:

MONTH	RECEIPTS	DISBURSEMENTS	BALANCE
June 2018	\$100.00	\$0.00	\$100.00
July 2018	\$2,611.09	\$341.09	\$2,370.00
August 2018	\$41.09	\$1,333.41	\$1,077.68

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Thursday, March 7, 2019

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2:00 PM

CONT... Robert Edward Zuckerman

Chapter 11

September 2018	\$151.00	\$1,227.75	\$0.93
October 2018	\$1,000.00	\$930.00	\$70.93
November 2018	\$0.00	\$0.00	\$70.93

In stark contrast to his alleged income of \$15,000.00 per month set forth in Debtor's amended schedule I, Debtor's average monthly income as reflected in his MORs is \$650.53. In all of Debtor's MORs, Debtor's disbursements are mostly on dry cleaning, gardening, pool cleaning, house maintenance/labor and United States Trustee fees [docs. 61, 90, 91, 97]. Debtor's untimely filed November 2018 MOR shows no disbursements at all [doc. 113].

Debtor did not timely file MORs for December 2018 and January 2019.

C. The Adversary Proceedings

On July 20, 2018, Edward P Albini, et al. filed a complaint against Debtor, initiating adversary proceeding 1:18-ap-01081-VK, requesting nondischargeability of plaintiffs' claims pursuant to 11 U.S.C. § 523(a)(2).

On August 2, 2018, Richard Abel filed a complaint against Debtor, among other defendants, initiating adversary proceeding 1:18-ap-01086-VK. Mr. Able requests declaratory relief, injunctive relief, turnover of property pursuant to 11 U.S.C. § 542 and nondischargeability of his claim pursuant to 11 U.S.C. § 523(a)(2) and (a)(6). With respect to the turnover cause of action, Mr. Abel alleges that preferential transfers were made to Sunderland McCutchan, LLP and Nikki B. Allen, Debtor's former attorney.

On October 17, 2018, the Court issued orders in all the adversary proceedings assigning the matters to mediation (the "Global Mediation") [1:18-ap-01081-VK, doc. 17; 1:18-ap-01086-VK, doc. 26]. On December 12, 2018, the mediator filed a mediator's certificate stating that the parties did not reach a settlement during the Global Mediation [1:18-ap-01081-VK, doc. 29; 1:18-ap-01086-VK, doc. 52].

D. The Motion and the Prior Hearing

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Central District of California
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Thursday, March 7, 2019

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2:00 PM

CONT... Robert Edward Zuckerman

Chapter 11

On December 17, 2018, Mr. Abel filed a motion to convert case to chapter 7 *nunc pro tunc* (the "Motion") [doc. 102]. On December 27, 2018, Debtor filed an opposition to the Motion (the "Opposition") [doc. 105]. On January 2, 2019, Mr. Abel filed a reply to the Opposition [doc. 106].

On January 17, 2019, the Court held a hearing on the Motion. At the hearing, the Court ordered Debtor to file a chapter 11 plan of reorganization and related disclosure statement by February 15, 2019. On February 15, 2019, Debtor filed a chapter 11 plan. Debtor did not timely file a related disclosure statement. Rather than filing the disclosure statement concurrently with his chapter 11 plan, Debtor filed the disclosure statement (without the exhibits referenced therein) the day before the continued hearing on the Motion.

II. DISCUSSION

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...

(E) Failure to comply with an order of the court;

(F) failure timely to provide information . . . reasonably requested by the United States Trustee . . . ;

...

(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. . . .

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2:00 PM

CONT... Robert Edward Zuckerman

Chapter 11

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 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).").

There is cause to convert or dismiss this case pursuant to 11 U.S.C. § 1112(b)(4)(E), (4)(H) and (4)(J). In violation of the Court's order at the prior hearing on January 17, 2019, Debtor did not file a disclosure statement by February 15, 2019. Further, Debtor did not timely file MORs for December 2018 and January 2019. As such, there is cause to convert or dismiss Debtor's case.

Conversion of Debtor's case appears to be in the best interests of the creditors and the estate. There are claims that a chapter 7 trustee could assess and potentially pursue *i.e.* preferential transfers and malpractice claims. Moreover, a chapter 7 trustee could assess and liquidate Debtor's equity interests in corporations; assess and potentially collect debts owed to Debtor; and liquidate any other non-exempt property. Consequently, it appears to be in the best interest of creditors and the estate to convert this case to chapter 7.

Mr. Abel argues that this case should be converted *nunc pro tunc* to May 4, 2018. However, Mr. Abel has provided no legal authority for this position. The Court will deny this request.

III. CONCLUSION

The Court will grant the Motion in part, and deny in part.

Mr. Abel must submit the order within seven (7) days.

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Thursday, March 7, 2019

Hearing Room 301

2:00 PM

CONT... Robert Edward Zuckerman

Chapter 11

EVIDENTIARY RULINGS

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

Objection to Declaration of Sanford L. Frey

para. 3 (lines 10-13): sustained

Objection to Declaration of Robert Edward Zuckerman

para. 6 (lines 17-25): sustained

para.12 (lines 27-28): overruled

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

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Thursday, March 7, 2019

Hearing Room 301

2:00 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

#15.00 Status conference re: chapter 11 case
from: 8/2/18; 12/6/18, 1/24/19

Docket 1

Tentative Ruling:

See calendar no. 14.

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

**United States Bankruptcy Court
Central District of California
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Thursday, March 7, 2019

Hearing Room 301

2:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#16.00 Debtor's motion for order modifying court's order entered October 19, 2018

Docket 139

Tentative Ruling:

Grant.

The Court will extend the deadline for the debtor to file a chapter 11 plan of reorganization and related disclosure statement to **April 22, 2019**. The continued chapter 11 status conference on March 14, 2019 is continued to **May 16, 2019 at 1:00 p.m.**

If the debtor has not timely filed a plan and related disclosure statement, the debtor 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 May 2, 2019**. The status report **must be supported by evidence** in the form of declarations and supporting documents.

The debtor must submit the 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):

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, March 7, 2019

Hearing Room 301

2:00 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 11

#17.00 Application by debtor and debtor in possession to employ Law Offices of Raymond H. Aver, A Professional Corporation, as general insolvency counsel

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):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

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

Thursday, March 7, 2019

Hearing Room 301

2:00 PM

1:19-10051 Rockin Artwork, LLC

Chapter 11

#18.00 Application to employ Force 10 Partners as investment banker
fr. 2/21/19

Docket 26

Tentative Ruling:

In light of the *Chapter 11 Trustee's First Case Status Report* [doc. 82], the Court will continue this hearing to **April 25, 2019 at 2:00 p.m.**

Appearances on March 7, 2019 are excused.

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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

Thursday, March 7, 2019

Hearing Room 301

2:00 PM

1:19-10051 Rockin Artwork, LLC

Chapter 11

#19.00 Motion for an order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, authorizing and approving employment and retention of Howard B. Grobstein, through Grobstein Teeple, LLP, as chief restructuring officer

Docket 41

***** VACATED *** REASON: Withdrawal of motion filed 3/5/19 [Dkt. 84]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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

Thursday, March 7, 2019

Hearing Room 301

2:00 PM

1:19-10051 Rockin Artwork, LLC

Chapter 11

- #20.00** Motion for an order:
(1) Approving form of asset purchase agreement for stalking horse bidder and for prospective overbidders to use,
(2) Approving auction sale format, bidding procedures, and Stalking Horse bid protections; and
(3) Scheduling a court hearing to consider approval of the sale to the highest bidder

fr. 2/21/19

Docket 45

Tentative Ruling:

In light of the *Chapter 11 Trustee's First Case Status Report* [doc. 82], the Court will continue this hearing to **April 25, 2019 at 2:00 p.m.**

Appearances on March 7, 2019 are excused.

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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

Thursday, March 7, 2019

Hearing Room 301

2:00 PM

1:19-10062 Andrew Marc Pitsicalis

Chapter 11

#21.00 Hendrix creditors' motion for order appointing chapter 11 trustee pursuant to Bankruptcy Code section 1104(a) or converting debtor's case to chapter 7 pursuant to Bankruptcy Code section 1112

fr. 2/11/19

Docket 8

***** VACATED *** REASON: Order entered on 2/13/19 [doc. 41].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrew Marc Pitsicalis

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, March 7, 2019

Hearing Room 301

2:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#22.00 Motion for authority to obtain post-petition insurance premium financing to obtain property insurance policy

Docket 18

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):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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

Tuesday, March 12, 2019

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 12, 2019

Hearing Room 301

11:00 AM

1:14-10894 Traci L. Scher and Craig Scher

Chapter 13

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

fr. 9/18/18; 11/6/18; 1/8/19; 2/12/19

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

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, March 12, 2019

Hearing Room 301

11:00 AM

1:14-12897 Mati Timor

Chapter 13

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

Docket 179

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, March 12, 2019

Hearing Room 301

11:00 AM

1:15-13919 Paul Douglas Collins

Chapter 13

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

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul Douglas Collins

Represented By
Michael E Clark

Trustee(s):

Elizabeth (SV) 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 12, 2019

Hearing Room 301

11:00 AM

1:16-10204 Juan Talavera and Beatriz Talavera

Chapter 13

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

Docket 61

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Talavera

Represented By
Gregory M Shanfeld
Harout G Bouldoukian

Joint Debtor(s):

Beatriz Talavera

Represented By
Gregory M Shanfeld
Harout G Bouldoukian

Trustee(s):

Elizabeth (SV) 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 12, 2019

Hearing Room 301

11:00 AM

1:16-11630 Salena G Ellerkamp

Chapter 13

#40.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 2/12/19

Docket 74

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, March 12, 2019

Hearing Room 301

11:00 AM

1:16-12523 Brent Carpenter

Chapter 13

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

fr. 2/12/19

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

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 12, 2019

Hearing Room 301

11:00 AM

1:16-13190 JeanPaul Reneaux

Chapter 13

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

Docket 78

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**

Tuesday, March 12, 2019

Hearing Room 301

11:00 AM

1:17-10051 Glenn Alan Badgett

Chapter 13

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

fr. 9/18/18 ; 11/6/18; 12/11/18; 2/12/19

Docket 62

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, March 12, 2019

Hearing Room 301

11:00 AM

1:17-10083 Javier Magana and Jacqueline E. Magana

Chapter 13

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

Docket 86

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 303 Calendar**

Tuesday, March 12, 2019

Hearing Room 303

11:00 AM

1:17-11443 Martin Cohn

Chapter 13

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

Docket 74

Tentative Ruling:

- NONE LISTED -

Party Information

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, March 12, 2019

Hearing Room 301

11:00 AM

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

Chapter 13

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

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

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, March 12, 2019

Hearing Room 301

11:00 AM

1:17-13039 Benjawan Rachapaetayakom

Chapter 13

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

fr. 2/12/19

Docket 84

Tentative Ruling:

- NONE LISTED -

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, March 12, 2019

Hearing Room 301

11:00 AM

1:18-10661 Andres Salcedo, Jr.

Chapter 13

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

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

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, March 12, 2019

Hearing Room 301

11:00 AM

1:18-10722 Tereso Betancourt

Chapter 13

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

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tereso Betancourt

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, March 12, 2019

Hearing Room 301

11:00 AM

1:15-13422 Roy Glen Stout and Sherri Sue Kirby-Stout

Chapter 13

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

Docket 65

Tentative Ruling:

- NONE LISTED -

Party Information

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, March 12, 2019

Hearing Room 301

11:30 AM

1:14-11489 Raymundo I Ramos

Chapter 13

#50.00 Motion re: Objection of U.S. Trustee to notice of mortgage payment change filed in connection with proof of claim 3

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.

Party Information

Debtor(s):

Raymundo I Ramos

Represented By
Richard A Loa

Trustee(s):

Elizabeth (SV) 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 12, 2019

Hearing Room 301

11:30 AM

1:16-13190 JeanPaul Reneaux

Chapter 13

#51.00 Motion re: objection to claim number 2 by claimant Wells Fargo Bank, N.A., et al. c/o Carrington Mortgage Services, LLC.

fr. 12/11/18; 2/12/19

Stip to continue filed 3/11/19

Docket 66

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**

Tuesday, March 12, 2019

Hearing Room 301

11:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#52.00 Application for compensation for debtor's attorney,
period: 8/1/18 to 1/18/19, fee: \$7,880.00, expenses: \$90.96.

Docket 107

Tentative Ruling:

The Court will continue this hearing to **11:30 a.m. on April 9, 2019**. No further briefing may be filed. If any such briefing is filed, any fees billed to prepare such briefs WILL NOT BE APPROVED.

Appearances on March 12, 2019 are excused.

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, March 12, 2019

Hearing Room 301

11:30 AM

1:18-11680 Alba Interiano

Chapter 13

#53.00 Order to show cause why debtor's counsel should not be held in civil contempt and/or sanctioned for failure to comply with court order and ordered to disgorge fees

fr. 2/12/19

Docket 50

Tentative Ruling:

On February 12, 2019, the Court entered an order continuing the hearing on the order to show cause and setting filing deadlines (the "Order") [doc. 57]. In the Order, the Court ordered that Carlo O. Reyes file and serve on the debtor a declaration, with attached billing statements, describing services he has provided to the debtor in connection with her chapter 13 bankruptcy case and the pending civil case no later than February 25, 2019. Mr. Reyes did not timely file a declaration.

In the Order, the Court further ordered that the debtor and Mr. Reyes file amendments to the debtor's statement of financial affairs no later than February 25, 2019. The debtor and Mr. Reyes did not timely file amendments to the debtor's statement of financial affairs.

2/12/19 Tentative Ruling

On July 03, 2018, the Alba Interiano (the "Debtor") filed a chapter 13 petition. On August 6, 2018, the Debtor filed a *Disclosure of Compensation of Attorney for Debtor(s)* ("Disclosure of Compensation") [doc. 14, at p. 31], which indicated that Mr. Reyes agreed to accept \$0.00 for his services in the Debtor's chapter 13 case. Also, on August 6, 2018, the Debtor filed a *Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys* ("RARA") [doc. 15]. The RARA indicated that Mr. Reyes would receive \$0.00 for his services.

On December 11, 2018, the Court held a continued chapter 13 plan confirmation hearing. Martin Weingarten appeared as an appearance attorney on behalf of the Debtor and Mr. Reyes. Based on the issues raised at the hearing, the Court determined

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

Tuesday, March 12, 2019

Hearing Room 301

11:30 AM

CONT... Alba Interiano

Chapter 13

that Mr. Reyes' personal appearance was required to facilitate confirmation of a chapter 13 plan. Accordingly, the Court continued the plan confirmation hearing to January 8, 2019 at 9:30 a.m. and issued an order requiring Mr. Reyes to appear personally at the continued confirmation hearing (the "Order to Appear") [doc. 45].

On January 8, 2019 at 9:30 a.m., the Court held a continued chapter 13 plan confirmation hearing. Contrary to the Order to Appear, Mr. Reyes did not appear, and his nonappearance was not excused by the Court. Martin Weingarten appeared as an appearance attorney on behalf of the Debtor and Mr. Reyes.

At the hearing, contrary to the Disclosure of Compensation and the RARA, someone allegedly assisting the Debtor stated that the Debtor claims that she has paid Mr. Reyes \$8,000.00. The Debtor did not disclose this payment on her Statement of Financial Affairs [doc. 14, at pp. 24-29]. The Debtor also requested that the Court dismiss her bankruptcy case. The Debtor stated that Mr. Reyes did not explain to her why she was in a chapter 13 bankruptcy case and mislead her into filing her petition. On January 9, 2019, the Court entered an order dismissing the Debtor's chapter 13 case [doc. 49].

On January 9, 2019, the Court issued an *Order to Show Cause Why Debtor's Counsel Should Not Be Held in Civil Contempt and/or Sanctioned for Failure to Comply with Court Order and Ordered to Disgorge Fees* (the "OSC") [doc. 50] on the grounds that Mr. Reyes failed to do the following: (i) comply with the Order to Appear; (ii) disclose the payments made to him by the Debtor and what services he provided to Debtor in connection with those payments; (iii) effectively communicate with the Debtor; and (iv) provide proper representation of the Debtor in her chapter 13 case.

The Debtor was ordered to file and serve on Mr. Reyes a declaration regarding the amount, timing, and rationale for any payments she made to Mr. Reyes or his law office no later than January 15, 2019. The Court further ordered that the Debtor's declaration must be supported by evidence of proof of payment. Mr. Reyes was ordered to file and serve on the Debtor a written response to the OSC no later than January 29, 2019.

On January 10, 2019, Mr. Reyes filed an *Amended Disclosure of Compensation of Attorney for Debtor(s)* [doc. 52] (the "Amended Disclosure of Compensation"),

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

Tuesday, March 12, 2019

Hearing Room 301

11:30 AM

CONT... Alba Interiano

Chapter 13

which indicated that he agreed to accept \$4,500.00 for his services in the Debtor's chapter 13 case. The Amended Disclosure of Compensation indicated that Mr. Reyes received \$1,000.00 pre-petition, and \$3,500.00 was the remaining balance. Mr. Reyes has not filed an amended RARA.

On January 14, 2019, the Debtor filed her response (the "Debtor's Response") [doc. 55]. Contrary to the OSC, the Debtor did not file a declaration signed under penalty of perjury, and she did not include proof of service on Mr. Reyes of the Debtor's Response.

Party Information

Debtor(s):

Alba Interiano

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, March 12, 2019

Hearing Room 301

11:30 AM

1:18-12844 Shirley Ann Walker

Chapter 13

#54.00 Trustee's objection to debtor's homestead exemption

Docket 18

Tentative Ruling:

In response to the chapter 13 trustee's objection, the debtor filed an amended Schedule C reducing her claim of exemption under California Code of Civil Procedure § 704.730(a) from \$100,000 to \$75,000 [doc. 27]. 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):

Shirley Ann Walker

Represented By
William J Smyth

Trustee(s):

Elizabeth (SV) 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 13, 2019

Hearing Room 301

9:30 AM

1:18-11318 Marcin Lambirth LLP

Chapter 7

#1.00 Motion for relief from stay [AN]

LISA MILLER
VS
DEBTOR

Docket 49

Tentative Ruling:

Grant relief from the automatic 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 and property of the debtor's bankruptcy estate.

Movant may proceed against the non-debtor defendants in the nonbankruptcy action.

Any other request for relief is denied.

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

Party Information

Debtor(s):

Marcin Lambirth LLP

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By
Christopher Celentino

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

Wednesday, March 13, 2019

Hearing Room 301

9:30 AM

1:18-11318 Marcin Lambirth LLP

Chapter 7

#2.00 Motion for relief from stay [AN]

DEBBIE VAUGHN
VS
DEBTOR

Docket 50

Tentative Ruling:

Grant relief from the automatic 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 and property of the debtor's bankruptcy estate.

Movant may proceed against the non-debtor defendants in the nonbankruptcy action.

Any other request for relief is denied.

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

Party Information

Debtor(s):

Marcin Lambirth LLP

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By
Christopher Celentino

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

Wednesday, March 13, 2019

Hearing Room 301

9:30 AM

1:19-10076 Regina Vazquez

Chapter 7

#3.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORP
VS
DEBTOR

Docket 12

***** VACATED *** REASON: No chambers copy of motion provided.
Motion not on calendar.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Regina Vazquez

Represented By
Nathan A Berneman

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 13, 2019

Hearing Room 301

9:30 AM

1:19-10110 Richard Tocher

Chapter 7

#4.00 Motion for relief from stay [PP]

ACAR LEASING LTD
VS
DEBTOR

Docket 11

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):

Richard Tocher

Represented By
Lauren Rode

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, March 13, 2019

Hearing Room 301

9:30 AM

1:19-10231 Nathalia Elaine Harris

Chapter 7

#5.00 Motion for relief from stay [PP]

DAIMLER TRUST
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.

Party Information

Debtor(s):

Nathalia Elaine Harris

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, March 13, 2019

Hearing Room 301

9:30 AM

1:19-10335 Mia Danielle Boykin

Chapter 7

#6.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 14

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Mia Danielle Boykin

Represented By
Faith A Ford

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, March 13, 2019

Hearing Room 301

9:30 AM

1:19-10325 Joann B Atkins

Chapter 13

#7.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 6

Tentative Ruling:

Grant motion on an interim basis and continue hearing to **May 8, 2019 at 9:30 a.m.**

The First Bankruptcy Case

On May 12, 2016, the debtor filed a prior chapter 13 petition (the "First Case") [case no. 1:16-bk-11441-MT]. In her prior schedules, the debtor disclosed monthly income in the amount of \$2,871.81 and monthly expenses in the amount of \$2,483.00, leaving net monthly income of \$388.81 [First Case, doc. 12, p. 19].

On September 7, 2016, the Court entered an order confirming the debtor's chapter 13 plan [First Case, doc. 23]. In her prior plan, the debtor's plan payment was \$388.00 per month for 60 months [First Case, doc. 13]. Through her chapter 13 plan payments, among other things, the debtor intended to cure prepetition deed of trust arrearages in the amount of \$14,742.00.

On March 16, 2017, creditor The Bank of New York Mellon ("BONYM") filed a motion for relief from stay as to real property located at 13217 Filmore Street, Los Angeles, California 91331 (the "RFS Motion") [First Case, doc. 30]. On June 14, 2017, the debtor and BONYM entered into a stipulation resolving the RFS Motion and providing for adequate protection payments [First Case, doc. 34]. On the same day, the Court entered an order granting the RFS Motion on the terms in that stipulation [First Case, doc. 36].

On February 14, 2018, the chapter 13 trustee (the "Trustee") filed a motion to dismiss for failure to make plan payments (the "Motion to Dismiss") [First Case, doc. 40]. On March 29, 2018, the Court entered an order dismissing the chapter 13 case for failure to make plan payments [First Case, doc. 46].

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

Wednesday, March 13, 2019

Hearing Room 301

9:30 AM

CONT... Joann B Atkins

Chapter 13

The Pending Bankruptcy Case

On February 13, 2019, the debtor filed the pending chapter 13 case. On February 14, 2019, the debtor filed a motion to continue the automatic stay as to all creditors (the "Motion to Continue Stay") [doc. 6]. In the Motion to Continue Stay, the debtor states that she is a health care provider. During the First Case, she experienced a temporary financial hardship when she lost a few of her patients. Additionally, the rental unit the debtor used to generate additional income was seized by the government because the renters were engaged in illegal activities.

In her pending case, the debtor's Schedules I and J indicate monthly income of \$2,987.41 and monthly expenses of \$2,834.00, leaving net monthly income of \$153.41 [doc. 13, p. 20]. In her chapter 13 plan, the debtor proposes a monthly payment of \$153.00 per month for months 1 through 6, then \$1,415.00 per month for months 7 through 60 [doc. 15]. The debtor's current chapter 13 plan proposes to cure deed of trust arrears in the amount of \$59,701.64.

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 discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

Notwithstanding the assertions in the Motion to Continue Stay, 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 less net monthly disposable income than during the First Case. Additionally, the debtor has provided no evidence that she has sufficient net monthly income to fund the step-up in her proposed chapter 13 plan.

In light of the foregoing, the Court will grant the motion on an interim basis up to the

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Wednesday, March 13, 2019

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9:30 AM

CONT...

Joann B Atkins

Chapter 13

date of the continued hearing. **No later than April 17, 2019**, 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 March 2019 and April 2019 deed of trust payments in the amount of \$1,755.00 (as stated in her current Schedule J) as to the real property located at 13217 Filmore Street, Pacoima, California 91331; and (2) her March 2019 and April 2019 plan payments in the amount of \$153.00 to the chapter 13 trustee. **No later than April 24, 2019**, the debtor must file a declaration to demonstrate that she timely made her required post-petition deed of trust and chapter 13 plan payments.

Party Information

Debtor(s):

Joann B Atkins

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 13, 2019

Hearing Room 301

10:00 AM

1:16-12203 Alfredo Gonzalez Villapando

Chapter 11

#7.10 Order to show cause why Greenpoint/Capital One, N.A. and/or its affiliates, should not be held in contempt of Court for violation of order of discharge and order under 11 U.S.C. sec. 506(d) regarding lien on 4250 Alonzo Ave., Encino, CA 91316 (APN: 2184-037-007)

Docket 290

Tentative Ruling:

- NONE LISTED -

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**

Wednesday, March 13, 2019

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

- #8.00** Status conference re: amended complaint to:
1. Quiet title of real property located at 22401 Summitridge Circle, Chatsworth, CA 91311; and
 2. Avoidance and recovery of fraudulent transfer pursuant to California Civil Code 3439.04
 3. Turnover of Property of the estate pursuant to 11 U.S.C. sec 542
 4. Imposition of constructive trust

fr. 11/7/18(stip); 12/5/18; 12/12/18; 1/9/2019;

Docket 48

***** VACATED *** REASON: Continued to 3/20/19 per stipulated order**

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

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CONT... Duane Daniel Martin

Chapter 7

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

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1:18-11914 William G Hill

Chapter 7

Adv#: 1:18-01121 Fields et al v. Hill et al

#9.00 Motion to dismiss adversary proceeding and alternatively
for summary judgement

Docket 6

Tentative Ruling:

The defendants did not file proof of service of notice of the hearing on the plaintiffs. The Court will continue this matter to **2:30 p.m. on April 17, 2019**. No later than **March 27, 2019**, the defendants must file and serve notice of the continued hearing and the deadline to file any response on the plaintiffs.

Appearances on March 13, 2019 are excused.

Party Information

Debtor(s):

William G Hill

Represented By
Gary S Saunders

Defendant(s):

William G Hill

Represented By
Gary S Saunders

KLYDA M HILL

Pro Se

Plaintiff(s):

Johnnie L Fields

Represented By
Bruce V Rorty

Scott D Carlton

Represented By
Bruce V Rorty

Carmen S. Ortiz

Represented By
Bruce V Rorty

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Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:18-11914 William G Hill

Chapter 7

Adv#: 1:18-01121 Fields et al v. Hill et al

#10.00 Status conference re complaint objecting to discharge pursuant to 11 U.S.C. sec 727(a)(2), 727(a)(4)(A), 727(a)(4)(C) and 727(a)(4)(D); and for monetary judgment per FRBP 7001(1) and 11 U.S.C. sec 542

fr. 2/6/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on April 17, 2019**, to be held with the continued hearing on the defendants' motion to dismiss.

Appearances on March 13, 2019 are excused.

Party Information

Debtor(s):

William G Hill

Represented By
Gary S Saunders

Defendant(s):

William G Hill

Pro Se

KLYDA M HILL

Pro Se

Plaintiff(s):

Johnnie L Fields

Represented By
Bruce V Rorty

Scott D Carlton

Represented By
Bruce V Rorty

Carmen S. Ortiz

Represented By
Bruce V Rorty

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Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:18-11150 Robert Edward Zuckerman
Adv#: 1:18-01086 Abel v. Zuckerman et al

Chapter 11

#11.00 Motion by Defendants Sunderland McCutchan, Inc., a California corporation, Sunderland McCutchan LLP, a California partnership, and B. Edward McCutchan, Jr., an individual, to Dismiss Richard Abel's First Amended Adversary Complaint

fr 2/20/19

Docket 24

Tentative Ruling:

In light of the Court's ruling to convert the debtor's case to a chapter 7 case [1:18-bk-11150-VK, doc. 125], the Court will dismiss the plaintiff's claims against nondebtor parties under 11 U.S.C. §§ 547 and 549, without prejudice, in accordance with the Court's ruling from the hearing on February 20, 2019 at 2:30 p.m. The plaintiff must file and serve an amended complaint no later than **March 27, 2019**.

The Court will prepare the orders.

2/20/2019 Ruling:

Grant in part and deny in part.

I. BACKGROUND

On May 4, 2018, Robert Zuckerman ("Debtor") filed a voluntary chapter 11 petition. The deadline to file a complaint for nondischargeability of a debt or to object to Debtor's discharge was set as August 6, 2018 (the "Dischargeability Deadline").

On August 2, 2018, Richard Abel ("Plaintiff") filed a complaint against Debtor and Sunderland/McCutchan, Inc., among others, initiating this adversary proceeding. On September 13, 2018, Plaintiff filed a first amended complaint (the "FAC") [doc. 11], adding Sunderland/McCutchan LLP and B. Edward McCutchan, Jr. as defendants

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(together with Sunderland/McCutchan, Inc., the "McCutchan Defendants"). As relevant to Debtor and the McCutchan Defendants, Plaintiff asserts claims for declaratory and injunctive relief, avoidance of transfers under 11 U.S.C. §§ 547 and 549 and nondischargeability of the debt owed to Plaintiff pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(2)(B) and (a)(6). [FN1]. In relevant part, the FAC includes the following allegations:

Debtor is an insider of certain corporations, including ZBCO (collectively, the "Corporations"). These entities are also listed on Debtor's schedules and named as co-defendants in the FAC.

Plaintiff has a claim against Debtor in connection with Liebling v. Goodrich, Sonoma County Superior Court Case No. SCV-245743 (the "State Court Action"). On June 29, 2017, in enforcing a judgment entered in favor of Plaintiff in the State Court Action, Plaintiff obtained a *Notice of Judgment Lien* (the "JL1 Lien"). On January 24, 2018, the state court issued an Order: (i) Granting Motion for Assignment Order (ii) Granting Motion for Restraining Order (iii) Granting Order to Seize (the "Assignment Order"). On January 25, 2018, the Notice of Entry of Order and the Assignment Order were served on Debtor and the McCutchan Defendants.

On January 24, 2018, Debtor's attorney, Nikki B. Allen, held funds that belonged to Debtor in Ms. Allen's Interest on Lawyer's Trust Account ("IOLTA") and additional amounts of Debtor's funds were deposited into the IOLTA after January 24, 2018. On April 10, 2018, Debtor, Ms. Allen and the McCutchan Defendants appeared in state court to discuss bench warrants issued against Debtor. At that time, Debtor directed Ms. Allen to use the funds from the IOLTA to pay one of the McCutchan Defendants \$8,135.00 for unpaid sanctions owed by Debtor.

Plaintiff was not a party to the bench warrants against Debtor, and Plaintiff was not served with any notice of the April 10, 2018 hearing, although Ms. Allen did represent in a voicemail that she would appear on that date for an *ex parte* hearing. The state court judge did not order

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the payment of sanctions; instead, the McCutchan Defendants requested the sanctions.

The Assignment Order transferred all title, rights and interest in Debtor's IOLTA funds to Plaintiff as of January 24, 2018. Therefore, the \$8,135.00 payment was a preferential transfer. Debtor, Ms. Allen and the McCutchan Defendants willfully and intentionally violated the Assignment Order and are in contempt of that order. Debtor's funds are now in the control of the McCutchan Defendants.

On August 1, 2018, Debtor filed amended schedules disclosing that Debtor had transferred 20% of ZBCO's profits to his sons; transferred 20% Continental-SJ; and created a new interest in Phoenix-Holdings (the "Postpetition Transfers") after the petition date. The amended schedules also disclosed that four of the Corporations owe Debtor large amounts of money. In addition, Debtor has received prepetition and postpetition family support. Debtor also maintains an undisclosed Venmo account.

As to nondischargeability, Plaintiff obtained a judgment of fraud against Debtor in state court (the "Amended Judgment"). Debtor falsely represented in writing that he would use money advanced by Plaintiff for land development in Malibu. However, Debtor admitted that he had no documentation showing where any of the funds from Plaintiff went, and none of the parcels ever had physical improvements made upon them. Debtor also misrepresented that each separate loan obtained by different parties would be secured by its own separate first deed of trust, misrepresented the number of parcels available and never made any payments on any loans.

In addition, Debtor applied for the loans with fraudulent and inflated appraisals for the purpose of deceiving Plaintiff. Plaintiff reasonably relied on the representations made by Debtor and Plaintiff sustained damages as a proximate result of Debtor's intentional fraud.

Amended Complaint, pp. 7-24. To the FAC, Plaintiff attached the Assignment Order.

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FAC, Exhibit F. In the Assignment Order, the state court held, in relevant part:

PART (1) – THE ASSIGNMENT ORDER

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 business entity or person in which Cruickshank, Skarpas, 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 . . .

PART (2) – THE RESTRAINING ORDER

IT IS FURTHER ORDERED that pursuant to Code of Civil Procedure section 708.520 the judgment debtors Cruickshank, Skarpas, 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.

FAC, Exhibit F.

On October 10, 2018, the McCutchan Defendants filed a motion to dismiss the FAC (the "McCutchan Motion") [doc. 24], asserting that: (A) the FAC is untimely as to them because some of the McCutchan Defendants were added to the FAC after the Dischargeability Deadline; (B) Plaintiff does not have standing to pursue avoidance of transfers on behalf of the estate; and (C) the sanction payment by Debtor does not qualify as a preferential transfer under 11 U.S.C. § 547(b).

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On January 10, 2019, Debtor filed a motion to dismiss the FAC (the "Debtor Motion") [doc. 55]. In the Debtor Motion, Debtor argues that: (A) Plaintiff did not sufficiently make allegations for declaratory relief as to the Assignment Order; (B) Plaintiff does not have standing to pursue avoidance of transfers on behalf of the estate; (C) and Plaintiff has not stated a claim for relief under 11 U.S.C. § 523(a)(2)(A), (a)(2)(B) or (a)(6). On February 05, 2019, Plaintiff filed oppositions to both motions [docs. 60, 62].

On December 17, 2018, Plaintiff filed a motion to convert Debtor's case from a chapter 11 case to a case under chapter 7 (the "Motion to Convert") [Bankruptcy Docket, doc. 102]. The Motion to Convert is set for hearing at 2:00 p.m. on March 7, 2019.

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 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.

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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).

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. Timeliness of Claims against McCutchan Defendants

In the McCutchan Motion, the McCutchan Defendants assert that the FAC is untimely as to them because some of the McCutchan Defendants were named as defendants

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after the Dischargeability Deadline. However, the Dischargeability Deadline pertains only to claims under 11 U.S.C. §§ 523 and 727, and the claims against the McCutchan Defendants are for declaratory relief and avoidance of a transfer under § 547(b). As such, the FAC is not untimely as to the McCutchan Defendants.

C. Standing - 11 U.S.C. §§ 547(b) and 549(a)

Both Debtor and the McCutchan Defendants assert that Plaintiff does not have standing to pursue the avoidance claims in the FAC. Pursuant to 11 U.S.C. § 547(b), "the trustee may avoid any transfer of an interest of the debtor in property" –

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made -- (A) on or within 90 days before the date of the filing of the petition; or (B) between 90 days and 1 year before the date of filing of the petition, if such creditor at the time such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if -- (A) the case were a case under chapter 7 of this title; (B) the transfer had not been made; and (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

(emphasis added). Pursuant to 11 U.S.C. § 549(a), "the trustee may avoid a transfer of property of the estate . . . that occurs after the commencement of the case; and . . . that is not authorized under this title or by the court." (emphasis added).

Avoidance claims under the Bankruptcy Code empower a trustee in bankruptcy to avoid and recover, for the benefit of the estate, transfers of property by a debtor. A chapter 11 debtor in possession is vested with certain rights, powers and duties of a trustee, including the power to bring avoidance actions. 11 U.S.C. § 1107(a). Creditors in a bankruptcy case typically are not vested with these powers.

In re Know Weigh, L.L.C., 576 B.R. 189, 206 (Bankr. C.D. Cal. 2017) (citing *In re Curry & Sorensen, Inc.*, 57 B.R. 824, 827 (B.A.P. 9th Cir. 1986)). Nevertheless, "[i]t

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is well settled that in appropriate situations the bankruptcy court may allow a party other than the trustee or debtor-in-possession to pursue the estate's litigation." *In re Spaulding Composites Co.*, 207 B.R. 899, 903 (B.A.P. 9th Cir. 1997).

"The Ninth Circuit [has not] adopted a definitive standard for evaluating when a [creditor] should be granted derivative standing." *In re Catholic Bishop of N. Alaska*, 2009 WL 8412174, at *5 (Bankr. D. Alaska Sept. 11, 2009). However, two decisions from the Bankruptcy Appellate Panel of the Ninth Circuit "have indicated that the court should consider whether the proposed litigation is 'necessary and beneficial' or the failure of the debtor in possession to act is 'unjustifiable.'" *Id.* (citing *Spaulding*, 207 B.R. at 904; and *Curry*, 57 B.R. at 828). The Ninth Circuit Court of Appeals also "has indicated that derivative standing is appropriate where the debtor in possession's failure to bring a suit 'does not adequately protect the creditor's interests or the chose in action is of inconsequential value to the estate.'" *Id.* (quoting *Biltmore Assocs., LLC v. Twin City Fire Ins. Co.*, 572 F.3d 663, 674 n.41 (9th Cir. 2009)). "The Fifth Circuit has stated that bankruptcy courts generally require 'that the claim be colorable, that the debtor-in-possession [has] refused unjustifiably to pursue the claim, and that the [creditor] first receive leave to sue from the bankruptcy court.' These criteria have been endorsed by other courts and by *Collier*." *Id.* (citing *Louisiana World Expo. v. Fed. Ins. Co.*, 858 F.2d 233, 247 (5th Cir. 1988); and 7 *Collier on Bankruptcy* ¶ 1103.05[6][a] at 1103-36-1103-37 (15th ed. revised 2009)).

"The requirement of court approval serves an important gatekeeping function with respect to the use of estate powers by anyone other than the trustee or debtor in possession." *Know Weigh, L.L.C.*, 576 B.R. at 209. "Although the standard and better practice is to obtain court approval before filing bankruptcy avoidance actions that are based on derivative standing, a bankruptcy court may exercise its discretion to grant such approval retroactively—after the complaint has been filed but before recovery." *Id.*, at 210 (citing *In re Hashim*, 379 B.R. 912, 922 (B.A.P. 9th Cir. 2007)).

Here, Plaintiff does not have standing to assert the avoidance claims in the FAC. Although Plaintiff may retroactively move for authorization to pursue the claims, Plaintiff has not filed a motion for authority to pursue the claims, and has not discussed why Plaintiff should be given such authority using the applicable legal standards. To the extent Plaintiff argues that he has standing because of the Assignment Order, assignments under CCP § 705.510, on which the Assignment

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Order is based, do not assign causes of action to assignees. *See AmeriPride Servs. Inc. v. Texas E. Overseas Inc.*, 782 F.3d 474, 491 (9th Cir. 2015) ("In California, '[a] cause of action for damages is itself personal property,' rather than a type of payment. A court therefore may assign only the right to payment due from a cause of action under section 708.510, and may not assign the cause of action directly.") (emphasis added). As such, the Assignment Order does not give Plaintiff standing.

In light of the Motion to Convert filed by Plaintiff, which is set for hearing on March 7, 2019 at 2:00 p.m., Debtor's chapter 11 case may be converted to a chapter 7 case. If the Court converts Debtor's case, a chapter 7 trustee will be appointed and will have exclusive standing to pursue avoidance claims on behalf of the estate. In light of this situation, the Court will continue this matter to March 7, 2019 at 2:00 p.m. At that time, if the Court converts Debtor's case, the Court will dismiss Plaintiff's avoidance claims without prejudice. If the Court does not convert Debtor's case, the Court will set deadlines for Plaintiff to file a motion for authority to pursue the applicable avoidance claims.

D. Plaintiff's Avoidance Claims against Debtor

Even if Plaintiff had standing, Plaintiff has not sufficiently alleged claims under 11 U.S.C. §§ 547 and 549 against Debtor. Pursuant to 11 U.S.C. § 550(a), "to the extent a transfer is avoided under section 547... [or] 549..., the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from... (1) *the initial transferee* of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate transferee of such initial transferee." 11 U.S.C. § 550(a)(1), (a)(2) (emphasis added). A debtor-transferor "may not be held liable as a transferor, an initial transferee, or as the entity for whose benefit the transfer was made." *In re Wolf*, 2018 WL 6192244 (Bankr. N.D. Ill. 2018) (aggregating cases).

Because Debtor is not a *transferee*, Plaintiff has not properly alleged claims under §§ 547 and 549 as against Debtor. Plaintiff asserts that the claims against Debtor are proper because Debtor maintained "dominion" over the allegedly transferred assets. The "dominion test" referenced by Plaintiff provides that a transferee must have sufficient control or dominion over an asset to properly be considered a transferee under these statutes. *See, e.g. In re Cohen*, 300 F.3d 1097, 1102 (9th Cir. 2002). The

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dominion test does *not* serve to convert a transferor to a transferee. As such, even if Plaintiff had standing, Plaintiff cannot assert claims under §§ 547 and 549 against *Debtor*, and the Court will dismiss these claims against Debtor with prejudice.

E. Plaintiff's Claims for Declaratory and Injunctive Relief

Pursuant to CCP § 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.

(emphasis added). In the FAC, Plaintiff requests a declaratory judgment that, pursuant to the Assignment Order, Plaintiff is the owner of Debtor's rights to: (A) receive payment from certain corporations; (B) the IOLTA funds; (C) payment for family support; (D) payment from the Venmo account; (E) income generated from the use of Debtor's real estate license and general contractor's license; and (F) any other right to payment as of January 24, 2018. [FN2]. Plaintiff also requests a declaratory judgment that the transfer of 20% of the profits of ZBCO to Debtor's sons violated the restraining order in the Assignment Order. [FN3].

The FAC includes sufficient allegations regarding Debtor's right to payment from the corporations and Debtor's licenses. However, Plaintiff has not adequately alleged that Debtor has a *right* to payment of family support, e.g., from a court order. To the

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extent Debtor is receiving family support as a gift, such an interest is not an assignable interest because Debtor does not have a right to receive such payments. *Casiopea Bovet, LLC v. Chiang*, 12 Cal.App.5th 656, 661 (Ct. App. 2017) ("This section does not make any property assignable that is not already assignable.").

Moreover, Plaintiff has not made sufficient allegations as to any interest Plaintiff may have in Debtor's Venmo account. For instance, were the funds in Debtor's Venmo account from before or after January 24, 2018, the date of the Assignment Order? Are the deposits in Debtor's Venmo account gifts?

As to the IOLTA funds, Plaintiff has not sufficiently alleged that Debtor has a right to reimbursement of the IOLTA funds. Regarding Plaintiff's claims for declaratory relief, Plaintiff does not sufficiently allege that the IOLTA funds originated from a source covered by the Assignment Order.

As to the alleged transfer of 20% of the profits of ZBCO, the Assignment Order precluded Debtor from transferring any rights to payment. However, Debtor's amended schedules do not show a *transfer* of profits. Moreover, Plaintiff has not adequately alleged that Debtor otherwise had a right to payment of 20% of ZBCO's profits. As such, Plaintiff's allegations regarding the ZBCO "transfer" are insufficient.

Finally, Plaintiff's allegation that the Assignment Order covers "any other right to payment that Debtor had as of January 24, 2018 or in the future" is too broad. The scope of the Assignment Order is not unlimited; for instance, the assignment is effective "only to the extent necessary to satisfy the money judgment," CCP § 708.510(c), and does not give Plaintiff a right to property that is not assignable. *Casiopea*, 12 Cal.App.5th at 661.

Plaintiff also references "injunctive relief" in the same section Plaintiff asserts declaratory relief. However, Plaintiff does not make allegations regarding the elements of a permanent injunction. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S.Ct. 1837, 1839, 164 L.Ed.2d 641 (2006) (for permanent injunction, a plaintiff must show "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and

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defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction"). It is unclear if Plaintiff is requesting a permanent injunction from this Court or if Plaintiff requests a declaratory judgment that the restraining order from the state court bars Debtor's transfer of certain assets. To the extent Plaintiff is requesting a permanent injunction from this Court, the Court will dismiss Plaintiff's claim for a permanent injunction with leave to amend.

F. 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 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, Plaintiff incorporates the Amended Judgment into the FAC. The Amended Judgment, combined with the allegations in the FAC, sufficiently state a claim under § 523(a)(2)(A). Regarding the first element, the state court held that Debtor made the following misrepresentations: (1) Debtor purposefully overvalued the security for Plaintiff's initial loans; (2) the Malibu property could not be developed as represented

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CONT... **Robert Edward Zuckerman**

Chapter 11

by the Debtor; (3) Debtor represented there were many more parcels of land than actually available; and (4) Debtor falsely represented he would use funds loaned to develop the Malibu land, but did not.

As to the second and third elements of § 523(a)(2)(A), the state court held that Debtor had "no intent whatsoever to use the money in the Malibu land development project." Amended Judgment, p. 7. In addition, Plaintiff alleges that Debtor knew there were fewer parcels than Debtor represented at the time Debtor made those representations, and that Debtor applied for the subject loans with the intent and purpose of deceiving Plaintiff.

With respect to reliance, Plaintiff alleges that Debtor represented to Plaintiff that Debtor had a personal net worth of over \$10 million and that he was a highly successful and sophisticated real estate developer, builder and broker. Plaintiff also alleges that he reasonably relied on the representations made in Debtor's loan applications. As to the final element of § 523(a)(2)(A), Plaintiff alleges that, because of the intentional misrepresentations by Debtor, Plaintiff was injured and suffered damages as stated in the FAC.

Debtor argues that issue preclusion should not apply to the Amended Judgment and the state court's findings related to fraud. However, the Court is not considering issue preclusion at this time; the Court is deciding whether the FAC and the incorporated Amended Judgment contain sufficient allegations under § 523(a)(2)(A). For the reasons stated above, Plaintiff has sufficiently alleged a claim under § 523(a)(2)(A).

G. 11 U.S.C. § 523(a)(2)(B)

Pursuant to 11 U.S.C. § 523(a)(2)(B), the plaintiff must show that the debtor incurred a debt 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 money, property, services, or credit reasonably relied; and
- (iv) that the debtor caused to be made or published with intent to deceive....

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Plaintiff bases his § 523(a)(2)(B) claim on appraisals provided by Debtor and his agent which falsely represented that the Malibu land included 13 separate parcels. However, Plaintiff does not allege that either Debtor or an insider of Debtor owned or had an interest in the Malibu land. As such, the allegedly fraudulent appraisals do not necessarily relate to “*the debtor’s or an insider’s*” financial condition, and Plaintiff has not made sufficient allegations as to the second element of § 523(a)(2)(B). Consequently, the Court will dismiss Plaintiff’s claim under § 523(a)(2)(B) with leave to amend.

H. 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 original).

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).

Here, Plaintiff bases his claim under § 523(a)(6) on the state court’s award of punitive damages. In the Amended Judgment, the state court awarded punitive damages pursuant to California Civil Code (“CCC”) § 3294 and found “by clear and convincing

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evidence that [Debtor] willfully, purposely, maliciously, intentionally, oppressively, maliciously and wrongfully engaged in fraudulent conduct...." Amended Judgment, p. 11.

Under CCC § 3294, "malice" is defined as *either*: (1) "conduct which is intended by the defendant to cause injury to the plaintiff" or (2) "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." CCC § 3294(c)(1). Only the former definition of malice encompasses the type of willful conduct contemplated by § 523(a)(6). *In re Plyam*, 530 B.R. 456, 465 (B.A.P. 9th Cir. 2015). Moreover, "[i]n the context of [CCC] § 3294, the term 'willful' refers only to the deliberate conduct committed by a person in a despicable manner. The statute, thus, employs the dictionary definition of 'willful.'" *Id.*, at 469.

The state court did not clarify which definition of malice it employed, nor did the state court expand on its definition of willfulness. As such, the Amended Judgment alone is insufficient to plead a claim under § 523(a)(6).

I. Request for More Definite Statement

In the Debtor Motion, Debtor requests a more definite statement regarding claims from other parties that have been assigned to Plaintiff. In an amended complaint, Plaintiff must include allegations regarding the alleged assignments of claims to Plaintiff, such as the identities of the assignors, the dates of assignment and the amounts assigned to Plaintiff.

III. CONCLUSION

The Court will dismiss Plaintiff's claims under 11 U.S.C. § 523(a)(2)(B) and (a)(6) with leave to amend. The Court will deny the Debtor Motion as to Plaintiff's claim under § 523(a)(2)(A), with the exception that Plaintiff must provide a more definite statement as to the alleged assignments, such as the identity of assignors, the dates of assignment and the amounts assigned to Plaintiff.

The Court also will deny the Debtor Motion as to the claim for declaratory relief related to income derived from Debtor's businesses and professional licenses. The

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Court will grant the Debtor Motion as to the family support payments, the IOLTA funds, the Venmo account, the transfer of 20% of ZBCO's profits and "any other right to payment that Debtor had as of January 24, 2018," with leave to amend. If Plaintiff is requesting a permanent injunction, the Court will dismiss the request with leave to amend.

As to Plaintiff's claims under §§ 547 and 549, the Court will dismiss the claims *against Debtor* with prejudice. As to the claims against other parties, the Court will continue this matter to **2:30 p.m. on March 13, 2019**. If the Court converts Debtor's case to a chapter 7 case, the Court will dismiss the claims under §§ 547 and 549, against nondebtor parties, without prejudice. If the Court does not convert Debtor's case to chapter 7, the Court will set a deadline for Plaintiff to file a motion for authority to pursue the avoidance claims. At the continued hearing on March 13, 2019, the Court will set a deadline for Plaintiff to file an amended complaint.

The Court will prepare the orders.

FOOTNOTES

1. Plaintiff also asserts a claim of turnover against the corporate defendants, but not against Debtor or the McCutchan Defendants.
2. Neither Debtor nor the McCutchan Defendants request dismissal of Plaintiff's second claim for relief for declaratory judgment related to the JL1 Lien.
3. Plaintiff references the Court's ruling on a motion to restrict use of cash collateral filed by Plaintiff in Debtor's bankruptcy case [Bankruptcy Docket, doc. 75]. However, in that ruling, the Court held that Plaintiff did not have a right to assignment of businesses, licenses or litigation claims, but *may* have a right to money owed to Debtor from use of the licenses or money derived from the businesses. In contrast to the subject of that ruling, here, Plaintiff alleges a right to money generated from Debtor's businesses and licenses, among other assets the Court did not discuss in the ruling.

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Chapter 11

Party Information

Debtor(s):

Robert Edward Zuckerman	Represented By Sandford L. Frey Stuart I Koenig
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Defendant(s):

B. Edward McCutchan Jr. an	Represented By Edward McCutchan
Sunderland/McCutchan LLP, a	Represented By Edward McCutchan
Phoenix Holdings, LLC a California	Pro Se
DOES 1-20	Pro Se
Nickki B Allen, an individual	Pro Se
Maravilla Center, LLC, a California	Pro Se
Sunderland/McCutchan, Inc., a	Represented By Edward McCutchan
San Jacinto Z, LLC, a California	Pro Se
Contiental San Jacinto, LLC, a	Pro Se
Zuckerman Building Company, a	Pro Se
Valley Circle Estates Realty Co., a	Pro Se
Continental Communities, LLC, a	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Rezinate San Jacinto, LLC, a	Pro Se

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Chapter 11

Movant(s):

B. Edward McCutchan Jr. an

Represented By
Edward McCutchan

Sunderland/McCutchan, Inc., a

Represented By
Edward McCutchan

Sunderland/McCutchan LLP, a

Represented By
Edward McCutchan

Plaintiff(s):

Richard Abel

Pro Se

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1:18-11150 Robert Edward Zuckerman
Adv#: 1:18-01086 Abel v. Zuckerman et al

Chapter 11

#12.00 Motion by Debtor and Defendant Robert Edward Zuckerman to Dismiss First Amended Complaint
fr 2/20/19

Docket 55

Tentative Ruling:

See calendar no. 11.

Party Information

Debtor(s):

Robert Edward Zuckerman	Represented By Sandford L. Frey Stuart I Koenig
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Defendant(s):

B. Edward McCutchan Jr. an	Represented By Edward McCutchan
Sunderland/McCutchan LLP, a	Represented By Edward McCutchan
Phoenix Holdings, LLC a California	Pro Se
DOES 1-20	Pro Se
Nickki B Allen, an individual	Pro Se
Sunderland/McCutchan, Inc., a	Represented By Edward McCutchan
Maravilla Center, LLC, a California	Pro Se
San Jacinto Z, LLC, a California	Pro Se
Contiental San Jacinto, LLC, a	Pro Se

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CONT... Robert Edward Zuckerman Chapter 11

Zuckerman Building Company, a	Pro Se
Valley Circle Estates Realty Co., a	Pro Se
Continental Communities, LLC, a	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Rezinate San Jacinto, LLC, a	Pro Se

Movant(s):

Robert Edward Zuckerman	Represented By Sandford L. Frey
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Plaintiff(s):

Richard Abel	Pro Se
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1:18-11150 Robert Edward Zuckerman
Adv#: 1:18-01086 Abel v. Zuckerman et al

Chapter 11

- #13.00** 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)

fr. 11/14/18 (stip); 1/9/2019; 2/20/19

Docket 11

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on May 8, 2019.**

Appearances on March 13, 2019 are excused.

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
Continental San Jacinto, LLC, a	Pro Se

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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
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1:17-10830 ColorFX, Inc.

Chapter 11

#1.00 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;
11/8/18

Docket 1

Tentative Ruling:

If the Post-Confirmation Committee files the declaration of Jack Mott in support of the *Second Post Confirmation Status Conference Report* [doc. 228] before the status conference, the Court will continue this status conference to **July 18, 2019 at 1:00 p.m. No later than July 4, 2019**, the Post-Confirmation Committee must file a 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.**

If the Post-Confirmation Committee does not file the declaration of Jack Mott before the status conference, the Court will continue this status conference to **April 4, 2019 at 1:00 p.m.**

Appearances on March 14, 2019 are excused.

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau

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1:17-13142 Amir Elosseini

Chapter 11

#2.00 Disclosure statement hearing in support of plan of reorganization

Docket 85

Tentative Ruling:

The parties must address the following:

Service/Notice. The debtor has not served notice of the disclosure statement ("DS") hearing on the Internal Revenue Service ("IRS") in accordance with Local Bankruptcy Rule 2002-2(c) and Fed. R. Bankr. P. 5003(e) and used 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, under "Rules & Procedures." In accordance with the foregoing, notice of any future contested matter or adversary proceeding involving 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

Post-Petition Taxes. What are the debtor's estimated post-petition income taxes? The *Declaration of Current/Postpetition Income and Expenses* (DS, Exh. A) does not provide for payment of such post-petition income taxes.

Chase/Bank One Card Serv. Claim. In the debtor's amended schedule E/F [doc. 67],

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CONT...

Amir Elosseini

Chapter 11

the debtor lists a \$23,705.00 unsecured claim in favor of Chase/Bank One Card Serv. The debtor did not list the claim as contingent, unliquidated or disputed. Exhibit C to the Disclosure Statement does not account for this claim.

Cash Flow Projections. The disclosure statement does not provide cash flow projections for the first six months after the effective date of the plan.

Available Cash. The debtor's monthly operating report ("MOR") for January 2019 shows an ending cash balance of \$2,558.78 [doc. 98]. In the *Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization* [doc. 85], the projected cash on hand on the effective date is stated as \$110,000. The debtor indicates that this amount will come from the debtor's 401k. However, the debtor has been withdrawing substantial amounts from that account throughout the duration of the bankruptcy case, as reflected in the debtor's MORs. The debtor must provide documentation evidencing the current balance of the 401k account.

Sale of Assets. The debtor must provide the analysis that supports the debtor's estimate that the sale of the debtor's real property will generate \$80,000 in net proceeds. Why wouldn't those funds be available if the sale of the debtor's real property took place in a chapter 7 case, i.e., why is the the net liquidation value of the debtor's residence described as \$0 in Exhibit B and the "Net liquidation value" of the debtor's assets on page 5 of the disclosure statement described as \$4,750?

State Court Litigation. The debtor is currently involved in state court litigation with UCSD. In his status conference report filed on January 15, 2019 [doc. 83], the debtor indicated that the trial was set for January 25, 2019. What is the status of this litigation? The debtor's chapter 11 plan of reorganization does not account for any award received from this litigation. In the disclosure statement, the debtor must disclose how the proceeds from the litigation, if any, will be used.

Lease of Real Property. In the debtor's proposed chapter 11 plan of reorganization, the aggregate monthly plan payments to the creditors in class 2(c) and 2(d), to be made prior to the sale of the debtor's real property, are \$6,624.92. In the debtor's disclosure statement, the debtor indicates that he has purportedly entered into a one-year lease of the real property for \$5,400.00 per month. The disclosure statement must discuss how the debtor will fund the deficiency between the plan payments and the

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CONT... Amir Elosseini

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rental income (if the Court approves the debtor's entry into the lease)?

Party Information

Debtor(s):

Amir Elosseini

Represented By
Kevin Tang
David Miller

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1:17-13142 Amir Elosseini

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 2/8/18; 8/16/18; 11/15/18, 1/24/19

Docket 1

Tentative Ruling:

Contrary to the Court's ruling at the prior status conference hearing on January 24, 2019, the debtor did not timely file a status report.

On January 15, 2019, the debtor filed a chapter 11 plan [doc. 84] and related disclosure statement [doc. 85]. In the disclosure statement, the debtor indicates that he has purportedly entered into a one-year lease for the lease of his real property. However, the debtor has not obtained Court approval for this postpetition lease that is outside the ordinary course of the debtor's business.

Additionally, in his January 2019 monthly operating report [doc. 98], the debtor listed a \$2,000 expense for an expert witness fee and a \$2,466 expense for a leasing fee. The debtor did not obtain Court approval for the engagement of an expert witness or for the engagement of a broker.

Party Information

Debtor(s):

Amir Elosseini

Represented By
Kevin Tang

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1:18-10417 Deborah Lois Adri

Chapter 11

#4.00 Status conference re: chapter 11 case

from: 3/29/18; 4/12/18; 11/15/18; 12/6/18; 1/17/19; 2/7/19

Docket 1

Tentative Ruling:

Having reviewed the *Chapter 11 Trustee's First Status Report* [doc. 291], and in light of the *Chapter 11 Trustee's Motion to Convert Case to Chapter 7* [doc. 296], the Court will continue the chapter 11 status conference to **1:00 p.m. on April 25, 2019**. If the case is converted to a case under chapter 7 prior to that time, the continued chapter 11 case status conference will be vacated.

Appearances on March 14, 2019 are excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan

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1:18-10642 Eduardo Ablan Jacinto

Chapter 11

#5.00 Post confirmation status conference re: chapter 11 case

fr. 5/3/18; 8/16/18; 9/20/18; 11/15/18; 11/29/18;

Docket 1

Tentative Ruling:

The Court will continue this status conference to **April 4, 2019 at 2:00 p.m.** to be held in connection with the debtor's motion for entry of discharge and final decree closing chapter 11 case [doc. 101].

Appearances on March 14, 2019 are excused.

Party Information

Debtor(s):

Eduardo Ablan Jacinto

Represented By
Onyinye N Anyama

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1:18-10715 Nasrollah Gashtili

Chapter 11

#6.00 Status conference re chapter 11 case

fr. 5/17/18; 6/7/18; 10/11/18; 10/18/18

Docket 1

Tentative Ruling:

The debtor has not filed monthly operating reports for November 2018, December 2018 and January 2019.

The debtor has not filed his 2017 federal tax return with the Court. In his case status report [doc. 90], the debtor indicated that he filed the 2017 federal tax return with the Internal Revenue Service on September 17, 2018. The debtor also must file the tax return with the Court.

Party Information

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

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1:18-11729 Richard Philip Dages

Chapter 11

#7.00 Status conference re chapter 11 case

fr. 8/16/18; 1/10/19

Docket 1

Tentative Ruling:

On March 1, 2019, the Court entered an order extending the deadline for the debtor to file a chapter 11 plan of reorganization and related disclosure statement to May 1, 2019 [doc. 59]. The Court will continue this status conference to **May 23, 2019 at 1:00 p.m.**, to assess if the debtor has timely filed a proposed chapter 11 plan and related disclosure statement by the extended deadline.

If the debtor has not timely filed a plan and related 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 May 9, 2019**. The status report **must be supported by evidence** in the form of declarations and supporting documents and explain why the debtor did not timely file the documents.

Appearances on March 14, 2019 are excused.

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

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1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#8.00 Status conference re: chapter 11 case

fr. 10/11/18; 10/18/18

Docket 1

***** VACATED *** REASON: Continued to 5/16/19 at 1:00 p.m. per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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1:18-12325 12 Cumpston Partnership

Chapter 11

#9.00 Status conference re chapter 11 case

fr. 11/15/18; 1/10/19; 2/7/19; 2/21/19

Docket 1

***** VACATED *** REASON: Order entered continuing hearing to 4/4/19
at 1:00 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

12 Cumpston Partnership

Represented By
Mark E Goodfriend

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1:19-10202 Besorat Investments, Inc.

Chapter 11

#10.00 Status conference re: chapter 11 case

Docket 1

***** VACATED *** REASON: Case reassigned to Judge Martin Barash on
2/22/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Besorat Investments, Inc.

Represented By
M. Jonathan Hayes

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1:10-17214 Darin Davis

Chapter 7

#11.00 Trustee's objection to proofs of claim nos. 4 and 15 filed by Asphalt Professionals, Inc.

fr. 2/21/19

Docket 257

Tentative Ruling:

I. BACKGROUND

On June 15, 2010, Darin Davis ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee"). On January 12, 2011, Asphalt Professionals, Inc. ("API") filed proof of claim no. 4-1, asserting an unsecured claim in the amount of \$3 million. API subsequently filed proof of claim no. 15-1, asserting an unsecured claim in the amount of \$2 million, intended as an amendment to proof of claim no. 4-1.

A. The State Court Action

API based its claim on pending litigation in state court (the "State Court Action"), in which API sued Debtor, among other entities, for breach of contract, foreclosure on a mechanic's lien, quantum meruit and fraud. [FN1]. The State Court Action was based, in part, on a subcontract agreement (the "Subcontract Agreement") between API and T.O., IX, LLC ("T.O."). In the operative complaint in the State Court Action (the "Fourth Amended Complaint"), one of API's fraud counts was based on Debtor's failure to pay API the amount owed under the Subcontract Agreement (the "Third Count"), and another fraud count was based on Debtor's alleged failure to disclose that T.O. was an unlicensed entity at the time the parties entered into the Subcontract Agreement (the "Fourth Count"). Both counts were asserted against Debtor, T.O. and multiple other entities.

On November 17, 2009, the state court held a hearing on motions for summary judgment filed by certain defendants. State Court's Tentative Ruling Dated November 17, 2009 (the "November 2009 Tentative Ruling"). In the November 17, 2009

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CONT...

Darin Davis

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Tentative Ruling, the state court stated that the defendants were entitled to summary judgment as to the Third Count. *Id.* However, the state court continued the hearings to provide API an additional opportunity to provide additional evidence. State Court's Minutes Dated February 26, 2010. At the continued hearing, the state court adopted its prior tentative ruling as the court's final ruling, including the dismissal of the Third Count. *Id.*

The trial court trifurcated the State Court Action into three trial phases. The first phase involved API's causes of action for breach of contract, foreclosure on a mechanic's lien and quantum meruit. In 2010, the trial court conducted a bench trial on the first phase. On October 29, 2010, the court entered an interlocutory judgment as to the first phase (the "Phase One Judgment"). After entry of the Phase One Judgment, API filed a motion for an award of attorneys' fees, and the trial court awarded API \$1.65 million (the "Fee Award"). After an appeal by T.O., an appellate court upheld the Fee Award.

The second phase of the State Court Action involved API'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"). In the Phase Two Decision, the state court held, in relevant part, that Debtor, among other entities named as defendants in the Third Count and Fourth Count, is an alter ego of T.O. The state court entered a judgment conforming to the Phase Two Decision (the "Phase Two Judgment"). After an appeal by Debtor, an appellate court upheld the Phase Two Judgment, except as against defendants not involved with the Fourth Count.

On June 26, 2013, API filed an Acknowledgment of Satisfaction of Judgment (the "Satisfaction of Judgment") in state court. Through the Satisfaction of Judgment and the stipulation attached thereto, API acknowledged that the Phase One Judgment and any attorneys' fees awarded to date had been paid in full.

B. Debtor's Objection to API's Claim

On September 17, 2014, Debtor filed an objection to API's claim ("Debtor's Objection to Claim") [doc. 89]. In Debtor's Objection to Claim, Debtor asserted that API had been paid the total \$1,869,048.05 owed to API pursuant to the Phase One Judgment and the Phase Two Judgment. Debtor also noted that API had not provided

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evidence regarding any remaining damages. On October 2, 2014, API filed an opposition to Debtor's Objection to Claim [doc. 95], arguing that the state court had not yet tried API's fraud cause of action and that API may obtain an additional award of damages after that trial. [FN2].

On October 30, 2014, the Court held a hearing on Debtor's Objection to Claim. On November 20, 2014, the Court entered an order disallowing \$1,869,048.05 of API's claim because that portion of the claim had already been paid (the "Claim Order") [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 API was entitled to the remaining \$1,130,951.42. The Court refrained from deciding whether to disallow the remaining portion of API's claim until the State Court Action concluded.

C. The Adversary Proceeding

On August 16, 2010, API 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 API's claims under 11 U.S.C. § 727. On December 23, 2014, the Court entered judgment in favor of Defendant on API's claims under 11 U.S.C. § 727 [Adversary Docket, 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, API and Defendant appeared for a status conference. The Court informed the parties that it would no longer delay prosecution of this adversary proceeding until the State Court Action was resolved.

On April 23 and 24, 2018, the Court held trial on API's claim under § 523(a)(2)(A). On June 13, 2018, the Court issued a ruling after trial, holding that API did not meet its burden of proof under § 523(a)(2)(A) [Adversary Docket, doc. 219]. On June 18, 2018, the Court entered judgment in favor of Defendant (the "Adversary Judgment") [doc. 221]. API filed an appeal with the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"). On January 31, 2019, the BAP issued an opinion affirming this Court in full. *In re Davis*, 2019 WL 406680 (B.A.P. 9th Cir. Jan. 31, 2019). API has

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not filed a notice of appeal of the BAP's opinion.

D. The Trustee's Objection to API's Claim

On January 11, 2019, the Trustee filed an objection to API's claims (the "Objection") [doc. 257]. In the Objection, the Trustee contends that, in light of the Adversary Judgment, the doctrine of res judicata bars API from proceeding with the Third Count and/or the Fourth Count against Debtor in state court. On February 6, 2019, API filed a response to the Objection (the "Response") [doc. 264]. In the Response, API asserts that it may proceed with its fraud counts against Debtor's alter egos in state court and, if successful, Debtor's estate will be liable to API. API also asserts that its claim is based on certain breach of contract damages and attorneys' fees related to the alter ego phase of the State Court Action that the state court did not award, as well as a claim of punitive damages against Debtor and/or his alter egos. On February 14, 2019, the Trustee filed a reply to the Response [doc. 267], asserting that res judicata bars not only API's claim related to the fraud counts, but also API's additional claims for breach of contract and attorneys' fees damages that have already been adjudicated by the state court.

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

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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).").

A. API's Fraud Causes of Action

"The res judicata doctrines regarding judgments of federal courts are a matter of federal common law." *In re Hansen*, 368 B.R. 868, 878 (B.A.P. 9th Cir. 2007). "Res judicata, or claim preclusion, provides that a final judgment on the merits of an action precludes the parties from relitigating all issues connected with the action that were *or could have been* raised in that action." *Rein v. Providian Fin. Corp.*, 270 F.3d 895, 898–99 (9th Cir. 2001) (emphasis added). Under federal law, claim preclusion applies where:

- (1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) there was a final judgment on the merits; and (4) the same claim or cause of action was involved in both suits.

Id., at 899.

Here, the Adversary Judgment is a judgment by a federal court, and the Court must apply the federal res judicata standard. The parties do not dispute that the Adversary Judgment was rendered by a court of competent jurisdiction. Moreover, although the parties initially disputed whether the Adversary Judgment was a final judgment on the merits because of the BAP appeal, the BAP has now affirmed the Adversary Judgment and API has not appealed the BAP's opinion.

As such, the only remaining issues are whether the parties are identical or in privity, and whether the same claim or cause of action was involved in both suits. Regarding the Third Count, and to the extent API is basing its claim on the Third Count, the state court docket reflects that the state court dismissed the Third Count. Nevertheless, for the reasons set forth below, the state court is precluded from moving forward with

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either the Third Count or the Fourth Count as to Debtor and his alter egos.

i. Privity

API does not dispute that Debtor was a party to both the adversary proceeding and the State Court Action. However, API asserts that the fraud action may proceed against Debtor's alter egos.

"'Privity' ... is a legal conclusion 'designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.'" *In re La Sierra Fin. Servs., Inc.*, 290 B.R. 718, 729 (B.A.P. 9th Cir. 2002) (quoting *In re Schimmels*, 127 F.3d 875, 881 (9th Cir. 1997) (internal citation omitted)). Several courts have held that alter ego entities are in privity with one another for purposes of claim or issue preclusion. *See, e.g. IMP Int'l, Inc. v. Zibo Zhongshi Green Biotech Co.*, 2015 WL 13357602, at *4 (C.D. Cal. Mar. 20, 2015) (aggregating federal and California cases); *Robinson v. Volkswagenwerk AG*, 56 F.3d 1268, 1275 (10th Cir. 1995) (holding that even a "'near alter ego' relationship would be sufficient to establish 'privity' between... two corporations such that [one of the corporations] is entitled to assert the previous judgment as a bar to the claim now asserted"); and *Dudley v. Smith*, 504 F.2d 979, 982 (5th Cir. 1974).

In light of the above, res judicata bars the state court from adjudicating the "same claim or cause of action" not only against Debtor, but also against Debtor's alter egos. Although the state court may proceed against defendants that have not been deemed Debtor's alter egos (assuming those entities are not in privity with Debtor for other reasons), any judgment against those entities will not be imputed to Debtor under API's alter ego theory of recovery against Debtor's estate because those entities have not been designated alter egos of Debtor. Given that Debtor's alter egos are in privity with Debtor, if claim or issue preclusion prohibit litigation against Debtor, the doctrines also will bar litigation against Debtor's alter egos.

ii. Same Claim or Cause of Action

In the Ninth Circuit—

We consider four criteria in determining whether the same claim or

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cause of action was involved in both suits: (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transaction or nucleus of facts.

Rein, 270 F.3d at 903. A determination of this last factor in the affirmative has been held sufficient to establish that the same claim or cause of action was involved in both suits." *Id.*, at 903-04.

Here, the Fourth Count is based on allegations that are identical to the facts adjudicated by this Court during the adversary trial. Thus, the same evidence would be presented in state court as was presented before this Court. Because the allegations before both courts are identical, the two suits also arise out of the same transaction and nucleus of facts. In addition, the rights established in the Adversary Judgment would be impaired by prosecution of the Fourth Count against Debtor or his alter egos; Debtor's bankruptcy estate will be held captive if the State Court Action remains pending despite the fact that this Court already determined that Debtor is not liable for damages arising out of the Fourth Count allegations.

The final consideration is whether the two suits involve infringement of the same right. As to this consideration, API argues that the nondischargeability claim is different from the fraud cause of action because one action concerns dischargeability of a debt while the other pertains to fraud. Generally, when there is a prepetition state court judgment of fraud, claim preclusion does not apply to bar dischargeability actions under § 523(a)(2)(A) (although, to the extent the issues are identical, *issue* preclusion does apply to bar relitigation, as discussed below).

This "narrow" exception to claim preclusion was established by the Supreme Court's decision in *Brown v. Felsen*, 442 U.S. 127, 99 S.Ct. 2205, 60 L.Ed.2d 767 (1979). See *In re Chew*, 496 F.3d 11, 18 (1st Cir. 2007) ("As a result of the particularity with which Congress has spoken on the exclusive jurisdiction of federal courts to adjudicate dischargeability, *Brown* is generally recognized as a 'narrow' exception to the general rule that claim preclusion does apply to bankruptcy proceedings."). The Supreme Court's imposed this exception to claim preclusion for several policy

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reasons. For instance, the Supreme Court noted that a creditor in a dischargeability proceeding "readily concedes that the prior decree is binding. That is the cornerstone of his claim. He does not assert a new ground for recovery, nor does he attack the validity of the prior judgment. Rather, what he is attempting to meet here is the new defense of bankruptcy which [the debtor] has interposed between [the creditor] and the sum determined to be due him." *Brown*, 442 U.S. at 133. In addition, the Supreme Court stated that applying res judicata in dischargeability proceedings would generate unnecessary litigation by forcing "an unwilling party to try [bankruptcy] questions to the hilt in order to protect himself against the mere possibility that a debtor might take bankruptcy in the future." *Id.*, at 135. Finally, the Supreme Court gave weight to the exclusive jurisdiction of bankruptcy courts over bankruptcy issues. *Id.*

These concerns are not present where a bankruptcy court liquidates a claim at the same time the court decides dischargeability of a debt. In this case, the Court had jurisdiction over both the dischargeability claim and the liquidation of API's fraud claim against Debtor. *See, e.g. In re Sasson*, 424 F.3d 864, 869-70 (9th Cir. 2005) ("It is clear... that bankruptcy courts have jurisdiction and power to enter money judgments in adjudicating nondischargeability adversary proceedings."). Moreover, there is no concern over forcing parties to litigate matters that are not ripe for controversy and creating needless litigation; here, API's fraud claim against Debtor was not hypothetical, it was a pending claim against Debtor and liquidating that claim at the same time the Court tried dischargeability of the claim *prevents* needless litigation.

Because the unique and "narrow" concerns that are present when a party attempts to apply claim preclusion to a state court judgment in a dischargeability proceeding are not present when a state court is applying claim preclusion to a dischargeability judgment, *Brown* does not appear to be applicable to this case. In fact, at least one court has held that *Brown* only applies to *prepetition* judgments because the Supreme Court's concerns are not present when courts apply res judicata to postpetition judgments. *In re Gilson*, 250 B.R. 226 (Bankr. E.D. Va. 2000).

API relies solely on *Daewoo Elecs. Am. Inc. v. Opta Corp.*, 875 F.3d 1241 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 2654, 201 L. Ed. 2d 1051 (2018), in support of its argument that res judicata does not apply to its state court causes of action. However, *Daewoo* is inapposite. In *Daewoo*, the plaintiff obtained breach of contract damages

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against GoVideo, but was unable to collect on its judgment. *Daewoo*, 875 F.3d at 1245. Subsequently, the plaintiff filed suit against two different entities, requesting enforcement of a guaranty agreement. *Id.* However, the trial court held that the guaranty agreement had expired and that the guarantors did not have any obligation to pay the plaintiff under the guaranty agreement. *Id.*, at 1245-46.

The plaintiff then filed a lawsuit against four entities, including the entities that were defendants in the guaranty action. *Id.*, at 1246. In this suit, the plaintiff moved for alter ego and successor liability against the defendants. *Id.* The district court held that the plaintiff's alter ego and successor liability causes were barred by the doctrine of res judicata. *Id.*

On appeal, the Ninth Circuit Court of Appeals first noted that New Jersey law on res judicata applied to the action because the prior guaranty judgment was rendered by a district court in New Jersey sitting with diversity jurisdiction. *Id.*, at 1247. Using New Jersey law, the Court of Appeals held that the guaranty action and the alter ego action did not grow out of the same transaction or occurrence because: (A) the guaranty action involved breach of the separate guaranty agreement and was based on the defendants' refusal to pay under the guaranty agreement and did not involve *GoVideo's* obligation to the plaintiff, whereas the alter ego action sought to hold the defendants directly liable under *GoVideo's* contract with the plaintiff; (B) the damages available to the plaintiff in the two actions were different, because the damages available through the guaranty action would have been capped at \$5 million under the independent duties set forth in the guaranty agreement, whereas the plaintiff might recover the full amount of damages against GoVideo through the alter ego and successor liability action; (C) the two lawsuits involved different legal theories because the guaranty action was based on breach of the guaranty agreement under New Jersey law but the alter ego action was based on California legal theories; and (D) the material facts and evidence presented in each action were different because the guaranty action involved formation and interpretation of the guaranty contract and those matters were irrelevant to the alter ego and successor liability action, which involved evidence regarding the defendants' conduct stripping assets of GoVideo. *Id.*, at 1248-49.

Even if the Court is to consider *Daewoo* despite its use of New Jersey law, under which courts consider slightly different factors than under federal law, the facts in

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Daewoo are substantially different from the facts here. API's allegations and request for damages related to the Fourth Count are *identical* to the allegations and request for damages adjudicated by this Court. As such, the Court need not engage in a lengthy determination regarding whether the Fourth Count and the § 523(a)(2)(A) involve the same claim or cause of action.

Finally, even if claim preclusion does not apply to bar the state court from adjudicating the Fourth Count as to Debtor and his alter egos, issue preclusion does apply. "Under both California and federal law, collateral estoppel applies only where it is established that... (1) the issue necessarily decided at the previous proceeding is identical to the one which is sought to be relitigated; (2) the first proceeding ended with a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the first proceeding." *Hydranautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir. 2000). "The elements of fraud under § 523(a)(2)(A) match the elements of common law fraud and of actual fraud under California law." *In re Jung Sup Lee*, 335 B.R. 130, 136 (B.A.P. 9th Cir. 2005). As such, the Fourth Count presents issues identical to the issues decided by this Court in the adversary proceeding, and the state court may not adjudicate the Fourth Count against Debtor or those in privity with Debtor, including his alter egos.

Regarding the Third Count, the Third Count appears to have been dismissed by the state court in 2010. To the extent the state court has not already dismissed the Third Count (the parties do not provide a clear record of the State Court Action), claim preclusion prevents the Third Count from proceeding against Debtor and his alter egos. Although this Court did not adjudicate the Third Count, the Third Count is based on API's allegations that Debtor and other entities fraudulently induced API to enter into the Subcontract Agreement. Because one of the issues before this Court was liquidating any damages arising out of fraud related to the Subcontract Agreement, including API's assertions that API would not have entered into the Subcontract Agreement had API been apprised of certain facts, the allegations in the Third Count arise out of the same transaction and nucleus of facts as the allegations tried during the adversary trial, and the Third Count involves infringement of the same rights. The Third Count also would involve presenting substantially the same evidence in state court that was presented before this Court during the adversary trial, including the circumstances surrounding the parties' execution of the Subcontract Agreement. Finally, for the same reasons as above, the rights established in the

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Adversary Judgment would be impaired by prosecution of the Third Count against Debtor or his alter egos.

E. API's Claim for Unpaid Breach of Contract Damages

API also asserts that part of its claim is based on unpaid breach of contract damages. However, the state court adjudicated the breach of contract phase. This Court does not have the power to modify the amount of damages awarded by the state court. 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments).

California's res judicata doctrine bars relitigation of API's breach of contract claim. Because the Phase One Judgment is a California judgment, the Court employs California's claim preclusion standard. Under California law, claim preclusion is defined as follows:

[A] final judgment, rendered upon the merits by a court having jurisdiction of the cause, is conclusive of the rights of the parties and those in privity with them, and is a complete bar to a new suit between them on the same cause of action.

Burdette v. Carrier Corp., 158 Cal.App.4th 1668, 1681–82 (Ct. App. 2008) (citing *Goddard v. Security Title Insurance & Guarantee Co.*, 14 Cal.2d 47, 51 (1939)) (internal quotations omitted). As with federal law, California's res judicata doctrine bars duplicative litigation of matters that were raised or *could have been* raised. *Tensor Grp. v. City of Glendale*, 14 Cal.App.4th 154, 160 (Ct. App. 1993) ("If the matter was within the scope of the action, related to the subject matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged.") (emphasis in *Tensor*).

Regarding what constitutes the same cause of action, "California adheres to a 'primary rights' theory in determining whether the claims or causes of action are the same." *Burdette*, 158 Cal.App.4th at 1684. "The significant factor is whether the claim or cause of action is for invasion of a single primary right. Whether the same facts are involved in both suits is not conclusive." *Id.* "[A] cause of action consists of 1) a primary right possessed by the plaintiff, 2) a corresponding primary duty devolving

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upon the defendant, and 3) a delict or wrong done by the defendant which consists in a breach of such primary right and duty. Thus, two actions constitute a single cause of action if they both affect the same primary right." *Id.*

Here, the Phase One Judgment is a final judgment by a court having jurisdiction. In addition, Debtor and API were parties to the breach of contract phase adjudicated by the state court. The state court awarded API damages based on its breach of contract and foreclosure of mechanic's lien causes during phase one of the State Court Action. Although API now contends that the damages were not based on breach of contract and awarded solely on API's foreclosure of mechanic's lien count, the breach of contract cause of action was before the state court and the Phase One Judgment disposed of API's breach of contract and foreclosure of mechanic's lien causes of action. Despite having signed the Satisfaction of Judgment of the Phase One Judgment, API now seeks additional damages based on breach of the same Subcontract Agreement before the state court. As such, API's claim against the estate involves the same primary right already determined by the state court, and API is barred from asserting damages that were or *could have been* asserted before the state court.

F. API's Claim for Unpaid Attorneys' Fees

API also asserts that Debtor is liable for unpaid attorneys' fees incurred litigating the alter ego phase of the State Court Action. [FN3]. The record is unclear as to whether the state court already has awarded attorneys' fees incurred prosecuting the alter ego phase (whether before the trial or appellate courts) that remain unpaid or if API intends to request such additional attorneys' fees from the state court.

The Court will continue this hearing to **2:00 p.m. on April 25, 2019**. No later than **April 4, 2019**, API must provide evidence of its entitlement to unpaid attorneys' fees incurred litigating the second phase of the State Court Action. No later than **April 18, 2019**, the Trustee may file a response to API's evidence.

G. API's Claim for Punitive Damages

Given that this Court entered judgment in favor of Debtor on API's § 523(a)(2)(A) claim, API is not entitled to punitive damages. As explained above, because the Third

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Count and the Fourth Count may not proceed against Debtor or his alter ego entities in state court, API also will not have a claim of punitive damages against the estate based on an award of punitive damages that may be entered against one of the other defendants to the State Court Action.

III. CONCLUSION

The Court will continue this hearing to **2:00 p.m. on April 25, 2019**. No later than **April 4, 2019**, API must file and serve evidence of its entitlement to **unpaid** attorneys' fees incurred litigating the second phase of the State Court Action (including appeals). No later than **April 18, 2019**, the Trustee may file and serve a response to API's evidence. The Court will not entertain additional briefing on any issue other than whether API is entitled to such additional attorneys' fees, as a prevailing party in the State Court Action.

If API does not timely provide evidence of its entitlement to such attorneys' fees, or if the request for an award of such additional attorneys' fees is time barred or API is otherwise not entitled to an award of such additional attorneys' fees, the Court will disallow API's claim in full.

FOOTNOTES

1. Some relevant background facts are taken from the Court's ruling after trial in the adversary proceeding [1:10-ap-01354-VK, doc. 219].
2. On October 15, 2014, after all the briefing on the Objection to Claim, API filed a separate claim for \$2 million, docketed as claim no. 15-1, based on the fraud action in state court. In his declaration, a representative of API stated that the \$2 million claim was meant to amend the original \$3 million claim. 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.
3. API's claim for attorneys' fees appears to be based on fees incurred during phase two of the State Court Action. To the extent API is requesting attorneys' fees incurred litigating API's fraud cause of action, API was not the prevailing party as against Debtor or his alter egos, and API is not entitled to any attorneys' fees incurred prosecuting that cause of action.

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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

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1:17-10378 Kandy Kiss of California, Inc.

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#12.00 Trustee's Motion for order authorizing and approving compromise of controversy re Mauricio Betancur, Secret Charm, LLC, Target Corporation, and Third Parties, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure

Docket 162

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):

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

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1:18-11243 Jeff Davani and Nadia Davani

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- #13.00** Trustee's Motion for Order:
- (1) Authorizing sale of real property located at 5355 Blanco Ave., Woodland Hills, CA 91367 (A) Outside the ordinary course of business; (B) Free and clear of all liens, claims, and encumbrances; (C) Subject to overbid; and (D) For determination of good faith purchaser under 11 U.S.C. section 363(m):
 - (2) Compelling debtors to vacate and turnover real property; and
 - (3) Establishing procedure for removal of debtors' personal property

Docket 86

Tentative Ruling:

Grant.

I. BACKGROUND

On May 14, 2018, Jeff Davani and Nadia Davani ("Debtors") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

In their schedule A/B, Debtors listed an interest in real property located at 5355 Blanco Avenue, Woodland Hills, CA 91367 (the "Property"). On December 7, 2018, the Trustee entered into a stipulation with the IRS (the "IRS Stipulation") [doc. 57]. In the IRS Stipulation, the parties noted that the Trustee's broker believes the Property is worth approximately \$810,000, that there is a first priority lien in favor of Chase in the approximate amount of \$390,000 and that the IRS filed a proof of claim against the estate in the amount of \$1,692,757.18. Through the IRS Stipulation, the IRS consented to the sale of the Property free and clear of the IRS's lien subject to the lien attaching to the proceeds of the sale.

The parties also agreed that the proceeds would be distributed as follows: (A) first, to Chase to satisfy its senior lien; (B) second, for reasonable costs of sale plus brokerage commissions not to exceed 6% of the sale price; (C) 60% of the remaining proceeds to the IRS in partial satisfaction of the debt owed to the IRS; and (D) 40% of the remaining proceeds to the Trustee as the non-exempt property of the estate. In the

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Stipulation, the parties also noted that, pursuant to 11 U.S.C. § 522(c), none of the sale proceeds will be distributed to Debtors because the IRS's lien has priority over Debtors' homestead exemption. On December 11, 2018, the Court entered an order approving the IRS Stipulation [doc. 60].

On December 18, 2018, the Trustee filed an application to employ real estate brokers to market and sell the Property (the "Broker Application") [doc. 62]. On December 20, 2018, Debtors filed a motion to dismiss their chapter 7 case (the "Motion to Dismiss") [doc. 64]. On January 22, 2019, the Court entered an order approving the Broker Application [doc. 73]. On January 30, 2019, Debtors stipulated with the Trustee to withdraw the Motion to Dismiss [doc. 79], and the Court approved the stipulation [doc. 80].

On February 21, 2019, the Trustee filed the Motion [doc. 86]. Aside from approval of the sale of the Property, the Trustee also requests turnover of the Property and asks the Court to set a procedure for removal of Debtors' personal property. In the Motion, the Trustee contends that the purchase and sale agreement between the Trustee and the proposed buyer requires the Trustee to close escrow no later than 15 days after the entry of an order approving the sale. As such, the Trustee requests immediate removal of Debtors' personal property and turnover of possession no later than March 15, 2019.

If Debtors do not evacuate by March 15, 2019, the Trustee requests assistance by the U.S. Marshals, including language in the order approving the sale that allows the Trustee to prepare a Writ of Assistance. As to removal of Debtors' personal property, the Trustee requests authorization to expend \$1,500 to rent a moving truck or hire an agent to remove the personal property, to provide a three-hour window for Debtors to remove what they want from the Property and to then discard all remaining items.

On February 28, 2019, Debtors filed a limited opposition to the Motion (the "Opposition") [doc. 93]. Debtors do not oppose the sale; instead Debtors request additional time to move out of the Property, specifically by 5:00 p.m. on May 1, 2019. Debtors contend that Debtors' adult daughter and Ms. Davani's 85-year-old father reside at the Property, and neither was served with the Motion. According to Debtors, their family members are entitled to notice under California law. On March 7, 2019, the Trustee filed a reply to the Opposition, agreeing to extend the move-out date to

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March 22, 2019. The Trustee also filed a declaration by David Abadi (the "Abadi Declaration") [doc. 95], in which Mr. Abadi, the proposed buyer, contends that he cannot accommodate Debtors past March 22, 2019 because Mr. Abadi is set to move out of his residence by the end of March, and Mr. Abadi's rate-lock rate expires on March 22, 2019.

II. ANALYSIS

Debtors do not oppose the sale of the Property. As such, the Court will approve the sale and discuss the turnover issues. 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 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.

Moreover, under 11 U.S.C. § 521(a)(4), debtors have a duty to surrender property of the estate to the trustee. There is no dispute that the Property is property of the estate and that it is of consequential value, given the Trustee's agreement with the IRS, which will yield proceeds that will be distributed to creditors of Debtors' estate. As such, an order requiring turnover is appropriate.

Debtors do not dispute that Debtors themselves may be compelled to vacate the premises. However, Debtors contend that the Trustee must comply with California

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law as to Debtors' family members who reside with Debtors on the Property. However, Debtors have not provided any evidence that their family members have a possessory interest in the Property, such as being a party to a rental or lease agreement.

In *Roussos v. Ehrenberg*, 2017 WL 2259674 (C.D. Cal. May 23, 2017), *appeal dismissed sub nom. Theodosios Roussos v. Ehrenberg for Estates of Roussos*, 2018 WL 1150465 (9th Cir. Feb. 28, 2018), after extensive litigation regarding whether certain real property should be recovered for the benefit of two related bankruptcy estates, certain parties entered into a settlement agreeing to the recovery. *Roussos*, 2017 WL 2259674 at *2. The settlement agreement was approved by the bankruptcy court and implemented, in part, by judgments. *Id.*, at *3. The district court affirmed the order and judgments. *Id.*

After entry of the order and judgments, the chapter 7 trustee immediately assumed control over the property and took steps to market and sell the property. *Id.* The debtor refused to surrender and deliver possession of three units within the property, in which the debtor and nondebtor parties were living rent free, thereby prompting the trustee to file a motion compelling turnover and authorizing the trustee to utilize the services of the United States Marshals. *Id.* The bankruptcy court granted the motion and the debtor appealed. *Id.* On appeal, the district court first disagreed with the debtor's contention that the "landlord-tenant" dispute was within the jurisdiction of the state court:

[The debtor's] argument that the Bankruptcy Court improperly waded into a landlord-tenant dispute that is uniquely within the jurisdiction of the state court ignores the broad powers of both the Bankruptcy Court and bankruptcy trustees with respect to property of an estate as well as the limited nature of the relief sought by the Trustee in this case. With respect to property of the estate, 11 U.S.C. § 521(a)(4) provides a debtor, at the outset of a case, must surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to the property of the estate.

...

Moreover, the Trustee was not seeking to dispossess lawful residents

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with valid and enforceable leases through a disguised unlawful detainer action. Instead, the Trustee was simply seeking to compel turnover of property belonging to [the debtor's] estate under applicable law. There was no evidence presented demonstrating that [the debtor] or any of the other Appellants had a valid possessory interest in the Units under California law. Accordingly, the Bankruptcy Court had jurisdiction to compel the turnover of the Units from [the debtor] and the other Appellants. *Schachter v. Lefrak*, 223 B.R. 431 (Bankr. S.D.N.Y. 1998) (holding that bankruptcy court possessed jurisdiction to enter turnover order compelling non-debtor wife of debtor to surrender cooperative apartment formerly owned by debtor in the absence of a possessory interest granted by valid agreement or decree).

Id., at *5-6. Finally, the district court held that the trustee was not required to bring an adversary proceeding against either the debtor or the third-party occupants. *Id.*

As in *Roussos*, the Trustee may compel turnover of the Property, including from Debtors' family members who appear to be residing on the Property rent-free, without initiating an adversary proceeding or providing notices required under state law to tenants with valid, enforceable possessory interests. Because there is no evidence that Debtors' family has a valid possessory interest in the Property, the Trustee need not pursue state law remedies to evict the non-debtor occupants.

Next, Debtors request additional time to move out of the Property. The Trustee has conceded to extend the move-out date to March 22, 2019, but Debtors request an extension until May 1, 2019. However, Debtors have known that the Trustee may sell the Property since December 7, 2018, when the Trustee entered into a stipulation with the IRS. The Court will not extend the deadline for Debtors to move out past March 22, 2019.

Nevertheless, the Court will not issue a writ at this time. If Debtors do not comply with the order for turnover, the Trustee must file a declaration regarding Debtors' lack of compliance and pursue a writ in accordance with Federal Rule of Bankruptcy Procedure 7070; *see also In re Kerlo*, 311 B.R. 256 (Bankr. C.D. Cal. 2004). If Debtors do not timely comply with the turnover order, Debtors will be liable for costs incurred by the estate. In addition, the parties should be prepared to discuss an

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appropriate *per diem* rate for Debtors to pay the estate if Debtors, their family members or their personal property occupy the Property past March 22, 2019.

III. CONCLUSION

The Court will approve sale of the Property and order Debtors to vacate the Property, including by removing their personal property, no later than **March 22, 2019**. If Debtors violate the order, and they, their family members or their personal property occupy the Property after March 22, 2019, the Court will issue a writ in accordance with Federal Rule of Bankruptcy Procedure 7070. The Court also will establish a *per diem* rate which will be charged to Debtors, **in addition to** any damages (including attorneys' fees) incurred by the estate to obtain compliance with the Court's order.

The Trustee must submit an order within seven (7) days. **To date, the Trustee has not paid the filing fee for this motion. Until the filing fee is paid, the Court will put a hold on the entry of the order.**

Party Information

Debtor(s):

Jeff Davani

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Joint Debtor(s):

Nadia Davani

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Trustee(s):

David Keith Gottlieb (TR)

Represented By

D Edward Hays

Laila Masud

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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; 12/12/18; 1/16/19; 2/20/19

Docket 80

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Cahuantzi Gutierrez

Represented By
Rabin J Pournazarian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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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; 12/12/18; 1/16/19; 2/20/19

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

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CONT... Adolph Earl Jones and Katherine Johnson Jones

Chapter 13

Debtor(s):

Adolph Earl Jones

Represented By
Allan S Williams

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

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9:30 AM

1:18-12592 Mario Alberto Cerritos

Chapter 13

#3.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

fr 2/20/19

Stip resolving motion filed 3/19/19

Docket 32

*** VACATED *** REASON: Order approving stip entered 3/19/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mario Alberto Cerritos

Represented By
Jaime A Cuevas Jr.

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-10271 Jose R. Fernandez and Esther Fernandez

Chapter 13

#4.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 2/20/19

Docket 12

Tentative Ruling:

At the prior hearing held on the motion, the Court ordered the movants to file a declaration, by no later than March 18, 2019, to demonstrate that they timely made their required post-petition deed of trust payment and chapter 13 plan payment. The movants did not timely file this declaration. Further, the movants have not provided evidence that they made the required payments. Consequently, the Court will deny the motion for the period following March 20, 2019.

The Court will prepare the order.

Ruling from 2/20/19

Movants have not served the motion and provided notice of the hearing thereon and the deadline to file a response in accordance with Judge Kaufman's self-scheduling procedure for motions that are set for hearing on shortened time. The notice of the motion fails to indicate that a written response must be filed and served at least two court days before the hearing.

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **March 20, 2019. No later than February 27, 2019**, the movants 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 movants must timely pay: (1) their March 2019 deed of trust payment in the amount of \$1,664.72 (as stated in their current Schedule J) as to the real property located at 16439 Jersey Street Granada Hills, California 91344; and (2) their March 2019 plan payment in the amount of \$400.00 to the chapter 13 trustee. **No later than March 18, 2019**, the movants must file a declaration to demonstrate that they timely made their required post-petition deed of trust payment and chapter 13 plan payment.

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CONT... Jose R. Fernandez and Esther Fernandez

Chapter 13

Party Information

Debtor(s):

Jose R. Fernandez

Represented By
Donald E Iwuchuku

Joint Debtor(s):

Esther Fernandez

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:19-10299 Paula Parisi

Chapter 11

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

fr. 3/6/19

Docket 14

Tentative Ruling:

For the reasons discussed below, if the debtor will agree to the appointment of a chapter 11 trustee or to the Court converting this case to one under chapter 7, the Court will grant the motion. Otherwise, the Court will deny the motion.

Debtor's Real Property

On July 17, 2003, Paula Parisi ("Debtor") executed a promissory note in the principal sum of \$400,000, which was made payable to Bank of America, N.A. [doc. 28, Exh. A]. That note is secured by a deed of trust, executed by Debtor and Michael Kochman, encumbering the real property located at 3629 Weslin Avenue, Sherman Oaks, California 91423 (the "Property"). *Id.* at Exh. B. Subsequently, that deed of trust was assigned to U.S. Bank National Association, not in its individual capacity, but solely as legal title trustee for BCAT 2016-18TT, and its successors and/or assigns ("U.S. Bank"). *Id.* at Exh. C.

On September 27, 2012, U.S. Bank recorded a notice of default against the Property, reflecting a default in the amount of \$18,379.06 *Id.* On December 31, 2012, U.S. Bank recorded a notice of sale against the Property, scheduling a sale for January 24, 2013. *Id.* at Exh. D.

The First Chapter 13 Case

On January 16, 2013, Debtor filed a chapter 13 petition (the "First Case") [case no. 1:13-bk-10305-VK]. For the majority of the First Case, Debtor was represented by counsel. In her prior schedules, Debtor disclosed monthly income in the amount of \$6,500.00 and monthly expenses in the amount of \$5,233.00, leaving net monthly income of \$1,267.00 [First Case, doc. 9, at p. 20]. Debtor represented that she was

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employed for five years as a writer/editor.

On May 13, 2013, U.S. Bank filed claim 13-1, asserting a secured claim in the amount of \$362,815.53, with prepetition arrears in the amount of \$32,405.80. First Case, claim 13-1.

On April 15, 2013, the Court entered an order confirming Debtor's chapter 13 plan [First Case, doc. 23]. On February 11, 2016, the Court entered an order dismissing the First Case for failure to make chapter 13 plan payments [First Case, doc. 80].

The Second Chapter 13 Case

On March 30, 2017, U.S. Bank recorded a notice of default against the Property, reflecting a default in the amount of \$76,094.95 [doc. 28, Exh. G]. On July 11, 2017, U.S. Bank recorded a notice of sale against the Property, scheduling a sale for August 11, 2017. *Id.* at Exh. H.

On October 10, 2017, Debtor filed another chapter 13 petition (the "Second Case") [case no. 1:17-bk-12717-MT]. Debtor was not represented by counsel. In her prior schedules, Debtor disclosed monthly income in the amount of \$6,993.75 and monthly expenses in the amount of \$4,495.97, leaving net monthly income of \$2,497.78 [Second Case, doc. 12, at p. 21]. Debtor represented that she was self-employed since 2013 as a writer and web designer.

On November 22, 2017, U.S. Bank filed an objection to confirmation of Debtor's chapter 13 plan [Second Case, doc. 23]. In that objection, U.S. Bank represented that its prepetition arrears were approximately \$95,458.73. *Id.*

On December 4, 2017, the Court entered an order dismissing the Second Case for failure to make the required payments [Second Case, doc. 27].

The Third Chapter 13 Case

On December 27, 2017, Debtor filed another chapter 13 petition (the "Third Case") [case no. 1:17-bk-13399-MB]. For the majority of the Third Case, Debtor was represented by counsel. In her prior schedules, Debtor disclosed monthly income in the amount of \$1,009.00 and monthly expenses in the amount of \$955.00 [FN1], leaving net monthly income of \$54.00 [Third Case, doc. 1, at p. 41]. Debtor

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CONT...

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represented that she was self-employed for four years as a writer and web designer.

On January 3, 2018, Debtor filed a motion to continue the automatic stay [Third Case, doc. 9]. In that motion, Debtor indicated that she would sell the Property before May 31, 2018 to benefit all creditors of the estate. Debtor also represented that the Second Case was dismissed because she filed it *pro se* and did not understand the bankruptcy process. On January 19, 2018, the Court granted that motion. *Id.* at doc. 15.

On March 7, 2018, U.S. Bank filed claim 5-2, asserting a secured claim in the amount of \$390,214.62, with prepetition arrears in the amount of \$107,642.62. Third Case, claim 5-2.

On February 26, 2018, Debtor filed an amended chapter 13 plan [Third Case, doc. 26]. In that plan, using the proceedings from the sale of the Property, Debtor proposed to pay secured creditors in full and make a \$99,111.00 lump sum payment in month seven to unsecured creditors.

On May 2, 2018, U.S. Bank filed a motion for relief from stay as to the Property [Third Case, doc. 40]. On August 16, 2018, the Court entered an order granting that motion. *Id.* at doc. 53.

Throughout the pendency of the Third Case, Debtor's then-counsel filed three motions to withdraw [Third Case, docs. 21, 34 and 42]. In each of those motions, Debtor's counsel cited an irreconcilable breakdown in communications, which made it unreasonably difficult for Debtor's counsel to carry out representation in an effective manner. On June 14, 2018, the Court entered an order granting Debtor's counsel's motion to withdraw as counsel [Third Case, doc. 48].

On September 11, 2018, following the chapter 13 plan confirmation hearing, the Court entered an order dismissing the Third Case [Third Case, doc. 57].

The Pending Chapter 11 Case

On September 4, 2018, U.S. Bank recorded a notice of default against the Property, reflecting a default in the amount of \$135,025.93 [doc. 28, Exh. L]. On January 2, 2019, U.S. Bank recorded a notice of sale against the Property, scheduling a sale for February 8, 2019. *Id.* at Exh. M.

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On February 7, 2019, Debtor filed the pending chapter 11 case. Debtor is not represented by counsel. On February 22, 2019, Debtor filed a motion to continue the automatic stay as to all creditors (the "Motion to Continue Stay") [doc. 14]. In the Motion to Continue Stay, Debtor represents that her financial circumstances have improved with the prospect of leasing the Property for \$6,000.00 per month or selling the Property under improved market conditions. Debtor also represents that her career prospects are "looking up."

In her pending case, Debtor's Schedules I & J indicate monthly income of \$3,218.16 and monthly expenses of \$4,910.00, leaving net monthly income of (\$1,691.83) [doc.27, at pp. 29–33]. Debtor indicated on her Schedule I that she is self-employed since 2008 as a writer and editor. *Id.* at p. 29. In addition, Debtor responded "Yes" to the question of whether she expected an increase in income within the first year of filing the petition. *Id.* at p. 30. Debtor indicated that she expects a substantial increase in income within the year and will "share that plan with the court." Based on her statement of financial affairs, Debtor's aggregate income from January 1, 2017 through February 7, 2019 (excluding \$2,000.00 in family gifts) was less than \$53,000.00. In her schedule C, Debtor claimed a \$175,000.00 homestead exemption in the Property.

On February 28, 2019, U.S. Bank filed a motion for relief from the automatic stay as to the Property [doc. 24]. In that motion, U.S. Bank states that Debtor has missed 45 payments, totaling \$146,009.25 in arrears. U.S. Bank is requesting 11 U.S.C. § 362(d) (4) relief. The hearing on that motion is set for April 3, 2019.

On March 4, 2019, U.S. Bank filed an opposition to the Motion to Continue Stay (the "Opposition") [doc. 29]. In the Opposition, U.S. Bank argues that Debtor has failed to provide clear and convincing evidence showing that her financial circumstances have changed from the Third Case.

On March 6, 2019, the Court held a hearing on the Motion to Continue Stay. On the same day, as a result of the insufficient service of the Opposition, the Court entered an order granting the Motion to Continue Stay on an interim basis and ordered Debtor to file a reply to the Opposition no later than March 13, 2019 [doc. 32]. Debtor did not timely file a reply.

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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.

Notwithstanding the assertions in the Motion to Continue Stay, Debtor has not provided at this time clear and convincing evidence that her financial affairs have improved since the Third Case, such that the pending chapter 11 case will result in a confirmed plan that will be fully performed.

This is Debtor's fourth bankruptcy case. Despite three prior chapter 13 filings, Debtor has yet to complete the bankruptcy process successfully and to obtain a discharge. Debtor has continued to be delinquent on her deed of trust payments for loans secured by the Property.

Debtor has provided no evidence that she has sufficient net monthly income to fund any proposed chapter 11 plan. Debtor represents that her career prospects are "looking up," but has provided no evidence substantiating this belief.

In the Motion to Continue Stay, Debtor represents that her financial circumstances have improved with the prospect of leasing the Property for \$6,000.00 per month or selling the Property under improved market conditions. In her Third Case, Debtor represented that she would sell the Property to repay her creditors. Debtor failed to do so. Debtor has not provided evidence of any prospective lease or sale offer. Further, Debtor has not filed an application to employ a broker.

Based on Debtor's representations in her schedules, there appears to be substantial equity in the Property, and a sale of the Property could fully repay creditors - as well as possibly provide Debtor with substantial exempt sale proceeds, arising from her claim of a homestead exemption. However, up to this point, Debtor has been unwilling or able to effectuate a sale of the Property. Based on Debtor's three prior

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chapter 13 filings, and the representations in her schedules, the Court cannot conclude that the pending chapter 11 case will result in a confirmed plan unless the Property is sold, *by a chapter 11 or chapter 7 trustee*.

Further, in light of the pending relief from stay motion, which is set for hearing on April 3, 2019, Debtor's only opportunity to receive her homestead exemption (which Debtor has asserted to have a value of \$175,000.00), may be to agree to the appointment of a chapter 11 trustee or to conversion of the case to one under chapter 7.

Conclusion

In light of the foregoing, the Court will deny the Motion to Continue Stay unless Debtor agrees to the appointment of a chapter 11 trustee or to the case converting to one under chapter 7.

The Court will prepare the order.

FOOTNOTES

1. This did not include an expense for deed of trust payments on the Property.

3/6/19 Tentative Ruling

If the debtor will agree to the appointment of a chapter 11 trustee or to the Court converting this case to one under chapter 7, the Court will grant the motion. Otherwise the Court will deny the motion.

On February 22, 2019, the debtor filed a motion to continue the automatic stay as to all creditors (the "Motion to Continue Stay") [doc. 14]. In the Motion to Continue Stay, the debtor represents that her financial circumstances have improved with the prospect of leasing her real property, located at 3629 Weslin Avenue, Sherman Oaks, California 91423 (the "Property"), for \$6,000.00 per month or selling the Property under improved market conditions. The debtor also represents that her career

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prospects are "looking up."

On March 4, 2019, U.S. Bank National Association, as legal title trustee for BCAT 2016-18TT, and its successors and/or assigns ("U.S. Bank"), filed an opposition to the Motion to Continue Stay (the "Opposition") [doc. 29]. In the Opposition, U.S. Bank details the debtor's history of bankruptcy filings.

This is the debtor's fourth bankruptcy case. Despite three prior bankruptcy filings, the debtor has yet to complete the bankruptcy process successfully and to obtain a discharge. The debtor has continued to be delinquent on her deed of trust payments for loans secured by the Property.

On February 28, 2019, U.S. Bank filed a motion for relief from the automatic stay as to the Property [doc. 24]. In that motion, U.S. Bank states that the debtor has missed 45 payments, totaling \$146,009.25 in arrears.

In her prior chapter 13 case (case no. 17-bk013399-MB), the debtor represented that she would sell the Property to repay her creditors. The debtor has not done so.

In this chapter 11 case, the debtor's Schedules I and J indicate monthly income of \$3,218.16 and monthly expenses of \$4,910.00, leaving net monthly income of (\$1,691.83) [doc.27, at pp. 29–33]. Based on her statement of financial affairs, the debtor's aggregate income from January 1, 2017 through February 7, 2019 (excluding \$2,000.00 in family gifts) was less than \$53,000.00. Based on the debtor's representations in her schedules and statement of financial affairs, the debtor does not have sufficient income to confirm a chapter 11 plan.

In the Motion to Continue Stay, the debtor represents that she is willing to sell the Property to repay her creditors. Based on the debtor's representations in her schedules, there appears to be substantial equity in the Property. It appears that a sale of the Property in the near future would fully repay creditors.

However, the debtor has not been willing or able to effectuate a sale of the Property. Based on the debtor's prior bankruptcy cases, and the representations in her schedules, the Court cannot conclude that the pending chapter 11 case will result in a confirmed

**United States Bankruptcy Court
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Wednesday, March 20, 2019

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9:30 AM

CONT... Paula Parisi

Chapter 11

plan unless the Property is sold, *by a chapter 11 or chapter 7 trustee.*

If a chapter 11 trustee is appointed, or this case is converted to chapter 7, the chapter 11 trustee or chapter 7 trustee could sell the Property and use the non-exempt, net proceeds (after paying off liens and costs of sale) to fund a chapter 11 plan (if the case remains in chapter 11) and/or to pay creditors. The debtor will be entitled to file and prosecute objections to secured and unsecured claims, if she contests any proofs of claim. The debtor would receive her homestead exemption, and perhaps more, if there is sufficient surplus funds following the sale of the Property; the debtor could use those funds to lease or acquire a new residence. Moreover, the debtor could receive a discharge.

The Court will prepare the order.

Party Information

Debtor(s):

Paula Parisi

Pro Se

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

Wednesday, March 20, 2019

Hearing Room 301

9:30 AM

1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

#5.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA
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.

Party Information

Debtor(s):

Aurora Frias Lee-Nelson

Represented By
Ronald D Tym

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, March 20, 2019

Hearing Room 301

9:30 AM

1:18-11620 Antoine R Chamoun

Chapter 7

#6.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

Stip to continue filed 3/6/19

Docket 28

***** VACATED *** REASON: Order approving stip entered 3/6/19.
Hearing continued to 5/22/9 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, March 20, 2019

Hearing Room 301

9:30 AM

1:18-12401 Allen Day

Chapter 7

#7.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 45

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):

Allen Day

Represented By
Matthew D. Resnik

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, March 20, 2019

Hearing Room 301

9:30 AM

1:18-12902 Farhad Besharati

Chapter 13

#8.00 Motion for relief from stay [UD]

HCH LIMITED PARTNERSHIP
VS
DEBTOR

Case dismissed with 180 day bar on 3/6/19

Docket 64

Tentative Ruling:

On March 6, 2019, this case was dismissed with a 180-day bar to the debtor refileing [doc. 71]. 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, when the debtor filed his chapter 13 petition on December 3, 2018, he did not include movant in his master mailing list. The debtor also did not include movant or the lease in his schedules and statement of financial affairs, filed on December 12, 2018 and December 13, 2018. The debtor did not serve Notice of the Section 341(a) Meeting and Hearing on Confirmation of Chapter 13 Plan, filed on December 14, 2018, on movant.

The debtor did not provide notice to movant of the filing of the case until January 15, 2019 [Exh. D]. It was not until January 30, 2019, that the debtor filed an amended statement of financial affairs which disclosed the litigation at issue [doc. 55].

Movant was unaware of the bankruptcy petition. In addition, the debtor acted

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CONT...

Farhad Besharati

Chapter 13

unreasonably and inequitably by not providing timely notice of the commencement of the case to movant and omitting information concerning this litigation from the debtor's schedules and statement of financial affairs for a significant period of time. 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.

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):

Farhad Besharati

Represented By
Dennis A Rasmussen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, March 20, 2019

Hearing Room 301

9:30 AM

1:16-10925 Josue Soncuya Villanueva

Chapter 13

#9.00 Amended motion for relief from stay [PP]

VW CREDIT, INC.
VS
DEBTOR

Docket 87

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):

Josue Soncuya Villanueva

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
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Wednesday, March 20, 2019

Hearing Room 301

9:30 AM

1:17-10904 Kenneth Blane Forde and Tamara Armand Forde

Chapter 13

#10.00 Amended motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
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.

Party Information

Debtor(s):

Kenneth Blane Forde

Represented By
Allan S Williams

Joint Debtor(s):

Tamara Armand Forde

Represented By
Allan S Williams

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CONT... Kenneth Blane Forde and Tamara Armand Forde

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, March 20, 2019

Hearing Room 301

9:30 AM

1:14-14567 John Redmond and Kaylyn Redmond

Chapter 13

#11.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTORS

Stipulation for adequate protection filed 3/18/19

Docket 81

*** VACATED *** REASON: APO entered on 3/18/19.

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
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Wednesday, March 20, 2019

Hearing Room 301

9:30 AM

1:15-13062 Hector Flores and Martha Flores

Chapter 13

#12.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 73

Tentative Ruling:

On March 18, 2019, the debtors belatedly filed a response to the motion [doc. 75].

Party Information

Debtor(s):

Hector Flores

Represented By
Donald E Iwuchuku

Joint Debtor(s):

Martha Flores

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, March 20, 2019

Hearing Room 301

9:30 AM

1:18-10798 Narkell Hobbs-James

Chapter 13

#13.00 Motion for relief from stay [RP]

U.S. BANK TRUST, 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 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.

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 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

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9:30 AM

CONT... Narkell Hobbs-James

Chapter 13

Debtor(s):

Narkell Hobbs-James

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:18-11785 Esther Ocampo

Chapter 13

#14.00 Motion for relief from stay [RP]

THE BANK OR NEW YORK MELLON
VS
DEBTOR

Stip for adequate protection filed 3/12/19

Docket 38

*** VACATED *** REASON: Order approving stipulation entered
3/13/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Esther Ocampo

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, March 20, 2019

Hearing Room 301

9:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#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 motion on an interim basis and continue hearing to **April 24, 2019 at 9:30 a.m.**

The First Case

On August 14, 2014, Mercedes Benitez (“Debtor”) filed a chapter 13 petition (the “First Case”) [case no. 1:14-bk-13827-VK]. On January 15, 2015, the Court entered an order dismissing the case because Debtor failed to make the required payment [First Case, doc. 30].

The Second Case

On February 17, 2015, Debtor filed another chapter 13 petition (the “Second Case”) [case no. 1:15-bk-10489-VK]. On February 17, 2015, Debtor filed a motion to continue the automatic stay as to secured creditors (the “First Motion to Continue”) [doc. 6]. In the First Motion to Continue, Debtor stated that, in the First Case, she tried to make the required payments to the chapter 13 trustee, however, she was sending them to the wrong address. On March 16, 2015, the Court entered an order granting the First Motion to Continue [doc. 21].

In her schedules, Debtor disclosed monthly income in the amount of \$6,738.41 and monthly expenses in the amount of \$5,909.59, leaving net monthly income of \$828.82 [Second Case, doc. 12]. Debtor represented that she was employed as an office manager at Toro School of Truck Driving for one year.

On April 24, 2015, the Court entered an order confirming Debtor’s first amended chapter 13 plan [doc. 34]. Under that chapter 13 plan, Debtor was to pay \$828.00 per month for five months, then \$1,146.00 for 55 months. That plan also proposed to cure arrearages on Debtor’s principal residence (the “Property”) in the amount of

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9:30 AM

CONT... Mercedes Benitez
\$53,817.97.

Chapter 13

On November 5, 2015, Debtor filed a motion to modify or suspend plan payments [doc. 48]. On December 4, 2015, the Court entered an order granting that motion [doc. 52]. On January 11, 2017, the Court entered an order dismissing the Second Case for failure to make plan payments [Second Case, doc. 65].

The Third Case

On October 12, 2017, Debtor filed another chapter 13 petition (the "Third Case") [case no. 1:17-bk-12748-VK]. In her schedules, Debtor disclosed monthly income in the amount of \$9,379.85 and monthly expenses in the amount of \$7,097.19, leaving net monthly income of \$2,282.66 [Third Case, doc. 13]. Debtor represented that she was employed as a care giver for In Home Social Services ("IHSS") for nine years.

On October 16, 2017, Debtor filed a motion to continue the automatic stay as to secured creditors (the "Second Motion to Continue") [Third Case, doc. 10]. In the Second Motion to Continue, Debtor represented that she fell behind on her chapter 13 plan payments in the Second Case because, among other things, her employer was not paying her on time. On November 9, 2017, the Court entered an order granting the Second Motion to Continue [doc. 19].

On December 21, 2017, the Court entered an order confirming Debtor's chapter 13 plan [doc. 27]. Under that chapter 13 plan, Debtor was to pay \$2,218.00 per month for 60 months. That plan also proposed to cure arrearages on the Property in the amount of \$113,000.00.

On May 14, 2018, The Bank of New York Mellon (the "BONYM") filed a motion for relief from stay as to the Property [doc. 39]. On August 10, 2018, Debtor and the BONYM entered into a stipulation resolving that motion and providing for adequate protection payments [doc. 45].

On September 5, 2018, the chapter 13 trustee filed a motion to dismiss the Third Case for failure to make plan payments [doc. 51]. On October 9, 2018, the Court entered an order dismissing the Third Case for failure to make plan payments [doc. 61].

The Pending Case

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9:30 AM

CONT...

Mercedes Benitez

Chapter 13

On February 20, 2019, Debtor filed the pending chapter 13 case. On February 22, 2019, Debtor filed a motion to continue the automatic stay as to all creditors (the "Third Motion to Continue") [doc. 6]. In the Third Motion to Continue, Debtor represents that her prior case was dismissed because she could no longer make her chapter 13 plan payments. Debtor represents that she did not receive a paycheck from IHSS for six months because of a clerical error and that, because her daughter was pregnant, her daughter could not contribute to household expenses. Debtor represents that the clerical error is now fixed and that her daughter's fiancé now is contributing to household expenses.

In her pending case, Debtor's Schedules I & J indicate monthly income of \$9,479.85 and monthly expenses of \$7,284.00, leaving net monthly income of \$2,195.85 [doc. 15]. In her schedule I, Debtor indicated that her daughter contributes \$800.00 per month to household expenses. In addition, Debtor responded "Yes" to the question of whether she expected an increase in income within the first year of filing the petition. Debtor did not provide an explanation of why she expected that increase.

In her proposed chapter 13 plan [doc. 12], Debtor proposes to pay \$2,196.00 per month for 60 months. That plan also proposes to cure arrearages on the Property in the amount of \$112,347.42. That plan is a 100% plan. In her schedule E/F, Debtor listed nonpriority unsecured claims in the amount of \$2,714.85.

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 discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

Notwithstanding the assertions in the Third Motion to Continue, Debtor has not provided at this time clear and convincing evidence that her financial affairs have improved since the Third Case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. Debtor has less net monthly disposable

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9:30 AM

CONT...

Mercedes Benitez

Chapter 13

income than during the Third Case. Additionally, Debtor has not provided evidence of her daughter's fiancé's ability to contribute \$800.00 per month to household expenses. Without that contribution, Debtor will not be able to afford her proposed plan payment.

In light of the foregoing, the Court will grant the motion on an interim basis up to the date of the continued hearing. Debtor must timely pay: (1) her March 2019 and April 2019 deed of trust payments in the amount of \$2,820.00 (as stated in her current Schedule J) as to the Property; and (2) her March 2019 and April 2019 plan payments in the amount of \$2,196.00 to the chapter 13 trustee. **No later than April 22, 2019**, the debtor must file a declaration to demonstrate that she timely made her required post-petition deed of trust and chapter 13 plan payments.

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Mercedes Benitez

Represented By
Matthew D. Resnik

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, March 20, 2019

Hearing Room 301

9:30 AM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#16.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Docket 42

Tentative Ruling:

Deny request for relief under 11 U.S.C. § 362(d)(1) and (d)(4). 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. In addition, 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.

Respondent must submit order within seven (7) days.

Party Information

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9:30 AM

CONT... Elas, LLC dba Calnopoly, LLC

Chapter 11

Debtor(s):

Elas, LLC dba Calnopoly, LLC

Represented By
Anthony Obehi Egbase

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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

- #17.00** Status conference re: amended complaint to:
1. Quiet title of real property located at 22401 Summitridge Circle, Chatsworth, CA 91311; and
 2. Avoidance and recovery of fraudulent transfer pursuant to California Civil Code 3439.04
 3. Turnover of Property of the estate pursuant to 11 U.S.C. sec 542
 4. Imposition of constructive trust

fr. 11/7/18(stip); 12/5/18; 12/12/18; 1/9/2019; 3/13/19;

Docket 48

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on May 8, 2019**, to be held in connection with the hearing on defendants' motion to dismiss [doc. 58].

Appearances on March 20, 2019 are excused.

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

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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

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Wednesday, March 20, 2019

Hearing Room 301

1:30 PM

1:17-10825 Amie Suzanne Greenberg

Chapter 7

Adv#: 1:17-01061 Rubin v. Greenberg

#18.00 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; 12/12/18

Docket 1

***** VACATED *** REASON: Judgment entered 3/15/19 [doc. 113].**

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

Pro Se

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, March 20, 2019

Hearing Room 301

1:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01081 Albini et al v. Zuckerman

#19.00 Status conference re first amended complaint based upon fraud to determine nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A)

fr. 10/3/18; 10/17/18, 11/7/18; 1/9/2019; 2/6/19

Docket 24

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to comply with Federal Rule of Bankruptcy Procedure ("FRBP") 7026: 4/5/19.

Continued status conference: 1:30 on 4/24/19 - unless, prior thereto, the parties have filed a pleading that demonstrates that they timely have met and conferred in accordance with FRBP 7026. If such a pleading is timely filed, the Court may vacate the continued status conference.

Deadline to complete discovery: 9/13/19.

Deadline to file pretrial motions: 9/25/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 10/23/19.

Pretrial: 1:30 p.m. on 11/6/19.

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.

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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).

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
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

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Chapter 11

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 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

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Chapter 11

	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 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

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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

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1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

Adv#: 1:19-01004 Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.

#20.00 Status conference re: complaint to avoid preferential transfers, recovery of avoided transfers, preservation of avoided transfers; and disallowance of claim

Docket 1

***** VACATED *** REASON: Order of Dismissal entered 3/19/19. [Dkt12]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

Defendant(s):

VitaVet Labs, Inc.

Pro Se

Plaintiff(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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1:16-10045 Duane Daniel Martin

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Adv#: 1:18-01122 David K. Gottlieb, Chapter 7 Trustee v. Martin

#21.00 Defendant's motion to dismiss complaint for failure to state a claim upon which relief could be granted

Docket 7

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion in part and deny the motion in part.

I. BACKGROUND

On January 7, 2016, Duane Daniel Martin ("Defendant") and Tisha Michelle Martin ("Tisha," and together with Defendant, "Debtors") filed a voluntary chapter 7 petition, initiating case 1:16-bk-10045-VK ("Bankruptcy Case"). David K. Gottlieb ("Plaintiff") was appointed chapter 7 trustee. On November 14, 2016, Debtors received a discharge [Bankruptcy Case, doc. 128].

In their schedule A/B [Bankruptcy Case, doc. 16], Debtors indicated that they held a leasehold interest in real property located at 22402 Summitridge Circle, Chatsworth, California 91311 (the "Property"). Debtors valued their interest in the Property at \$65,000.00. Debtors indicated that this valuation was based on a \$65,000.00 payment to Roxe, LLC ("Roxe"), the alleged lessor, for a security deposit and pre-paid rent.

In their schedule A/B, Debtors indicated that they held an interest in fourteen LLCs or corporations, including XE Visions, Inc. ("XE"), Won Hundred, Inc. ("Won Hundred") and Driftwood, Inc. ("Driftwood"). In an attachment to their schedule B, Debtors represented that XE is a loan-out and production corporation which, among other things, contracts with other entities regarding Tisha's services as a performer. Debtors also represented that XE's assets include residuals and/or royalties from contracts assigned to it by loan-out companies formerly operated by Debtors. Debtors represented that Driftwood was one of the former loan-out companies. Debtors did not list an interest in Roxe or Alba Designs, LLC ("Alba Designs"). Similarly, in their statement of financial affairs ("SOFA"), Debtors did not list ownership of or any

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connection with Alba Designs.

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On March 16, 2016, Plaintiff filed an emergency motion for an order authorizing operation of XE and for turnover of the business assets [Bankruptcy Case, doc. 29]. On April 14, 2016, the Court entered an order granting in part and denying in part that motion [Bankruptcy Case, doc. 64]. The Court authorized Plaintiff to operate XE, but denied his request for turnover. Subsequently, Plaintiff became the president of XE.

A. The Settlement Agreement

On April 1, 2016, Plaintiff and XE filed an adversary proceeding against Debtors and Won Hundred, initiating case 1:16-ap-01050-VK. In that adversary proceeding, in the first amended complaint, Plaintiff and XE were requesting declaratory relief, a permanent injunction and damages. Plaintiff and XE did not include claims under 11 U.S.C. § 727. On September 6, 2016, Plaintiff filed a motion to approve compromise of that adversary proceeding under Fed. R. Bank. P. 9019 [Bankruptcy Case, doc. 115]. Exhibit 1 to that motion was the proposed settlement agreement that the parties would enter into regarding: (1) postpetition payments relating to the Dr. Ken Show; (2) the residuals from all past works and performances by Debtors; (3) Debtors' claimed homestead exemption; and (4) Debtors' claimed automobile exemption (the "Settlement Agreement"). On October 11, 2016, the Court entered an order authorizing the parties to enter into the Settlement Agreement. *Id.* at doc. 122.

The Settlement Agreement provides in relevant part:

E. The Residuals. The Debtors represent that XE owns the rights to all of the residual ("Residuals") from all past works and performances by the Debtors on shows, movies or related productions. Most, if not all, of the Residuals are received from and through the Screen Actors Guild-American Federation of Television and Radio Artists ("SAG-AFTRA") and were assigned to XE by various other loan-out entities owned by the Debtors (the "Other Loan-Outs"). Debtors represent that neither of them has been paid Residuals since the Petition Date and that Residuals received by XE or the Other Loan-Outs since the Petition date have been deposited into XE's bank account, which is presently under the control of the Trustee.

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1. **Settlement Payments.** The following payments set forth in Sections 1.1, 1.2 and 1.3 (collectively, the "Settlement Payments") have been or shall be delivered by or on behalf of the Debtors to the Trustee in good funds:
 - 1.1 Funds maintained in the XE bank account (at Whitney Bank) in the sum of \$98,000, which have been delivered to the Trustee and shall be retained by the Trustee to administer the estate.
 - 1.2 The sum of \$185,000 which represents the Post-Petition Payments, which will be turned over to the Trustee immediately upon Court approval of this Agreement.
 - 1.3 The Debtors shall pay to the Trustee the sum of \$55,000 as and for the Post-Petition Rent in resolution of the Trustee's objection to the Debtors' claimed Homestead Exemption.
 - 1.4 **Assignment of Residuals.** Any and all Residuals paid to or owing to the Debtors (the "Residual Payments") from and after the Petition Date are hereby assigned to, and shall be paid to, the Trustee either immediately or as they are collected and received Post-Petition as follows.
 - 1.4.1 Immediately upon the Court's approval of this Agreement, the Debtors shall deliver to the Trustee all post-petition Residual Payments received through such date, if any, that have not already been deposited into XE's bank account turned over in Section 1.1 above, as well as any additional Residual Payments received after such date, with a corresponding report from SAG-AFTRA confirming such amounts.
 - 1.4.2 The Debtors will cooperate with the Trustee to effectuate the assignment of all post-petition Residual Payments and to have SAG-AFTRA forward all future Residual Payments to the Trustee.
 - 1.4.3 The Debtors will have the option to purchase from the Trustee the right to receive the post-petition Residual Payments for the sum of \$125,000, which shall be funded by the Debtors to their counsel prior to the hearing on approval of this Agreement, and paid to the Trustee

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immediately upon Court approval of this Agreement.

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3. **Debtors' Discharge Conditioned Upon Trustee's Timely Receipt of Settlement Payments.** Upon the Trustee's timely receipt of the full amount of the *Settlement Payments*, in good funds, pursuant to this Settlement Agreement, (1) the Trustee shall abandon to the Debtors the remainder of the *scheduled* assets which are not transferred or assigned to the Trustee pursuant to this Settlement Agreement; (b) the § 727 objection filing deadline in all tolling agreements shall be deemed to have lapsed; (c) the Trustee *shall not object to the Debtors' discharge under 11 U.S.C. § 727*; and (d) the Debtors shall exchange mutual releases of all claims against the other under California Civil Code § 1542 as described below. (emphasis added).

...

7. **Mutual Releases.**

- 7.1. Effective upon Debtors' timely delivery to the Trustee of the Settlement Payments, *except for the Debtors' performance of their obligations as required herein*, the Trustee, on behalf of himself, the bankruptcy estate and its respective successors and assigns, does hereby release, remise, and discharge the Debtors, the Debtors' attorneys at Fredman Lieberman Pearl LLP, and each of them, from any and all liens, claims, demands, debts, liabilities, contracts, obligations, accounts, torts, causes of action, damages or claims for relief *arising from or related to or in connection with the Debtors' bankruptcy case*, and as alleged in the Adversary Proceeding, *whether known or unknown or suspected or unsuspected* by these releasing Parties, or any of them, which these same releasing parties may have, claim to have, or have at any time heretofore had or claimed to have had, or that may hereafter accrue against any of these released Parties by reason of *any transaction, occurrence, act, or omission prior to the execution of this Agreement*. (emphasis added).

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8. **Waiver of Unknown Claims.** The Debtors and the Trustee understand and recognize that they may discover or obtain information in the future pertaining to matters being released herein which they did not know or have as of the date of this Agreement. The releases set forth in paragraph 7 above are expressly intended to cover and include a release of any claims which arise out of, relate to, are connected with, or are incidental to any such information which may be discovered or obtained in the future. The Debtors and the Trustee therefore *expressly waive the provisions of Section 1542 of the Civil Code of the State of California* (and any federal or state statute or common law principle to similar effect) which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor. (emphasis in original).

The Debtors and the Trustee expressly agree that, notwithstanding the provisions of Civil Code Section 1542, the releases set forth in paragraph 7 above shall be given full force and effect according to each and all of their expressed terms and provisions, *including those relating to unknown and unspecified claims, demands and rights, lawsuits, or other causes of action. . . .*

On March 15, 2018, Plaintiff filed a motion for turnover of property and to resolve a dispute under the Settlement Agreement (the "Motion to Resolve Dispute") [doc. 159]. In the Motion to Resolve Dispute, Plaintiff represented that a dispute between the parties developed regarding Section 1.4 of the Settlement Agreement, which covered Residual Payments. On April 19, 2018, the Court entered an order granting in part and denying in part the Motion to Resolve Dispute (the "Order to Resolve Dispute") [doc. 170].

In the Order to Resolve Dispute, the Court ordered that a \$125,000.00 payment by Debtors to Plaintiff on January 26, 2018, was to be applied by Plaintiff to the outstanding Residual Payments (as defined in the Settlement Agreement). The Court further ordered that the \$125,000.00 payment did not constitute Debtors' exercise of

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the purchase option under Section 1.4.3 of the Settlement Agreement. The Court also ordered Debtors to provide an accounting to Plaintiff of the Residual Payments from the petition date through the present date.

B. The Adversary Proceeding

On November 30, 2018, Plaintiff filed a complaint (the "Complaint") against Defendant seeking to revoke his discharge under 11 U.S.C. § 727(d)(2), (d)(3) and (e) and for turnover of property under 11 U.S.C. § 542. In the Complaint, Plaintiff argues that grounds for revocation of Defendant's discharge include: (1) Defendant's diversion and concealment of residual payments that should have been delivered to Plaintiff pursuant to the terms of the Settlement Agreement; (2) Defendant's secret beneficial interest in the Property; and (3) Defendant's active concealment of his interest in Alba Designs.

1. The Residuals

Regarding the Residuals, in relevant part, the Complaint alleges:

In early March 2018, Plaintiff learned that, for approximately 18 months, Debtors did not deliver to Plaintiff, and instead improperly diverted, all post-petition Residual Payments that were to be paid to the estate under the Settlement Agreement. Pursuant to the Order to Resolve Dispute, Debtors provided Plaintiff with an accounting of postpetition Residual Payments (the "Accounting"). As determined by the Accounting, the diverted Residual Payments totaled in excess of \$275,000.00.

Pursuant to the Order to Resolve Dispute, the \$125,000.00 payment received from Debtors on January 26, 2018 was applied to the Residual Payments. Following entry of the Order to Resolve Dispute, Debtors began paying Plaintiff for postpetition Residual Payments due and owing under the Settlement Agreement, but also other monies earned by Debtors in order to catch up on the diverted Residual Payments.

Plaintiff and his professionals reviewed the Accounting and determined that, even after application of the \$125,000.00 payment and the other monies delivered to Plaintiff following entry of the Order to Resolve Dispute, Debtors

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still owe the estate approximately \$103,000.00. Through the Accounting, the additional sums were traced to what has been identified as the Driftwood payment.

Subsequently, Tisha learned that the Driftwood payment was included in the checks diverted by Defendant. Tisha found the Driftwood payment with other diverted checks maintained in Debtors' records. Defendant knowingly and fraudulently diverted from the estate the Residuals owing to Plaintiff under the Settlement Agreement. Based on Defendant's diversion of the Residuals, including the Driftwood payment, Plaintiff seeks to revoke Defendant's discharge and recover the Driftwood payment.

2. The Property

Regarding the Property, in relevant part, the Complaint alleges:

On October 30, 2012, Derek Folk and Michael Martin ("Michael") formed Roxe at the direction of Defendant to conceal Defendant's ownership interest in the Property by facilitating the transfer of title of the Property to Roxe with a loan from a cooperative creditor. Defendant is the alter ego of Roxe. After the purported transfer of title to the Property from Debtors to Roxe, Debtors continued to reside in the Property and continued to retain control over the residual equity in the Property, despite the transfer. Defendant directed the continued renovations to the Property that were started by Debtors prior to the transfer, at an expense of approximately \$150,000.00.

Mr. Folk served as Roxe's accountant from its origination through at least February 28, 2018, when Mr. Folk resigned, leaving Michael as the sole member of Roxe. Michael is Defendant's brother. Mr. Folk and Michael did not invest any money in Roxe. Mr. Folk and Michael have been the only entities to hold a legal interest in Roxe since its inception. Further, Roxe has failed to pay real property taxes on the Property for more than three years.

On March 1, 2006, Defendant purchased the Property for \$900,000, of which \$650,000 was financed with a loan. On July 3, 2007, Defendant borrowed the additional sum of \$1,950,000 to construct a home on the Property (together

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with the \$650,000 loan, the "Bank Loans"). On September 23, 2009, Defendant quitclaimed the Property to the Campbell-Martin Family Trust. After September 23, 2009, Defendant intentionally caused the Bank Loans to go into default in order to negotiate a short sale of the Property.

Defendant negotiated with the bank a short sale of the Property to Roxe for an amount less than owing on the Bank Loans. The purchase was financed through a loan arranged by Defendant from his friends (the "Lenders") through their company (the "Loan"). On November 30, 2012, through a double escrow at Beverly Hills Escrow: (i) the Lender's company recorded a deed of trust on the Property in the sum of \$1,407,651.00, with Roxe named as the borrower; (ii) the Bank Loans were satisfied for the discounted sum of \$1,380,000.00; and (iii) Roxe obtained title to the Property via a grant deed from Debtors.

On December 1, 2012, Debtors and Roxe purported to enter into a residential lease (the "Lease") whereby Debtors leased the Property from Roxe for \$5,000.00 per month. The Lease was a sham which was never intended by the parties to be performed and Debtors have not made all payments as required by the Lease because of the Loan. Roxe had a checking account at Chase Bank. The account statements from Chase Bank indicate that: (1) infrequent and sporadic loan payments were made to the Lenders via wire transfer; and (2) those wire transfers were on behalf of Debtors, not Roxe. Complaint, Exh. D.

Debtors lived in the Property until January 2018, when Tisha filed for divorce from Defendant, and Tisha moved to another residence. Defendant continues to reside at the Property.

On January 30, 2018, Tisha sent an email to Defendant and Mr. Folk with a "to do list," which included, the following: (1) we need to go over the bills that maintain the Property; (2) we should unload the Property to get a fresh financial start; and (3) how much do we owe the Lenders for the Property. Complaint, Exh. A.

On July 25, 2018, at the direction of Defendant, the Property was listed for sale for \$2,695,000.00. Defendant intends to retain the sale proceeds in excess

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of the Loan, approximately \$1,100,000.00.

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Defendant knowingly and fraudulently made a false oath or account in failing to disclose his secret beneficial interest in the Property. Defendant has a secret beneficial interest in the Property and otherwise controls Roxe, such that Defendant has an affirmative duty to cause Roxe to convey title to the Property back to Debtors.

3. *Alba Designs*

Regarding Alba Designs, in relevant part, the Complaint alleges:

Since 2012 and continuing on and after the petition date, Defendant has held an interest in a clothing store, Alba Designs. Debtors did not list their interest in Alba Designs on their SOFA.

Postpetition, Defendant has received substantial sums of cash delivered to him by one of his partners, Jhanna Alba. Defendant has received at least \$250,000.00, plus potentially \$2,500.00 to \$5,000.00 per month in cash, as part of Defendant's scheme of diversion, along with annual dividends of between \$40,000.00 to \$60,000.00 per year. These distributions were an asset of Debtors' bankruptcy estate, but for Defendant's concealment.

Some of the monies were delivered to Defendant, or others on behalf of Defendant, in cash. Defendant would receive cash in increments of \$2,500.00 or \$5,000.00 at arranged times from Ms. Alba, under the guise of "picking up his suit." Alternatively, Michael would receive cash payments from Ms. Alba at the direction of Defendant, if Defendant was not able to pick up the cash. Monies may also have been delivered to Defendant's mother, who may have an interest in Alba Designs.

Some of the monies were delivered to Defendant through backdoor distribution channels established through use of entities controlled by Defendant. Between January 2016 and December 2016, at least \$22,500.00 was wired to an account in the name of "Zipper King." This entity is controlled by Defendant. On March 16, 2016, \$40,000.00 was delivered to "Williams

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Tax and Financial Group" for the benefit of Defendant. These funds were then transferred to Defendant at Defendant's direction. On August 11, 2016, \$50,000.00 was wired to an account in the name of "Dubai Equity." This is an entity formed on behalf of Defendant for the specific purpose of diverting payments from Defendant's interest in Alba Designs from Debtors' bankruptcy estate.

Defendant knowingly and fraudulently made a false oath or account in failing to disclose his interest in Alba Designs. Defendant acquired property in the form of payments from Alba Designs, which is property of the bankruptcy estate. Defendant knowingly failed to report the acquisition of this property or deliver or surrender this property to Plaintiff. Based on Defendant's conduct of his continuing concealment of his retained, secret beneficial interest in Alba Designs, Plaintiff seeks to revoke Defendant's discharge and recover his legal/equitable interest in the payments from Alba Designs.

On December 31, 2018, Defendant filed a motion to dismiss the Complaint (the "Motion") [doc. 7]. In the Motion, Defendant argues that the provisions in the Settlement Agreement bar Plaintiff from filing this adversary proceeding. On March 6, 2019, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 11]. On March 14, 2019, Defendant filed a reply to the Opposition (the "Reply") [doc. 13].

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

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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); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (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. 11 U.S.C. § 727(e)

Pursuant to 11 U.S.C. § 727(e)—

(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

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- (1) under subsection (d)(1) of this section within one year after such discharge is granted; or
- (2) under subsection (d)(2) or (d)(3) of this section before the later of—
 - (A) one year after the granting of such discharge; and
 - (B) the date the case is closed.

Here, Plaintiff is requesting revocation of Defendant's discharge under 11 U.S.C. § 727(d)(2) and (d)(3). As such, Plaintiff must have brought the action before the later of one year after the granting of Defendant's discharge, which would have been in 2017, or before the case is closed. The case has not yet closed. As such, Plaintiff has timely filed the Complaint.

C. Language of the Settlement Agreement

Defendant argues that the 11 U.S.C. § 727 claims are barred by the Settlement Agreement. Under Section 3 of the Settlement Agreement, if Debtors timely delivered the Settlement Payments, as defined in Sections 1.1, 1.2 and 1.3, Plaintiff agreed to not object to Debtors' discharge under 11 U.S.C. § 727. Defendant contends that because Defendant timely delivered the Settlement Payments to Plaintiff, Plaintiff may no longer seek revocation of Defendant's discharge.

Under the Bankruptcy Code, there are separate causes of action for objection to discharge under 11 U.S.C. § 727(a) and revocation of discharge under 11 U.S.C. § 727(d). The most reasonable interpretation of the language in the Settlement Agreement is that, if Debtors timely delivered the Settlement Payments, Plaintiff would not object to their discharge based on the issues in the adversary proceeding. Plaintiff retained the right to bring an action for *revocation of Debtors' discharge* based on any applicable conduct which took place *subsequent to the execution of the Settlement Agreement*.

Defendant also argues that under Section 7.1 of the Settlement Agreement, Plaintiff agreed to release all claims against Debtors in connection with Debtors' bankruptcy

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case. Further, in Section 8 of the Settlement Agreement, Plaintiff agreed to waive unknown claims. Thus, Defendant contends that Plaintiff's claims under 11 U.S.C. § 727(d)(2) and (3) are barred.

Under Section 7.1 of the Settlement Agreement, upon timely delivery to Plaintiff of the Settlement Payments, as defined in Sections 1.1, 1.2 and 1.3, Plaintiff agreed to release all claims against Debtors arising in connection with Debtors' bankruptcy case, whether known or unknown, or that may accrue against Debtors by reason of any transaction or omission *prior to the execution of the Settlement Agreement*. In Section 8, Plaintiff and Debtors waived Cal. Civ. Code § 1542.

Plaintiff is not contending that Defendant did not timely deliver the Settlement Payments. As such, based on the language of the Settlement Agreement, it appears that Plaintiff released all claims, including unknown claims, against Defendant based on transactions, acts and omissions prior to the execution of the Settlement Agreement. This would include *Plaintiff's* prosecution of a revocation of discharge action based on acts or omissions that took place prior to the execution of the Settlement Agreement.

As discussed below, some of the allegations in the Complaint relate to transactions, acts or omissions prior to the execution of the Settlement Agreements. Claims arising from this conduct are barred by the release. However, Plaintiff's claims that relate to any transactions, acts or omissions that took place *after* the execution of the Settlement Agreement may form the basis of Plaintiff's claims under 11 U.S.C. § 727(d).

D. 11 U.S.C. § 727(d)(2)

Pursuant to 11 U.S.C. § 727(d)(2)—

(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

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estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee.

"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)).

1. The Residuals

In connection with revocation of Defendant's discharge, regarding the Residuals, Plaintiff has sufficiently plead a claim for relief. Plaintiff alleges that Defendant acquired postpetition Residuals, which are property of the estate, and knowingly and fraudulently failed to deliver them to Plaintiff. Plaintiff's allegations satisfy both elements of § 727(d)(2). Further, the release in the Settlement Agreement specifically excepted Debtors' performance of their obligations under the Settlement Agreement *i.e.* delivery of all postpetition Residual Payments received. Accordingly, Plaintiff has stated a claim for relief under 11 U.S.C. § 727(d)(2).

2. The Property

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In connection with revocation of Defendant's discharge, regarding the Property, Plaintiff released unknown claims of the estate against Defendant, which arose before the execution of the Settlement Agreement. (This release does **not** include the separately held rights of the United States Trustee, or other creditors, to bring a timely revocation action). Prior to that date, Defendant allegedly obtained and held a secret beneficial interest in the Property. Accordingly, regarding the Property, the Court will grant the Motion as to the § 727(d)(2) claim, without leave to amend.

3. *Alba Designs*

Regarding the payments from Alba Designs, Plaintiff has sufficiently plead a claim for relief for payments received after the execution of the Settlement Agreement. Taking the allegations in the Complaint as true, Defendant owned an interest in Alba Designs on the petition date. Under 11 U.S.C. § 541, Defendant's interest in Alba Designs, and any monies received an account of that interest, constitute property of the estate. Plaintiff alleges that Defendant acquired such property of the estate postpetition. Further, Plaintiff alleges that Defendant knowingly and fraudulently failed to report the acquisition of the Alba Designs payments or to deliver or surrender the payments to Plaintiff. These allegations satisfy both elements of 11 U.S.C. § 727(d)(2).

As discussed above, Plaintiff released all claims against Debtors for conduct that occurred prior to the execution of the Settlement Agreement. In light of that release, in order for Plaintiff to prosecute a claim for revocation of discharge, Defendant must have acted, in the manner set forth in 11 U.S.C. § 727(d)(2), subsequent to the execution of the Settlement Agreement. Consequently, to clarify whether and to what extent Defendant received these payments *following the execution of the Settlement Agreement*, Plaintiff must amend the Complaint.

E. 11 U.S.C. § 727(d)(3)

Pursuant to 11 U.S.C. § 727(d)(3)—

(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—

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(3) the debtor committed an act specified in subsection (a)(6) of this section.

Pursuant to 11 U.S.C. § 727(a)(6)—

(a) The Court shall grant the debtor a discharge, unless—

(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify.

Here, Plaintiff does not specify the basis for the 11 U.S.C. § 727(d)(3) claim. Because 11 U.S.C. § 727(a)(6)(B) and (6)(C) are not applicable, Plaintiff's claim could be based on 11 U.S.C. § 727(a)(6)(A). However, Plaintiff does not specify which order Debtor failed to obey.

Plaintiff may be referring to the order approving the Settlement Agreement. However, Defendant's noncompliance with the Settlement Agreement does not mean that he did not obey that order. The order (unlike the Settlement Agreement) did not mandate specific conduct. Accordingly, as of this time, the Complaint does not state a claim for relief under 11 U.S.C. § 727(d)(3). Because these deficiencies in the Complaint may be cured with amendment, as to the 11 U.S.C. § 727(d)(3) claim, the Court will grant the Motion, with leave to amend.

F. Turnover

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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 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.

"Thus, in order to prevail in a turnover action [a party] must prove the following elements under section 542(a): (1) the property [is] in the possession, custody, or control of an entity, (2) the property can be used in accordance with 11 U.S.C. § 363; and (3) the property has more than inconsequential value or benefit to the estate." *Matter of Alofs Mfg. Co.*, 209 B.R. 83, 91 (Bankr. W.D. Mich. 1997).

1. The Residuals

Regarding the Residuals, Plaintiff has sufficiently plead a claim for relief under Rule 12(b)(6). Under the Settlement Agreement, Plaintiff secured the estate's right to continued receipt of the Residuals, and Defendant was obligated to deliver them to Plaintiff. Assuming the truth of the allegations in the Complaint, as the Court must on a Rule 12(b)(6) motion, Defendant has improperly diverted Residual Payments, which remain property of the estate. Accordingly, Plaintiff's claim for turnover of the Residuals states a claim for relief.

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2. *The Property*

Regarding the Property, Plaintiff has sufficiently plead a claim for relief under Rule 12(b)(6). Plaintiff alleges that Defendant has a secret beneficial interest in the Property. Plaintiff plausibly represents, with sufficient factual detail, that Roxe is a sham entity created to conceal Defendant's interest in the Property, and that Debtors' lease with Roxe is a sham. After the purported transfer of the Property, Debtors continued to reside in the Property. Moreover, as alleged in the Complaint, Defendant continues to retain control over the residual equity in the Property and intended to receive any net proceeds from Defendant's planned sale of the Property (which transaction Defendant controlled).

Taking all Plaintiff's allegations as true, Defendant has a secret beneficial interest in the Property, which makes it property of the estate under 11 U.S.C. § 541. Plaintiff may be able to sell, use or lease the Property, and because of the alleged equity therein, the Property is not of inconsequential value. Consequently, under 11 U.S.C. § 542, Plaintiff may compel Defendant's turnover of the Property. Finally, in Section 3 of the Settlement Agreement, Plaintiff only agreed to abandon the remainder of Debtors' *scheduled assets*. Plaintiff alleges that Defendant *concealed* his beneficial interest in the Property. Accordingly, in connection with the Settlement Agreement, Plaintiff did not abandon any secret beneficial interest which Defendant has in the Property.

3. *Alba Designs*

Regarding the payments from Alba Designs, Plaintiff has sufficiently plead a claim for relief under Rule 12(b)(6). In the Complaint, Plaintiff alleges that Defendant owned an interest in Alba Designs on the petition date. The Court must accept this allegation as true. Defendant did not schedule his interest in Alba Designs. Thus, in connection with the Settlement Agreement, Plaintiff did not abandon the estate's interest in Alba Designs. As such, the Complaint states a claim for relief as to turnover of payments generated from Defendant's interest in Alba Designs.

III. CONCLUSION

The Court will grant the Motion, with leave to amend, as to: (1) the 11 U.S.C. §

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727(d)(3) claim; and (2) the 11 U.S.C. § 727(d)(2) claim based on Defendant's receipt of postpetition, post-release payments in connection with his interest in Alba Designs. As to the 11 U.S.C. § 727(d)(2) claim regarding the Property, the Court will grant the motion without leave to amend. As to all other claims, the Court will deny the Motion.

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

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Defendant(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley
Joseph R Dunn

Plaintiff(s):

David K. Gottlieb, Chapter 7 Trustee

Represented By
Monica Y Kim
Beth Ann R Young

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong
Beth Ann R Young

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1:16-10045 Duane Daniel Martin

Chapter 7

Adv#: 1:18-01122 David K. Gottlieb, Chapter 7 Trustee v. Martin

#22.00 Status conference re: complaint for:
(1) Revocation of discharge pursuant to 11 U.S.C. sec 727(d)(2)
and (3) and sec 727(e)(2) and
(2) Recovery of property of the estate

fr. 2/6/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Defendant(s):

Duane Daniel Martin

Pro Se

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley
Joseph R Dunn

Plaintiff(s):

David K. Gottlieb, Chapter 7 Trustee

Represented By
Monica Y Kim
Beth Ann R Young

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

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Duane Daniel Martin

Jeffrey S Kwong
Beth Ann R Young

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1:17-13375 Adir Setton

Chapter 7

Adv#: 1:18-01035 Kessler v. Setton

#23.00 Plaintiff's motion to vacate dismissal

Docket 45

Tentative Ruling:

In the notice filed by the plaintiff, the plaintiff did not include notice of the deadline by which the defendant may object to the motion.

The Court will continue this matter to **2:30 p.m. on April 17, 2019**. No later than **March 22, 2019**, the plaintiff must file and serve notice of the continued hearing and include information about the deadline by which the defendant may file an opposition to the motion.

Appearances on March 20, 2019 are excused.

Party Information

Debtor(s):

Adir Setton

Represented By
Stephen S Smyth
William J Smyth
Andrew Edward Smyth

Defendant(s):

Adir Setton

Represented By
Andrew Edward Smyth

Plaintiff(s):

Avigdor Kessler

Represented By
Martin S Wolf
Andrew Edward Smyth

Trustee(s):

Amy L Goldman (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:18-10071 LOST COAST RANCH INC.

Chapter 7

#1.00 Motion for relief from stay [RP]

BOBS, LLC
VS
DEBTOR

fr. 3/6/19

Docket 82

Tentative Ruling:

The parties should be prepared to discuss a date for an evidentiary hearing to determine the value of the property, i.e., if possible, one day from and including April 29, 2019 through May 3, 2019.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

Movant's Evidentiary Objections to the Declaration of Jim Redd [doc. 89]
para. 4: overruled

Movant's Evidentiary Objections to the Supplemental Declaration of Jim Redd [doc. 94]
para. 4:22-27: overruled
exh. A: overruled

Party Information

Debtor(s):

LOST COAST RANCH INC.

Represented By
Ronald A Norman - BK SUSPENDED -

Trustee(s):

David Seror (TR)

Represented By

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LOST COAST RANCH INC.

Talin Keshishian
Richard Burstein

Chapter 7

**United States Bankruptcy Court
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Wednesday, March 27, 2019

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9:30 AM

1:19-10271 Jose R. Fernandez and Esther Fernandez

Chapter 13

#2.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 2/20/19; 3/20/19

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.

Party Information

Debtor(s):

Jose R. Fernandez

Represented By
Donald E Iwuchuku

Joint Debtor(s):

Esther Fernandez

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, April 3, 2019

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9:30 AM

1:18-12883 Kristine Rosales Pettit

Chapter 7

#1.00 Motion for relief from stay [RP]

ALAN MITCHELL ARKLES AND ARI ARKLES
VS
DEBTOR

fr. 3/6/19

Docket 18

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.

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):

Kristine Rosales Pettit

Represented By
Kevin T Simon

Trustee(s):

Diane C Weil (TR)

Pro Se

United States Bankruptcy Court
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Wednesday, April 3, 2019

Hearing Room 301

9:30 AM

1:15-10295 Adolph Earl Jones and Katherine Johnson Jones

Chapter 13

#1.10 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 11/7/18; 12/12/18; 1/16/19; 2/20/19; 3/20/19

Stip for adequate protection filed 4/1/19

Docket 58

*** VACATED *** REASON: Order approving stipulation entered 4/1/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adolph Earl Jones

Represented By
Allan S Williams

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

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1:18-11243 Jeff Davani and Nadia Davani

Chapter 7

#2.00 Motion for relief from stay [AN]

YVONNE JOHNSON
VS
DEBTOR

Docket 90

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. On August 21, 2018, movant filed an adversary proceeding against the debtor, asserting claims for relief that include claims under 11 U.S.C. §§ 523(a)(2), 523(a)(4), and 523(a)(6). If movant contends that its claims are nondischargeable in nature, this Court may make such a nondischargeability determination within the context of the pending adversary proceeding. Notwithstanding the foregoing, movant may proceed against the non-debtor cross-defendants in the nonbankruptcy action.

The debtors must submit the order within seven (7) days.

Party Information

Debtor(s):

Jeff Davani

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Joint Debtor(s):

Nadia Davani

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Trustee(s):

David Keith Gottlieb (TR)

Represented By

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Jeff Davani and Nadia Davani

D Edward Hays
Laila Masud

Chapter 7

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Hearing Room 301

9:30 AM

1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

#3.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 38

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):

Aurora Frias Lee-Nelson

Represented By
Ronald D Tym

Movant(s):

Toyota Motor Credit Corporation as

Represented By
Stephanie R Lewis

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CONT... Aurora Frias Lee-Nelson

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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9:30 AM

1:19-10076 Regina Vazquez

Chapter 7

#4.00 Amended motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORTION
VS
DEBTOR

Docket 15

*** VACATED *** REASON: Notice of withdrawl of motion filed 4/1/2019.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Regina Vazquez

Represented By
Nathan A Berneman

Movant(s):

Toyota Motor Credit Corporation

Represented By
Stephanie R Lewis

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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9:30 AM

1:19-10266 Hernan Corado Alvarez

Chapter 7

#5.00 Motion for relief from stay [PP]

HYUNDAI MOTOR FINANCE COMPANY
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):

Hernan Corado Alvarez

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:18-12932 Martha Beltran

Chapter 7

#6.00 Motion for relief from stay [PP]

TD AUTO FINANCE LLC
VS
DEBTOR

Docket 23

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):

Martha Beltran

Represented By
M. Wayne Tucker

Movant(s):

TD Auto Finance LLC

Represented By
Jennifer H Wang

Trustee(s):

Nancy J Zamora (TR)

Represented By

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Martha Beltran

Larry D Simons

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1:19-10463 Keisha Jones

Chapter 13

#7.00 Motion for relief from stay [UD]

MASANOBU SHIBYA
VS
DEBTOR

Docket 9

*** VACATED *** REASON: Case dismissed on 3/18/19 [doc. 12]. The motion is moot.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keisha Jones

Pro Se

Movant(s):

Masanobu Shibuya

Represented By
David S Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-10299 Paula Parisi

Chapter 11

#8.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 23

Tentative Ruling:

For the reasons discussed below, the Court will grant relief from the automatic stay under 11 U.S.C. § 362(d)(4).

On July 17, 2003, Paula Parisi (“Debtor”) executed a promissory note in the principal sum of \$400,000, which was made payable to Bank of America, N.A. [doc. 24, Exh. A]. That note is secured by a deed of trust, executed by Debtor and Michael Kochman, encumbering the real property located at 3629 Weslin Avenue, Sherman Oaks, California 91423 (the “Property”). *Id.* at Exh. B. Subsequently, that deed of trust was assigned to U.S. Bank National Association, not in its individual capacity, but solely as legal title trustee for BCAT 2016-18TT, and its successors and/or assigns (“U.S. Bank”). *Id.* at Exh. C.

The First Chapter 13 Case

On September 27, 2012, U.S. Bank recorded a notice of default against the Property, reflecting a default in the amount of \$18,379.06. *Id.* at Exh. D. On December 31, 2012, U.S. Bank recorded a notice of sale against the Property, scheduling a sale for January 24, 2013. *Id.* at Exh. E.

On January 16, 2013, eight days before the scheduled foreclosure sale, Debtor filed a chapter 13 petition, initiating case 1:13-bk-10305-VK (the “First Case”). For the majority of the First Case, Debtor was represented by counsel.

On May 13, 2013, U.S. Bank filed claim 13-1, asserting a secured claim in the amount of \$362,815.53, with prepetition arrears in the amount of \$32,405.80.

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Paula Parisi

Chapter 11

On April 15, 2013, the Court entered an order confirming Debtor's chapter 13 plan [First Case, doc. 23]. On February 11, 2016, the Court entered an order dismissing the First Case for failure to make chapter 13 plan payments [First Case, doc. 80].

The Second Chapter 13 Case

On March 30, 2017, U.S. Bank recorded a notice of default against the Property, reflecting a default in the amount of \$76,094.95 [doc. 24, Exh. G]. On July 11, 2017, U.S. Bank recorded a notice of sale against the Property. *Id.* at Exh. H.

On October 10, 2017, Debtor filed another chapter 13 petition, initiating case 1:17-bk-12717-MT (the "Second Case"). Debtor was not represented by counsel.

On November 22, 2017, U.S. Bank filed an objection to confirmation of Debtor's chapter 13 plan [Second Case, doc. 23]. In that objection, U.S. Bank represented that its prepetition arrears were approximately \$95,458.73. *Id.* On December 4, 2017, the Court entered an order dismissing the Second Case for failure to make the required payments [Second Case, doc. 27].

The Third Chapter 13 Case

On December 27, 2017, Debtor filed another chapter 13 petition, initiating case 1:17-bk-13399-MB (the "Third Case"). For the majority of the Third Case, Debtor was represented by counsel.

On January 3, 2018, Debtor filed a motion to continue the automatic stay [Third Case, doc. 9]. In that motion, Debtor indicated that she would sell the Property before May 31, 2018 to benefit all creditors of the estate. Debtor also represented that the Second Case was dismissed because she filed it *pro se* and did not understand the bankruptcy process. On January 19, 2018, the Court granted that motion. *Id.* at doc. 15.

On March 7, 2018, U.S. Bank filed claim 5-2, asserting a secured claim in the amount of \$390,214.62, with prepetition arrears in the amount of \$107,642.62.

On February 26, 2018, Debtor filed an amended chapter 13 plan [Third Case, doc. 26]. In that plan, using the proceeds from the sale of the Property, Debtor proposed to pay secured creditors in full and to make a \$99,111.00 lump sum payment in month seven to unsecured creditors. Nonetheless, Debtor did not sell the Property during the

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CONT... Paula Parisi

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pendency of the Third Case.

On May 2, 2018, U.S. Bank filed a motion for relief from stay as to the Property [Third Case, doc. 40]. On August 16, 2018, the Court entered an order granting that motion. *Id.* at doc. 53. On September 11, 2018, the Court entered an order dismissing the Third Case [Third Case, doc. 57].

The Pending Chapter 11 Case

On September 4, 2018, U.S. Bank recorded a notice of default against the Property, reflecting a default in the amount of \$135,025.93 [doc. 24, Exh. K]. On January 2, 2019, U.S. Bank recorded a notice of sale against the Property, scheduling a sale for February 8, 2019. *Id.* at Exh. L.

On February 7, 2019, one day before the scheduled foreclosure sale, Debtor filed the pending chapter 11 case. Debtor is not represented by counsel.

In her pending case, Debtor's Schedules I & J indicate monthly income of \$3,218.16 and monthly expenses of \$4,910.00, leaving net monthly income of (\$1,691.83) [doc. 27, at pp. 29–33]. Based on her statement of financial affairs, Debtor's aggregate income from January 1, 2017 through February 7, 2019 (excluding \$2,000.00 in family gifts) was less than \$53,000.00. In her schedule C, Debtor claimed a \$175,000.00 exemption in the Property.

On February 22, 2019, Debtor filed a motion to continue the automatic stay as to all creditors (the "Motion to Continue Stay") [doc. 14]. In the Motion to Continue Stay, Debtor represented that her financial circumstances have improved with the prospect of leasing the Property for \$6,000.00 per month or selling the Property under improved market conditions. Debtor also represented that she has substantial equity in the Property, and that a sale of the Property would fully repay all creditors of the estate.

On March 6, 2019, the Court held a hearing on the Motion to Continue Stay. Before the hearing, the Court posted a tentative ruling explaining that Debtor had not presented clear and convincing evidence that the pending chapter 11 case would result in a confirmed plan that would be fully performed *unless* a chapter 11 or chapter 7 trustee is appointed, who would sell the Property. Debtor provided no evidence that

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Chapter 11

she has sufficient net monthly income to fund any proposed chapter 11 plan. Further, in the Third Case, Debtor committed that she would sell the Property to repay her creditors, yet Debtor failed to do so. Furthermore, in the pending chapter 11 case, Debtor had not filed an application to employ a broker.

At the hearing, Debtor requested that the Court continue the hearing for her to file a reply to U.S. Bank's opposition (the "Opposition"). On March 6, 2019, the Court entered an order continuing the hearing to March 20, 2019 [doc. 32]. In that same order, the Court ordered Debtor to file a reply to the Opposition no later than March 13, 2019 at 9:30 a.m. Debtor did not timely file a reply. Instead, the morning of the continued hearing, Debtor filed a 133-page pleading, including exhibits (the "Reply") [doc. 40].

On March 20, 2019, the Court held the continued hearing on the Motion to Continue Stay. During that hearing, the Court explained to Debtor that she had not met the applicable standard for the Court to continue the automatic stay, as set forth in the Court's ruling [doc. 34]. The Court offered to grant the Motion to Continue Stay if Debtor agreed to the appointment of a chapter 11 trustee or to the conversion of this chapter 11 case to one under chapter 7. Debtor would not do so. Further, Debtor still had not filed an application to employ a broker. Accordingly, on March 21, 2019, the Court entered an order denying the Motion to Continue Stay (the "Order") [doc. 36].

On March 21, 2019, Debtor filed a motion for reconsideration of the Order requesting that the automatic stay continue until April 3, 2019 (the "Motion for Reconsideration") [doc. 38]. Among other things, Debtor argued that it would have been impossible for the Court to carefully read the Reply because it was filed shortly before the continued hearing. Debtor did not justify her decision to disregard the Court's order and belatedly file the voluminous Reply. On March 27, 2019, the Court entered an order denying the Motion for Reconsideration [doc. 43].

On February 28, 2019, U.S. Bank filed a motion for relief from the automatic stay as to the Property (the "Motion") [doc. 24]. In the Motion, U.S. Bank states that Debtor has missed 45 payments, totaling \$146,009.25 in arrears. Debtor filed a response [doc. 37] to the Motion that did not attach a declaration signed under penalty of perjury (the "Response").

As of March 27, 2019, Debtor still has not filed an application to employ a broker to

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sell or lease the Property.

Chapter 11

Discussion

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 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 that involved multiple

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bankruptcy filings affecting the Property. This is Debtor's fourth bankruptcy case affecting the Property. Despite three prior chapter 13 filings, Debtor has yet to complete the bankruptcy process successfully and to obtain a discharge. Debtor has continued to be delinquent on her deed of trust payments for loans secured by the Property. In the Response, Debtor did not even address the \$146,009.25 prepetition arrearages owed to U.S. Bank.

In addition to the foregoing, Debtor's apparent inability to fund a feasible chapter 11 plan and unwillingness or inability to effectuate a sale of the Property justify relief from the automatic stay pursuant 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).

Any other request for relief is denied.

U.S. Bank must submit an order within seven (7) days.

Party Information

Debtor(s):

Paula Parisi

Pro Se

Movant(s):

U.S. Bank National Association, not

Represented By
Kelsey X Luu

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#8.10 Motion for relief from stay [RP]

2005 RESIDENTIAL TRUST 3-2 BY WILMINGTON SAVINGS FUND SOCIETY
VS
DEBTOR

Docket 34

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.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By

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Coast to Coast Holdings, LLC

John-Patrick M Fritz
David B Golubchik

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1:19-10112 Coast to Coast Holdings, LLC

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#9.00 Motion for relief from the automatic stay

2005 RESIDENTIAL TRUST 3-2
VS
DEBTOR

Docket 31

***** VACATED *** REASON: Notice of withdrawal filed 3/19/19 [Dkt.33]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01069 Seror v. Muennichow et al

- #10.00** Pre-trial 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; 11/21/18

Docket 1

Tentative Ruling:

The Court will approve the parties' joint pretrial stipulation [doc. 74]. The parties should be prepared to address the following:

The Court intends to set this matter for trial **from June 25, 2019, beginning at 9:30 a.m., through June 27, 2019.**

TRIAL BRIEFS:

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.

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Any reply brief by the plaintiff must be filed and served **14 days** before trial.

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.

Declarations filed by the plaintiff in lieu of live direct testimony must be filed and served no later than **28 days** before trial.

Declarations filed by the defendant in lieu of live direct testimony and any evidentiary objections to the declarations filed by the plaintiff must be filed and served no later than **21 days** before trial.

Any evidentiary objections to the declarations filed by the defendant and any responses to the defendant's evidentiary objections must be filed and served no later than **14 days** before trial.

Any responses to the plaintiff's evidentiary objections must be filed and served no later than **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 direct examination (if applicable) 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 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.**

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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.

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
Richard Burstein

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

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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; 11/21/18; 2/20/19

Cross-claim

David Seror, soley in his capacity as the Chapter 7 Trustee for the bankruptcy estate of debtor Hermann Muennichow

v.

Helayne Muennichow, an individual; Duane Van Dyke Irrevocable Trust, an entity of unknown form; and John Van Duke, trustee of the Duane Van Dyke Irrevocable trust

Cross-claim

Helayne Muennichow,\

v.

Duane Van Dyke Irrevocable Trust; David Seror; and chapter 7 trustee

Docket 1

Tentative Ruling:

The Court intends to set the motion to reconsider the consent order (the "Motion to Reconsider") [doc. 24], filed by Helayne Muennichow, for hearing at **2:30 p.m. on**

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CONT...

Hermann Muennichow

Chapter 7

May 15, 2019. Should the Court stay this adversary proceeding until entry of an order on the Motion to Consider? If the parties do not request a stay, the parties should be prepared to discuss the following:

Deadline to complete discovery: 10/1/19.

Deadline to file pretrial motions: 10/15/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 11/6/19.

Pretrial: 1:30 p.m. on 11/20/19.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the chapter 7 trustee 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):

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

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CONT... Hermann Muennichow

Chapter 7

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

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1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:18-01105 QUEEN et al v. Anderson

#12.00 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; 12/12/18

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on April 24, 2019**, to be held with the hearing on the plaintiffs' motion for default judgment [doc. 16].

Appearances on April 3, 2019 are excused.

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

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1:18-12560 Remon Ramzy Hanna

Chapter 7

Adv#: 1:19-01005 Patel et al v. Hanna et al

#13.00 Status conference re: complaint to determine dischargeability
of debt under 11 U.S.C. sec 523(a)(2), (4), (6)

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 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: 9/18/19.

Pretrial: 1:30 p.m. on 10/2/19.

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):

Remon Ramzy Hanna

Represented By
Michael H Raichelson

Defendant(s):

Remon Ramzy Hanna

Pro Se

Gamatat Youssef Khalil

Pro Se

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CONT... Remon Ramzy Hanna

Chapter 7

Joint Debtor(s):

Gamatat Youssef Khalil

Represented By
Michael H Raichelson

Plaintiff(s):

Dipesh Patel

Represented By
Randy B Soref

Nilay Patel

Represented By
Randy B Soref

Mark Ross, Jr.

Represented By
Randy B Soref

Raied Francis

Represented By
Randy B Soref

Trustee(s):

David Seror (TR)

Pro Se

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2:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#14.00 Pretrial 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/ 8/1/18; 1/23/19(stip)

Docket 42

***** VACATED *** REASON: Rescheduled for 4/10/19 at 2:30 PM**

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

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2:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#15.00 Motion for a protective order to (1) Have depositions occur only after the Court determines an evidentiary hearing is necessary on defendants claim objection and (2) Bar plaintiff from attending defendants depositions

fr. 1/17/19

Docket 69

***** VACATED *** REASON: Rescheduled for 4/10/19 at 2:30 PM**

Tentative Ruling:

- NONE LISTED -

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
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By
Vahe Khojayan

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2:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#16.00 Plaintiff's motion for order compelling defendants to produce additional documents in response to requests for production of documents, and for sanctions

fr. 1/16/19; 1/23/19

Docket 72

***** VACATED *** REASON: Rescheduled for 4/10/19 at 2:30 PM**

Tentative Ruling:

- NONE LISTED -

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
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By
Vahe Khojayan

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1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#17.00 Plaintiff's motion to compel defendants to appear at deposition
and for sanctions

fr. 1/16/19; 1/23/19

Docket 77

*** VACATED *** REASON: Rescheduled for 4/10/19 at 2:30 PM

Tentative Ruling:

- NONE LISTED -

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
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By
Vahe Khojayan

**United States Bankruptcy Court
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Hearing Room 301

1:00 PM

1:13-17502 Glenroy E Day, Jr.

Chapter 11

#1.00 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; 11/15/18; 2/21/19

Docket 1

Tentative Ruling:

In light of the debtor's status report [doc. 285], the Court will continue this status conference to **1:00 p.m. on August 8, 2019**. No later than **July 25, 2019**, the debtor must file and serve a status report updating the Court on the status of the pending appeal.

Appearances on April 4, 2019 are excused.

Party Information

Debtor(s):

Glenroy E Day Jr.

Represented By
Thomas B Ure

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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; 11/8/18; 3/14/19

Docket 1

Tentative Ruling:

If the Post-Confirmation Committee files the declaration of Jack Mott in support of the *Second Post Confirmation Status Conference Report* [doc. 228] before the status conference, the Court will continue this status conference to **September 19, 2019 at 1:00 p.m. No later than September 5, 2019**, the Post-Confirmation Committee must file a 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.**

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau

**United States Bankruptcy Court
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1:00 PM

1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan

Chapter 11

#3.00 Confirmation hearing re: individual debtors' second amended modified chapter 11 plan of reorganization

fr. 12/13/18; 2/7/19

Docket 105

Tentative Ruling:

On March 6, 2019, the Court entered an order disallowing the claim filed by Pogos Araik Melkonian [doc. 153]. In light of the disallowance of Mr. Melkonian's claim, Mr. Melkonian is not a creditor of the estate and does not have standing to object to confirmation of the debtors' proposed chapter 11 plan.

The Court will confirm the debtors' Second Amended Modified Chapter 11 Plan dated October 25, 2018 [doc. 105]. No later than **September 19, 2019**, 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 **October 3, 2019 at 1:00 p.m.**

The debtors must submit the confirmation order within seven (7) days.

Debtors' appearance on April 4, 2019 is 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, April 4, 2019

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; 9/13/18; 10/18/18; 11/1/18;
12/13/18; 2/7/19

Docket 1

Tentative Ruling:

See calendar no. 3.

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, April 4, 2019

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; 12/6/18

Docket 1

***** VACATED *** REASON: Plan confirmed 3/7/19. Post-confirmation
status conference set for 9/12/19 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

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, April 4, 2019

Hearing Room 301

1:00 PM

1:18-11181 Rowena Benito Macedo

Chapter 11

#6.00 Confirmation hearing re Debtor's chapter 11 plan of reorganization
fr. 2/7/19

Docket 52

Tentative Ruling:

On March 6, 2019, the debtor filed proof of service of the new bar date [doc. 79], indicating that the debtor timely served notice of the new bar date on February 11, 2019. In light of this proof of service and the lack of any opposition by Class 6(b) unsecured creditors, the Court will confirm the Chapter 11 Plan dated October 23, 2018 [doc. 52].

No later than **September 19, 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 **October 3, 2019 at 1:00 p.m.**

The debtor must submit the confirmation order within seven (7) days.

Debtor's appearance on April 4, 2019 is excused.

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, April 4, 2019

Hearing Room 301

1:00 PM

1:18-11181 Rowena Benito Macedo

Chapter 11

#7.00 Status conference re: chapter 11 case

fr. 6/21/18; 10/18/18; 11/1/18; 12/13/18; 2/7/19

Docket 1

Tentative Ruling:

See calendar no. 6.

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, April 4, 2019

Hearing Room 301

1:00 PM

1:18-12325 12 Cumpston Partnership

Chapter 11

#8.00 Status conference re chapter 11 case

fr. 11/15/18; 1/10/19; 2/7/19; 2/21/19; 3/14/19

Docket 1

Tentative Ruling:

Having reviewed the status report and declarations filed on March 21, 2019 [doc. 65], the Court will continue this status conference to **June 13, 2019 at 1:00 p.m.**

No later than May 31, 2019, the debtor must file an amended chapter 11 plan of reorganization and related disclosure statement. 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 May 31, 2019**. 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 to file an amended chapter 11 plan of reorganization and related disclosure statement.

Appearances on April 4, 2019 are excused.

Party Information

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, April 4, 2019

Hearing Room 301

1:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#9.00 First amended disclosure statement describing chapter 11 plan
fr. 2/21/19

Docket 68

Tentative Ruling:

At the prior hearing, the Court indicated that the debtor must amend the disclosure statement to include information regarding: (1) the liquidation value of the loan receivable from MidiCi Sherman Oaks; (2) the assumptions underlying the financial projections, including the basis of the payroll assumptions; (3) the status of the implementation of the revitalization strategy; and (4) the franchise committees. It appears that the debtor has remedied these deficiencies in the first amended disclosure statement - keeping in mind that the debtor also proposes to supplement the disclosure statement with monthly projections, which are attached to the debtor's reply [doc. 114].

In light of the debtor's offer to increase the value set aside for allowed disputed claims to \$300,000.00, the debtor must amend the disclosure statement to reflect that increase.

Proposed dates and deadlines regarding "Debtor's First Amended Chapter 11 Plan" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "First Amended Disclosure Statement Describing First Amended Chapter 11 Plan:"

Hearing on confirmation of the Plan: **June 13, 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: **April 26, 2019.**

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

Thursday, April 4, 2019

Hearing Room 301

1:00 PM

CONT... MidiCi Group, LLC

Chapter 11

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, the Official Committee of Unsecured Creditors (the "Committee"), and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtor: **May 24, 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: **June 3, 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 Committee, the U.S. Trustee and any party who objects to confirmation.

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, April 4, 2019

Hearing Room 301

1:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#10.00 Status conference re chapter 11 case

fr. 11/8/18, 1/24/19;2/21/19

Docket 1

Tentative Ruling:

- NONE LISTED -

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, April 4, 2019

Hearing Room 301

1:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#11.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The debtor has not timely filed monthly operating reports for January 16, 2019 through January 31, 2019 and for February 2019.

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **June 7, 2019.**

Deadline to mail notice of Bar Date: **April 5, 2019.**

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.

Continued chapter 11 case status conference to be held at **1:00 p.m. on August 16, 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 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):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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

Thursday, April 4, 2019

Hearing Room 301

1:00 PM

1:19-10224 Alpha Real Estate Investment & Development Propert

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"): **June 14, 2019.**

Deadline to mail notice of Bar Date: **April 12, 2019.**

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: **September 13, 2019.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on October 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):

Alpha Real Estate Investment &

Represented By
R Grace Rodriguez

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

Thursday, April 4, 2019

Hearing Room 301

2:00 PM

1:10-17214 Darin Davis

Chapter 7

#13.00 Trustee's objection to proof of claim no. 8 filed by
Murneck Holdings, Inc. and Amanda Patricia Cortez

fr. 1/17/19; 2/21/19

Docket 254

Tentative Ruling:

At the last hearing, the Court ruled that, if Murneck Holdings, Inc. and Amanda Patricia Cortez ("Claimants") amend their proof of claim to attach the relevant guaranties, Claimants will meet their burden of showing that Debtor individually guarantied the debt. The Court also held that, because California Civil Code ("CCC") § 2845 only exonerates Debtor's estate "to the extent to which [the estate] is... prejudiced," if Claimants provided evidence of a foreclosure by the senior lienholder that did not provide recovery to Claimants, Claimants could assert a claim for the full amount of the guaranty.

On March 7, 2019, Claimants timely amended their proof of claim and attached both relevant guaranties. Claimants also attach a Trustee's Deed Upon Sale (the "Deed Upon Sale"), Exhibit I, which shows that a deed of trust in favor of Gloria Pall and other beneficiaries (the "Pall Parties") was executed on October 3, 2005 and recorded on October 19, 2005. The Deed Upon Sale shows that the total unpaid debt in favor of the Pall Parties was \$1,481,845.14, and that the Pall Parties bid \$800,000 to obtain the subject property.

On March 20, 2019, the chapter 7 trustee (the "Trustee") filed a response to the amended proof of claim [doc. 271], arguing that Claimants have not provided a copy of a deed of trust in their favor and that Claimants may have a deed of trust that was recorded prior to the Pall Parties' deed of trust.

Claimants have met their burden of proving the validity of their claim. Claimants amended their proof of claim to attach the subject guaranties and provided evidence of a foreclosure of the collateral. The Deed Upon Sale shows that the Pall Parties foreclosed on the collateral for a bid of \$800,000 on an unpaid debt of \$1,481,845.14.

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Thursday, April 4, 2019

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2:00 PM

CONT...

Darin Davis

Chapter 7

There is no evidence on the record that the Claimants' deed of trust was senior to the Pall Parties' deed of trust, and the Deed Upon Sale shows that the Pall Parties were the sole beneficiaries paid from the sale of the subject collateral.

The Trustee argues that Claimants should have provided a preliminary title report proving that their deed of trust was junior to the Pall Parties' deed of trust. However, the Trustee could have obtained a preliminary title report himself if the Trustee believes the title report may have defeated Claimants' claim for any reason. As it stands, the record shows that the Pall Parties foreclosed on the collateral and obtained only partial satisfaction of the debt owed to them, leaving nothing to other lienholders, including Claimants. As such, Claimants demonstrated that they could not have availed themselves of any recovery from the foreclosure of the collateral.

In addition, even if the Trustee believes Claimants may have other remedies because they may have held a senior deed of trust, for which contention there is no evidence on the record, it appears that the subject guaranties include *Gradsky* waivers in accordance with California Civil Code ("CCC") § 2856, which would serve to waive any defenses to the guaranty, including the defense under CCC § 2845 raised by the Trustee. *See Union Bank v. Gradsky*, 265 Cal.App.2d 40 (Ct. App. 1968). Pursuant to CCC § 2856—

- (a) Any guarantor or other surety, including a guarantor of a note or other obligation secured by real property or an estate for years, may waive any or all of the following:
 - (1) The guarantor or other surety's rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the guarantor or other surety by reason of Sections 2787 to 2855, inclusive.
 - (2) Any rights or defenses the guarantor or other surety may have in respect of his or her obligations as a guarantor or other surety by reason of any election of remedies by the creditor.
 - (3) Any rights or defenses the guarantor or other surety may have

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Thursday, April 4, 2019

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CONT...

Darin Davis

Chapter 7

because the principal's note or other obligation is secured by real property or an estate for years. These rights or defenses include, but are not limited to, any rights or defenses that are based upon, directly or indirectly, the application of Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure to the principal's note or other obligation.

- (b) A contractual provision that expresses an intent to waive any or all of the rights and defenses described in subdivision (a) shall be effective to waive these rights and defenses without regard to the inclusion of any particular language or phrases in the contract to waive any rights and defenses or any references to statutory provisions or judicial decisions.

The guaranties, which are attached as Exhibits B and C to the Declaration of Richard W. Petty in support of the claim, include the following language:

This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Debt or the Note, or by the existence, validity, enforceability, perfection, or extent of any collateral therefore, or by any fact or circumstance relating to the Guaranteed Debt, which might otherwise constitute a defense to this Guaranty.

Declaration of Richard W. Petty, Exhibits B-C. Through this language, the parties expressed an intent to waive any defenses arising from the existence or enforceability of collateral securing the debt. ("This Guaranty shall not be affected by the... *existence... enforceability... or extent of any collateral* therefore, or by *any fact or circumstance* relating to the Guaranteed Debt, *which might otherwise constitute a defense* to this Guaranty."). In light of this language, even if the Trustee could show that Claimants maintain a lien against the collateral, which is not supported by the record before the Court, it appears Debtor waived any defense under CCC § 2845.

In light of the above, the Court will incorporate its ruling from the February 21, 2019 hearing to the ruling above and overrule the Trustee's objection to Claimants' claim.

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

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Thursday, April 4, 2019

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2:00 PM

CONT... Darin Davis

Chapter 7

2/21/2019 Tentative:

I. BACKGROUND

On June 15, 2010, Darin Davis ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee").

On March 23, 2011, Murneck Holdings, Inc. ("Murneck") and Amanda Patricia Cortez filed claim no. 8 in the amount of \$420,688.74. In the proof of claim, Murneck and Ms. Cortez (together, "Claimants") indicated their claim was based on a personal guaranty. Claimants included a note secured by deed of trust with an attached guaranty (the "Fairland Guaranty") to the proof of claim. The first paragraph of the Guaranty states:

In consideration of Cactus Properties, LLC ("Cactus") purchasing the note agreement dated October 7, 2005, in the original amount of \$500,000, bearing interest at the rate of eight percent (8%) per annum between First American and Chad Evanson/Robert Blessing (herein referred to as the "Note"), you, [Debtor], hereby absolutely and unconditionally guarantee prompt payment of the Note when due, whether at stated maturity or otherwise....

Fairland Guaranty, p. 1. However, the Fairland Guaranty also stated that "the words 'you' and 'your' refer to the undersigned guarantor," and the listed guarantor by the signature block is Fairland Construction, Inc. ("Fairland"). Fairland Guaranty, pp. 1-2.

On December 13, 2018, the Trustee filed the Objection [doc. 254], arguing that the Fairland Guaranty showed that Fairland, not Debtor, was liable as a guarantor because Fairland was the undersigned entity. Claimants did not timely file a response to the Objection. In light of the lack of opposition and the identification of Fairland as the guarantor in the Fairland Guaranty, the Court issued a tentative ruling sustaining the Objection. However, Claimants appeared at the hearing on the Objection and requested a continuance to supplement their proof of claim with a guaranty agreement demonstrating that Debtor is a guarantor on the claimed debt. The Court continued the hearing on the Objection to provide Claimants an opportunity to supplement their

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CONT... Darin Davis
proof of claim.

Chapter 7

On January 22, 2019, Claimants filed a response to the Objection (the "Response") [doc. 262]. In the Response, Claimants attach another guaranty (the "Debtor Guaranty"). Response, Exhibit A. The Debtor Guaranty is not attached to Claimants' proof of claim, nor is it authenticated by a declaration. Nevertheless, the Debtor Guaranty provides that "the words 'you' and 'your' refer to the undersigned guarantor;" in the Debtor Guaranty, the "undersigned guarantor" is Debtor. *Id.* Claimants also attach discharge orders from the bankruptcy cases of the original obligors on the underlying debt to show that the original obligors are no longer personally liable on the debt. Response, Exhibits B-C. In addition, Claimants attach an order granting relief from stay for a senior lienholder to foreclose on property securing Claimants' junior debt. Response, Exhibit D.

On February 7, 2019, the Trustee filed a reply to the Response (the "Reply") [doc. 265]. In the Reply, the Trustee argues: (A) despite the fact that Debtor is listed as a guarantor, it does not appear Debtor executed a personal guaranty of the underlying debt; (B) Claimants have not shown that the original obligors listed the debt in the schedules filed in their bankruptcy cases to show that the debt was discharged as to those obligors; and (C) Claimants have not provided evidence that the property securing their debt was actually foreclosed and, if it was foreclosed, if Claimants could have received a payout from the foreclosure proceeds.

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

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CONT...

Darin Davis

Chapter 7

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).").

Claimants have now provided two different guaranties: the Fairland Guaranty and the Debtor Guaranty. In the Fairland Guaranty, Debtor is named as a guarantor in the first paragraph, but the undersigned guarantor is Fairland. In the Debtor Guaranty, Fairland is named as a guarantor in the first paragraph, but Debtor is listed individually as the undersigned guarantor. In the Objection, the Trustee argued that Debtor is not individually liable as a guarantor because Fairland was the undersigned guarantor in the Fairland Guaranty. However, Claimants have now produced a guaranty agreement where *Debtor* is the undersigned guarantor. Other than a conclusory statement that Debtor did not personally guaranty the debt despite Debtor's signature in the Debtor Guaranty, the Trustee has not provided pertinent authority or evidence that Debtor did not actually guaranty the underlying debt. Given that Claimants did not include a declaration authenticating the Debtor Guaranty, Claimants should amend their proof of claim to attach the Debtor Guaranty. Upon such amendment, Claimants will have met their burden of showing that Debtor individually guarantied the debt.

The Trustee also argues that, if Debtor did guaranty the underlying debt, Claimants must first demonstrate that they attempted to pursue collection from the primary obligors or through other available remedies before pursuing a claim against Debtor's estate. However, the original obligors have obtained discharges and Claimants may no longer pursue the obligors for satisfaction of the underlying debt. *See* 1:09-bk-15656-MT; 1:07-bk-14224-GM. The dockets of both these cases reflect that the cases are no asset chapter 7 cases without a deadline for creditors to file a proof of claim. Thus, contrary to the Trustee's contention, Claimants need not show that the underlying debt was scheduled in either of these bankruptcy cases.

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CONT... Darin Davis

Chapter 7

The Trustee further argues that, even if Claimants may no longer pursue the other obligors, Claimants should provide evidence that they can no longer foreclose on their security interest. Although Claimants attach a relief from stay order showing an intent by a senior lienholder to foreclose on Claimants' security, the Trustee contends that Claimants have not demonstrated that a foreclosure sale actually occurred and, if it did, that Claimants were unable to receive any satisfaction from the foreclosure. The Trustee cites California Civil Code ("CCC") § 2845, which states—

A surety may require the creditor, subject to Section 996.440 of the Code of Civil Procedure, to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue, and which would lighten the surety's burden; and if the creditor neglects to do so, the surety is exonerated *to the extent to which the surety is thereby prejudiced*.

(emphasis added).

CCC § 2845 only exonerates Debtor's estate "to the extent to which [the estate] is... prejudiced." CCC § 2845. In other words, if Claimants could have pursued proceeds from a foreclosure sale, the claim would only be reduced by the amount Claimants could have received from the foreclosure. CCC § 2845 would not automatically disallow the claim in its entirety. In light of these facts, the Court will continue this hearing for Claimants to provide a supplemental declaration providing evidence regarding whether the senior lienholder foreclosed on the subject property and the distribution of any proceeds from the foreclosure sale. Claimants also must amend their proof of claim to attach the Debtor Guaranty.

III. CONCLUSION

The Court will continue this hearing to **2:00 p.m. on March 14, 2019**. No later than **February 28, 2019**, Claimants must file and serve a declaration with evidence regarding whether a foreclosure sale impacting Claimants' lien occurred and any pertinent details about the foreclosure. By **February 28, 2019**, Claimants also must file an amended proof of claim attaching the Debtor Guaranty. No later than **March 7, 2019**, the Trustee may file and serve a response to the supplemental declaration.

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Central District of California
San Fernando Valley
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Thursday, April 4, 2019

Hearing Room 301

2:00 PM

CONT... Darin Davis

Chapter 7

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
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Thursday, April 4, 2019

Hearing Room 301

2:00 PM

1:18-10642 Eduardo Ablan Jacinto

Chapter 11

#14.00 Motion for entry of discharge of chapter 11 case pursuant to 11 U.S.C. 1141(D)(5) upon completion of payments to unsecured creditors and final decree closing chapter 11 case

Docket 101

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**

Thursday, April 4, 2019

Hearing Room 301

2:00 PM

1:18-10642 Eduardo Ablan Jacinto

Chapter 11

#15.00 Post confirmation status conference re: chapter 11 case
fr. 5/3/18; 8/16/18; 9/20/18; 11/15/18; 11/29/18; 3/14/19

Docket 1

Tentative Ruling:

See calendar no. 14.

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, April 4, 2019

Hearing Room 301

2:00 PM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#16.00 Motion in individual ch 11 case for order approving a budget for the use of the debtor's cash and postpetition income

Docket 38

Tentative Ruling:

Because it is unclear if the debtor will have sufficient funds to pay the expenses listed in the budget, *if funds are insufficient to pay all of the budgeted items in full*, the debtor must pay the deed of trust payment to Wells Fargo Bank, N.A. first, followed by the tax and insurance payments. If the debtor agrees to this order of payment, the Court will approve the debtor's budget.

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

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, April 9, 2019

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 9, 2019

Hearing Room 301

10:30 AM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#41.00 Motion for order determining value of collateral
(4715 Presidio Dr., Los Angeles, CA 90043)

WELLS FARGO, N.A.

Docket 36

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):

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, April 9, 2019

Hearing Room 301

10:30 AM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#42.00 Motion for order determining value of collateral
(1355 - 1357 W. Vernon Ave., Los Angeles, CA 90037)

HSBC BANK USA, N.A.

Docket 37

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):

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, April 9, 2019

Hearing Room 301

10:30 AM

1:18-12958 Barbara Simril

Chapter 13

**#43.00 Debtor's motion to avoid junior lien on principal residence
with Riverside County Department of Child Support Services**

Docket 28

Tentative Ruling:

For the reasons discussed below, the Court will deny the Motion with prejudice.

I. BACKGROUND

On December 10, 2018, Barbara Simril ("Debtor") filed a voluntary chapter 13 petition. In her petition, Debtor listed 7363 Bothwell Road, Reseda, California 91335 (the "Property") as her residence.

On January 30, 2019, U.S. Bank National Association, as Trustee, filed claim 2-1 ("U.S. Bank") [doc. 28, Exh. B]. In that claim, U.S. Bank states that it has a \$929,804.35 secured claim, secured by a deed of trust on the Property. The borrowers on the deed of trust are Debtor and Kile S. Wesley, as joints tenants. Mr. Wesley is Debtor's son. Declaration of Barbara Simril ("Simril Decl."), ¶ 3.

Additionally, the Property is subject to an involuntary lien pursuant to a judgment entered against Mr. Wesley for child support. Simril Decl., ¶ 5. On April 10, 2014, Riverside County Department of Child Support Services ("Riverside County") recorded an abstract of judgment against the Property [Exhs. C and D].

On February 5, 2019, Debtor filed a motion to avoid Riverside County's lien under 11 U.S.C. § 522(f) [doc. 18]. On February 28, 2019, the Court entered an order denying that motion with prejudice because pursuant to 11 U.S.C. §§ 522(f)(1)(A) and 523(a) (5), Debtor may not avoid the fixing of a judicial lien that secured a debt for a domestic support obligation [doc. 24].

On March 19, 2019, Debtor filed a motion to avoid junior lien on a principal residence under 11 U.S.C. § 506(d) (the "Motion") [doc. 28]. Attached to the Motion is an appraisal of the Property, valuing the Property at \$500,000.00 [Exh. E]. In the Motion,

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CONT...

Barbara Simril

Chapter 13

based on the appraisal, Debtor requests that the Court avoid Riverside County's lien from the Property under § 506(d).

II. DISCUSSION

Pursuant to 11 U.S.C. § 506—

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under [section 553](#) of this title, *is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property*, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest. (emphasis added).

...

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) such claim was disallowed only under [section 502\(b\)\(5\)](#) or [502\(e\)](#) of this title; or

(1) (2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under [section 501](#) of this title.

Pursuant to 11 U.S.C. § 524—

(e) Except 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.

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CONT... Barbara Simril

Chapter 13

Here, Debtor and Mr. Wesley own the property as joint tenants, meaning that Debtor owns 50% of the Property and Mr. Wesley owns 50%. However, only Debtor's 50% interest in the Property is property of the bankruptcy estate; Mr. Wesley's 50% interest is not. In the Motion, Debtor is asking the Court to value the entire Property. However, § 506(a) permits valuation only of the estate's interest in the Property. *See In re Rodriguez*, 156 B.R. 659 (Bankr. E.D. Cal. 1993).

In *Rodriguez*, the chapter 13 debtor owned a 50% interest in a vehicle. The other 50% interest was owned by a non-debtor co-owner and co-obligor. The court was asked to strip a credit union's lien off both the estate's interest and the non-debtor's interest in the vehicle. In relevant part, the court noted:

Debtor has not submitted, nor has the court discovered, any authority which allows a debtor who is not the sole owner of the property to be valued to extinguish all of a secured creditor's rights in its collateral through the use of 11 U.S.C. § 506. Accordingly, the objection to the claim must be overruled and the claim allowed as filed.

The result of the court's ruling in this matter may appear at odds with the frequently applied bankruptcy principle that a debtor is permitted to acquire clear title to property when the debtor has paid to creditors (according to applicable priorities, if any) the value of the property.

But section 506 permits valuation only of the estate's interest in the property. If the debtor, as appears is the case here, has a 50% interest in the property, then the secured creditor has a secured claim as to the value of that 50% only— insofar as the debtor's interest is concerned—and an unsecured claim for the entire balance of the obligation.

This results in the creditor still having a secured claim in the full amount of the obligation as to the 50% of the property not belonging to the estate, but belonging to the co-owner/co-obligor. Where does such a confusion of rights and interests leave the parties involved? Pending a more insightful analysis not presently available to the court, the only logical result is to rule that a debtor holding only a fractional interest in property cannot utilize section 506 to value

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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CONT... **Barbara Simril**
a secured claim.

Chapter 13

Rodriguez, 156 B.R. at 660.

The *Rodriguez* court's analysis is consistent with the Ninth Circuit Court of Appeal's methodology for valuation under § 506(a) where only the debtor's joint tenancy interest in real property is property of the estate. *In re Reed*, 940 F.2d 1317, 1322-23 (9th Cir. 1991) ("We hold that there is value if the Debtor's one-half interest in the net proceeds from the sale of the entire residence exceeds the value of Debtor's homestead exemption."). It is also consistent with the Ninth Circuit Court of Appeal's methodology for lien stripping under 11 U.S.C. § 522(f) where only the debtor's joint tenancy interest in real property is property of the estate. *In re Meyer*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007) ("one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii).").

Accordingly, the Court cannot value the non-debtor's interest in the Property. Riverside County's lien encumbers Mr. Wesley's 50% interest in the Property. The Court cannot avoid Riverside County's lien because it would effectively discharge a non-debtor's in personam liability for the claim. Section 524(e) "precludes bankruptcy courts from discharging the liabilities of non-debtors." *In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995).

III. CONCLUSION

The Court will deny the Motion with prejudice.

The Court will prepare the order.

Party Information

Debtor(s):

Barbara Simril

Represented By
Matthew D. Resnik

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San Fernando Valley
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CONT... Barbara Simril

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, April 9, 2019

Hearing Room 301

11:00 AM

1:13-16654 Roselle Salazar Angellano

Chapter 13

#44.00 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; 12/11/18; 2/12/19

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 9, 2019

Hearing Room 301

11:00 AM

1:15-10700 Candace Renee Feldman

Chapter 13

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

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Candace Renee Feldman

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, April 9, 2019

Hearing Room 301

11:00 AM

1:15-13109 Artashes Yenokyan

Chapter 13

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

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

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, April 9, 2019

Hearing Room 301

11:00 AM

1:15-13919 Paul Douglas Collins

Chapter 13

#47.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 3/12/19;

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul Douglas Collins

Represented By
Michael E Clark

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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San Fernando Valley
Judge Victoria Kaufman, Presiding
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Tuesday, April 9, 2019

Hearing Room 301

11:00 AM

1:16-10680 Patricia Prichard Leedom

Chapter 13

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

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Prichard Leedom

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 9, 2019

Hearing Room 301

11:00 AM

1:16-11630 Salena G Ellerkamp

Chapter 13

#49.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 2/12/19; 3/12/19;

Docket 74

Tentative Ruling:

- NONE LISTED -

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
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Tuesday, April 9, 2019

Hearing Room 301

11:00 AM

1:16-13190 JeanPaul Reneaux

Chapter 13

#50.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 3/12/19;

Docket 78

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
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Tuesday, April 9, 2019

Hearing Room 301

11:00 AM

1:17-10158 Bryan David Blair

Chapter 13

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

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

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
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Tuesday, April 9, 2019

Hearing Room 301

11:00 AM

1:17-13192 Stephanie Marie Wilson

Chapter 13

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

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephanie Marie Wilson

Represented By
Todd J Roberts

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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San Fernando Valley
Judge Victoria Kaufman, Presiding
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Tuesday, April 9, 2019

Hearing Room 301

11:00 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

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

Docket 90

Tentative Ruling:

- NONE LISTED -

Party Information

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, April 9, 2019

Hearing Room 301

11:00 AM

1:18-10968 Imelda Godoy

Chapter 13

#54.00 Trustee's motion to dismiss case for failure to make plan payments
fr 2/12/19

Docket 38

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Imelda Godoy

Represented By
Kevin Tang

Trustee(s):

Elizabeth (SV) 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 9, 2019

Hearing Room 301

11:00 AM

1:18-11574 Carlos Velapatio

Chapter 13

#55.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 2/12/19

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Velapatio

Represented By
Kevin Tang

Trustee(s):

Elizabeth (SV) 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 9, 2019

Hearing Room 301

11:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#56.00 Application for compensation for debtor's attorney,
period: 8/1/18 to 1/18/19, fee: \$7,880.00, expenses: \$90.96.

fr. 3/12/19;

Docket 107

Tentative Ruling:

The Court will continue this hearing to **11:30 a.m. on May 14, 2019**. No further briefing may be filed. If any such briefing is filed, any fees billed to prepare such briefs WILL NOT BE APPROVED.

Appearances on April 9, 2019 are excused.

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
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Judge Victoria Kaufman, Presiding
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Tuesday, April 9, 2019

Hearing Room 301

11:30 AM

1:18-11560 Elizabeth Roberts

Chapter 13

#57.00 Order to show cause why debtors' counsel should not be sanctioned for failure to appear at confirmation hearing

fr. 12/11/18; 1/8/19; 2/12/19

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

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
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Tuesday, April 9, 2019

Hearing Room 301

11:30 AM

1:18-11799 Farahnaz Alvand

Chapter 13

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

fr. 10/9/18 ; 12/11/18; 2/12/19

Docket 33

Tentative Ruling:

On March 4, 2019, the debtor filed a fifth amended chapter 13 plan [doc. 64]. The debtor's fifth amended chapter 13 plan proposes a plan payment of \$1,000.00 per month for months 1 through 12, then \$1,250.00 per month from months 13 through 24, then \$1,500.00 per month for months 25 through 48, then \$1,600.00 per month for months 49 through 60. The proposed plan payments in the fifth amended plan are identical to the proposed plan payments in the debtor's fourth amended chapter 13 plan.

Two secured creditors, Las Virgenes Village Community Association ("Las Virgenes") and Wells Fargo Bank, N.A. ("Wells Fargo"), have filed objections to the fifth amended chapter 13 plan [docs. 66 and 67]. Certain issues raised in Las Virgenes' most recent objection to confirmation of the chapter 13 plan are identical to issues raised in Las Virgenes' prior objections to plan confirmation [docs. 26 and 59]. Similarly, certain issues raised in Wells Fargo's most recent objection are identical to issues raised in Wells Fargo's prior objection to plan confirmation [doc. 30].

On March 27, 2019, the debtor's attorney filed a notice of association of counsel with E. Richard McGuire, Esq. [doc. 69]. On April 1, 2019, the debtor filed amended schedules I and J and an amended statement of financial affairs [docs. 71, 72 and 73].

In her amended schedules I and J [docs. 71 and 72], the debtor indicates that she receives \$8,196.82 per month in income and that her expenses are \$6,889.82 per month, leaving monthly net income of \$1,307.00.

At the prior hearing the Court noted that it appears that the debtor's chapter 13 plan must provide for the claim secured by the real property located at 17710 Martha Street, Encino, California 91316. The debtor's fifth amended chapter 13 plan still does

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CONT... Farahnaz Alvand
not do so.

Chapter 13

2/2/19 Tentative Ruling

On July 18, 2018, the debtor filed a chapter 13 petition, commencing this case. In September, October and December 2018, the Court has held hearings on the confirmation of the debtor's then-pending chapter 13 plan. At the last plan confirmation hearing, held on December 11, 2018, the Court continued the hearing to February 12, 2019, and informed the debtor's counsel that that continued hearing would be the last plan confirmation hearing, before the debtor's case would be dismissed, because of failure to confirm a chapter 13 plan.

The debtor has filed several versions of a chapter 13 plan [docs. 12, 14, 49, 50, 55]; on January 24, 2019, the debtor filed the most recent version, *i.e.*, the fourth amended chapter 13 plan [doc. 55]. The chapter 13 trustee and two secured creditors, including the Las Virgenes Village Community Association, have filed objections to the fourth amended chapter 13 plan.

Certain issues raised in the chapter 13 trustee's most recent objection to confirmation of the chapter 13 plan [doc. 58] are identical to issues raised in the chapter 13 trustee's prior objection to plan confirmation, filed on December 19, 2018 [doc. 54].

In her amended schedules I and J, filed on August 6, 2018 [doc. 21], the debtor indicates that she receives \$4,500 per month in income and that her expenses are \$4,133 per month, leaving monthly net income of \$367. The debtor also filed a declaration stating that she receives \$4,500 per month in income [doc. 40]. Nevertheless, the debtor's fourth amended chapter 13 plan provides for a plan payment of \$1,000 per month. Based on the debtor's amended schedules I and J, the fourth amended chapter 13 plan apparently is not feasible; the debtor does not have sufficient net income to make the required monthly plan payments.

It also appears that the debtor's chapter 13 plan must provide for the claim secured by the real property located at 17710 Martha Street, Encino, California 91316 (the "Encino Property"); as of now, the debtor's fourth amended chapter 13 plan does not do so.

According to the *Disclosure of Compensation of Attorney for Debtor(s) – Amended* (the "Disclosure of Compensation") [doc. 20], and the *Rights and Responsibilities*

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CONT... Farahnaz Alvand

Chapter 13

Agreement Between Chapter 13 Debtors and their Attorneys (the "RARA") [doc. 36], the debtor's counsel received \$4,500 from the debtor for his services in connection with the debtor's chapter 13 bankruptcy case.

Given the continued deficiencies in the chapter 13 plans filed by the debtor's counsel, the Court questions whether the debtor's counsel is capable of properly preparing a chapter 13 plan, and obtaining confirmation of a chapter 13 plan. Consequently, the Court may order disgorgement of a substantial portion of the fees which the debtor's counsel has received from the debtor.

The Court will prepare the order.

Party Information

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
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Tuesday, April 9, 2019

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11:30 AM

1:18-12467 Colin Basil MacLean

Chapter 13

#59.00 Debtor's motion for order disallowing claim filed by American Express Bank (claim no. 3)

Docket 31

Tentative Ruling:

Objection overruled. Claim no. 3 of American Express National Bank is allowed in the amount of \$9,660.24.

11 U.S.C. § 502(a) provides that a proof of claim ("POC") is deemed allowed, unless a party in interest objects. Fed. R. Bankr. P. 3001(f) provides that a POC 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).")

On February 27, 2019, American Express National Bank filed an amendment to claim 3, attaching a state court judgment against the debtor entered on September 14, 2010. Pursuant to California Code of Civil Procedure § 683.020, the entry of a money judgment is valid for 10 years after the entry of the judgment. Accordingly, it appears

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CONT... Colin Basil MacLean

Chapter 13

that the state court judgment is valid and enforceable until September 14, 2020. The debtor has provided no evidence to the contrary. As the debtor has not provided a sufficient legal or factual basis for disallowing the claim, claim no. 3 will not be disallowed at this time.

American Express National Bank must submit Order within seven (7) days.

Party Information

Debtor(s):

Colin Basil MacLean

Represented By
William E. Winfield

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Tuesday, April 9, 2019

Hearing Room 301

11:30 AM

1:18-12467 Colin Basil MacLean

Chapter 13

#60.00 Debtor's motion for order disallowing claim filed by
Cach LLC (claim no. 2)

Docket 32

Tentative Ruling:

The Court will continue this hearing to **May 14, 2019 at 11:30 a.m.** The debtor's notice of hearing and objection indicates that the creditor is American Express, FSB and that the debtor is objecting to claim 3 filed by American Express Bank, FSB on November 1, 2018. However, the objection relates to claim 2 filed by CACH, LLC on October 30, 2018. **No later than April 12, 2019**, the debtor must properly serve notice of the continued hearing and objection on CACH, LLC in accordance with Federal Rule of Bankruptcy Procedure 7004 and Local Bankruptcy Rule 3007-1.

Party Information

Debtor(s):

Colin Basil MacLean

Represented By
William E. Winfield

Trustee(s):

Elizabeth (SV) 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 9, 2019

Hearing Room 301

11:30 AM

1:16-13190 JeanPaul Reneaux

Chapter 13

#61.00 Motion re: objection to claim number 2 by claimant Wells Fargo Bank, N.A., et al. c/o Carrington Mortgage Services, LLC.

fr. 12/11/18; 2/12/19; 3/12/19(stip)

Docket 66

Tentative Ruling:

On March 19, 2019, Wells Fargo Bank, N.A. filed a motion for authority to enter into a loan modification agreement with the debtor [doc. 94]. What is the status of the debtor's trial and permanent loan modification?

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**

Tuesday, April 9, 2019

Hearing Room 301

11:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#62.00 Motion re: objection to claim number 3 by Claimant H. Samuel Hopper.

Docket 50

***** VACATED *** REASON: Notice of withdrawal filed 3/28/19 [doc. 54].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) 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 10, 2019

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 [PP]

SANTANDER CONSUMER USA
VS
DEBTOR

fr. 3/6/19;

Docket 93

***** VACATED *** REASON: APO entered on 4/2/19 [doc. 99].**

Tentative Ruling:

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

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

9:30 AM

1:17-12919 Margot Ortiz

Chapter 13

#2.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

fr. 1/2/19; 2/6/19; 3/6/19;

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.

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, April 10, 2019

Hearing Room 301

9:30 AM

CONT... Margot Ortiz

Chapter 13

Debtor(s):

Margot Ortiz

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 10, 2019

Hearing Room 301

9:30 AM

1:18-13023 Hekmatjah Family Limited Partnership

Chapter 11

#3.00 Motion for relief from stay [AN]

MOURIS AHDOUT
VS
DEBTOR

fr. 3/6/19 (stip)

Docket 22

***** VACATED *** REASON: Continued to 5/8/19 per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hekmatjah Family Limited

Represented By
Stella A Havkin

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

Wednesday, April 10, 2019

Hearing Room 301

9:30 AM

1:19-10538 Anthony Blair Thomas

Chapter 7

#4.00 Motion for relief from stay [PP]

TD AUTO FINANCE LLC
VS
DEBTOR

Docket 11

*** VACATED *** REASON: Case dismissed on 3/26/19 [doc. 13]. The motion is moot.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anthony Blair Thomas

Pro Se

Movant(s):

TD Auto Finance LLC

Represented By
Jennifer H Wang

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 10, 2019

Hearing Room 301

9:30 AM

1:19-10319 James Lamont Dubose

Chapter 7

#5.00 Motion for relief from stay [PP]
(2012 Ford Fusion, VIN: 3FAHP0HA5CR130796)

FORD MOTOR CREDIT COMPANY LLC
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.

Party Information

Debtor(s):

James Lamont Dubose

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, April 10, 2019

Hearing Room 301

9:30 AM

1:19-10319 James Lamont Dubose

Chapter 7

#6.00 Motion for relief from stay [PP]
(2017 Lincoln Continental)

FORD MOTOR CREDIT COMPANY LLC
VS
DEBTOR

Docket 24

Tentative Ruling:

The Court will continue this hearing to **May 8, 2019 at 9:30 a.m.** On the notice of motion, the movant indicated that the hearing on the motion would be held at "255 East Temple Street, Los Angeles, CA 90012." On or before **April 17, 2019**, the movant must file and serve notice of the motion and the continued hearing with the correct hearing location on the debtor, the debtor's attorney, the chapter 7 trustee and the United States Trustee.

Appearances on April 10, 2019 are excused.

Party Information

Debtor(s):

James Lamont Dubose

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, April 10, 2019

Hearing Room 301

9:30 AM

1:19-10517 Edwin Rolando Perez Mendez

Chapter 13

#7.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC
VS
DEBTOR

Docket 10

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 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):

Edwin Rolando Perez Mendez

Represented By
Lionel E Giron

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

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

Wednesday, April 10, 2019

Hearing Room 301

9:30 AM

CONT... Edwin Rolando Perez Mendez

Jennifer H Wang

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 10, 2019

Hearing Room 301

9:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#8.00 Motion for relief from stay [PP]

ACAR LEASING LTD.
VS
DEBTOR

Docket 120

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):

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, April 10, 2019

Hearing Room 301

9:30 AM

1:15-13479 Brian Jeffrey Bolokofsky and Sara Joanne Bolokofsky

Chapter 13

#9.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Stip re adequate protection filed 3/29/19

Docket 53

*** VACATED *** REASON: APO entered on 4/1/19 [doc. 59].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Jeffrey Bolokofsky

Represented By
Allan S Williams

Joint Debtor(s):

Sara Joanne Bolokofsky

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**

Wednesday, April 10, 2019

Hearing Room 301

9:30 AM

1:18-12178 Jose Espino

Chapter 13

#10.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY FSB
VS
DEBTOR

Docket 45

Tentative Ruling:

On March 27, 2019, the debtor filed a response to the motion for relief from the automatic stay [doc. 47]. The debtor did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

Party Information

Debtor(s):

Jose Espino

Represented By
Lionel E Giron

Movant(s):

Wilmington Savings Fund Society,

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, April 10, 2019

Hearing Room 301

9:30 AM

1:18-11729 Richard Philip Dages

Chapter 11

#11.00 Motion for relief from stay [UD]

THE REAL ESTATE PLACE INC., A CA CORP
VS
DEBTOR

Docket 66

Tentative Ruling:

Unless an appearance is made at the hearing on April 10, 2019, the hearing is continued to May 8, 2019 at 9:30 a.m., and movant must cure the deficiencies noted below on or before April 17, 2019.

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.

On March 27, 2019, the debtor filed a response to the motion for relief from the automatic stay [doc. 68]. **By no later than April 24, 2019**, the movant must file a reply to that response addressing, among other things, cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) and the applicability of California Civil Procedure Code § 1161b.

Appearances on April 10, 2019 are excused.

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

Movant(s):

The Real Estate Plaza, Inc., A Ca

Represented By
Paul E Gold

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

Wednesday, April 10, 2019

Hearing Room 301

1:30 PM

1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:19-01009 Goldman v. Pavehzadeh et al

- #12.00** Status conference re complaint:
(1) for declaratory relief;
(2) Injunctive relief;
(3) An accounting;
(4) Constructive trust; and
(5) Turnover of property of the estate

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: 7/31/19.

Deadline to complete one day of mediation: 8/15/19.

Deadline to file pretrial motions: 8/30/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 9/18/19.

Pretrial: 1:30 p.m. on 10/2/19.

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.

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

Wednesday, April 10, 2019

Hearing Room 301

1:30 PM

CONT... Maryam Hadizadeh

Chapter 7

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):

Maryam Hadizadeh

Represented By
Stella A Havkin

Defendant(s):

Houshang Pavehzadeh

Pro Se

Shahnam Ebrahimi

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Anthony A Friedman

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Anthony A Friedman

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

Wednesday, April 10, 2019

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 for a protective order to (1) Have depositions occur only after the Court determines an evidentiary hearing is necessary on defendants claim objection and (2) Bar plaintiff from attending defendants depositions

fr. 1/17/19; 4/3/19

Docket 69

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on May 15, 2019**, to be heard with the motion to dismiss filed by the defendants [doc. 91].

Appearances on April 10, 2019 are excused.

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
Sheila Esmaili

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

Wednesday, April 10, 2019

Hearing Room 301

2:30 PM

CONT... Yegiya Kutyan

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, April 10, 2019

Hearing Room 301

2:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#14.00 Plaintiff's motion to compel defendants to appear at deposition
and for sanctions

fr. 1/16/19; 1/23/19; 4/3/19

Docket 77

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on May 15, 2019**, to be heard with the motion to dismiss filed by the defendants [doc. 91].

Appearances on April 10, 2019 are excused.

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
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By

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

Wednesday, April 10, 2019

Hearing Room 301

2:30 PM

CONT...

Yegiya Kutyan

Vahe Khojayan

Chapter 11

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

Wednesday, April 10, 2019

Hearing Room 301

2:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#15.00 Plaintiff's motion for order compelling defendants to produce additional documents in response to requests for production of documents, and for sanctions

fr. 1/16/19; 1/23/19; 4/3/19

Docket 72

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on May 15, 2019**, to be heard with the motion to dismiss filed by the defendants [doc. 91].

Appearances on April 10, 2019 are excused.

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
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By

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

Wednesday, April 10, 2019

Hearing Room 301

2:30 PM

CONT...

Yegiya Kutyan

Vahe Khojayan

Chapter 11

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

Wednesday, April 10, 2019

Hearing Room 301

2:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#16.00 Pretrial 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/ 8/1/18; 1/23/19(stip); 4/3/19

Docket 42

Tentative Ruling:

The Court will continue this pretrial conference to **2:30 p.m. on May 15, 2019**, to be held with the motion to dismiss filed by the defendants [doc. 91].

Appearances on April 10, 2019 are excused.

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, April 10, 2019

Hearing Room 301

2:30 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, April 10, 2019

Hearing Room 301

2:30 PM

1:18-10329 Ali P Dargah

Chapter 13

Adv#: 1:18-01045 Dargah v. Dargah et al

#17.00 Debtor's motion for summary judgment regarding the first amended complaint

Docket 36

Tentative Ruling:

The proofs of service attached to the motion for summary judgment [doc. 36] and to the notice of hearing on the motion for summary judgment [doc. 39] do not reflect service of the motion or notice of the hearing on the defendant. Although the motion and the notice were served on an attorney who has occasionally appeared on behalf of the defendant, the defendant has not filed a Substitution of Attorney, and the plaintiff must serve the defendant directly.

The Court will continue this hearing to **2:30 p.m. on June 12, 2019**. No later than **May 1, 2019**, the plaintiff must file and serve the motion and notice of the continued hearing on the defendant.

Appearances on April 10, 2019 are excused.

Party Information

Debtor(s):

Ali P Dargah

Represented By
Matthew D. Resnik

Defendant(s):

Jeff Javad Dargah

Represented By
Matthew D. Resnik

Jeff Javad Dargah, an individual

Pro Se

Geraldine Granda, an individual

Pro Se

The Bank of New York Mellon fka

Represented By
Jeffrey S Allison

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

Wednesday, April 10, 2019

Hearing Room 301

2:30 PM

CONT... Ali P Dargah Chapter 13

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, April 10, 2019

Hearing Room 301

2:30 PM

1:18-10329 Ali P Dargah

Chapter 13

Adv#: 1:18-01045 Dargah v. Dargah et al

#18.00 Debtor's motion to dismiss cross-complaint

Docket 26

Tentative Ruling:

On August 21, 2018, the plaintiff filed a first amended complaint (the "FAC") [doc. 10]. On November 6, 2018, defendant Jeff Javad Dargah ("Defendant") filed and served on the plaintiff an answer to the FAC and a counterclaim against the plaintiff (the "Counterclaim") [doc. 18]. On January 16, 2019, the plaintiff filed a motion to dismiss the Counterclaim (the "Motion") [doc. 26].

Pursuant to Federal Rule of Civil Procedure 12(a)(1)(B), "[a] party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim." The plaintiff's response to the Counterclaim was due by November 27, 2018. The plaintiff did not file the Motion until January 16, 2019. As such, the Court will deny the Motion as untimely.

In addition, the plaintiff did not properly serve Defendant. Although an attorney has occasionally appeared on behalf of Defendant, Defendant has not filed a Substitution of Attorney. As such, the plaintiff must directly serve Defendant. The proof of service attached to the Motion and notice of the Motion does not reflect service on Defendant.

The Court will prepare the order.

Party Information

Debtor(s):

Ali P Dargah

Represented By
Matthew D. Resnik

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

Wednesday, April 10, 2019

Hearing Room 301

2:30 PM

CONT... Ali P Dargah

Chapter 13

Defendant(s):

Jeff Javad Dargah

Represented By
Matthew D. Resnik

Jeff Javad Dargah, an individual

Pro Se

Geraldine Granda, an individual

Pro Se

The Bank of New York Mellon fka

Represented By
Jeffrey S Allison

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**

Thursday, April 11, 2019

Hearing Room 301

10:30 AM

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

Chapter 11

#1.00 Amended Motion for payment of final fees and/or expenses

fr. 3/7/19

Docket 106

Tentative Ruling:

The Court will continue this hearing to **May 23, 2019 at 10:30 a.m. No later than May 9, 2019**, the applicant must file an amended application curing the deficiencies noted below.

According to the United States trustee guidelines ¶ C.8, "[t]o facilitate effective review of the application, all time and service entries should be arranged by project categories." ¶ C.8.a; *see also* ¶ C.8.b and Exhibit D-1 – Summary of Compensation Requested by Project Category.

Having assessed the application, the Court requires that the applicant separate his billing entries into, among others, the following project categories from the United States trustee guidelines: (1) Asset Disposition; (2) Case Administration; (3) Claims Administration and Objections; (4) Employment and Fee Applications; (5) Plan and Disclosure Statement; and (6) Reporting. The applicant may include any other applicable categories from the United States trustee guidelines.

In addition, "[s]ervices should be described in detail and not combined or ‘lumped’ together, with each service showing a separate time entry." ¶ C.8.d. Further, "[e]ntries should give sufficient detail about the work, identifying the subject matter of the communication, hearing, or task and any recipients or participants." ¶ C.8.e.

The billing records attached to the application do not conform to these guidelines. For example, there is a one-hour entry for October 1, 2018 to October 26, 2018, "PC: Emails, Texts re sale w Client & Broker." Furthermore, this same entry appears twice in the billing records.

In order for the Court to review of the application effectively, the applicant must file

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Thursday, April 11, 2019

Hearing Room 301

10:30 AM

CONT... Roger Ronald Steinbeck and Stannis Veronica Steinbeck
amended billing records, which conform to ¶ C.8.

Chapter 11

Appearances on April 11, 2019 are excused.

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, April 11, 2019

Hearing Room 301

10:30 AM

1:18-12494 Elas, LLC dba Calnopoly, LLC

Chapter 11

#2.00 Application for payment of first interim fees and/or expenses
for A.O.E. Law & Associates APC

Docket 46

Tentative Ruling:

A.O.E. Law & Associates ("Applicant"), counsel to the debtor and debtor-in-possession – approve fees in the amount of \$10,546.25 and reimbursement of expenses in the amount of \$352.08, pursuant to 11 U.S.C. § 331, for the period between October 9, 2018 through March 20, 2019, on an interim basis. Applicant may collect 85% of the approved fees and 100% of the approved expenses at this time. The Court has not approved \$4,913.75 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 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).

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

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CONT... Elas, LLC dba Calnopoly, LLC

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.").

In accordance with the foregoing, the Court does not approve the fees billed for the services identified below as secretarial:

Category	Date	Timekeeper	Description	Time	Rate	Fee
Motions	11/7/ 18	JF	Assemble Motion to Employ Counsel with Declaration and exhibits, prepare proof of service, file and serve via US mail to creditors and Judge copy	1.50	\$200.00	\$300.00
Administration/ Case	11/21 /18	JF	Email client First Case Status Report for review and signature.	0.30	\$150.00	\$45.00
Motions	11/26 /18	JF	Prepare POS re: Declaration that no party requested hearing on motion to employ counsel; service via US mail and judge copy	0.50	\$200.00	\$100.00

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Motions	12/13/18	JF	Prepare proof of service for Supplemental Decl. of Debtor regarding Cash Collateral Motion and file declaration	0.50	\$2000.00	\$100.00
Administration/Case	12/18/18	JF	File Motion Operating Report, November 2018	0.30	\$200.00	\$60.00
Administration/Case	1/28/19	SYS	File Motion Operating Report, December 2018	0.20	\$350.00	\$70.00
Administration/Case	2/15/19	JF	File Motion Operating Report, January 2019	0.20	\$200.00	\$40.00
Motions	2/22/19	JF	Prepare POS and exhibits for filing Motions Setting Property Value, File Motions	0.50	\$200.00	\$100.00
Motions	3/6/19	JF	Prepare POS, Exhibits Re: Wells Fargo MFR, file and serve	1.00	\$200.00	\$200.00

In addition to violating the Local Rules, lumped or blocked billing is generally frowned upon by courts because it prevents the court from "fairly evaluating whether individual tasks were expeditiously performed within a reasonable time frame." *In re Thomas*, 2009 WL 7751299, *5 (9th Cir. BAP), quoting *In re Hudson*, 364 B.R. 875, 880 (Bankr. N.D.N.Y. 2007). When fee applications contain lumped billing, courts disallow or reduce the lumped entries. See *In re Breeden*, 180 B.R. 802, 810 (Bankr. N.D. W.Va. 1995) (court disallowed all lumped fee entries solely because their format); *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942 at 948 (9th Cir. 2007) (court may properly impose a reduction for block billing).

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Some of the Applicant's time entries listed below, approximately \$1,225.00 of the requested fees, contain entries with lumped services. Accordingly, this Court will reduce the fees based on lumped billing by 15%, which will reduce the fees sought by \$183.75. *See e.g. Thomas*, *7 (upheld 10% reduction of fees from lumped billing); *Darling Intern., v. Baywood Partners, Inc.*, 2007 WL 4532233, *9 (N.D. Cal. 2007) ("courts typically make an adjustment ranging from 5% to over 30%"); *In re SAIF, Inc.*, 2009 WL 6690966 (Bankr. S.D.Cal. 2009) (due to substantial lumping, court reduced the fees sought by 10%); *In re Stewart*, 2008 WL 8462960, *6 (9th Cir. BAP 2008) (upheld 20% reduction for inappropriate lumping).

Category	Date	Timekeeper	Description	Time	Rate	Fee
Motions	3/19/19	SYS	Review file in preparation of first interim fee app and draft first interim fee app; discuss fee app with client	2.00	\$350.00	\$700.00
Court Appearance	3/20/19	SYS	Attend Wells Fargo MFR; prepare and lodge Order Denying MFR	1.50	\$350.00	\$525.00

Because the qualifications of the alleged paraprofessional, Jose Flores, are not provided, the Court will not allow any of the "paraprofessional" fees billed at \$200.00 per hour in the application, totaling \$4,660.00. Moreover, the following time entries by Jose Flores constitute lumped services.

Category	Date	Timekeeper	Description	Time	Rate	Fee
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Motions	11/6/ 18	JF	Draft Declaration of Latrice Allen in support of Motion to use Cash Collateral, email client Motion for Review, draft Proof of Service and File Motion to use Cash Collateral	1.50	\$200.00	\$300.00
Administration/ Case	12/7/ 18	JF	Review Order Setting Deadlines. Prepare and File Declaration regarding service.	0.60	\$150.00	\$90.00
Administration/ Case	12/14 /18	JF	Review Bank Statements and client communication regarding clarification on bank statements in preparation for Monthly Operating Report, November 2018; Draft MOR, email client for review and signature	2.00	\$200.00	\$400.00
Administration/ Case	1/14/ 19	JF	Review Bank Statements and client communication regarding clarification on bank statements in preparation for Monthly Operating Report, December 2018; Draft MOR, email client for review and signature	1.50	\$200.00	\$300.00

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Administration/ Case	2/13/ 19	JF	Review Bank Statements and client communication regarding clarification on bank statements in preparation for Monthly Operating Report, January 2019; Draft MOR, email client for review and signature	1.50	\$200.00	\$300.00
Motions	2/18/ 19	JF	Review File and Appraisals; Draft Motion to Value for Presidio Drive & W. Vernon Avenue	3.00	\$200.00	\$600.00

To the extent that Jose Flores qualifies as a paraprofessional and a rate of \$200.00 per hour is appropriate, all remaining time entries not previously discussed, may constitute compensable services.

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):

Elas, LLC dba Calnopoly, LLC

Represented By
Anthony Obehi Egbase

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1:14-13456 Ginkgo Rose Ltd.

Chapter 11

#3.00 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; 10/11/18

Docket 214

Tentative Ruling:

- NONE LISTED -

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
Dennis P Riley

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CONT... Gingko Rose Ltd.

Chapter 11

Esmeralda Hernandez

Represented By
Dennis P Riley

Jack Vaughn

Represented By
Dennis P Riley

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1:14-13456 Gingko Rose Ltd.

Chapter 11

#4.00 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; 10/11/18

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gingko Rose Ltd.

Represented By
Alan W Forsley

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1:17-11255 Ikechukwu Mgbeke

Chapter 11

#5.00 Post Confirmation 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; 10/11/18

Docket 1

***** VACATED *** REASON: Order entered 1/22/19 Closing Case on
Interim Basis**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ikechukwu Mgbeke

Represented By
Anthony Obehi Egbase
Clarissa D Cu
Crystle J Lindsey
W. Sloan Youkstetter

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1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#6.00 Disclosure statement hearing describing chapter 11 plan of reorganization

Docket 76

Tentative Ruling:

In light of the debtor's reply [doc. 91], in which the debtor requests leave to file an amended chapter 11 plan and related disclosure statement, the Court will deny approval of the current disclosure statement [doc. 76].

No later than **May 9, 2019**, the debtor must file an amended chapter 11 plan and related disclosure statement. If the debtor timely files an amended chapter 11 plan and related disclosures statement, the Court will set a hearing on the adequacy of the amended disclosure statement at **1:00 p.m. on June 20, 2019**. The debtor must file and serve notice of the continued hearing no later than **May 9, 2019**.

Appearances on April 11, 2019 are excused.

Party Information

Debtor(s):

Mr. Tortilla, Inc.

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

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1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#7.00 Status conference re chapter 11 case

fr. 10/11/18; 12/6/18; 2/21/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on June 20, 2019**, to be held with the hearing on the adequacy of the debtor's amended disclosure statement.

Appearances on April 11, 2019 are excused.

Party Information

Debtor(s):

Mr. Tortilla, Inc.

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

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1:16-10934 Amparo Cetina

Chapter 7

#8.00 Motion to avoid creditor lien with LVNV Funding LLC

Docket 15

Tentative Ruling:

First, the debtor has not provided a mortgage statement or other evidence, dated close in time to the date that the debtor filed the bankruptcy petition, regarding the alleged junior lien of Diana R. Harrison against the subject property.

Second, the debtor has not provided a mortgage statement, dated close in time to the date that the debtor filed the bankruptcy petition, regarding the alleged lien of HSBC Mortgage Corporation against the subject property.

Third, the debtor has not provided adequate evidence of the value of the subject property. The debtor states in the motion that the value of the subject property as of the petition date was \$587,850. However, the debtor did not attach any evidence to the motion in support of this valuation.

The Court will continue this hearing to **2:00 p.m. on May 23, 2019**. No later than **May 9, 2019**, the debtor must file and serve on LVNV Funding, LLC ("LVNV"): (1) evidence curing the deficiencies described above; and (2) a written reply addressing the other arguments raised in LVNV's opposition to the motion [doc. 19].

Appearances on April 11, 2019 are excused.

Party Information

Debtor(s):

Amparo Cetina

Represented By
Beatriz Chen

Trustee(s):

David Seror (TR)

Pro Se

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1:18-10465 Ziv Kanon

Chapter 13

#1.00 Debtor's motion to enforce terms of court approved settlement agreement

Docket 74

Tentative Ruling:

On January 15, 2019, the debtor filed a motion to approve compromise with Mark and Doris Wurzel (the "Settlement Agreement") [doc. 66]. On February 11, 2019, the Court entered an order approving the Settlement Agreement (the "Order") [doc. 71]. In relevant part, the salient terms of the Settlement Agreement provide:

The Settlement provides that by January 18, 2019, Kanon will pay Wurzel \$10,000. Thereafter, no later than ten (10) days following court approval of this Motion to Compromise, Kanon will pay an additional \$35,000 which will trigger a 30 day period by which Kanon and any others asserting an interest in property being held on the Property, shall remove said personal property and leave the property in clean condition. If the property is left clean at the expiration of the 30 day period, Wurzel will refund \$5000 [*sic*] to Kanon. If not, Wurzel will retain the funds.

The debtor tendered the monies required under the terms of the Settlement Agreement to the Wurzels. Declaration of Ziv Kanon ("Kanon Decl."), ¶ 6. On March 5, 2019, the debtor's attorney met with Mr. Wurzel at the real property. Declaration of David S. Hagen ("Hagen Decl."), ¶ 10. During this meeting, Mr. Wurzel tendered the key to the real property to the debtor's attorney, which triggered the 30-day period for the debtor to remove his personal property. *Id.*

Apparently, Debtor believed that the expiration of the 30-day period was on April 4, 2019. Kanon Decl., ¶ 6. However, on April 3, 2019 at 10:04 p.m., the debtor's attorney received an email from the Wurzels' attorney stating:

David

The 30 days are up as of today. Your clients have abandoned the property and will be locked out. If they attempt to get back on the property the police will be called. The WURZEL's will be exercising their right to title on all property

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CONT...

Ziv Kanon

Chapter 13

left behind and retaining the \$5000 security.

Doc. 74, Exhibit 3.

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 9006—

(a) Computing time

The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) Period stated in days or a longer unit

When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(B) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Neither the Settlement Agreement nor the Order specify a method of computing the 30-day period. Accordingly, FRBP 9006 applies in order to compute the 30-day period under the Settlement Agreement. As such, the 30-day period expired on April 4, 2019; not April 3, 2019. The Wurzels should have allowed the debtor access to the real property through April 4, 2019 for him to collect his personal property and clean the real property.

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CONT... Ziv Kanon

Chapter 13

Debtor(s):

Ziv Kanon

Represented By
David S Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-12873 Rita S Silva

Chapter 7

#1.00 Reaffirmation agreement between debtor and
San Diego County Credit Union

fr. 3/19/19

Docket 8

Party Information

Debtor(s):

Rita S Silva

Pro Se

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:19-10031 William Allen Holmquist

Chapter 7

#2.00 Reaffirmation agreement between debtor and
Ford Motor Credit Company LLC (2018 Ford F150)

Docket 23

Party Information

Debtor(s):

William Allen Holmquist

Represented By
David S Hagen

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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8:30 AM

1:19-10031 William Allen Holmquist

Chapter 7

#3.00 Reaffirmation agreement between debtor and Cab West, LLC
(2017 Ford Explorer)

Docket 24

Party Information

Debtor(s):

William Allen Holmquist

Represented By
David S Hagen

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:19-10031 William Allen Holmquist

Chapter 7

#4.00 Reaffirmation agreement between debtor and Ben Bridge Jewelers

Docket 33

Party Information

Debtor(s):

William Allen Holmquist

Represented By
David S Hagen

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:19-10031 William Allen Holmquist

Chapter 7

#5.00 Reaffirmation agreement between debtor and
Ford Motor Credit Company LLC (2016 Ford Flex)

Docket 35

Party Information

Debtor(s):

William Allen Holmquist

Represented By
David S Hagen

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:19-10073 Juan Carlos Calzolari and Celia N. Calzolari

Chapter 7

#6.00 Reaffirmation agreement between debtor and
American Honda Finance Corporation

Docket 10

Party Information

Debtor(s):

Juan Carlos Calzolari

Represented By
R Grace Rodriguez

Joint Debtor(s):

Celia N. Calzolari

Represented By
R Grace Rodriguez

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:17-10266 Cindy Park

Chapter 13

Adv#: 1:18-01125 Park v. New Penn Financial, LLC dba Shellpoint Mortgage Se

#1.00 Motion to dismiss adversary proceeding

Docket 6

*** VACATED *** REASON: Hearing Rescheduled for 4/24/19 at 2:30 p.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

Defendant(s):

New Penn Financial, LLC dba

Pro Se

The Bank of New York Mellon fka

Pro Se

New Penn Financial, LLC DBA

Represented By
Erin M McCartney

Movant(s):

New Penn Financial, LLC DBA

Represented By
Erin M McCartney

Plaintiff(s):

Cindy Park

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:17-13375 Adir Setton

Chapter 7

Adv#: 1:18-01035 Kessler v. Setton

#2.00 Plaintiff's motion to vacate dismissal

fr. 3/20/19

Docket 45

Tentative Ruling:

Grant, subject to the plaintiff reimbursing the defendant for the defendant's reasonable attorneys' fees and costs incurred as a result of the plaintiff's failure to comply timely with orders of the Court.

I. BACKGROUND

On December 21, 2017, Adir Setton ("Defendant") filed a voluntary chapter 7 petition. On March 22, 2018, Avigdor Kessler ("Plaintiff") filed a complaint against Defendant, seeking nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(6), a declaratory judgment pursuant to Federal Rule of Bankruptcy Procedure 7001(9) and recovery of money and property pursuant to 11 U.S.C § 542.

On July 27, 2018, the Court entered a scheduling order [doc. 19], ordering the parties to file a joint pretrial stipulation no later than October 17, 2018. On October 26, 2018, the parties belatedly filed a joint pretrial stipulation (the "JPS") [doc. 23]. On October 31, 2018, the Court held a pretrial conference. The Court noted the JPS did not conform to the Local Bankruptcy Rules. The Court instructed Plaintiff to file an amended JPS or a unilateral pretrial statement no later than November 30, 2018.

On December 12, 2018, the Court held a continued pretrial conference. The parties did not file an amended JPS. The Court again informed Plaintiff that he must file an amended JPS or a unilateral pretrial statement no later than December 19, 2018. The Court also issued an Order to Show Cause why this adversary proceeding should not be dismissed for failure to prosecute (the "OSC") [doc. 28]. In the OSC, the Court instructed Plaintiff to file a written response to the OSC no later than January 9, 2019. Plaintiff did not timely file an amended JPS or a unilateral pretrial statement and did

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not file a timely response to the OSC.

On January 23, 2019 the Court held a hearing on the OSC [doc. 33]. Neither Plaintiff nor Plaintiff's counsel made appearances. On January 24, 2019, the Court issued an order dismissing the case for failure to prosecute (the "Dismissal Order") [doc. 34] based on Plaintiff's failure to: (A) comply with the instructions of the Court at the pretrial conference held on October 31, 2018; (B) file an amended JPS or a unilateral pretrial statement with a declaration explaining why the parties did not file an amended JPS; (C) file a scheduling order; and (D) file a timely written response to the OSC.

On February 14, 2019, Plaintiff filed a motion to vacate the dismissal order (the "Motion") [doc. 45]. The Motion is supported by declarations by Martin S. Wolf, Plaintiff's now-terminated attorney, Egal Shahbaz [doc. 47], Mr. Wolf's law clerk and Plaintiff [doc. 48]. According to these declarants, Mr. Wolf relied on Mr. Shahbaz to calendar dates and deadlines without knowing that Mr. Shahbaz was undergoing chemotherapy. Because of Mr. Shahbaz's cancer and treatments, Mr. Shahbaz missed many days of work and miscalendared dates and deadlines.

On March 20, 2019, the Court issued a ruling instructing Plaintiff to file and serve an amended notice of a continued hearing date and include notice of the deadline by which Defendant must oppose the Motion. On March 22, 2019, Plaintiff filed a notice of continued hearing [doc. 50]. On the same day, Plaintiff filed a Substitution of Attorney substituting Leonardo Drubach in place of Martin Wolf, Plaintiff's former attorney. On March 27, 2019, Adir Setton ("Defendant") filed an opposition to the Motion [doc. 53].

II. ANALYSIS

Federal Rule of Civil Procedure ("Rule") 60(b), applicable via 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."

Because Congress has provided no other guideposts for determining what sorts of neglect will be considered "excusable," we conclude that

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Adir Setton

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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 (1993). Although *Pioneer* dealt with excusable neglect in the context of Federal Rule of Bankruptcy Procedure 9006(b), the Ninth Circuit 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."). Although the trial court is granted discretion, the Ninth Circuit 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). The Court in *Lemoge* also 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 at 1195.

Moreover, when a case has been dismissed for failure to prosecute, there are additional considerations relevant to determining whether the case should be reinstated. While "[d]istrict courts have inherent power to control their dockets and may impose sanctions, including dismissal, in the exercise of that discretion," "[b]ecause dismissal is a harsh penalty, it should be imposed as a sanction only in extreme circumstances." *Oliva v. Sullivan*, 958 F.2d 272, 273 (9th Cir. 1992). Relevant factors include "the plaintiff's diligence, the trial court's need to manage its docket, the danger of prejudice to the party suffering the delay, the availability of alternative sanctions, and the existence of warning to the party occasioning the delay." *In re Hamilton v. Neptune Orient Lines, Ltd.*, 811 F.2d 498, 499 (9th Cir. 1987).

Two of these factors have been deemed decisive: "the failure to consider less drastic alternatives and the lack of warning of imminent dismissal of the case." *Oliva*, 958 F.2d. at 274. "In cases involving *sua sponte* dismissal of an action, rather than

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CONT... **Adir Setton**

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dismissal following a noticed motion under Rule 41(b) . . . there is a closer focus on these two considerations." *Id.* "Where, as here, the district court does not explicitly consider these factors, we independently review the record to determine whether the order of dismissal was an abuse of discretion." *Id.* The court in *Oliva* found that a lower court abused its discretion in *sua sponte* dismissing a case without "indications that alternative sanctions were considered and a warning to counsel that dismissal was imminent." *Id.*

A. General Analysis under Rule 60(b)

1. Prejudice to Defendant

Here, although granting the Motion is somewhat prejudicial to Defendant given the delay caused by Plaintiff's past conduct, any prejudice to Defendant may be mitigated by imposing alternative sanctions against Plaintiff, as discussed below. Otherwise, Plaintiff filed the Motion less than 20 days after the Court entered the Dismissal Order, and there has not been a significant delay between dismissal and moving for relief from the Dismissal Order.

2. 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.

On January 24, 2019, the Court entered the Dismissal Order. On February 12, 2019, Plaintiff filed the Motion. Given the relatively short period of time between entry of the Dismissal Order and Plaintiff's filing of the Motion, the length of delay will not have a notable impact on the adversary proceeding. As such, this factor weighs in favor of vacating the Dismissal Order.

3. Reason for the Delay/Delay in Reasonable Control of the Movant

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Although any delay would be in the reasonable control of Plaintiff's counsel, as noted above, there was not much of a delay in filing the Motion. Counsel does not provide a reason for the short delay, but because there were only about two and a half weeks between entry of the Dismissal Order and the filing of the Motion, this factor should not weigh against Plaintiff.

4. Whether Movant Acted in Good Faith

In determining whether a movant acted in good faith, the court should look at whether the "errors resulted from negligence and carelessness," or from "deviousness or willfulness." *Bateman*, 231 F.3d at 1225. There does not appear to be any evidence of bad faith in this case. As such, this factor favors granting the Motion.

B. Dismissal as Abuse of Discretion Warranting Reinstatement of Case

1. Plaintiff's Diligence

Plaintiff has not been diligent in prosecuting this matter. Despite several opportunities, Plaintiff repeatedly failed to meet deadlines. Nevertheless, the evidence in support of the Motion demonstrates that the dismissal was caused largely by Plaintiff's former counsel. At this time, Plaintiff has retained new counsel. In addition, alternative sanctions are sufficient to deter future delay by Plaintiff without imposing the harsh sanction of dismissal.

2. The Trial Court's Need to Manage its Docket

"This factor is usually reviewed in conjunction with the public's interest in expeditious resolution of litigation to determine if there is unreasonable delay." *In re Eisen*, 31 F.3d 1447, 1452 (9th Cir. 1994). At this time, this adversary proceeding has been pending for approximately one year. Given that the parties have reached the pretrial phase of this litigation, there has not yet been a significant impact on expeditious resolution of this proceeding. As such, the Court's ability to manage this docket has not been impacted enough to warrant denial of the Motion.

3. The Danger of Prejudice to the Party Suffering the Delay

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See above, Section A.1, for discussion of prejudice.

4. The Availability of Alternative Sanctions

"District courts have inherent power to control their dockets and may impose sanctions, including dismissal." *Oliva*, 958 F.2d at 273. However, "dismissal...should be imposed as a sanction only in extreme circumstances." *Id.*

Here, alternative sanctions are available. The Court may impose monetary sanctions for any damages caused to Defendant by Plaintiff's conduct. As noted above, should Plaintiff continue to shirk deadlines, alternative sanctions will likely be insufficient to prevent prejudice to Defendant and compel Plaintiff to comply. At that time, the Court will consider a final dismissal of this adversary proceeding.

5. The Existence of Warning to the Party Occasioning the Delay

Plaintiff was repeatedly warned that he may face dismissal if he does not comply with deadlines. In fact, the Court issued the OSC to inform Plaintiff explicitly that, if he did not respond, the adversary proceeding would be dismissed. As such, Plaintiff had a great deal of warning about the dismissal.

Nevertheless, because courts favor decisions on the merits, subject to Plaintiff reimbursing Defendant for Defendant's reasonable attorneys' fees and costs incurred as a result of Plaintiff's failure to comply timely with orders of the Court, the Court will vacate the Dismissal Order and provide Plaintiff a final chance to meet deadlines and comply with Court orders.

III. CONCLUSION

The Court will order Plaintiff to reimburse the reasonable attorneys' fees and costs incurred by Defendant: (A) in connection with Plaintiff's failure to file timely an amended JPS or unilateral pretrial statement and to appear at the hearing on the OSC; and (B) filing an opposition to the Motion. Subject to Plaintiff making that reimbursement, the Court will vacate the Dismissal Order. The Court will continue this hearing to **2:30 p.m. on May 22, 2019**. No later than **May 1, 2019**, Defendant's counsel must file and serve a declaration regarding the attorneys' fees and costs

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incurred in connection with the matters specified above. No later than **May 8, 2019**, Plaintiff may file and serve a response to the declaration. No later than **May 15, 2019**, Defendant may file and serve a reply to any response filed by Plaintiff.

Party Information

Debtor(s):

Adir Setton

Represented By
Stephen S Smyth
William J Smyth
Andrew Edward Smyth

Defendant(s):

Adir Setton

Represented By
Andrew Edward Smyth

Plaintiff(s):

Avigdor Kessler

Represented By
Martin S Wolf
Andrew Edward Smyth

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:18-11914 William G Hill

Chapter 7

Adv#: 1:18-01121 Fields et al v. Hill et al

#3.00 Motion to dismiss first amended adversary complaint

fr. 3/13/19

Docket 10

Tentative Ruling:

Grant.

I. BACKGROUND

On July 31, 2018, William G. Hill filed a voluntary chapter 7 petition. On August 2, 2018, 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. 6]. 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 November 6, 2018.

On November 29, 2018, Mr. Fields, Mr. Carlton and Ms. Ortiz (collectively, "Plaintiffs") filed a complaint (the "Complaint") against Debtor and Klyda M. Hill (collectively, "Defendants") requesting denial of Debtor's discharge under 11 U.S.C. § 727(a)(2), (a)(4)(A), (a)(4)(C) and (a)(4)(D) and a monetary judgment against both Defendants in the amount of \$6,310 as to Mr. Fields, \$15,000 as to Mr. Carlton and \$3,500 as to Ms. Ortiz. Plaintiffs did not base their request for a monetary judgment on anything other than Plaintiffs' claims under 11 U.S.C. § 727.

On December 21, 2018, Defendant filed a motion to dismiss the Complaint (the "Motion") [doc. 3]. On March 12, 2019, one day before the prior hearing on the Motion, Plaintiffs filed a first amended complaint (the "FAC") [doc. 8].

On March 13, 2019, the Court held a hearing on the Motion and instructed Defendants to file and serve notice of a continued hearing on Plaintiffs. On the same day, Defendants filed and served notice of the continued hearing on the Motion [doc. 9].

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On April 9, 2019, Defendants filed a motion to dismiss the FAC (the "Second Motion") [doc. 10]. Defendants captioned the hearing date on the Second Motion for April 17, 2019 at 2:30 p.m. Plaintiffs have not timely filed an opposition to the Motion.

II. ANALYSIS

A. The FAC and the Second Motion

Pursuant to Federal Rule of Civil Procedure 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.

Here, Plaintiffs filed the FAC approximately four months after the Complaint and over two months after Defendants filed and served the Motion. As such, Plaintiffs were required to seek leave of Court to file an amended complaint.

In addition, this Court's Self-Calendaring Procedure, located on the Court's website, prohibits parties from self-calendaring motions to dismiss in adversary proceedings. Defendants self-calendared the Second Motion for hearing on April 17, 2019 at 2:30 p.m. Moreover, Defendants must file and serve notice of a motion to dismiss *21 days* before the hearing date. Local Bankruptcy Rule 9013-1(d)(2). In light of the above, the Court will not consider either the FAC or the Second Motion.

B. Dismissal of the Complaint

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 4004(a)—

In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (a)(9)

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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)... 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.

Under FRBP 4004(b)—

- (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.

Bankruptcy Rules 4004(a) and 4007(c) set a strict sixty day time limit within which a creditor may dispute the discharge of the debtor and the dischargeability of the debts. Bankruptcy Rules 4004(b) and 4007(c) also provide that there will be no extension of time to file a complaint unless a motion is made before the 60 day limit has expired. In addition, Bankruptcy Rule 9006(b)(3) provides that a "court may enlarge the time for taking action [under Rules 4004(a) and 4007(c)] only to the extent and under the conditions stated in those rules." Bankruptcy Rule 2002(f) requires the clerk to give notice of the deadline to the parties.

In re Anwiler, 958 F.2d 925, 927 (9th Cir. 1992), as amended on denial of reh'g (Apr. 8, 1992); see also *In re Schrag*, 464 B.R. 909, 915 (D. Or. 2011) ("By their plain terms, the Rules [4004(a) and 4007(c) are 'strict' ...").

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As emphasized by the Ninth Circuit Court of Appeals in *Anwiler*, the deadline to file a complaint objecting to a debtor's discharge is strict. Plaintiffs filed the Complaint 23 days after expiration of the deadline, and did not timely move to extend the deadlines. Plaintiffs also have not responded to the Motion. Consequently, the Court will dismiss Plaintiffs' claims under 11 U.S.C. § 727 with prejudice.

As to their request for a monetary judgment against Defendants, Plaintiffs have not provided a basis for this request other than Plaintiffs' claims under § 727. Given that the remedy for successful claims under § 727 is a denial of a debtor's discharge, Plaintiffs did not sufficiently allege a basis for a monetary judgment against Defendants. As such, the Court will dismiss Plaintiffs' request for a monetary judgment without prejudice.

III. CONCLUSION

The Court will dismiss Plaintiffs' claims under § 727 with prejudice. The Court will dismiss Plaintiffs' request for a monetary judgment without prejudice.

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

Party Information

Debtor(s):

William G Hill

Represented By
Gary S Saunders

Defendant(s):

William G Hill

Represented By
Gary S Saunders

KLYDA M HILL

Pro Se

Plaintiff(s):

Johnnie L Fields

Represented By
Bruce V Rorty

Scott D Carlton

Represented By

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Carmen S. Ortiz

Bruce V Rorty

Represented By
Bruce V Rorty

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:18-11914 William G Hill

Chapter 7

Adv#: 1:18-01121 Fields et al v. Hill et al

#4.00 Status conference re complaint objecting to discharge pursuant to 11 U.S.C. sec 727(a)(2), 727(a)(4)(A), 727(a)(4)(C) and 727(a)(4)(D); and for monetary judgment per FRBP 7001(1) and 11 U.S.C. sec 542

fr. 2/6/19; 3/13/19

Docket 1

Tentative Ruling:

See calendar no. 3.

Party Information

Debtor(s):

William G Hill

Represented By
Gary S Saunders

Defendant(s):

William G Hill

Pro Se

KLYDA M HILL

Pro Se

Plaintiff(s):

Johnnie L Fields

Represented By
Bruce V Rorty

Scott D Carlton

Represented By
Bruce V Rorty

Carmen S. Ortiz

Represented By
Bruce V Rorty

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:19-10874 Caridad Salas Hileman

Chapter 13

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

Docket 6

Tentative Ruling:

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **May 22, 2019 at 9:30 a.m. No later than April 24, 2019**, 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 May 2019 deed of trust payments in the aggregate amount of \$3,307.00 (as stated in her current Schedule J) as to the real property located at 14658 Haynes Street, Van Nuys, California 91411 and 291 S. 16th Avenue, Show Low, Arizona 85901; and (2) her May 2019 plan payment in the amount of \$863.00 to the chapter 13 trustee. **No later than May 17, 2019**, the debtor must file a declaration to demonstrate that she timely made her required post-petition deed of trust payments and chapter 13 plan payment.

Party Information

Debtor(s):

Caridad Salas Hileman

Represented By
Ryan A. Stubbe

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:15-13062 Hector Flores and Martha Flores

Chapter 13

#1.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 3/20/19

Docket 73

*** VACATED *** REASON: APO entered 4/3/19 [doc. 78].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Flores

Represented By
Donald E Iwuchuku

Joint Debtor(s):

Martha Flores

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#2.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 3/20/19

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.

March 20, 2019 Ruling

Grant motion on an interim basis and continue hearing to **April 24, 2019 at 9:30 a.m.**

The First Case

On August 14, 2014, Mercedes Benitez (“Debtor”) filed a chapter 13 petition (the “First Case”) [case no. 1:14-bk-13827-VK]. On January 15, 2015, the Court entered an order dismissing the case because Debtor failed to make the required payment [First Case, doc. 30].

The Second Case

On February 17, 2015, Debtor filed another chapter 13 petition (the “Second Case”) [case no. 1:15-bk-10489-VK]. On February 17, 2015, Debtor filed a motion to continue the automatic stay as to secured creditors (the “First Motion to Continue”) [doc. 6]. In the First Motion to Continue, Debtor stated that, in the First Case, she tried to make the required payments to the chapter 13 trustee, however, she was

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Mercedes Benitez

Chapter 13

sending them to the wrong address. On March 16, 2015, the Court entered an order granting the First Motion to Continue [doc. 21].

In her schedules, Debtor disclosed monthly income in the amount of \$6,738.41 and monthly expenses in the amount of \$5,909.59, leaving net monthly income of \$828.82 [Second Case, doc. 12]. Debtor represented that she was employed as an office manager at Toro School of Truck Driving for one year.

On April 24, 2015, the Court entered an order confirming Debtor's first amended chapter 13 plan [doc. 34]. Under that chapter 13 plan, Debtor was to pay \$828.00 per month for five months, then \$1,146.00 for 55 months. That plan also proposed to cure arrearages on Debtor's principal residence (the "Property") in the amount of \$53,817.97.

On November 5, 2015, Debtor filed a motion to modify or suspend plan payments [doc. 48]. On December 4, 2015, the Court entered an order granting that motion [doc. 52]. On January 11, 2017, the Court entered an order dismissing the Second Case for failure to make plan payments [Second Case, doc. 65].

The Third Case

On October 12, 2017, Debtor filed another chapter 13 petition (the "Third Case") [case no. 1:17-bk-12748-VK]. In her schedules, Debtor disclosed monthly income in the amount of \$9,379.85 and monthly expenses in the amount of \$7,097.19, leaving net monthly income of \$2,282.66 [Third Case, doc. 13]. Debtor represented that she was employed as a care giver for In Home Social Services ("IHSS") for nine years.

On October 16, 2017, Debtor filed a motion to continue the automatic stay as to secured creditors (the "Second Motion to Continue") [Third Case, doc. 10]. In the Second Motion to Continue, Debtor represented that she fell behind on her chapter 13 plan payments in the Second Case because, among other things, her employer was not paying her on time. On November 9, 2017, the Court entered an order granting the Second Motion to Continue [doc. 19].

On December 21, 2017, the Court entered an order confirming Debtor's chapter 13 plan [doc. 27]. Under that chapter 13 plan, Debtor was to pay \$2,218.00 per month for 60 months. That plan also proposed to cure arrearages on the Property in the amount

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of \$113,000.00.

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On May 14, 2018, The Bank of New York Mellon (the "BONYM") filed a motion for relief from stay as to the Property [doc. 39]. On August 10, 2018, Debtor and the BONYM entered into a stipulation resolving that motion and providing for adequate protection payments [doc. 45].

On September 5, 2018, the chapter 13 trustee filed a motion to dismiss the Third Case for failure to make plan payments [doc. 51]. On October 9, 2018, the Court entered an order dismissing the Third Case for failure to make plan payments [doc. 61].

The Pending Case

On February 20, 2019, Debtor filed the pending chapter 13 case. On February 22, 2019, Debtor filed a motion to continue the automatic stay as to all creditors (the "Third Motion to Continue") [doc. 6]. In the Third Motion to Continue, Debtor represents that her prior case was dismissed because she could no longer make her chapter 13 plan payments. Debtor represents that she did not receive a paycheck from IHSS for six months because of a clerical error and that, because her daughter was pregnant, her daughter could not contribute to household expenses. Debtor represents that the clerical error is now fixed and that her daughter's fiancé now is contributing to household expenses.

In her pending case, Debtor's Schedules I & J indicate monthly income of \$9,479.85 and monthly expenses of \$7,284.00, leaving net monthly income of \$2,195.85 [doc. 15]. In her schedule I, Debtor indicated that her daughter contributes \$800.00 per month to household expenses. In addition, Debtor responded "Yes" to the question of whether she expected an increase in income within the first year of filing the petition. Debtor did not provide an explanation of why she expected that increase.

In her proposed chapter 13 plan [doc. 12], Debtor proposes to pay \$2,196.00 per month for 60 months. That plan also proposes to cure arrearages on the Property in the amount of \$112,347.42. That plan is a 100% plan. In her schedule E/F, Debtor listed nonpriority unsecured claims in the amount of \$2,714.85.

Discussion

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Mercedes Benitez

Chapter 13

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.

Notwithstanding the assertions in the Third Motion to Continue, Debtor has not provided at this time clear and convincing evidence that her financial affairs have improved since the Third Case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. Debtor has less net monthly disposable income than during the Third Case. Additionally, Debtor has not provided evidence of her daughter's fiancé's ability to contribute \$800.00 per month to household expenses. Without that contribution, Debtor will not be able to afford her proposed plan payment.

In light of the foregoing, the Court will grant the motion on an interim basis up to the date of the continued hearing. Debtor must timely pay: (1) her March 2019 and April 2019 deed of trust payments in the amount of \$2,820.00 (as stated in her current Schedule J) as to the Property; and (2) her March 2019 and April 2019 plan payments in the amount of \$2,196.00 to the chapter 13 trustee. **No later than April 22, 2019**, the debtor must file a declaration to demonstrate that she timely made her required post-petition deed of trust and chapter 13 plan payments.

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Mercedes Benitez

Represented By
Matthew D. Resnik

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
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9:30 AM

1:19-10531 CFC California Fabrication, Inc.

Chapter 7

#3.00 Motion for relief from stay [UD]

ALABAMA 7901, LLC
VS
DEBTOR

Stip to continue filed 4/18/19

Docket 4

***** VACATED *** REASON: Order approving stip entered 4/19/19.
Hearing continued to 5/22/19 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

CFC California Fabrication, Inc.

Represented By
David R Hagen

Trustee(s):

Diane C Weil (TR)

Pro Se

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Wednesday, April 24, 2019

Hearing Room 301

9:30 AM

1:18-11255 Ellen Marie Hopko

Chapter 7

#4.00 Motion for relief from stay [RP]

TRUSTEES UNDER THE WILL AND OF THE ESTATE OF
BERNICE PAUAHI BISHOP, DECEASED, DBA KAMEHAMEHA SCHOOLS
VS
DEBTOR

Docket 41

*** VACATED *** REASON: Order approving stip entered 4/15/19.
Hearing continued to 5/15/19 at 9:30 AM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ellen Marie Hopko

Represented By
Maria C Hehr

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
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9:30 AM

1:19-10599 Fred Jackson

Chapter 13

#5.00 Motion for relief from stay [UD]

RUBEN VALDEZ
VS
DEBTOR

Case dismissed 4/1/19

Docket 7

***** VACATED *** REASON: This case was dismissed on 4/1/19 [doc. 9].
The motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fred Jackson

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 24, 2019

Hearing Room 301

9:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#6.00 Motion for relief from stay [AN]

H. Samuel Hopper
VS
DEBTOR .

Docket 38

Tentative Ruling:

The Court will continue this hearing to **May 15, 2019 at 9:30 a.m.** to be held in connection with the *Order to Show Cause Why Samuel Hopper and Daniel Jett Should Not Be Held in Civil Contempt for Violation of the Automatic Stay* [doc. 64].

Appearances on April 24, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) 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 24, 2019

Hearing Room 301

9:30 AM

1:18-12759 Janet Rae Pettine

Chapter 13

#7.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC
VS
DEBTOR

Docket 25

*** VACATED *** REASON: APO entered 4/23/19 [doc. 36].

Tentative Ruling:

Party Information

Debtor(s):

Janet Rae Pettine

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
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Wednesday, April 24, 2019

Hearing Room 301

9:30 AM

1:18-12759 Janet Rae Pettine

Chapter 13

#8.00 Motion for relief from stay [PP]

NISSAN INFINITI LT
VS
DEBTOR

Docket 29

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):

Janet Rae Pettine

Represented By
Andrew S Mansfield

**United States Bankruptcy Court
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Wednesday, April 24, 2019

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CONT... Janet Rae Pettine

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
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Wednesday, April 24, 2019

Hearing Room 301

9:30 AM

1:16-10680 Patricia Prichard Leedom

Chapter 13

#9.00 Motion for relief from stay [RP]

TARZANA COURTS HOA
VS
DEBTOR

Docket 50

*** VACATED *** REASON: Order entered 4/4/2019.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Prichard Leedom

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
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Wednesday, April 24, 2019

Hearing Room 301

9:30 AM

1:16-11316 Sergio Luquin and Lorena Palacios Luquin

Chapter 13

#10.00 Motion for relief from stay [RP]

CARRINGTON MORTGAGE SERVICES, LLC
VS
DEBTOR

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sergio Luquin

Represented By
Gregory M Shanfeld

Joint Debtor(s):

Lorena Palacios Luquin

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, April 24, 2019

Hearing Room 301

9:30 AM

1:17-13103 Steven Joseph Dombrovsky

Chapter 13

#11.00 Motion for relief from stay [RP]

E TRADE BANK
VS
DEBTOR .

Stip for adequate protection filed 4/8/19

Docket 69

*** VACATED *** REASON: Order approving stipulation entered 4/8/19.

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
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Wednesday, April 24, 2019

Hearing Room 301

9:30 AM

1:19-10536 Robin Hudson and Darryl Jones

Chapter 13

#12.00 Emergency motion for emotional distress and punitive damages for violation of stay

Docket 7

Tentative Ruling:

Deny.

I. BACKGROUND

A. Debtors' Bankruptcy Petition

On March 8, 2019, Robin Fayette Hudson and Darryl Jones (together, "Debtors") filed a voluntary chapter 13 petition. Debtors' petition [doc. 1] is only eight pages in length and includes only one creditor, Jones & Jones Management Group, Inc. ("Jones & Jones").

Although Debtors filed a joint petition, Debtors have made no representations to this Court that they were legally married, at the time of the filing. If Debtors were not legally married, Debtors were not entitled to file a joint petition.

Debtors' schedules and statements were due for filing by March 22, 2019. Debtors did not timely file their schedules and statements. As a result, on March 25, 2019, the Court entered an order dismissing Debtors' bankruptcy case [doc. 8].

B. The State Court Case

On May 31, 2017, Ms. Hudson entered into a lease agreement (the "Lease Agreement") with Jones & Jones to rent the real property located at 20909 Parthenia St. 3, Canoga Park, California 91304 (the "Property") beginning on July 1, 2017 [doc. 18, Exh. A]. In relevant part, the terms of the Lease Agreement state:

Section 1: Summary of Terms

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9:30 AM

CONT...

Robin Hudson and Darryl Jones

Chapter 13

K. Named Resident(s): Robin Fayette Hudson, Roshai Burns, Eden Jones

Section 2: Lease Terms

6. **Use.** The Premises shall be used as a private dwelling with no more than the number of persons set forth in Section J of the Summary of Terms inhabiting the Premises during any month, nor by any person other than the Named Residents set forth in Section K of the Summary of Terms, and for no other purpose, without Landlord's prior written consent, except as required by applicable law. . . . Acceptance of rent for any unauthorized persons does *not create a tenancy*. . . . (emphasis added).

Subsequently, Ms. Hudson fell behind on her monthly lease payments to Jones & Jones. On October 4, 2018, Jones & Jones served a three-day notice to pay rent or quit on Ms. Hudson [doc. 18, Exh. B].

On October 25, 2018, Jones & Jones filed an unlawful detainer complaint against Ms. Hudson in the Superior Court of California, County of Los Angeles, case no. 18VEUD04574. *Id.* On December 18, 2018, the state court entered default against Ms. Hudson [doc. 18, Exh. C]. On January 2, 2019, the state court entered an unlawful detainer judgment against Ms. Hudson (the "UD Judgment") [doc. 18, Exh. D]. On January 10, 2019, the state court issued a writ of possession (the "Writ") [doc. 19, Exh. E].

On February 7, 2019, the County of Los Angeles Sheriff's Department posted a notice to vacate the Property by February 12, 2019 [doc. 19, Exh. E]. Attached to that notice to vacate was the Writ, which indicates that the prejudgment claim of right to possession was not served in compliance with California Code of Civil Procedure § 415.46. This means that the UD Judgment did not include all tenants, subtenants, named claimants and other occupants of the Property.

On February 11, 2019, Ms. Hudson filed an ex parte application for a motion to vacate the default judgment and to quash service of the summons (the "Motion to Vacate") [doc. 18, Exhs. C and F]. On the same day, the state court held a hearing on the Motion to Vacate. *Id.* at Exh. C. Ms. Hudson did not appear at the hearing. *Id.* at Exh. F. Instead, Mr. Jones appeared at the hearing on behalf of Ms. Hudson. Apparently,

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Mr. Jones stated that he was Ms. Hudson's husband and that he resided at the Property for the last two years. The state court denied the Motion to Vacate and approved the parties' agreement to delay the lockout until February 24, 2019.

On February 22, 2019, Mr. Jones filed a prejudgment claim of right to possession (the "Claim to Possession") [doc. 7, Exh. A]. On March 7, 2019, the state court held a hearing on the Claim to Possession [doc. 18, Exhs. C]. Mr. Jones appeared at that hearing and represented himself. *Id.* at Exh. H.

On March 7, 2019, the state court entered an order denying the Claim to Possession. *Id.* at Exh. C. The state court ruled that the County of Los Angeles Sheriff's Department was authorized to proceed with the lockout and that no further posting was required. *Id.* at Exh. H.

On March 8, 2019, Debtors filed a notice of stay of proceedings in the state court action because they had filed their bankruptcy petition [doc. 7, Exh. D]. On March 14, 2019, the County of Los Angeles Sheriff's Department executed the Writ. Declaration of Darryl Jones, doc. 19, ¶ 20. Subsequently, Debtors were evicted from the Property. *Id.* at ¶ 21.

On March 21, 2019, Mr. Jones filed in the state court an ex parte motion to vacate illegal eviction and lockout (the "Second Motion to Vacate") [doc. 18, Exh. I]. On the same day, a hearing was held in the state court on the Second Motion to Vacate. *Id.* at Exh. J. At that hearing, the state court denied the Second Motion to Vacate.

C. The Motion for Violation of the Automatic Stay

On March 21, 2019, Mr. Jones filed an emergency motion in this Court for emotional distress and punitive damages for violation of stay (the "Motion") [doc. 7]. Mr. Jones argues that the eviction was illegal and violated the automatic stay under 11 U.S.C. § 362. Mr. Jones contends that he was living in the Property for two years and that he helped contribute to rental payments under the Lease Agreement and assisted with the payment of utilities.

On April 9, 2019, Jones & Jones filed an opposition to the Motion (the "Opposition") [doc. 18]. On April 17, 2019, Mr. Jones filed a reply to the Opposition [doc. 19].

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CONT... Robin Hudson and Darryl Jones

Chapter 13

II. ANALYSIS

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—
- (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 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...

However, pursuant to 11 U.S.C. § 362(b)(22), a bankruptcy petition does not operate as a stay "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).

Pursuant to California Code of Civil Procedure ("CCP") § 415.46—

- (e)(1) If an owner or his or her agent has directed and obtained service of a prejudgment claim of right to possession in accordance with this section, no

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occupant of the premises, whether or not that occupant is named in the judgment for possession, may object to the enforcement of that judgment as prescribed in Section 1174.3.

A. 11 U.S.C. § 362(b)(22)

Here, 11 U.S.C. § 362(b)(22) applies to Ms. Hudson. Ms. Hudson resides at the Property as a tenant under a lease agreement with Jones & Jones. Prepetition, Jones & Jones obtained the UD Judgment and Writ for possession of the Property. As such, as to Ms. Hudson, the execution of the eviction on March 14, 2019 was not a violation of the automatic stay.

As to Mr. Jones, 11 U.S.C. § 362(b)(22) may not apply, because Mr. Jones was not a tenant under the Lease Agreement. Further, according to the Writ, service of the prejudgment claim of right to possession was not served in accordance with CCP § 415.46. As such, if he was an occupant of the Property, Mr. Jones could object to enforcement of the Writ.

B. Property of the Bankruptcy Estate

If 11 U.S.C. § 362(b)(22) does not apply as to Mr. Jones, the next question is whether, as of the petition date, the Property was "property of the estate," such that the execution of the Writ would constitute a violation of the automatic stay.

The filing of a bankruptcy petition creates a bankruptcy estate, which is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Pursuant to 11 U.S.C. § 362(a)(3), a bankruptcy petition operates as a stay, applicable to all entities, of "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," except as provided in subsection (b). If Debtors did not have a legal or equitable interest in the Property at the commencement of the case, the automatic stay would not bar execution of the Writ.

"We look to state law to determine property interests in bankruptcy proceedings." *In re Perl*, 811 F.3d 1120, 1127–28 (9th Cir. 2016) (citing *Butner v. United States*, 440 U.S. 48, 55 99 S.Ct. 914, 918, 59 L.Ed.2d 136 (1979)). "[U]nder California law, entry

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CONT... **Robin Hudson and Darryl Jones**

Chapter 13

of judgment and a writ of possession following unlawful detainer proceedings extinguishes all other legal and equitable possessory interests in the real property at issue. *Id.* (citing *Vella v. Hudgins*, 20 Cal.3d 251, 142 Cal.Rptr. 414, 572 P.2d 28, 30 (1977)).

The Ninth Circuit Court of Appeals recently decided *Perl*, in which the Court of Appeals held that "whether [the debtor] had actual possession of the property when he filed for bankruptcy has no bearing on whether he had a cognizable possessory interest in the property." *Perl*, 811 F.3d at 1128. Rather, the prepetition "unlawful detainer judgment and writ of possession entered pursuant to California Code Civil Procedure § 415.46 bestowed legal title and *all* rights of possession upon [the owner]." *Id.* at 1130 (emphasis in *Perl*). As explained by the Court of Appeals:

We therefore conclude that because [the debtor] had no remaining interest in the property, legal or equitable, when the bankruptcy petition was filed, the bankruptcy court erred in concluding that [the owner] violated the automatic stay by executing the writ of possession.

The unlawful detainer judgment and writ of possession entered pursuant to California Code Civil Procedure § 415.46 bestowed legal title and *all* rights of possession upon [the owner]. *See Vella*, 142 Cal.Rptr. 414, 572 P.2d at 30. Thus, at the time of the filing of the bankruptcy petition, [the debtor] had been completely divested of all legal and equitable possessory rights that would otherwise be protected by the automatic stay. *See id.* Consequently, the Sheriff's lockout did not violate the automatic stay because no legal or equitable interests in the property remained to become part of the bankruptcy estate. *See id.*; *see also* 11 U.S.C. § 541(a)(1) (describing the bankruptcy estate as consisting of "all legal or equitable interests of the debtor in property as of the commencement of the case").

Id. Here, the UD Judgment and Writ entered before the petition date divested Ms. Hudson of all legal and equitable possessory rights that would otherwise be protected by the automatic stay. As he was not a named resident under Section K of the Summary of Terms in the Lease Agreement, Mr. Jones did not hold a leasehold interest in the Property.

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CONT... Robin Hudson and Darryl Jones

Chapter 13

Under *Perl*, the fact that Mr. Jones had actual possession of the Property has no bearing on whether he had a cognizable possessory interest in the Property. Pursuant to the terms of the Lease Agreement, Section 6, even if Jones & Jones had accepted lease payments from Mr. Jones, a tenancy was not created. Furthermore, prepetition, the state court denied Mr. Jones' prejudgment claim to possession. Moreover, postpetition, the state court denied the Second Motion to Vacate filed by Mr. Jones.

Because Ms. Hudson's legal and equitable interests in the Property were divested prepetition, and Mr. Jones has not shown that he held a legal or equitable interest in the Property on the petition date, the Property was not property of the bankruptcy estate on the petition date.

III. CONCLUSION

The Court will deny the Motion.

Jones & Jones must submit an order within seven (7) days.

Party Information

Debtor(s):

Robin Hudson	Pro Se
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Joint Debtor(s):

Darryl Jones	Pro Se
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Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court
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Wednesday, April 24, 2019

Hearing Room 301

9:30 AM

1:19-10785 Attilio E Armeni

Chapter 11

#13.00 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 up to the date of the continued hearing. The Court will continue this hearing to **May 22, 2019 at 9:30 a.m.**

No later than April 29, 2019, 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). In the motion, the debtor states that he intends to accept the terms of the loan modification agreement [Exh. A] provided to him by the servicer of the mortgage and he proposes to make adequate protection payments based on that loan modification agreement. The debtor must timely pay his proposed adequate protection payments as to the real property located at 3116 N. Summit Pointe Drive, Topanga, California 90290 in the amount of \$8,332.25 (as stated in the proposed loan modification agreement). The debtor must pay his April 2019 adequate protection payment by **April 30, 2019** and his May 2019 adequate protection payment by **May 15, 2019**. **No later than May 20, 2019**, the debtor must file a declaration to demonstrate that he timely made these adequate protection payments.

The movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

**United States Bankruptcy Court
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Wednesday, April 24, 2019

Hearing Room 301

1:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01081 Albini et al v. Zuckerman

#14.00 Status conference re first amended complaint based upon fraud to determine nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A)

fr. 10/3/18; 10/17/18, 11/7/18; 1/9/2019; 2/6/19; 3/20/19

Docket 24

***** VACATED *** REASON: Pretrial conference set for 11/6/19 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

Plaintiff(s):

Ronald Lapham

Represented By
Edward McCutchan

Vito Lovero

Represented By
Edward McCutchan

Frederick Mann

Represented By
Edward McCutchan

Katherine Mann

Represented By

**United States Bankruptcy Court
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CONT... Robert Edward Zuckerman

Chapter 11

	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 Spiridonoff	Represented By Edward McCutchan
Greg Vernon	Represented By Edward McCutchan
Carmen Violin	Represented By Edward McCutchan

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CONT... Robert Edward Zuckerman

Chapter 11

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

Henry P Crigler

Represented By

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CONT... Robert Edward Zuckerman

Chapter 11

	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

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Wednesday, April 24, 2019

Hearing Room 301

1:30 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; 11/21/18; 1/23/19; 3/6/19;

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on May 8, 2019**, to be held in connection with the hearing on the stipulation for judgment [doc. 37].

Appearances on April 24, 2019 are excused.

Party Information

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

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CONT... Asif Sheikh

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, April 24, 2019

Hearing Room 301

1:30 PM

1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01096 Karimzad v. Sheikh et al

#16.00 Status conference re: amended 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; 11/21/18; 1/23/19; 3/6/19;

Docket 21

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on May 8, 2019**, to be held in connection with the hearing on the stipulation for judgment [doc. 37].

Appearances on April 24, 2019 are excused.

Party Information

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

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1:30 PM

CONT... Atif Sheikh

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, April 24, 2019

Hearing Room 301

1:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01011 Gottlieb (TR) v. Flores

#17.00 Status conference re complaint to determine extent and validity of lien

Docket 1

Tentative Ruling:

In light of the status report filed by the plaintiff and the motion to approve a compromise between the parties filed in the debtor's bankruptcy case [1:18-bk-11488-VK, doc. 101], the Court will continue this status conference to **1:30 p.m. on June 5, 2019.**

If the Court approves the parties' compromise, which provides that this adversary proceeding will be dismissed upon such approval, the parties must file a stipulation, or the plaintiff may submit an order, to dismiss this adversary proceeding.

If an order dismissing this adversary proceeding is entered prior to the continued status conference, the Court will vacate the status conference.

Appearances on April 24, 2019 are excused.

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Juan Scsi Flores

Pro Se

Plaintiff(s):

David K. Gottlieb (TR)

Represented By
Peter A Davidson

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CONT... Christopher Anderson

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

**United States Bankruptcy Court
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Wednesday, April 24, 2019

Hearing Room 301

1:30 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 11

Adv#: 1:19-01010 Strategic Funding Source, Inc. v. Armand Zaharian et al

#18.00 Status conference re: complaint to determine nondischargeability of debt

Docket 1

***** VACATED *** REASON: Hearing continued to 6/12/19 per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

Defendant(s):

Armand Zaharian

Pro Se

Elizabeth Y. Zaharian

Pro Se

Plaintiff(s):

Strategic Funding Source, Inc.

Represented By
Brian T Harvey

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

Wednesday, April 24, 2019

Hearing Room 301

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1:17-10266 Cindy Park

Chapter 13

Adv#: 1:18-01125 Park v. New Penn Financial, LLC dba Shellpoint Mortgage Se

#19.00 Motion to dismiss adversary proceeding

fr. 4/17/19

Docket 6

Tentative Ruling:

Grant.

I. BACKGROUND

On February 1, 2017, Cindy Park ("Plaintiff") filed a chapter 13 petition. In her schedule A/B, Debtor listed a fee simple interest in real property located at 19400 Wyandotte Street, #11, Reseda, California 91335 (the "Property"). In her schedule D, Debtor indicated that the Property is encumbered by a deed of trust in favor of "Shellpoint" in the amount of \$220,622.05. Debtor listed the debt as disputed.

On May 15, 2017, The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2005-26CB, Mortgage Pass-Through Certificates, Series 2005-26CB ("BONYM") filed proof of claim no. 1-1, asserting a secured claim in the amount of \$317,798.81. To the proof of claim, BONYM attached a promissory note dated May 11, 2005 between America's Wholesale Lender ("AWL") and Plaintiff (the "Note"). Attached to the Note is a blank indorsement stating "PAY TO THE ORDER OF" with the recipient left blank, signed by an individual named David A. Specter (the "Blank Indorsement"). The Blank Indorsement is not dated.

In relevant part, the Note provides that Plaintiff agrees to pay \$252,000 plus interest to the lender at 6.125% interest with a maturity date of June 1, 2035. Note, p. 1. The Note also provides that, upon default, Plaintiff is liable for late charges and reasonable costs and expenses incurred by the lender, including attorneys' fees. Note, p. 2. The Note also states that "the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is

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called the 'Note Holder.'" Note, p. 1.

BONYM also attached a deed of trust (the "DOT"), recorded May 18, 2005 and signed by Plaintiff. The DOT listed AWL as the lender, but included a reference to Countrywide Home Loans, Inc, ("Countrywide") on the first page. Plaintiff initialed each page of the DOT and signed the last page of the DOT. In relevant part, the DOT reads—

"Lender" is
AMERICA'S WHOLESALE LENDER
Lender is a CORPORATION
organized and existing under the laws of NEW YORK
...

"MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument.

"Note" means the promissory note signed by [Plaintiff] and dated May 11, 2005.
...

TRANSFER OF RIGHTS IN PROPERTY
The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. ... [Plaintiff] understands and agrees that MERS holds only legal title to the interests granted by [Plaintiff] in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property....

DOT, pp. 2-4. In addition, the DOT states that the Note "can be sold one or more times without prior notice to [Plaintiff]." DOT, p. 12.

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BONYM also attached an Assignment of Deed of Trust (the "Assignment"). Through the Assignment, dated August 11, 2011 and recorded on August 17, 2011, AWL transferred "all beneficial interest under" the DOT "together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said" DOT to BONYM. Finally, BONYM attached a statement itemizing the fees and charges owed to BONYM. Based on the account statements, Plaintiff's mortgage is serviced by New Penn Financial, LLC dba Shellpoint Mortgage Service ("Shellpoint").

On December 10, 2018, Plaintiff filed a complaint (the "Complaint") against BONYM and Shellpoint (collectively, "Defendants"). In the Complaint, Plaintiff alleges that she filed her bankruptcy petition to protect the Property from being sold through a non-judicial foreclosure. Plaintiff also incorporates two letters she sent to Peaks Foreclosure Service, Inc. ("Peaks") and Shellpoint demanding that Peaks and Shellpoint cease any foreclosure efforts related to the Property. Complaint, Exhibits H, I.

Generally, Plaintiff alleges in the Complaint that the Note, the DOT and the Assignment are void. Plaintiff alleges the original Note and the DOT are void because (A) AWL is a trade name and cannot hold recorded security interests, and there is no reference to AWL being a dba or associated with any other company; and (B) AWL did not exist before or at the time of signing the Note. As to the allegations that AWL did not exist, Plaintiff incorporates into the Complaint a New York Department of State Entity Information page (the "Entity Information Sheet") showing that an entity named America's Wholesale Lender, *Inc.* (the "AWL Corporation") was incorporated on December 16, 2008. Complaint, Exhibit G. Plaintiff also incorporates copies of the Note and the DOT; the copies attached to the Complaint include all of the pertinent provisions outlined above, with the exception that the Note attached to the Complaint does not include the Blank Indorsement.

Plaintiff also alleges the Assignment is void on the following bases: (A) MERS did not have authority to execute the Assignment; (B) the Assignment and the Blank Indorsement are "robo-signed;" (C) Countrywide was bankrupt at the time one of its representatives signed the Blank Indorsement attached to the Note; and (D) the Blank Indorsement was not specifically indorsed to BONYM. On these bases, Plaintiff asserts BONYM does not have standing to enforce the Note or the DOT.

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Plaintiff further alleges that BONYM included fees and charges in its proof of claim that are not supported by documentation in violation of Federal Rule of Bankruptcy Procedure ("FRBP") 3001(c). Finally, Plaintiff asserts that BONYM's filing of the proof of claim is a fraud upon the Court because, aside from the allegations outlined above, BONYM did not attach an "exact copy" of the Note of the DOT and the filing of the proof of claim is a violation of the automatic stay.

On January 9, 2019, Defendants filed the Motion [doc. 6]. In the Motion, Defendants contend that: (A) AWL was a trade name by which Countrywide did business, and Plaintiff mistakenly refers to AWL Corporation, which is a separate entity, instead of AWL; (B) under the DOT, MERS was the nominee of AWL and the beneficiary, and thus had authority to enforce and assign the Note and the DOT; (C) Defendants have both constitutional and prudential standing to file the proof of claim because, under California law, any entity that has possession of a note that includes a blank indorsement has standing to enforce the note and accompanying deed of trust; and (D) Defendants attached sufficient evidence to the proof of claim. Defendants also filed a request for judicial notice (the "RJN") [doc. 8], asking the Court to take judicial notice of, among other things, a New York Department of State Certificate of Amendment of Assumed Name (the "Certificate of Amendment"). RJN, Exhibit 4. The Certificate of Amendment reflects that, as of April 29, 1996, Countrywide used AWL as an assumed name. *Id.*

On January 29, 2019, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 9]. In the Opposition, Plaintiff argues that: (A) the Note is a non-negotiable instrument because it was securitized and, as a result, the Note could not be transferred by using the Blank Indorsement; (B) had Plaintiff known she was contracting with Countrywide, she would not have entered into the Note and, consequently, there was no "meeting of the minds" when Plaintiff executed the Note; and (C) the "Creator" of the Note had unclean hands. Plaintiff again asserts that the Assignment is fraudulent because BONYM has not demonstrated that the Assignment was signed by someone with authority.

II. ANALYSIS

A. General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard

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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). "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

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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).

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. The Challenges to the Original Note and the DOT

As concerns Plaintiff's challenges to the original Note and the DOT, it appears Plaintiff is alleging the Note and the DOT are void because: (A) AWL is a trade name and cannot hold recorded security interests, and there is no reference to AWL being a dba or associated with any other company; and (B) AWL did not exist before or at the time of signing the Note. In the Opposition, Plaintiff also argues, for the first time, that the original Note is void because, had Plaintiff known she was contracting with Countrywide, she would not have entered into an agreement with Countrywide.

i. AWL as a Trade Name

Pursuant to California Commercial Code § 3401(b), "[a] signature may be made (1) manually or by means of a device or machine, and (2) by the use of any name, *including a trade or assumed name*, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing." (emphasis added). "[T]here is nothing in California law that prohibits an entity from doing business under a fictitious business name, or a 'dba.' To the contrary, California law specifically provides for this practice." *Tyshkevich v. Wells Fargo Bank, N.A.*, 2016 WL 193666, at *9 (E.D. Cal. Jan. 15, 2016), *aff'd*, 708 F. App'x 339 (9th Cir. 2017) (citing Cal. Bus. & Prof. Code §§ 17900-30); *see also Perry v. Select Portfolio*

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Servicing, Inc., et al., 2016 WL 3078839, at *1 (N.D. Cal. Jan. 8, 2016) ("Perry has advanced no viable basis for finding the note and deed of trust void simply because the lender was identified by its trade name instead of its formal legal name.").

Plaintiff's references to *America's Wholesale Lender v. Pagano*, 87 Conn.App. 474 (Ct. App. 2005) and *Bank of America, N.A. v. Linda Nash*, Case No. 59-2011-CA-004389, are inapposite and have previously been rejected by courts. For instance, as noted by the *Perry* court:

Perry's reliance on *America's Wholesale Lender v. Pagano*, 87 Conn. App. 474, 475, 866 A.2d 698 (2005) is unavailing. There, the court merely held that under Connecticut procedural standing law, a suit brought by Countrywide against a borrower was defective because it initially was filed only under the trade name. Nothing in the opinion suggested that the underlying contract was void. Perry also refers to a state court decision in Florida (for which she provides no citation). Copies of what appear to be a judgment in that case, *Bank of America, N.A. v. Linda Nash*, can be located on various internet sites. Suffice it to say that whatever may have been decided in that action, it is not controlling or compelling authority here.

Perry, 2016 WL 3078839 at *1. The *Nash* opinion also has been reversed by a Florida appellate court. See *Bank of America, N.A. v. Nash*, 200 So.3d 131 (Ct. App. 2016). In light of these authorities, Plaintiff cannot sustain a claim on the basis that Countrywide used its trade name, AWL, in the Note and the DOT.

ii. Plaintiff's Allegations that AWL was a Nonexistent Entity

Plaintiff also argues that AWL did not exist at the time Plaintiff executed the Note and the DOT. Plaintiff incorporates by reference the Entity Information Sheet, which states that *AWL Corporation* was incorporated on December 16, 2008, after execution of the Note and the DOT. However, AWL Corporation was not the lender associated with the Note and the DOT. The Note references AWL without including a corporate designation. The DOT refers to AWL, not AWL Corporation, and states that "Lender is a CORPORATION organized and existing under the laws of New York." DOT. p.

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2.

The Court may take judicial notice of certified state corporate records. *See Roberts v. Am.'s Wholesale Lender*, 2012 WL 1379203, at *4 (D. Utah Mar. 22, 2012), *aff'd*, 525 F. App'x 675 (10th Cir. 2013) ("As facts which are a matter of an official public record, the Court chooses to take judicial notice of the New York State document, submitted by Defendants, which shows AWL simply is a trade name for Countrywide Home Loans, Inc."). As noted above, the Court also may consider matters of public record in deciding a motion to dismiss. *See Parks School of Business*, 51 F.3d at 1484. The Court will take judicial notice of the Certificate of Amendment, which states that Countrywide used AWL as an assumed name as of April 1996, years before execution of the Note and the DOT. RJN, Exhibit 4. In light of the Certificate of Amendment, the corporate lender to which the DOT refers appears to be Countrywide, not AWL Corporation, which apparently did not exist at the time the Note and the DOT were executed. Complaint, Ex. G. In fact, the *Tyshkevich* court addressed a substantially similar argument made by the plaintiff in that case:

At oral argument on this matter, however, plaintiff pressed the possibility that AWL was actually non-existent, rather than simply a fictional name, by asserting that the Deeds of Trust identify AWL as a New York corporation, when in fact, she alleges, it was not a New York corporation. This argument misreads the Deeds of Trust. They do not state that "AWL" is a corporation. Rather, they state that the "Lender" is a corporation organized under the laws of New York. While the wording could be clearer, [the] plain meaning of this is that the "Lender" – which plaintiff implicitly acknowledges is *Countrywide* (dba AWL) – is a New York Corporation. It does not assert that AWL – the fictitious name itself – is a New York Corporation.

Tyshkevich, 2016 WL 193666 at *9; *see also Vildosola v. Countrywide Home Loans, Inc.*, 2015 WL 5258687, at *2 (Cal. Ct. App. Sept. 10, 2015) ("[I]n using the fictitious name America's Wholesale Lender in the loan documents, Countrywide acted properly and did not create or purport to create any new juridical entity....The fact that the loan documents went further and stated that America's Wholesale Lender is a New York Corporation was not inaccurate or misleading. Countrywide, doing business as

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America's Wholesale Lender, is and was a New York corporation and, like a multitude of other businesses, is permitted to operate under its fictitious name.").

In addition, Plaintiff's allegations regarding AWL being a nonexistent entity do not amount to a plausible claim. As noted by one court—

The Court fails to see how Plaintiff can plausibly allege that AWL "never existed" while simultaneously borrowing money from it.... Plaintiff does not deny that AWL advanced her \$288,000 to purchase her property. Nor does she deny that she owes the debt. Plaintiff's allegation that AWL was not a valid legal entity fails to support a plausible claim and BANA's motion to dismiss Claim I as to AWL is granted.

Dawson v. Bank of New York Mellon, 2016 WL 7217626, at *3 (D. Or. Dec. 13, 2016). In any event, because Plaintiff's allegations pertain to AWL Corporation, a separate legal entity that was not involved with the subject transactions, Plaintiff has not adequately stated a claim for relief based on AWL not having existed at the time Plaintiff signed the Note and the DOT.

iii. Plaintiff's "Meeting of the Minds" Argument

Plaintiff does not include any allegations in the Complaint regarding Plaintiff's assertion in the Opposition that she was unaware she was contracting with Countrywide at the time Plaintiff signed the Note and the DOT. There being no such allegations in the Complaint, this argument does not bar dismissal of the Complaint.

Nevertheless, Plaintiff's assertions in the Opposition would not state a plausible claim for relief against Defendants. The DOT, which is signed and initialed by Plaintiff, bears Countrywide's name on the first page. Moreover, as noted above, the fact that Countrywide used AWL as an assumed name was a matter of public record. Given the public nature of this fact, Plaintiff easily could have learned that AWL and Countrywide were the same entity. Thus, even if Plaintiff were to amend the Complaint to include these allegations, Plaintiff would not adequately allege a basis to deem the Note or the DOT void.

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iv. Plaintiff's Unclean Hands Argument

In the Opposition, Plaintiff asserts that the "Creator" of the Note had unclean hands because an individual named Richard Weatherman was removed from the loan in escrow, and Plaintiff would not have qualified for the loan without Mr. Weatherman's income. These allegations are not in the Complaint and, as a result, the Court may dismiss the Complaint notwithstanding this argument. Moreover, Plaintiff's assertions regarding unclean hands are vague and do not, as stated, establish a claim for relief against Defendants.

C. Plaintiff's Challenges to the Assignment

Plaintiff also alleges the Assignment is void because: (A) MERS did not have authority to execute the Assignment; (B) the Assignment and the Blank Indorsement are "robo-signed;" (C) Countrywide was bankrupt at the time one of its representatives signed the Blank Indorsement attached to the Note; and (D) the Blank Indorsement was not specifically indorsed to BONYM. In the Opposition, Plaintiff also contends that the Note is a non-negotiable instrument because it was securitized and, as a result, could not be transferred using the Blank Indorsement. As to each of the allegations, Plaintiff does not have standing to dispute the Assignment and/or has not adequately stated a claim for relief.

i. Borrower Standing to Challenge Assignments

Defendants do not raise the issue of whether Plaintiff has standing in the Motion. However, "both the Supreme Court and [the Ninth Circuit Court of Appeals] have held that whether or not the parties raise the issue, 'federal courts are *required* sua sponte to examine jurisdictional issues such as standing.'" *D'Lil v. Best W. Encina Lodge & Suites*, 538 F.3d 1031, 1035 (9th Cir. 2008) (quoting *Bernhardt v. County of Los Angeles*, 279 F.3d 862, 868 (9th Cir. 2001) (emphasis in *D'Lil*); see also *United States v. Hays*, 515 U.S. 737, 742, 115 S.Ct. 2431, 132 L.Ed.2d 635 (1995). Under California law—

[A] borrower can generally raise no objection to assignment of the note and deed of trust. A promissory note is a negotiable instrument the lender may sell without notice to the borrower. (*Creative Ventures, LLC v. Jim Ward & Associates* (2011) 195 Cal.App.4th 1430,

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1445–1446, 126 Cal.Rptr.3d 564.) The deed of trust, moreover, is inseparable from the note it secures, and follows it even without a separate assignment.

Yvanova v. New Century Mortg. Corp., 62 Cal.4th 919, 927 (2016). In *Yvanova*, the California Supreme Court carved out a narrow exception to the general rule that a borrower does not have standing to challenge an assignment of a note and deed of trust. *Id.*, at 924. The *Yvanova* court held that a borrower does not lack standing to challenge an assignment "if (1) the trustee's sale has completed and (2) the borrower properly alleges that the assignment is void, not merely voidable." *Kaurloto v. U.S. Bank, N.A.*, 2016 WL 6808117, at *3 (C.D. Cal. Nov. 17, 2016) (citing *Yvanova*, 62 Cal.4th at 924) (emphasis in *Kaurloto*).

Here, the Complaint is unclear, but it appears Plaintiff alleges that Defendants initiated a foreclosure prepetition. The exhibits attached to the Complaint, which are incorporated by reference into the Complaint, include two letters sent by Plaintiff to Peaks and Shellpoint asking the entities to cease foreclosure efforts. Plaintiff also alleges that she filed her bankruptcy petition to avoid foreclosure of the Property. The alleged foreclosure apparently never occurred; Plaintiff listed the Property in her schedule A/B and the parties do not dispute that the Property is property of the estate.

Courts are split regarding whether borrowers have standing before a foreclosure occurs. Nevertheless, a vast majority of courts appear to agree that borrowers do not have standing until a foreclosure is complete. After *Yvanova*, a California appellate court decided *Saterbak v. JPMorgan Chase Bank, N.A.*, 245 Cal.App.4th 808 (Ct. App. 2016). In *Saterbak*, the deed of trust named MERS as the beneficiary "solely as nominee for Lender and Lender's successors and assigns." *Saterbak*, 245 Cal.App.4th at 811. The deed of trust stated that MERS had the right "to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the" subject real property. *Id.* Subsequently, MERS executed an assignment of the deed of trust to Citibank, N.A. ("Citibank"). The plaintiff defaulted on her mortgage payments, and Citibank substituted and appointed National Default Servicing Corporation ("NDS") as trustee under the deed of trust. *Id.*, at 812. NDS recorded a notice of default followed by a notice of trustee's sale, scheduling a foreclosure sale. *Id.*

The plaintiff then filed a lawsuit alleging that the assignment from MERS to Citibank

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was invalid, including an allegation that the signature on the assignment was robo-signed. *Id.* The trial court dismissed the plaintiff's complaint, and the plaintiff appealed. *Id.* On appeal, the court held that California courts do not allow lawsuits to halt foreclosures "because they 'would result in the impermissible interjection of the courts into a nonjudicial scheme enacted by the California Legislature.'" *Id.*, at 814 (quoting *Jenkins v. JP Morgan Chase Bank, N.A.*, 216 Cal.App.4th 497, 513 (Ct. App. 2013)). In assessing the impact of *Yvanova* on this law, the *Saterbak* court stated that "*Yvanova*'s ruling is expressly limited to the post-foreclosure context." *Id.*, at 815. Because the foreclosure had not yet occurred in *Saterbak*, the court held that the plaintiff did not have standing to challenge the assignment of the deed of trust. *Id.*

"With the exception of four decisions, every decision by our court of appeals and district courts in our circuit has declined to extend *Yvanova* to pre-foreclosure challenges, thereby adopting *Saterbak* and its progeny." *Wyman v. First Am. Title Ins. Co.*, 2017 WL 512869, at *3 (N.D. Cal. Feb. 8, 2017) (aggregating cases). Of particular note, although unpublished, the only decisions by the Ninth Circuit Court of Appeals addressing this issue after *Yvanova* have held that *Yvanova* does not confer standing on borrowers to challenge assignments before a foreclosure has occurred. *See, e.g. Wasjutin v. Bank of Am., N.A.*, 732 F. App'x 513, 517 (9th Cir. 2018) ("Nothing about *Yvanova* suggests that, contrary to longstanding precedent on this point, California now allows an action for wrongful foreclosure before a foreclosure takes place."); *Yagman v. Nationstar Mortgage, LLC*, 699 F. App'x 634 (9th Cir. 2017) ("*Yvanova* provides no assistance to [the borrower]; his property has not been subject to a nonjudicial foreclosure. As we have in the past, we join the majority of courts that have declined to extend *Yvanova*." (citing, *inter alia*, *Saterbak*, 245 Cal.App.4th 808). California courts appear to be in agreement. *See Shetty v. ARLP Securitization Tr. Series 2014-2*, 2017 WL 8220702, at *9 (C.D. Cal. Jan. 19, 2017) (aggregating California cases).

Consequently, *pre-foreclosure*, Plaintiff does not have standing to challenge the Assignment. Nevertheless, even if the Court held that Plaintiff has standing to challenge an assignment prior to a foreclosure, under *Yvanova*, Plaintiff also would have to show that the Assignment is *void*, not just voidable. *Yvanova*, 62 Cal.4th at 936-37. "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." *Id.*, at 936.

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For the reasons discussed below, Plaintiff's allegations either do not establish a defect in the Assignment or, if proven true, would render the Assignment voidable, not void.

ii. MERS's Authority to Execute the Assignment

The DOT provides that MERS is the nominee of AWL and all its successors and assigns and that MERS has the right to "exercise any or all of" the interests granted by Plaintiff under the DOT to the lender. "The authority to exercise all of the rights and interests of the lender necessarily includes the authority to assign the deed of trust." *Saterbak*, 245 Cal.App.4th at 816 (internal quotation omitted); *see also Lam v. JPMorgan Chase Bank NA*, 605 F. App'x 600, 603 (9th Cir. 2015) ("[The borrower's] ... contention that MERS lacked authority to assign his deed of trust is foreclosed by his agreement in the deed of trust that MERS would have the right 'to exercise any or all of [the lender's] interests.'"). This language in the DOT, incorporated by reference into the Complaint, contradicts Plaintiff's allegation that MERS did not have authority to assign the DOT. As such, Plaintiff has not adequately alleged that the Assignment is defective based on a lack of authority by MERS.

iii. The Robo-Signing Allegations

Next, as to Plaintiff's allegations regarding robo-signing, courts have consistently held that robo-signed documents are voidable, not void. *See Kramer v. Quality Loan Servicing Corp.*, 666 F. App'x 646, 648 (9th Cir. 2016) (holding that "robo-signed," forged or otherwise unauthorized signatures are subject to ratification and voidable); *and Pratap v. Wells Fargo Bank, N.A.*, 63 F.Supp.3d 1101, 1109 (N.D. Cal. 2014) ("[T]o the extent that an assignment was in fact robo-signed, it would be voidable, not void, at the injured party's option. Here, the injured party would be Wells Fargo Bank, not [the borrowers]."). As such, to the extent the Assignment was robo-signed, the Assignment would be voidable, not void, and Plaintiff would not have standing to challenge a voidable assignment.

In addition to a lack of standing, Plaintiff has not adequately alleged facts regarding the allegedly robo-signed Assignment. The prohibition of "robo-signing" derives from California's Homeowners Bill of Rights, which "did not go into effect until January 1, 2013." *Reed v. Wilmington Tr., N.A.*, 2016 WL 3124611, at *5 n.6 (N.D.

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Cal. June 3, 2016) (citing Cal. Civ. Code § 2924.17). "Courts have found that the statute does not apply retroactively." *Id.* (citing *Powell v. Wells Fargo Home Mortg.*, 2016 WL 1718189, at *9 (N.D. Cal. Apr. 29, 2016)).

Here, the Assignment, a recorded document of which this Court may take judicial notice, was signed on August 11, 2011. *See, e.g. Rosal v. First Federal Bank of California*, 671 F.Supp.2d 1111, 1121 (N.D. Cal. 2009) (taking judicial notice of documents recorded with the county recorder). As such, even if Plaintiff had standing, she could not base her claim that the Assignment is void, or even voidable, on the allegation that the Assignment was robo-signed.

iv. The Blank Indorsement and Securitization Arguments

With respect to the Blank Indorsement, Plaintiff alleges that: (A) the Blank Indorsement is robo-signed; (B) the Blank Indorsement was signed after Countrywide was bankrupt; (C) the Blank Indorsement is not specifically indorsed to BONYM; and (D) the Blank Indorsement is insufficient to transfer an interest to BONYM because the Note here was "securitized" and "non-negotiable."

As noted above, Plaintiff does not have standing to challenge an assignment based on robo-signing. Regarding Plaintiff's allegation that the signature is by an individual without authority because Countrywide was allegedly bankrupt at the time of signing, the Blank Indorsement is not dated and Plaintiff does not otherwise include allegations regarding the timing of Countrywide's bankruptcy or the signing of the Blank Indorsement. Plaintiff also does not allege why an entity's bankrupt status would prevent an agent from signing the Blank Indorsement. Thus, Plaintiff has not adequately alleged that the Blank Indorsement was signed by someone without authority.

Under the California Commercial Code, the "person entitled to enforce" an instrument means: (a) the holder of the instrument, (b) a non-holder in possession of the instrument who has the rights of a holder, or (c) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to sections 3309 or 3418(d). Cal. Com. Code § 3301; *In re Lee*, 408 B.R. 893, 899 (Bankr. C.D. Cal. 2009); *In re Vargas*, 396 B.R. 511 (Bankr. C.D. Cal. 2008). A person or entity in possession of an instrument is the holder of the instrument if the instrument is payable

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to that person or entity, or payable to the bearer. Cal. Com. Code § 1201(b)(21). An instrument is payable to the bearer if it does not state a payee or it is "indorsed in blank." Cal. Com. Code §§ 3109(a)(2), 3109(c), 3201(b) & 3205(b).

The Court may take judicial notice of its own record. *In re Owner Mgmt. Serv., LLC Tr. Corps*, 530 B.R. 711, 717-18 (Bankr. C.D. Cal. 2015). Here, BONYM has filed a proof of claim attaching the Note with the Blank Indorsement. As a holder of an instrument payable to the bearer, as defined above, BONYM is a "person entitled to enforce" the Note, and the Note need not be specifically indorsed to BONYM.

Finally, Plaintiff's securitization arguments are unclear. Plaintiff does not include any allegations regarding securitization in the Complaint. In the Complaint, Plaintiff states in a conclusory fashion that the Note is "non-negotiable" without any additional explanation. As noted above, promissory notes are "negotiable instrument[s] the lender may sell without notice to the borrower." *Yvanova*, 62 Cal.4th at 927 (citing *Creative Ventures*, 195 Cal.App.4th at 1445-46).

Under California law, a negotiable instrument is defined as "an unconditional promise or order to pay a fixed amount of money." Cal. Comm. Code § 3104(a). For an instrument to be negotiable under California law: (1) it must be made payable to bearer or order at the time it is issued or first comes into possession of a holder; (2) it must be payable on demand or at a definite time; and (3) it must not state any other undertaking or instruction by the person promising to do any act in addition to the payment of money, except that the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment. Cal. Comm. Code § 3104(a)(1)-(3).

In re Smith, 509 B.R. 260, 265-66 (Bankr. N.D. Cal. 2014). In *Smith*, the debtor obtained a loan from Reunion Mortgage, Inc. ("Reunion") and executed a promissory note payable to Reunion and secured by a deed of trust. *Id.*, at 261-62. Subsequently, CitiMortgage, Inc. ("Citi") purchased a pool of loans from Reunion, including the debtor's loan. *Id.* As part of this transaction, an agent of Reunion indorsed the promissory note in blank and transferred physical possession of the promissory note. *Id.*

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Citi then sold the loan to Freddie Mac. *Id.* An agent of Citi indorsed the promissory note in blank on behalf of Citi as the seller. *Id.* In accordance with the Freddie Mac Single Family/Single-Family Seller/Service Guide (the "Guide"), Citi continued to service the loan and, under the provisions of the Guide, was able to "physically possess and enforce the Note, have the Deed of Trust assigned to Citi when necessary, report information to [MERS], substitute a trustee to enforce the Deed of Trust, declare whether the loan is in default, collect payments due under the Note, and initiate foreclosure action." *Id.*, at 263. After purchasing the loan, Freddie Mac securitized the loan by placing the loan into a pool of mortgages. *Id.*

After the debtor defaulted, Citi retained Cal-Western Reconveyance Corporation ("Cal Western") to initiate foreclosure proceedings against the debtor's property. *Id.* At that time, Freddie Mac authorized Citi to cause the deed of trust to be assigned to Citi; as a result, an agent of MERS executed an assignment of the deed of trust to Citi. *Id.* Cal Western then executed a notice of default and, when the debtor failed to cure the default, a notice of trustee's sale. *Id.*, at 264.

The debtor then filed for bankruptcy protection. *Id.* In the debtor's bankruptcy case, Citi filed a proof of claim, attaching, among other documents, the promissory note, the deed of trust and the assignment of the deed of trust. *Id.* The debtor then filed an adversary proceeding against Citi and Freddie Mac, alleging that the defendants did not have an interest in the property, objecting to the proof of claim filed by Citi and requesting a judgment quieting title in the property. *Id.* In relevant part, the debtor argued that the promissory note was not a negotiable instrument and that securitization of the promissory note prevented Citi from enforcing the promissory note. *Id.*, at 265.

The *Smith* court held that there was no authority for the debtor's contention that securitization of the promissory note had an effect on Citi's right to foreclose. *Id.* In addition, the court concluded:

Here, the Note was made payable to the order of Reunion at the time it was issued. The Note is payable at a definite time, February 1, 2036. Finally, the Note does not require Borrowers to undertake any act other than the payment of money (with the exception of maintaining and protecting the Property to secure payment, as permitted under Cal.

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Comm. Code § 3104(a)(3)). The Note thus meets the requirements of a negotiable instrument under California law.

Id., at 266.

As in *Smith*, here, the Note was made payable to AWL at the time it was issued with a definite maturity date of June 1, 2035. The Note did not require Plaintiff to undertake any act other than the payment of money. As such, the Note also meets the requirements of a negotiable instrument under California law.

In addition, as in *Smith*, Plaintiff has not articulated why securitization of the Note would change this characterization or otherwise have an effect on BONYM's ability to enforce the Note. To the extent Plaintiff is now arguing that securitization of the Note had an effect on BONYM's ability to enforce the Note, because Plaintiff is not a party to any pool servicing agreement, Plaintiff "lacks standing to challenge the process by which [her] mortgage was (or was not) securitized." *Junger v. Bank of Am., N.A.*, 2012 WL 603262, at *3 (C.D. Cal. Feb. 24, 2012). In addition, "[t]he argument that parties lose their interest in a loan when it is assigned to a trust pool has... been rejected by many district courts." *Lane v. Vitek Real Estate Indus. Grp.*, 713 F.Supp.2d 1092, 1099 (E.D. Cal. 2010). As such, even if Plaintiff were to amend the Complaint to include the securitization arguments she makes in the Opposition, the allegations would be insufficient to state a claim for relief.

In light of the above, Plaintiff's allegations are insufficient to state a plausible claim that the Assignment is defective. Moreover, Plaintiff does not have standing to make many of the arguments above. Consequently, the Court will dismiss Plaintiff's request for a declaratory judgment and Plaintiff's objection to Defendants' proof of claim based on these allegations.

D. Plaintiff's Fraud Claim and Sanctions Request

The basis of Plaintiff's fraud claim is unclear. To properly plead fraud, Plaintiff must meet the heightened pleading requirements of Rule 9(b) and "state with particularity the circumstances constituting fraud...." Rule 9(b). As such, the Court may dismiss Plaintiff's fraud claim on this basis alone.

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However, in addition to Plaintiff's failure to plead with particularity, none of the allegations in the Complaint sufficiently state a claim for fraud. The elements of fraud under California and federal law are identical. Under federal common law—

To establish a fraud claim under federal common law, a plaintiff must prove (i) debtor made a material false representation, (ii) *scienter*: debtor made the representation knowing of its falsity, (iii) debtor acted with intent to defraud plaintiff, (iv) plaintiff justifiably relied on the false representation and (v) plaintiff suffered damages that were the proximate cause of plaintiffs' reliance. Restatement (Second) of Torts 1976 ("Restatement") §§ 525, 546 and 548A.

In re Madigan, 2018 WL 2143315, at *9 (Bankr. N.D.N.Y. May 8, 2018). Under California law—

(1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages.

West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 792 (Ct. App. 2013).

Here, other than conclusory allegations that BONYM "manufactured and/or fabricated" the Assignment, there are no allegations related to any of these elements. To the extent Plaintiff is basing her fraud claim on any of the allegations above regarding alleged invalidity of the Assignment, Plaintiff has failed to allege adequately that the Assignment was defective at all, let alone that BONYM fraudulently filed a defective assignment.

Plaintiff also alleges that BONYM improperly filed redacted copies of the Note and the DOT. However, with the exception that BONYM includes the Blank Indorsement attached to the Note, there are no material differences between the Note and the DOT attached by BONYM and the Note and the DOT incorporated by Plaintiff into the Complaint. To the extent Plaintiff questions the validity of the Note based on inclusion of the Blank Indorsement, Plaintiff has not explained why a subsequent

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attachment of the Blank Indorsement for the purpose of transferring the Note would be impermissible; as noted above, under California law, it is legal to transfer promissory notes using blank indorsements.

Plaintiff also appears to argue that the filing of the proof of claim was fraudulent because BONYM did not adequately itemize its fees and charges. Plaintiff also contends that BONYM filed the proof of claim in violation of the automatic stay. However, as discussed below, BONYM properly itemized its fees and charges in an attachment to the proof of claim. Moreover, "[t]he filing of a Proof of Claim before a bankruptcy court, which is in control over the process of administering the property of the bankruptcy estate... cannot itself constitute a violation of the stay...." *In re Sammon*, 253 B.R. 672, 681 (Bankr. D.S.C. 2000); *see also In re Teerlink Ranch Ltd.*, 886 F.2d 1233, 1237 (9th Cir. 1989) ("The stay does not operate against the court with jurisdiction over the bankrupt."). As a result, Plaintiff has not stated a claim for relief as to fraud or for sanctions arising from a violation of the automatic stay.

E. Plaintiff's Objection Based on Documentation Attached to the Proof of Claim

Pursuant to FRBP 3001(c)(2)—

In a case in which the debtor is an individual:

- (A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.
- (B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.
- (C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of

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the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

- (i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
- (ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Here, contrary to the allegations in the Complaint, the Court takes judicial notice of the fact that Defendants' proof of claim is supported by the documentation and information required by FRBP 3001(c). The Note, incorporated into the Complaint, plainly provides that, upon default, Plaintiff is liable for late charges and costs and expenses incurred by the failure to pay, including reasonable attorneys' fees. Note, p. 2. Plaintiff's conclusory allegations that the documented fees and charges are "false" are insufficient to state a plausible claim against Defendants, or to disallow Defendants' claim against the estate. "To defeat [a claim against the estate], 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). Because none of the allegations would suffice to defeat Defendants' claim under this standard, Plaintiff also has failed to allege that Defendants' claim should be disallowed on this basis.

III. CONCLUSION

The Court will dismiss the Complaint. With the exception of Plaintiff's challenge to the charges, fees and costs and Plaintiff's unclean hands argument in the Opposition, the Court will dismiss all claims without leave to amend. Plaintiff cannot cure the deficiencies related to standing, and the remaining allegations made by Plaintiff are either contradicted by the judicially noticeable record or grounded on an incorrect

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interpretation of the law.

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The Court will dismiss the Complaint as to Plaintiff's challenge to additional charges, fees and costs associated with Defendants' claim without prejudice, but will direct Plaintiff to file any challenges to these charges, fees and costs in connection with Plaintiff's objection to Defendants' claim in the main bankruptcy case. The Court will dismiss Plaintiff's argument regarding unclean hands with leave to amend.

If Plaintiff elects to file an amended complaint regarding Plaintiff's unclean hands argument, Plaintiff must file and serve an amended complaint **no later than May 8, 2019**. In an amended complaint, Plaintiff should not include any allegations regarding the claims that were dismissed with prejudice, or regarding Plaintiff's dispute over the charges, fees and costs associated with Defendants' proof of claim, which arguments the Court will address in connection with Plaintiff's objection to Defendants' claim.

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

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

Defendant(s):

New Penn Financial, LLC dba

Pro Se

The Bank of New York Mellon fka

Pro Se

New Penn Financial, LLC DBA

Represented By
Erin M McCartney

Movant(s):

New Penn Financial, LLC DBA

Represented By
Erin M McCartney

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Plaintiff(s):

Cindy Park

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:17-10266 Cindy Park

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Adv#: 1:18-01125 Park v. New Penn Financial, LLC dba Shellpoint Mortgage Se

- #20.00** Status conference re: complaint of the plaintiff pursuant to 11 U.S.C. section 506(a),(d) and Bankruptcy Rule 3012 to determine;
- 1) The fraud upon the court,
 - 2) The validity of creditor's proof of claim,
 - 3) The value of the security, and,
 - 4) Claim for damages, sanctions and injunctive relief

fr. 2/13/19

Docket 1

Tentative Ruling:

See calendar no. 19.

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

Defendant(s):

New Penn Financial, LLC dba

Pro Se

The Bank of New York Mellon fka

Pro Se

Plaintiff(s):

Cindy Park

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:18-01105 QUEEN et al v. Anderson

#21.00 Motion for default judgment under LBR 7055-1

Docket 16

Tentative Ruling:

Grant the motion as to 11 U.S.C. §§ 727(a)(3), (a)(4), (a)(5) and (a)(6)(A) and deny as to 11 U.S.C. § 727(a)(2)(A), for the reasons discussed below.

I. BACKGROUND

On June 12, 2018, Christopher Anderson ("Defendant") filed a voluntary chapter 7 petition, initiating case 1:18-bk-11488-VK. On July 27, 2018, Wayne Queen and Tony Wayne Blassingame ("Plaintiffs") filed a motion for a Federal Rule of Bankruptcy Procedure ("FRBP") 2004 examination of Defendant and production of documents (the "2004 Motion") [doc. 22]. On August 6, 2018, the Court entered an order granting the 2004 Motion (the "2004 Order") [doc. 33].

On September 13, 2018, Plaintiffs filed a complaint against Defendant (the "Complaint"), objecting to discharge under 11 U.S.C. §§ 727(a)(2)(A), (a)(3), (a)(4), (a)(5), (a)(6) and (c)(1) and requesting nondischargeability of the debt owed to them pursuant to 11 U.S.C. §§ 523(a)(2)(A) and (a)(6), initiating case 1:18-ap-01105-VK. In relevant part, the Complaint alleges:

Plaintiffs were listed as unsecured creditors in the amount of \$12,573,736.00 on Defendant's schedule E/F. Based upon the information provided in Defendant's schedules and statements, Defendant's bankruptcy case appears to be a no asset case.

Plaintiffs are informed that Defendant with intent to hinder, delay or defraud a creditor of the estate, transferred or concealed, or permitted to be transferred or concealed, the assets of Sharp Image Gaming, Inc. ("Sharp"), a company owned and controlled by Defendant, and in Catco Gaming, Inc. ("Catco"), a company owned and controlled by Defendant. Further,

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Defendant has a secret interest in a verbal contract, entered into about August or September 2017, for the development of three Indian casinos.

Defendant has unjustifiably concealed, destroyed or failed to keep or preserve recorded information from which Defendant's financial affairs might be ascertained.

Defendant has made numerous false oaths relating to his bankruptcy schedules and statements including: (1) listing an incorrect address; (2) failing to provide dbas for himself and his companies for the last eight years; (3) listing an incorrect value for his household goods and furnishings; (4) intentionally failing to list all creditors; (5) failing to list his co-debtor's, including his wife; (6) listing that he did not live in a community property state; (7) listing that he was not employed and had \$0.00 income, other than contributions from his family; (8) listing that he had no income from operating a business in 2016, 2017 and 2018; (9) listing that he did not make any payments to insiders or transfer of property within one year prior to filing; (10) listing that his property was not in the possession of a court appointed receiver within one year of filing; and (11) listing that he did not store property in a storage unit.

Defendant has failed to satisfactorily explain the loss of assets or deficiency of assets to meet Defendant's liabilities. Finally, Defendant has refused to obey the 2004 Order.

On September 14, 2018, Plaintiffs served a summons (the "Summons") and the Complaint on Defendant [doc. 2]. On October 15, 2018, Defendant filed an Answer (the "Answer") to the Complaint [doc. 6].

On October 24, 2018, Plaintiffs filed a unilateral status report [doc. 7]. On November 7, 2018, Defendant failed to appear at a status conference, and on November 8, 2018, the Court issued an *Order to Show Cause Why Defendant's Answer Should Not Be Stricken for Failure to Prosecute* (the "OSC"). On November 28, 2018, Plaintiffs' counsel, Michael Goch, filed a Declaration outlining several attempts to contact Defendant to meet and confer with respect to the status conference.

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On December 12, 2018, Defendant did not appear for the OSC hearing. On December 17, 2018, the Court entered an order to strike Defendant's answer [doc. 14]. The Court also ruled that the Plaintiffs may proceed by way of default judgment.

On February 27, 2019, Plaintiffs filed a motion for default judgment as to the 11 U.S.C. § 727 claims (the "Motion") [doc. 16]. Along with the Motion, Plaintiffs also filed a memorandum of points and authorities [doc. 17], the declaration of Michael Goch in Support of the Motion (the "Goch Declaration") [doc. 18] and a request for judicial notice [doc. 19]. Defendant has not filed a response to the Motion.

II. DISCUSSION

Federal Rule of Civil Procedure ("FRCP") 55, incorporated by Federal Rule of Bankruptcy Procedure ("FRBP") 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

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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.

"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*,

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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 Plaintiffs

Given Defendant's failure to prosecute his case or respond and cooperate with Plaintiffs, without relief through default judgment, Plaintiffs will be prejudiced.

B. Merits of the Plaintiffs' Substantive Claim

1. 11 U.S.C. § 727(a)(2)(A)

Section 727(a)(2)(A) 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.

"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).

On June 12, 2018, Defendant filed his bankruptcy petition. Under a § 727(a)(2)(A) claim, the relevant period (the one year before the date of the filing of the petition) is between June 12, 2017 and June 12, 2018. Plaintiffs have failed to allege in their pleadings any specific transfers or concealment by the Defendant within the relevant period. In the testimony, Defendant admitted that some payments likely were made from March 2018 through June 2018 in connection with "cleaning out the business," as well as repayment to his son. (Goch Decl., Exh A at 68-69). Defendant also

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testified that Crystal Farias transferred the machinery and equipment from Catco to her company. However, Defendant did not testify when these transfers occurred. Presumably, Plaintiffs want the Court to infer that the assets were transferred or concealed during the relevant period. However, to support this inference, there is neither sufficient allegations nor evidence.

2. *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 their 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).

Here, the Goch Declaration establishes a claim under § 727(a)(3). Plaintiffs assert that Defendant failed to provide documents regarding the Defendant's financial condition or business transactions. The only documents provided were individual tax returns for 2013 – 2017, Sharp's corporate returns for 2013 – 2016, Catco's corporate returns for 2013 – 2017, and a two-page summary of disbursement of approximately \$450,000 in proceeds from the September 2017 secured loan. Defendant provided no records regarding the \$9,250,000.00 Defendant borrowed from Plaintiffs between May 1, 2014 and July 24, 2015. Defendant himself admitted in the 2004 examination that, "We never did any financial statements." (Goch Decl., Exh A, at 17).

Plaintiffs have shown that they attempted to obtain records from the Defendant on several occasions, including pursuant to the 2004 Order, at the FRBP 2004

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examination and at the § 341(a) meeting held in September 2018. Defendant referred to bank records, checks, and corporate books in his testimony, and stated he would "look for" records, including those related to loans, sale of assets of companies and return of equipment and submit them as required by the 2004 Order within ten days. (Goch Decl., Exh A, at 62, 76). However, Defendant never produced the documents.

As a result of Defendant's failure to submit these documents, Plaintiffs assert that they are unable to ascertain any detail regarding Defendant's material business transactions. Considering the absence of recorded information related to Defendant's entities and material business transactions, Plaintiffs have sustained their burden under § 727(a) (3).

3. *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

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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).

Defendant signed his schedules and Statement of Financial Affairs ("SOFA"), under penalty of perjury, stating that they were true and correct. Plaintiffs allege that Defendant knew then that they were not true and correct. Despite his sworn testimony as to several inaccuracies in the 2004 examination, and contradictions presented at the § 341(a) meeting, Defendant has amended his schedules only to add one credit card and one creditor.

In the 2004 examination, Defendant admitted that he intentionally failed to list four creditors (Goch Decl., Exh A, at 30-31). He also testified that he intentionally failed to list a credit card account so that he could continue to use it. (Goch Decl., Exh A, at 41-42; Exh C. at 26, 63). Plaintiffs allege several other false statements in Defendant's schedules and SOFA, including failure to list: (i) his correct residential address; (ii) all his names and alias in the last eight years; (iii) true value of goods and furnishings, including all electronics; (iv) the name of co-debtor, Kelli Anderson, his wife from whom he is now separated; (v) that he lived in a community property state; (vi) his residences in the last 3 years; (vii) income from employment, including casino consulting and royalties received (Goch Decl., Exh A, at 27-29; Exh D. at 20); (viii) reimbursements to his son(s) in the amounts of \$60,000 and \$25,000 (Goch Decl. Exh A, at 69); (ix) a true and complete answer as to whether he had sold, traded, or otherwise transferred property to anyone and whether any financial accounts in his name or for his benefit were closed, sold, or transferred; and (x) several representations as to gifts, insurance policies, and status of his accounts, storage facilities, etc.

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Several false representations made by Defendant were material because they were directly related to the business transactions and disposition of property – namely, his intermittent income from consulting and royalties and the disposition of his assets and property. Further, Defendant admitted he did not even read the schedules and SOFA before signing them. (Goch Decl., Exh A, at 50, 67). Defendant's admissions of inaccuracies and reckless disregard for the accuracy of his schedules and SOFA support a finding of fraudulent intent. As a result of these vague and inaccurate representations, Plaintiffs are unable to ascertain the status of Defendant's financial affairs and the disposition of the proceeds of Plaintiffs' loans. Plaintiffs have presented sufficient factual allegations to support a § 727(a)(4)(A) claim.

4. 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).

In determining the appropriate time period from the petition date, there is no hard and fast rule. How far prepetition a court should look back depends on the case. *In re Kerr*, 556 B.R. 343 (Bankr. N.D. Ohio 2016); *In re Darr*, 472 B.R. 888 (Bankr. E.D. Mo. 2012). A focus on the two years prior to the bankruptcy filing is common, but inquiries beyond the two-year period may be warranted. *In re Virani*, 574 B.R. 338 (Bankr. N.D. Ga. 2017). A court may look back to funds that debtor had borrowed five to seven years prepetition if the size of the loans is significant. *In re Racer*, 580 B.R. 45 (Bankr. E.D. N.Y. 2018) (holding that inquiry into loans obtained five to seven years pre-petition was appropriate given the size of loans, in aggregate of \$1.5 million).

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Plaintiffs assert that Defendant's discharge should be denied because Defendant has not satisfactorily explained the disposition of approximately \$9,250,000.00 that Defendant borrowed between May 2014 and July 2015. Given that the sum in dispute is significant, a look-back period of four years pre-petition is appropriate.

As discussed earlier concerning the § 727(a)(3) claim, Defendant has repeatedly failed to produce sufficient documentation or records concerning these funds or the disposition of any of his companies' assets. Defendant's testimony in the FRBP 2004 Examination explains that Plaintiffs' funds were used to open Catco. (Goch Decl., Exh A, at 21). When asked, "What happened to the assets of Catco?" Defendant responded, "All disbursed to return back to financiers. Some of the sold to pay – continue to pay bills that were owed by the company." *Id.* In questioning that followed, Defendant admitted no monies were paid to Plaintiffs. *Id.* Although Defendant promised to provide records regarding the dissolution of the company, despite repeated requests, he has yet to provide any documentation.

Although large amounts of money were loaned and transferred into personal accounts of Defendant, Defendant has vague, if any, explanations for where the money went, with no records presented to date. As such, Plaintiffs have met their burden, and the Court will enter judgment on Plaintiffs' claim under § 727(a)(5).

5. *11 U.S.C. § 727(a)(6)(A)*

Section 727(a)(6) provides that the court shall grant the debtor a discharge, unless "the debtor has refused, in the case – (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify."

To warrant denial of discharge, debtor's failure and refusal to comply with a lawful court order must be willful and intentional, not merely the showing of a mistake or the inability to comply. *In re Lebbos*, 439 B.R. 154, 165 (E.D. Cal. 2010), *aff'd*, 529 F. App'x 854 (9th Cir. 2013) (holding the debtor knowingly and willfully violated the court's orders . . . by failing to appear at two examinations and continually failing to produce books and records requested by the trustee.) *In re Jordan*, 521 F.3d 430, 433–434 (4th Cir.2008); *In re Foster*, 335 B.R. 709, 55 Collier Bankr. Cas. 2d (MB) 1006 (Bankr. W.D. Mo. 2006); *In re Green*, 335 B.R. 181 (Bankr. D. Utah 2005).

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Here, Plaintiffs allege that Defendant violated the 2004 Order by producing only a few documents in response to the 73 categories of documents required. As discussed earlier, despite repeated requests to provide records, including assurances made by Defendant during the 2004 examination to comply, Defendant has refused to obey the 2004 Order. Further, Defendant's 2004 examination had to be continued to September 13, 2018. Defendant never appeared at the continued 2004 exam [doc. 18, Exh. B]. There is no suggestion from Defendant that he failed to obey the 2004 Order due to inadvertency, mistake or inability to comply. Plaintiffs have presented evidence sufficient to satisfy the standard for denial of discharge under §727(a)(6)(A).

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.

In the event default judgment is not granted under §727, Plaintiffs reserve the right to bring a motion for default judgment under 11 U.S.C. § 523. The Motion requests default judgment only under their 11 U.S.C. § 727 claims. As to these claims, the Complaint makes similar allegations as the statements in the Goch Declaration. As such, for the reasons stated above, the Complaint sufficiently states a claim against Defendant.

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).

Plaintiffs are requesting a denial of discharge pursuant to 11 U.S.C. § 727. The Motion specifies amounts owed to each Plaintiff: \$8,650,620.00, inclusive of interest

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and attorneys' fees, to Queen and \$4,987,149.00, inclusive of interest and attorneys' fees, to Blassingame. Given the significant amount in dispute and Defendant's failure to participate, this factor weighs in favor of default judgment.

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)).

While there is a possibility of dispute over Defendant's intent, Defendant has had multiple opportunities to dispute the merits of Plaintiffs' claims and has chosen not to proceed. Given that Defendant filed the Answer on October 15, 2018, Defendant is aware of this adversary proceeding and was given an opportunity to defend himself on the merits. However, Defendant failed to defend his case. Considering Defendant's knowledge of the proceedings and failure to participate, this factor weighs in favor of default judgment.

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)).

As mentioned above, given that Defendant filed the Answer, Defendant is aware of this adversary proceeding, and he was given an opportunity to defend himself on the merits. As such, this factor also weighs in favor of default judgment.

III. CONCLUSION

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For the reasons discussed above, the Court will grant the Motion as to 11 U.S.C. §§ 727(a)(3), (a)(4), (a)(5) and (a)(6)(A) and deny as to 11 U.S.C. § 727(a)(2)(A).

Plaintiffs must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT 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.

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Christopher Anderson

Represented By
Daniel King

Plaintiff(s):

WAYNE QUEEN

Represented By
Michael Goch

TONY WAYNE BLASSINGAME

Represented By
Michael Goch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:18-01105 QUEEN et al v. Anderson

#22.00 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; 12/12/18; 4/3/19

Docket 1

Tentative Ruling:

See calendar no. 21.

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

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Thursday, April 25, 2019

Hearing Room 301

10:30 AM

1:11-23855 Edward E. Elliott

Chapter 7

#1.00 Trustee's final report and applications for compensation

Diane C. Weil, Chapter 7 Trustee

Danning Gill Diamnd & Kollitz, LLP, Attorneys for Chapter 7 Trustee

Tenina Law, APC, Attorney for Chapter 7 Trustee

Grobstein Teeple, LLP, Accountants for Chapter 7 Trustee

Docket 228

Tentative Ruling:

Diane C. Weil, chapter 7 trustee – approve fees of \$32,861.13 and reimbursement of expenses of \$399.89 on a final basis. The trustee is authorized to collect the pro rata reduced amount of \$15,729.10 in fees and 100% of the approved expenses.

Danning, Gill, Diamond & Kollitz LLP (“Danning Gill”), counsel to chapter 7 trustee – approve fees of \$270,224.73 and reimbursement of expenses of \$6,076.68 on a final basis. All fees and expenses approved on an interim basis are approved on a final basis. Danning Gill is authorized to collect the pro rata reduced amount of \$106,780.04 in fees and 100% of the approved expenses.

Tenina Law, APC (“Tenina Law”), former counsel to chapter 7 trustee – approve fees of \$22,295.00 and reimbursement of expenses of \$705.00, pursuant to the stipulation entered into between the chapter 7 trustee and Tenina Law [doc. 220].

Grobstein Teeple, LLP (“Grobstein Teeple”), accountant to chapter 7 trustee – approve fees of \$10,357.50 and reimbursement of expenses of \$128.91. Grobstein Teeple is authorized to collect the pro rata reduced amount of \$4,957.66 in fees and \$128.91 in expenses.

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

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CONT... Edward E. Elliott 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.

Party Information

Debtor(s):

Edward E. Elliott

Represented By
Gail Higgins - DISBARRED -
Andrew Edward Smyth

Trustee(s):

Diane C Weil (TR)

Represented By
Alla Tenina

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10:30 AM

1:16-10440 Salvador Nevarez

Chapter 7

#2.00 Trustee's final report and applications for compensation

Nancy Zamora, Chapter 7 Trustee

Larry D. Simons, Attorney for Chapter 7 Trustee

LEA Accountancy, LLP, Accountants for Chapter 7 Trustee

Docket 84

Tentative Ruling:

Nancy Hoffmeier Zamora, Esq., chapter 7 trustee – approve fees of \$3,350.00 and reimbursement of expenses of \$1,000.00 on a final basis. The trustee is authorized to collect 100% of the approved fees and expenses.

In accordance with Local Bankruptcy Rule 2016-2(a), the chapter 7 trustee may disburse up to \$1,000.00 from estate funds to pay certain actual and necessary expenses of the estate without further court authorization. The chapter 7 trustee has requested that the Court approve reimbursement of \$1,231.00 for expenses. If the trustee wishes to receive more than \$1,000.00, she must provide a summary listing of all expenses by category in accordance with Local Bankruptcy Rules 2016-1(c)(2) and 2016-1(a)(1)(F).

The Law Offices of Larry D. Simons, counsel to chapter 7 trustee – approve fees of \$14,320 in fees, pursuant to the stipulation entered into between the United States Trustee and The Law Offices of Larry D. Simons [doc. 83], and reimbursement of expenses of \$218.27.

LEA Accountancy, LLP, accountant to chapter 7 trustee – approve \$4,000.00 in fees, pursuant to the stipulation entered into between the chapter 7 trustee and LEA Accountancy, LLP [doc. 81], and reimbursement of \$254.37 in expenses.

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

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CONT... Salvador Nevarez

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is required and the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Salvador Nevarez

Represented By
Richard McGuire
Edmond Richard McGuire
Phillip Myer

Trustee(s):

Nancy J Zamora (TR)

Represented By
Larry D Simons
Frank X Ruggier

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1:18-11193 Renzo M Castro and Rizielina R Castro

Chapter 7

#3.00 Trustee's final report and applications for compensation

Amy Goldman, Chapter 7 Trustee

Docket 30

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee - approve fees of \$770.19 and reimbursement of expenses of \$5.85.

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 will be so notified.

Party Information

Debtor(s):

Renzo M Castro

Represented By
Moises S Bardavid

Joint Debtor(s):

Rizielina R Castro

Represented By
Moises S Bardavid

Trustee(s):

Amy L Goldman (TR)

Pro Se

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10:30 AM

1:18-11815 Shahrzad Ranjbaran

Chapter 7

#4.00 Trustee's final report and applications for compensation

Amy Goldman, Chapter 7 Trustee

Docket 29

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee - approve fees of \$1,500.00 and reimbursement of expenses of \$7.35.

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 will be so notified.

Party Information

Debtor(s):

Shahrzad Ranjbaran

Represented By
Daniel King

Trustee(s):

Amy L Goldman (TR)

Pro Se

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10:30 AM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#5.00 Application for payment of interim fees and/or expenses
for Reorganization Counsel to Debtor in Possession

fr. 1/24/19; 2/7/19

Docket 90

Tentative Ruling:

The debtor has not timely filed its Monthly Operating Report for April 2019 and its proposed plan and related proposed disclosure statement.

Ruling from February 7, 2019

Law Offices of David A. Tilem ("Applicant"), counsel to the debtor and the debtor in possession – approve fees in the amount of \$58,396.00 and reimbursement of expenses in the amount of \$1,126.67, pursuant to 11 U.S.C. § 331, for the period between August 22, 2018 through November 30, 2018, on an interim basis. Applicant may collect 100% of the approved expenses at this time.

At this time, it remains unclear how the debtor is able to pay the approved fees (aside from those fees that can be satisfied with the prepetition retainer). As of December 31, 2019, the debtor's general debtor in possession account had an ending balance of \$11,105.58. Although the cash collateral account had an ending balance of \$43,048.73, the Court has not approved use of \$16,667.00 per month which the debtor receives from Automated Systems America, Inc. These funds may not be used to pay Applicant's interim allowed fees.

In order to assess the debtor's ability to pay the approved fees, the Court will continue this hearing to April 25, 2019 at 10:30 a.m., by which time the debtor will have filed its proposed plan and disclosure statement.

The Court will not approve \$1,260.00 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

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CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

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.

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 will not approve the fees billed by Applicant for the services identified below:

Category	Date	Timekeeper	Description	Time	Rate	Fee
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Chapter 11

Chapter 11 General	9/5/18	JJF	Prepare and file deficiencies	0.80	\$150.00	\$120.00
Office of U.S. Trustee Matters	8/27/18	JJF	Prepare 7-day package	1.00	\$150.00	\$150.00
Office of U.S. Trustee Matters	8/27/18	JJF	Prepare and assemble 7-day package	1.00	\$150.00	\$150.00
Office of U.S. Trustee Matters	8/28/18	JJF	Prepare updates to 7-day packages	1.50	\$150.00	\$225.00
Office of U.S. Trustee Matters	8/29/18	JJF	Prepare and assemble 7-day package	3.00	\$150.00	\$450.00
Cash Collateral Issues	9/17/18	JJF	Redact bank statements for discovery	0.80	\$150.00	\$120.00
Cash Collateral Issues	9/17/18	JJF	Prepare and assemble reply to VitaVet	0.30	\$150.00	\$45.00

Appearances on February 7, 2019 are excused.

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

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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1:00 PM

1:17-13142 Amir Elosseini

Chapter 11

#6.00 Status conference re: chapter 11 case

fr. 2/8/18; 8/16/18; 11/15/18, 1/24/19; 3/14/19

Docket 1

Tentative Ruling:

Has the debtor paid United States trustee quarterly fees for the first quarter of 2019?

On April 11, 2019, the debtor filed an application to employ Donald Pyne as a certified public accountant [doc. 120] and an application to employ Anonio Vaziri as a real estate broker [doc. 119]. In both applications the debtor is requesting approval of employment *nunc pro tunc* as of February 6, 2019 and December 31, 2018, respectively.

"Both § 327 and Bankruptcy Rule 2014 explicitly require attorneys [and other professionals] to seek the approval of the court before they commence employment for the estate." *In re Downtown Inv. Club III*, 89 B.R. 59, 63 (B.A.P. 9th Cir. 1988). "The Ninth Circuit allows retroactive (*nunc pro tunc*) awards of fees for services rendered without prior court approval where: (1) the applicant has a satisfactory explanation for the failure to receive prior judicial approval; and (2) the applicant has benefitted the estate in some significant manner." *In re Mehdipour*, 202 B.R. 474, 479 (B.A.P. 9th Cir. 1996), *aff'd*, 139 F.3d 1303 (9th Cir. 1998). "These strict requirements are not to be taken lightly 'lest it be too easy to circumvent the statutory requirement of prior approval.'" *Id.* (quoting *In re B.E.S. Concrete Prods., Inc.*, 93 B.R. 228, 231 (Bankr.E.D.Cal.1988)). "A retroactive authorization order should not be issued where the lateness in seeking court approval of employment is accompanied by inexcusable or unexplained negligence." *Downtown*, 89 B.R. at 63–64.

Under Local Bankruptcy Rule 2014-1(b)(E), "an application for the employment of counsel for a debtor in possession should be filed as promptly as possible after the commencement of the case, and an application for employment of any other professional person should be filed as promptly as possible after such person has been engaged."

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Amir Elosseini

Chapter 11

Here, the debtor has not explained in either application what circumstances exist such that the Court should approve employment *nunc pro tunc*. Further, on April 15, 2019, the United States trustee filed an objection to the motion to employ Donald Payne as a certified public accountant [doc. 123].

Party Information

Debtor(s):

Amir Elosseini

Represented By
Kevin Tang

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1:18-10417 Deborah Lois Adri

Chapter 11

#7.00 Status conference re: chapter 11 case

from: 3/29/18; 4/12/18; 11/15/18; 12/6/18; 1/17/19; 2/7/19;
3/14/19

Docket 1

***** VACATED *** REASON: Order converting case to one under chapter
7 entered on 4/8/19 [doc. 305]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan

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1:18-11580 Kaliston Jose Nader

Chapter 11

#8.00 Status conference re: chapter 11 case

from: 8/2/18; 1/17/19; 2/21/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on June 20, 2019**, to assess if the debtor has timely filed a proposed chapter 11 plan and related disclosure statement by the extended deadline of June 15, 2019. If the debtor does not timely file a proposed chapter 11 plan and related disclosure statement, no later than **June 17, 2019**, the debtor must file and serve a status report, **supported by evidence**, explaining why the debtor did not timely file the documents.

Appearances on April 25, 2019 are excused.

Party Information

Debtor(s):

Kaliston Jose Nader

Represented By
Onyinye N Anyama

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1:18-12607 Claudia Carola Gonzalez

Chapter 7

#9.00 U.S. Trustee's motion under 11 U.S.C. sec 110 for disgorgement of fees and fines against bankruptcy petition preparer Claudia Cisneros

Docket 17

Tentative Ruling:

Grant. Pursuant to 11 U.S.C. § 110(h)(5), respondent must remit the fines set forth below to the Office of the U.S. Trustee:

1. Respondent failed to sign and print her name and address on the Bankruptcy Petition Preparer Declaration and the Bankruptcy Petition Preparer Disclosure as commanded by 11 U.S.C. § 110(b)(1): **\$500.00** (\$250.00 per violation)
2. Respondent failed to place on the Bankruptcy Petition Preparer Declaration and the Bankruptcy Petition Preparer Disclosure an identifying number that identifies those who prepared the document as mandated by 11 U.S.C. § 110(c)(1): **\$500.00** (\$250.00 per violation)
3. Respondent failed to file an accurate declaration under penalty of perjury disclosing the fee they received on behalf of the debtor(s) as dictated by 11 U.S.C. § 110(h)(2): **\$250.00**
4. Respondent failed to prove the debtor a copy of the documents filed on her behalf as commanded by 11 U.S.C. § 110(d): **\$250.00**
5. Respondent gave legal advice in violation of 11 U.S.C. § 110(e)(2): **\$250.00**
6. Respondent used the word "legal" in advertisements in violation of 11 U.S.C. § 110(f): **\$250.00**
7. Respondent received payment from the debtor for the court fees in connection with filing the petition in violation of 11 U.S.C. § 110(g): **\$250.00**

Because respondent did not disclose her identity, the Court will triple these fines

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CONT... Claudia Carola Gonzalez Chapter 7

pursuant to 11 U.S.C. § 110(1)(2)(D), for a total of **\$6,750.00**. Pursuant to 11 U.S.C. § 110(h)(3)(A)(i), the Court will also require disgorgement of **\$1,500.00** in unreasonable fees paid by the debtor.

In addition, by forging the debtor's signature on the substitution of attorney, respondent acted fraudulently in violation of 11 U.S.C. § 110(i)(1). Respondent must pay damages in the amount of **\$2,000.00** to the debtor and **\$1,000.00** to the movant plus reasonable attorneys' fees and costs incurred.

Thus, respondent must remit the following amounts to the Office of the U.S. Trustee: **\$3,500.00** (to be remitted/disgorged to the debtor pursuant to 11 U.S.C. § 110(h)(3) and 11 U.S.C. § 110(i)) and **\$7,750.00** (payable to the U.S. Trustee). Respondent must send **certified** funds to the Office of the U.S. Trustee within 30 days after the order is served.

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

Party Information

Debtor(s):

Claudia Carola Gonzalez

Represented By
Isaac Goss Dillon

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#10.00 Status conference re: chapter 11 case
fr. 4/4/19

Docket 1

Tentative Ruling:

The Court will set a hearing on the adequacy of the disclosure statement [doc. 48] describing the debtor's proposed chapter 11 plan [doc. 46] for hearing at **1:00 p.m. on June 20, 2019**. No later than **May 9, 2019**, the debtor must file and serve notice of the hearing on the adequacy of the disclosure statement.

The Court will continue this status conference to **1:00 p.m. on August 16, 2019**.

Appearances on April 25, 2019 are excused.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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1:19-10299 Paula Parisi

Chapter 11

#11.00 Status conference re chapter 11 case

Docket 1

Tentative Ruling:

The Court will continue this status conference to **May 23, 2019 at 1:00 p.m.**, to be held subsequent to the debtor's continued § 341(a) meeting of creditors on April 25, 2019.

Deadline to file proof of claim ("Bar Date"): **July 1, 2019**

Deadline to mail notice of Bar Date: **May 1, 2019**

The debtor has not filed any monthly operating reports ("MORs"). The debtor should have filed the February 2019 MOR by March 15, 2019 and the debtor's March 2019 MOR by April 15, 2019.

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (4)(F), in light of the debtor's failure to file MORs on a timely basis, there is cause for the Court to dismiss or convert this case to one under chapter 7.

No later than **May 15, 2019**, the debtor must have filed each of the MORs due for the post-petition period through April 2019. If the debtor has not done so timely, at the continued status conference, the Court may dismiss this case.

The Court will prepare the order.

Appearances on April 25, 2019 are excused.

Party Information

Debtor(s):

Paula Parisi

Pro Se

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1:10-17214 Darin Davis

Chapter 7

#12.00 Trustee's objection to proofs of claim nos. 4 and 15 filed by Asphalt Professionals, Inc.

fr. 2/21/19; 3/14/19

Docket 257

Tentative Ruling:

The Court will sustain the Trustee's objection to API's claim in full. [FN1].

I. BACKGROUND

Addition background information may be found in the Court's ruling from March 14, 2019, set forth below (the "Prior Ruling").

On March 14, 2019, the Court held a hearing on the Objection. At that time, the Court issued the Prior Ruling, but continued the hearing on the Objection to provide API an opportunity to offer additional evidence *solely* as to the following issue:

No later than April 4, 2019, API must file and serve evidence of its entitlement to **unpaid** attorneys' fees incurred litigating the second phase of the State Court Action (including appeals).... *The Court will not entertain additional briefing on any issue other than whether API is entitled to such additional attorneys' fees, as a prevailing party in the State Court Action.*

If API does not timely provide evidence of its entitlement to such attorneys' fees, or if the request for an award of such additional attorneys' fees is time barred or API is otherwise not entitled to an award of such additional attorneys' fees, the Court will disallow API's claim in full.

Prior Ruling, p. 25.

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On April 4, 2019, API filed a supplemental brief in response to the Prior Ruling ("API's Supplemental Brief") [doc. 272]. In API's Supplemental Brief, API contends that the "State Court never awarded attorney's fees to API for prosecuting the alter ego phase of the State Court Action as to" Debtor, and that the state court created a special protocol allowing the parties to file a motion for attorneys' fees at the conclusion of the entire State Court Action, which remains pending. API's Supplemental Brief, 2:20-21. As support for this contention, API attaches a Minute Order issued by the state court and dated April 10, 2013 (the "Minute Order"). API's Supplemental Brief, Exhibit F. In the Minute Order, the state court provided:

After the first phase, the court proposed without objection that attorney fees and costs incurred on Phase I would be subject to immediate hearing and review; without prejudice to attorney fees and costs incurred after such hearing in any subsequent facet of the case. This is how the parties then proceeded, as did the Court of Appeal, which accepted the parties' hypothesis that each phase and its associated fee/cost issues would be deemed final for purposes of review as the case progressed.

It was only after defendants inadvertently forgot to timely seek fee/cost orders as to some marginal defendants that were quietly culled out by the court during the Phase II "alter ego" portion- that the agreed-upon protocol over a course of years suddenly became an "option" to the defendants to wait until all of the trial phases were completed (or some arbitrary point in time in between) before those marginal defendants' fee/cost claims needed to be addressed.

Minute Order, p. 2. Despite the Court's statement that the Court will not entertain additional briefing, API also included additional briefing on other matters in API's Supplemental Brief; these issues are discussed separately in the analysis section below.

On April 17, 2019, Debtor filed a response to API's Supplemental Brief ("Debtor's Response") [doc. 277]. Debtor also filed the Declaration of Leonard Tavera (the "Tavera Declaration") [doc. 278] and a request for judicial notice (the "RJN") [doc. 279]. The Tavera Declaration and the RJN establish the following additional facts

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regarding the State Court Action:

On June 11, 2009, the state court defendants deposited \$119,746.77 with the state court. Tavera Declaration, ¶ 9. On October 29, 2010, the state court entered the Phase One Judgment, awarding \$119,746.77 against T.O. Tavera Declaration, ¶ 10, Exhibit 1. On November 3, 2010, the state court entered the *Amended Order Regarding Release and Payment to Plaintiff of Funds Deposited into Superior Court by Defendants* (the "Order to Release Funds"). Tavera Declaration, ¶ 11, Exhibit 2. In the Order to Release Funds, the state court ordered the release of \$119,746.77 in deposited funds to API. *Id.*

API then filed a motion for an award of attorneys' fees and costs related to the first phase of litigation. Tavera Declaration, ¶ 12. On January 18, 2011, the state court awarded API \$1.65 million in attorneys' fees and costs (the "Phase One Fee Award"). Tavera Declaration, ¶ 12, Exhibit 3. T.O. then appealed the Phase One Fee Award. Tavera Declaration, ¶ 12.

To stay enforcement of the Phase One Fee Award, defendant Jose F. Leon posted a bond from American Contractors Indemnity Company ("American") with the state court. Tavera Declaration, ¶ 13. On November 22, 2011, the appellate court issued an opinion affirming the Phase One Fee Award. Tavera Declaration, ¶ 14, Exhibit 4.

In December 2011, the state court held trial on phase two of the litigation. Tavera Declaration, ¶ 15. On December 23, 2011, the state court issued the Phase Two Decision. Tavera Declaration, ¶ 15, Exhibit 5.

On April 4, 2012, API filed a motion for an award of attorneys' fees prosecuting, among other things, phase two of the state court litigation. RJN, Exhibit 2. On May 29, 2012, the state court entered an order awarding API \$600,000 in attorneys' fees for prosecuting phase two of the litigation (the "Phase Two Fee Award"). Tavera Declaration, ¶ 16, Exhibit 6. In the Phase Two Fee Award, the state court explicitly

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stated that the order related to fees and costs incurred litigating "Phase II of the Court Trial" as well as to fees incurred defending the appeal of the Phase One Fee Award. *Id.* The state court also explicitly stated that the Phase Two Fee Award applied to all state court defendants, including Debtor. *Id.*

On September 6, 2012, Mr. Leon obtained and filed a separate \$900,000 bond to cover the obligations under the Phase Two Fee Award. Tavera Declaration, ¶ 17. On the same day, the state court acknowledged the \$900,000 bond in a minute order. Tavera Declaration, ¶ 17, Exhibit 7. On September 12, 2012, the state court entered an order awarding API costs in the amount of \$164,725.41 (the "Phase Two Cost Award"). Tavera Declaration, ¶ 18, Exhibit 8. Once again, the state court explicitly stated that the award related to "Phase II" of the litigation and that Debtor, among other state court defendants, was liable for the award. *Id.* On November 8, 2012, the state court defendants withdrew their appeal of the Phase Two Fee Award. Tavera Declaration, ¶ 19, Exhibit 9. On January 18, 2013, the appellate court issued an opinion affirming the Phase Two Decision. Tavera Declaration, ¶ 20, Exhibit 10.

API then filed a motion to recover attorneys' fees and costs incurred defending the appeal of the Phase Two Decision and the Phase Two Fee Award. Tavera Declaration, ¶ 21. On February 22, 2013, the state court entered an order awarding API an additional \$71,965 in attorneys' fees and \$5,930.95 in costs (the "Phase Two Appeal Award"). Tavera Declaration, ¶ 22, Exhibit 11. In the Phase Two Appeal Award, the state court ordered American, the bonding company, to pay all outstanding and unpaid orders, judgments and awards of the state court in favor of API. *Id.* The Phase Two Appeal Award did not name Debtor as one of the defendants liable for the Phase Two Appeal Award. *Id.*

On March 1, 2013, American caused checks in the amounts of \$675,319.93 and \$78,035.33 to be hand delivered to Jeffrey Ludlow of API at API's attorney's office. Tavera Declaration, ¶ 24, Exhibit 12.

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The \$675,319.93 check was for the Phase Two Fee Award plus interest. Tavera Declaration, ¶ 25, Exhibit 12. The \$78,035.33 check was for the Phase Two Appeal Award plus interest. Tavera Declaration, ¶ 26, Exhibit 12.

On May 1, 2013, American caused checks in the amounts of \$2,027,009.70 and \$174,744.27 to be hand delivered to Matthew Ludlow of API at API's attorney's office. Tavera Declaration, ¶ 27. The \$2,027,009.70 check was for the Phase One Fee Award plus interest. Tavera Declaration, ¶ 28, Exhibit 13. The \$174,744.27 check was for the Phase Two Cost Award. Tavera Declaration, ¶ 29, Exhibit 13.

On May 29, 2013, API filed a final motion for attorneys' fees to recover \$303,045. Tavera Declaration, ¶ 30. The state court issued a tentative ruling awarding API \$186,345. *Id.* Prior to the state court entering a final ruling, API and the state court defendants agreed to settle the final fee request through a stipulation (the "Final Fee Stipulation"). Tavera Declaration, ¶ 31.

On June 26, 2013, API and the state court defendants executed the Final Fee Stipulation. Tavera Declaration, ¶ 31, Exhibit 14. In the Final Fee Stipulation, the parties reference the first and second phases of trial and agree to resolve the outstanding fee dispute; in fact, the parties explicitly excluded from the Final Fee Stipulation *only* rights, claims and causes of action related to the *third* phase of trial. *Id.* The parties also agreed to resolve the final fee request by having the defendants pay API \$186,345. *Id.* On the same day, API further acknowledged that it had been satisfied in full as to the first two phases of litigation by filing the Satisfaction of Judgment with the state court. Tavera Declaration, ¶ 33, Exhibit 15.

Moreover, in letters dated June 26, 2013, API's counsel, Ray B. Bowen, Jr., stated that "all amounts due and owing pursuant to recorded Abstract of Judgments" were paid in full. Tavera Declaration, ¶ 35, Exhibit 17. On July 2, 2013, the state court exonerated the bond

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as provided in the Final Fee Stipulation. Tavera Declaration, ¶ 36, Exhibit 18.

On July 22, 2013, Mr. Tavera sent Mr. Bowen a check from Semper Law Group, LLP for \$186,345 to pay API in accordance with the Final Fee Stipulation. Tavera Declaration, ¶ 37, Exhibit 19.

The Court notes that Mr. Bowen was the attorney representing API during all phases of the State Court Action, and Mr. Bowen filed all of API's requests for attorneys' fees and costs enumerated above.

In light of this record, Debtor contends that: (A) the state court documents reflect that API was paid all of its attorneys' fees and costs, plus interest, incurred during *both* phases of the State Court Action; (B) even if API could show an entitlement to fees, the billing records attached to API's Supplemental Response relate to the first phase of litigation, not the second phase; (C) the claim for attorneys' fees is time barred; (D) API is collaterally estopped from submitting a new fee request; and (E) the billing is unreasonable.

II. ANALYSIS

A. API is Not Entitled to Any Additional Attorneys' Fees or Costs

The additional state court record submitted by Debtor establishes that API has moved for and obtained an award of attorneys' fees as to the alter ego phase of litigation. As noted in the Prior Ruling, this Court does not have the power to modify an order by the state court. 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments). In addition, under California law, claim preclusion is defined as follows:

[A] final judgment, rendered upon the merits by a court having jurisdiction of the cause, is conclusive of the rights of the parties and those in privity with them, and is a complete bar to a new suit between them on the same cause of action.

Burdette v. Carrier Corp., 158 Cal.App.4th 1668, 1681–82 (Ct. App. 2008) (citing

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Goddard v. Security Title Insurance & Guarantee Co., 14 Cal.2d 47, 51 (1939)) (internal quotations omitted). As with federal law, California's res judicata doctrine bars duplicative litigation of matters that were raised or *could have been* raised. *Tensor Grp. v. City of Glendale*, 14 Cal.App.4th 154, 160 (Ct. App. 1993) ("If the matter was within the scope of the action, related to the subject matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged.") (emphasis in *Tensor*).

Regarding what constitutes the same cause of action, "California adheres to a 'primary rights' theory in determining whether the claims or causes of action are the same." *Burdette*, 158 Cal.App.4th at 1684. "The significant factor is whether the claim or cause of action is for invasion of a single primary right. Whether the same facts are involved in both suits is not conclusive." *Id.* "[A] cause of action consists of 1) a primary right possessed by the plaintiff, 2) a corresponding primary duty devolving upon the defendant, and 3) a delict or wrong done by the defendant which consists in a breach of such primary right and duty. Thus, two actions constitute a single cause of action if they both affect the same primary right." *Id.*

Notwithstanding the fact that API represents to the Court that the "State Court never awarded attorney's fees to API for prosecuting the alter ego phase of the State Court Action as to" Debtor, the record above demonstrates that the state court *fully* adjudicated API's entitlement to an award of attorneys' fees and costs incurred prosecuting the alter ego phase *and* the related appeals. As noted above, with the exception of the Phase Two Appeal Award, the fees and costs awards related to the alter ego phase of trial were against Debtor as well as all other state court defendants. As such, API's representation to the Court is patently false and completely contradicted by the state court record. Given that Mr. Bowen was the attorney representing API during the State Court Action and filing the multiple requests for attorneys' fees related to the alter ego phase of trial, the Court intends to issue an Order to Show Cause why Mr. Bowen should not be sanctioned under Federal Rule of Bankruptcy Procedure 9011 for misrepresenting the record in a pleading filed before the Court.

As to the Phase Two Appeal Award, it is unclear why Debtor was not included as a defendant liable for the award. However, whatever the implications of Debtor's

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omission from the Phase Two Appeal Award may be, the parties settled *all* remaining disputes as to the first two phases of litigation through the Final Fee Stipulation and the Satisfaction of Judgment. Debtor is named as a judgment debtor in an attachment to the Satisfaction of Judgment, and the Final Fee Stipulation refers to all remaining state court defendants. Once again, Mr. Bowen was the attorney of record at the time the parties entered into the Final Fee Stipulation and signed the Final Fee Stipulation himself. Mr. Bowen also was the attorney who filed the Satisfaction of Judgment with the state court.

In light of the above, the fee awards related to the first and second phases of the State Court Action were final orders by a court having jurisdiction. Debtor and API were parties to the fee litigation surrounding phase two of the State Court Action. API now seeks an additional award of attorneys' fees based on the same fees and costs incurred by API and already assessed by the state court in connection with the fee awards. To the extent API asserts it has billing statements it did not present to the state court, API is barred by the doctrine of res judicata because the additional request for fees and costs *could have been* asserted before the state court.

The Minute Order does not change the Court's analysis. In fact, the Minute Order supports Debtor's contention that API's fee request is time barred. Although API relies on the Minute Order to argue that the state court allowed the parties to request fees and costs until completion of the State Court Action, the Minute Order actually provides that the state court instructed the parties that attorneys' fees and costs incurred after each phase "would be subject to immediate hearing and review." Minute Order, p. 2. In fact, the state court reprimanded the state court defendants for failing to "timely seek fee/cost orders" in contravention of the "agreed-upon protocol over a course of years." *Id.* The state court noted that the defendants did not have the option of "wait[ing] until all of the trial phases were completed" or waiting for "some arbitrary point in time in between...." *Id.* As such, in addition to API's request being barred by res judicata, API's own evidence reflects that API's fee request related to the first two phases of the State Court Action is time barred.

The Court notes that many of the billing statements attached as evidence of API's alleged entitlement to fees and costs incurred during the second phase of litigation actually reference fraud. To the extent API is attempting to recover attorneys' fees and costs related to its prosecution of its fraud causes of action, the Court again notes,

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as it did in the Prior Ruling, that API is not entitled to an award of attorneys' fees and costs as to its fraud counts because API did not prevail as to those counts.

B. API's Additional Arguments Regarding the Prior Ruling

As noted above, the Court did not allow additional briefing on any issue other than whether API is entitled to attorneys' fees and costs related to the alter ego phase of litigation. Nevertheless, API argues the following issues, which the Court will briefly address below.

First, with respect to this Court's statement from Prior Ruling that the state court had dismissed the Third Count, API notes that API appealed from that order and that the order "was reversed in part thereby making API the prevailing party and entitled to appellate fees and costs for said appeal." API's Supplemental Brief, p. 4. It is unclear if API means to say that the dismissal of the Third Count was reversed by an appellate court, for which contention API provides no support, or if API is merely contending that API was the prevailing party in the State Court Action despite dismissal of the Third Count. As to the former, there is no evidence; as to the latter, it is irrelevant to the Court's prior comment that the Third Count has been dismissed. In any event, as discussed in the Prior Ruling, the Court held that, even if the Third Count was not dismissed, API is barred from proceeding with the Third Count as to Debtor and/or Debtor's alter egos.

API contends that the following language from the Prior Ruling is incorrect: "one of API's fraud counts was based on Debtor's failure to pay API the amount owed under the Subcontract Agreement (the 'Third Count'), and another fraud count was based on Debtor's alleged failure to disclose that T.O. was an unlicensed entity at the time the parties entered into the Subcontract Agreement (the 'Fourth Count'). Both counts were asserted against Debtor, T.O. and multiple other entities." Prior Ruling, p. 13. API contends this language is incorrect because the state court held that only T.O. failed to pay API the amount owed under the Subcontract Agreement. However, the language in the Prior Ruling referred to API's allegations in the Fourth Amended Complaint filed in the state court; those allegations *were* against Debtor, as well as T.O. and other parties. That the state court eventually entered judgment against T.O. alone is a different issue.

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API then disputes the Court's holding regarding res judicata on the following bases: (A) Debtor is not in privity with T.O. and the Court's citation to *In re La Sierra Fin. Servs., Inc.*, 290 B.R. 718, 729 (B.A.P. 9th Cir. 2002) is distinguishable because, unlike in that case, this case does not involve the sale of real property and Debtor will not be prejudiced if API recovers from the estate; (B) the Court does not cite any other Ninth Circuit Court of Appeals or Bankruptcy Appellate Panel ("BAP") decision on this point; (C) the claims in state court are different from the claim decided here; (D) as to API's request for additional attorneys' fees and unpaid breach of contract awards, API agrees that the Court cannot modify the state court's awards, but contends that API is entitled to attorneys' fees based on the *alter ego* phase of trial; and (E) API may be entitled to punitive damages if API proceeds on its state court fraud action.

Regarding privity, API attempts to distinguish this case from *La Sierra* on the basis that *La Sierra* involved the sale of real property and, in *La Sierra*, the court held that the involved party would be adversely affected if the court did not act. In the Prior Ruling, the Court used *La Sierra* solely to provide a definition of privity; the Court did not analogize the facts of this case to the facts in *La Sierra*. API ignores the remaining authorities cited by this Court which provide that alter egos are in privity each other.

API then contends that the Court did not cite other Court of Appeals or BAP decisions. API does not itself cite any relevant authorities. If API believed there were decisions by the Ninth Circuit Court of Appeals or the BAP that contradicted this Court's in-circuit authority on the issue of alter egos and privity, API could have referenced any such authorities in its briefs. It has not.

Further, API states in a conclusory fashion that res judicata does not apply because the adversary proceeding involved a different claim from the remaining fraud count in state court. API does not provide any analysis as to this point, and the Court will refer API to the Prior Ruling where the Court discussed this issue in detail.

API next contends that it did not request additional breach of contract damages, but is requesting attorneys' fees related to the alter ego phase of trial. For the reasons discussed above, API is not entitled to additional attorneys' fees or costs related to the alter ego phase of trial. Finally, API claims it is entitled to punitive damages because

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API may prevail on its fraud causes of action in state court. Once again, and as explained in the Prior Ruling, API is barred from proceeding with the fraud counts in state court as to Debtor and/or Debtor's alter egos. Because the remaining defendants are not designated alter egos of Debtor, even if API prevails as to those defendants, API cannot recover from Debtor's estate.

III. CONCLUSION

For the reasons stated above and in the Prior Ruling, the Court will sustain the Trustee's objection to API's claim in full. The Court will post on the docket a ruling combining the ruling above with the Prior Ruling. The Court also intends to issue an Order to Show Cause why Mr. Bowen should not be sanctioned under Federal Rule of Bankruptcy Procedure 9011 for misrepresenting the state court record in API's Supplemental Brief.

FOOTNOTES

1. Unless otherwise defined, the defined terms herein mirror the defined terms from the Prior Ruling.

3/4/2019 Ruling:

I. BACKGROUND

On June 15, 2010, Darin Davis ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee"). On January 12, 2011, Asphalt Professionals, Inc. ("API") filed proof of claim no. 4-1, asserting an unsecured claim in the amount of \$3 million. API subsequently filed proof of claim no. 15-1, asserting an unsecured claim in the amount of \$2 million, intended as an amendment to proof of claim no. 4-1.

A. The State Court Action

API based its claim on pending litigation in state court (the "State Court Action"), in which API sued Debtor, among other entities, for breach of contract, foreclosure on a mechanic's lien, quantum meruit and fraud. [FN1]. The State Court Action was

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based, in part, on a subcontract agreement (the "Subcontract Agreement") between API and T.O., IX, LLC ("T.O."). In the operative complaint in the State Court Action (the "Fourth Amended Complaint"), one of API's fraud counts was based on Debtor's failure to pay API the amount owed under the Subcontract Agreement (the "Third Count"), and another fraud count was based on Debtor's alleged failure to disclose that T.O. was an unlicensed entity at the time the parties entered into the Subcontract Agreement (the "Fourth Count"). Both counts were asserted against Debtor, T.O. and multiple other entities.

On November 17, 2009, the state court held a hearing on motions for summary judgment filed by certain defendants. State Court's Tentative Ruling Dated November 17, 2009 (the "November 2009 Tentative Ruling"). In the November 17, 2009 Tentative Ruling, the state court stated that the defendants were entitled to summary judgment as to the Third Count. *Id.* However, the state court continued the hearings to provide API an additional opportunity to provide additional evidence. State Court's Minutes Dated February 26, 2010. At the continued hearing, the state court adopted its prior tentative ruling as the court's final ruling, including the dismissal of the Third Count. *Id.*

The trial court trifurcated the State Court Action into three trial phases. The first phase involved API's causes of action for breach of contract, foreclosure on a mechanic's lien and quantum meruit. In 2010, the trial court conducted a bench trial on the first phase. On October 29, 2010, the court entered an interlocutory judgment as to the first phase (the "Phase One Judgment"). After entry of the Phase One Judgment, API filed a motion for an award of attorneys' fees, and the trial court awarded API \$1.65 million (the "Fee Award"). After an appeal by T.O., an appellate court upheld the Fee Award.

The second phase of the State Court Action involved API'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"). In the Phase Two Decision, the state court held, in relevant part, that Debtor, among other entities named as defendants in the Third Count and Fourth Count, is an alter ego of T.O. The state court entered a judgment conforming to the Phase Two Decision (the "Phase Two Judgment"). After an appeal by Debtor, an appellate court upheld the Phase Two Judgment, except as against defendants not involved with the Fourth Count.

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On June 26, 2013, API filed an Acknowledgment of Satisfaction of Judgment (the "Satisfaction of Judgment") in state court. Through the Satisfaction of Judgment and the stipulation attached thereto, API acknowledged that the Phase One Judgment and any attorneys' fees awarded to date had been paid in full.

B. Debtor's Objection to API's Claim

On September 17, 2014, Debtor filed an objection to API's claim ("Debtor's Objection to Claim") [doc. 89]. In Debtor's Objection to Claim, Debtor asserted that API had been paid the total \$1,869,048.05 owed to API pursuant to the Phase One Judgment and the Phase Two Judgment. Debtor also noted that API had not provided evidence regarding any remaining damages. On October 2, 2014, API filed an opposition to Debtor's Objection to Claim [doc. 95], arguing that the state court had not yet tried API's fraud cause of action and that API may obtain an additional award of damages after that trial. [FN2].

On October 30, 2014, the Court held a hearing on Debtor's Objection to Claim. On November 20, 2014, the Court entered an order disallowing \$1,869,048.05 of API's claim because that portion of the claim had already been paid (the "Claim Order") [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 API was entitled to the remaining \$1,130,951.42. The Court refrained from deciding whether to disallow the remaining portion of API's claim until the State Court Action concluded.

C. The Adversary Proceeding

On August 16, 2010, API 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 API's claims under 11 U.S.C. § 727. On December 23, 2014, the Court entered judgment in favor of Defendant on API's claims under 11 U.S.C. § 727 [Adversary Docket, doc. 113]. The Court initially stayed this adversary proceeding to await conclusion of the State Court

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Action. On April 19, 2017, nearly seven years after Defendant filed his chapter 7 petition, API and Defendant appeared for a status conference. The Court informed the parties that it would no longer delay prosecution of this adversary proceeding until the State Court Action was resolved.

On April 23 and 24, 2018, the Court held trial on API's claim under § 523(a)(2)(A). On June 13, 2018, the Court issued a ruling after trial, holding that API did not meet its burden of proof under § 523(a)(2)(A) [Adversary Docket, doc. 219]. On June 18, 2018, the Court entered judgment in favor of Defendant (the "Adversary Judgment") [doc. 221]. API filed an appeal with the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"). On January 31, 2019, the BAP issued an opinion affirming this Court in full. *In re Davis*, 2019 WL 406680 (B.A.P. 9th Cir. Jan. 31, 2019). API has not filed a notice of appeal of the BAP's opinion.

D. The Trustee's Objection to API's Claim

On January 11, 2019, the Trustee filed an objection to API's claims (the "Objection") [doc. 257]. In the Objection, the Trustee contends that, in light of the Adversary Judgment, the doctrine of res judicata bars API from proceeding with the Third Count and/or the Fourth Count against Debtor in state court. On February 6, 2019, API filed a response to the Objection (the "Response") [doc. 264]. In the Response, API asserts that it may proceed with its fraud counts against Debtor's alter egos in state court and, if successful, Debtor's estate will be liable to API. API also asserts that its claim is based on certain breach of contract damages and attorneys' fees related to the alter ego phase of the State Court Action that the state court did not award, as well as a claim of punitive damages against Debtor and/or his alter egos. On February 14, 2019, the Trustee filed a reply to the Response [doc. 267], asserting that res judicata bars not only API's claim related to the fraud counts, but also API's additional claims for breach of contract and attorneys' fees damages that have already been adjudicated by the state court.

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

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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).").

A. API's Fraud Causes of Action

"The res judicata doctrines regarding judgments of federal courts are a matter of federal common law." *In re Hansen*, 368 B.R. 868, 878 (B.A.P. 9th Cir. 2007). "Res judicata, or claim preclusion, provides that a final judgment on the merits of an action precludes the parties from relitigating all issues connected with the action that were *or could have been* raised in that action." *Rein v. Providian Fin. Corp.*, 270 F.3d 895, 898–99 (9th Cir. 2001) (emphasis added). Under federal law, claim preclusion applies where:

- (1) the parties are identical or in privity;
- (2) the judgment in the prior action was rendered by a court of competent jurisdiction;
- (3) there was a final judgment on the merits; and
- (4) the same claim or cause of action was involved in both suits.

Id., at 899.

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Here, the Adversary Judgment is a judgment by a federal court, and the Court must apply the federal res judicata standard. The parties do not dispute that the Adversary Judgment was rendered by a court of competent jurisdiction. Moreover, although the parties initially disputed whether the Adversary Judgment was a final judgment on the merits because of the BAP appeal, the BAP has now affirmed the Adversary Judgment and API has not appealed the BAP's opinion.

As such, the only remaining issues are whether the parties are identical or in privity, and whether the same claim or cause of action was involved in both suits. Regarding the Third Count, and to the extent API is basing its claim on the Third Count, the state court docket reflects that the state court dismissed the Third Count. Nevertheless, for the reasons set forth below, the state court is precluded from moving forward with either the Third Count or the Fourth Count as to Debtor and his alter egos.

i. Privity

API does not dispute that Debtor was a party to both the adversary proceeding and the State Court Action. However, API asserts that the fraud action may proceed against Debtor's alter egos.

"'Privity' ... is a legal conclusion 'designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.'" *In re La Sierra Fin. Servs., Inc.*, 290 B.R. 718, 729 (B.A.P. 9th Cir. 2002) (quoting *In re Schimmels*, 127 F.3d 875, 881 (9th Cir. 1997) (internal citation omitted)). Several courts have held that alter ego entities are in privity with one another for purposes of claim or issue preclusion. *See, e.g. IMP Int'l, Inc. v. Zibo Zhongshi Green Biotech Co.*, 2015 WL 13357602, at *4 (C.D. Cal. Mar. 20, 2015) (aggregating federal and California cases); *Robinson v. Volkswagenwerk AG*, 56 F.3d 1268, 1275 (10th Cir. 1995) (holding that even a "'near alter ego' relationship would be sufficient to establish 'privity' between... two corporations such that [one of the corporations] is entitled to assert the previous judgment as a bar to the claim now asserted"); and *Dudley v. Smith*, 504 F.2d 979, 982 (5th Cir. 1974).

In light of the above, res judicata bars the state court from adjudicating the "same claim or cause of action" not only against Debtor, but also against Debtor's alter egos. Although the state court may proceed against defendants that have not been deemed

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Debtor's alter egos (assuming those entities are not in privity with Debtor for other reasons), any judgment against those entities will not be imputed to Debtor under API's alter ego theory of recovery against Debtor's estate because those entities have not been designated alter egos of Debtor. Given that Debtor's alter egos are in privity with Debtor, if claim or issue preclusion prohibit litigation against Debtor, the doctrines also will bar litigation against Debtor's alter egos.

ii. Same Claim or Cause of Action

In the Ninth Circuit—

We consider four criteria in determining whether the same claim or cause of action was involved in both suits: (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transaction or nucleus of facts.

Rein, 270 F.3d at 903. A determination of this last factor in the affirmative has been held sufficient to establish that the same claim or cause of action was involved in both suits." *Id.*, at 903-04.

Here, the Fourth Count is based on allegations that are identical to the facts adjudicated by this Court during the adversary trial. Thus, the same evidence would be presented in state court as was presented before this Court. Because the allegations before both courts are identical, the two suits also arise out of the same transaction and nucleus of facts. In addition, the rights established in the Adversary Judgment would be impaired by prosecution of the Fourth Count against Debtor or his alter egos; Debtor's bankruptcy estate will be held captive if the State Court Action remains pending despite the fact that this Court already determined that Debtor is not liable for damages arising out of the Fourth Count allegations.

The final consideration is whether the two suits involve infringement of the same right. As to this consideration, API argues that the nondischargeability claim is different from the fraud cause of action because one action concerns dischargeability

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of a debt while the other pertains to fraud. Generally, when there is a prepetition state court judgment of fraud, claim preclusion does not apply to bar dischargeability actions under § 523(a)(2)(A) (although, to the extent the issues are identical, *issue* preclusion does apply to bar relitigation, as discussed below).

This "narrow" exception to claim preclusion was established by the Supreme Court's decision in *Brown v. Felsen*, 442 U.S. 127, 99 S.Ct. 2205, 60 L.Ed.2d 767 (1979). *See In re Chew*, 496 F.3d 11, 18 (1st Cir. 2007) ("As a result of the particularity with which Congress has spoken on the exclusive jurisdiction of federal courts to adjudicate dischargeability, *Brown* is generally recognized as a 'narrow' exception to the general rule that claim preclusion does apply to bankruptcy proceedings."). The Supreme Court's imposed this exception to claim preclusion for several policy reasons. For instance, the Supreme Court noted that a creditor in a dischargeability proceeding "readily concedes that the prior decree is binding. That is the cornerstone of his claim. He does not assert a new ground for recovery, nor does he attack the validity of the prior judgment. Rather, what he is attempting to meet here is the new defense of bankruptcy which [the debtor] has interposed between [the creditor] and the sum determined to be due him." *Brown*, 442 U.S. at 133. In addition, the Supreme Court stated that applying res judicata in dischargeability proceedings would generate unnecessary litigation by forcing "an unwilling party to try [bankruptcy] questions to the hilt in order to protect himself against the mere possibility that a debtor might take bankruptcy in the future." *Id.*, at 135. Finally, the Supreme Court gave weight to the exclusive jurisdiction of bankruptcy courts over bankruptcy issues. *Id.*

These concerns are not present where a bankruptcy court liquidates a claim at the same time the court decides dischargeability of a debt. In this case, the Court had jurisdiction over both the dischargeability claim and the liquidation of API's fraud claim against Debtor. *See, e.g. In re Sasson*, 424 F.3d 864, 869-70 (9th Cir. 2005) ("It is clear... that bankruptcy courts have jurisdiction and power to enter money judgments in adjudicating nondischargeability adversary proceedings."). Moreover, there is no concern over forcing parties to litigate matters that are not ripe for controversy and creating needless litigation; here, API's fraud claim against Debtor was not hypothetical, it was a pending claim against Debtor and liquidating that claim at the same time the Court tried dischargeability of the claim *prevents* needless litigation.

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Because the unique and "narrow" concerns that are present when a party attempts to apply claim preclusion to a state court judgment in a dischargeability proceeding are not present when a state court is applying claim preclusion to a dischargeability judgment, *Brown* does not appear to be applicable to this case. In fact, at least one court has held that *Brown* only applies to *prepetition* judgments because the Supreme Court's concerns are not present when courts apply res judicata to postpetition judgments. *In re Gilson*, 250 B.R. 226 (Bankr. E.D. Va. 2000).

API relies solely on *Daewoo Elecs. Am. Inc. v. Opta Corp.*, 875 F.3d 1241 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 2654, 201 L. Ed. 2d 1051 (2018), in support of its argument that res judicata does not apply to its state court causes of action. However, *Daewoo* is inapposite. In *Daewoo*, the plaintiff obtained breach of contract damages against GoVideo, but was unable to collect on its judgment. *Daewoo*, 875 F.3d at 1245. Subsequently, the plaintiff filed suit against two different entities, requesting enforcement of a guaranty agreement. *Id.* However, the trial court held that the guaranty agreement had expired and that the guarantors did not have any obligation to pay the plaintiff under the guaranty agreement. *Id.*, at 1245-46.

The plaintiff then filed a lawsuit against four entities, including the entities that were defendants in the guaranty action. *Id.*, at 1246. In this suit, the plaintiff moved for alter ego and successor liability against the defendants. *Id.* The district court held that the plaintiff's alter ego and successor liability causes were barred by the doctrine of res judicata. *Id.*

On appeal, the Ninth Circuit Court of Appeals first noted that New Jersey law on res judicata applied to the action because the prior guaranty judgment was rendered by a district court in New Jersey sitting with diversity jurisdiction. *Id.*, at 1247. Using New Jersey law, the Court of Appeals held that the guaranty action and the alter ego action did not grow out of the same transaction or occurrence because: (A) the guaranty action involved breach of the separate guaranty agreement and was based on the defendants' refusal to pay under the guaranty agreement and did not involve *GoVideo's* obligation to the plaintiff, whereas the alter ego action sought to hold the defendants directly liable under *GoVideo's* contract with the plaintiff; (B) the damages available to the plaintiff in the two actions were different, because the damages available through the guaranty action would have been capped at \$5 million under the independent duties set forth in the guaranty agreement, whereas the plaintiff might

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recover the full amount of damages against GoVideo through the alter ego and successor liability action; (C) the two lawsuits involved different legal theories because the guaranty action was based on breach of the guaranty agreement under New Jersey law but the alter ego action was based on California legal theories; and (D) the material facts and evidence presented in each action were different because the guaranty action involved formation and interpretation of the guaranty contract and those matters were irrelevant to the alter ego and successor liability action, which involved evidence regarding the defendants' conduct stripping assets of GoVideo. *Id.*, at 1248-49.

Even if the Court is to consider *Daewoo* despite its use of New Jersey law, under which courts consider slightly different factors than under federal law, the facts in *Daewoo* are substantially different from the facts here. API's allegations and request for damages related to the Fourth Count are *identical* to the allegations and request for damages adjudicated by this Court. As such, the Court need not engage in a lengthy determination regarding whether the Fourth Count and the § 523(a)(2)(A) involve the same claim or cause of action.

Finally, even if claim preclusion does not apply to bar the state court from adjudicating the Fourth Count as to Debtor and his alter egos, issue preclusion does apply. "Under both California and federal law, collateral estoppel applies only where it is established that... (1) the issue necessarily decided at the previous proceeding is identical to the one which is sought to be relitigated; (2) the first proceeding ended with a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the first proceeding." *Hydranautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir. 2000). "The elements of fraud under § 523(a)(2)(A) match the elements of common law fraud and of actual fraud under California law." *In re Jung Sup Lee*, 335 B.R. 130, 136 (B.A.P. 9th Cir. 2005). As such, the Fourth Count presents issues identical to the issues decided by this Court in the adversary proceeding, and the state court may not adjudicate the Fourth Count against Debtor or those in privity with Debtor, including his alter egos.

Regarding the Third Count, the Third Count appears to have been dismissed by the state court in 2010. To the extent the state court has not already dismissed the Third Count (the parties do not provide a clear record of the State Court Action), claim preclusion prevents the Third Count from proceeding against Debtor and his alter

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egos. Although this Court did not adjudicate the Third Count, the Third Count is based on API's allegations that Debtor and other entities fraudulently induced API to enter into the Subcontract Agreement. Because one of the issues before this Court was liquidating any damages arising out of fraud related to the Subcontract Agreement, including API's assertions that API would not have entered into the Subcontract Agreement had API been apprised of certain facts, the allegations in the Third Count arise out of the same transaction and nucleus of facts as the allegations tried during the adversary trial, and the Third Count involves infringement of the same rights. The Third Count also would involve presenting substantially the same evidence in state court that was presented before this Court during the adversary trial, including the circumstances surrounding the parties' execution of the Subcontract Agreement. Finally, for the same reasons as above, the rights established in the Adversary Judgment would be impaired by prosecution of the Third Count against Debtor or his alter egos.

B. API's Claim for Unpaid Breach of Contract Damages

API also asserts that part of its claim is based on unpaid breach of contract damages. However, the state court adjudicated the breach of contract phase. This Court does not have the power to modify the amount of damages awarded by the state court. 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments).

California's res judicata doctrine bars relitigation of API's breach of contract claim. Because the Phase One Judgment is a California judgment, the Court employs California's claim preclusion standard. Under California law, claim preclusion is defined as follows:

[A] final judgment, rendered upon the merits by a court having jurisdiction of the cause, is conclusive of the rights of the parties and those in privity with them, and is a complete bar to a new suit between them on the same cause of action.

Burdette v. Carrier Corp., 158 Cal.App.4th 1668, 1681–82 (Ct. App. 2008) (citing *Goddard v. Security Title Insurance & Guarantee Co.*, 14 Cal.2d 47, 51 (1939)) (internal quotations omitted). As with federal law, California's res judicata doctrine

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bars duplicative litigation of matters that were raised or *could have been* raised. *Tensor Grp. v. City of Glendale*, 14 Cal.App.4th 154, 160 (Ct. App. 1993) ("If the matter was within the scope of the action, related to the subject matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged.") (emphasis in *Tensor*).

Regarding what constitutes the same cause of action, "California adheres to a 'primary rights' theory in determining whether the claims or causes of action are the same." *Burdette*, 158 Cal.App.4th at 1684. "The significant factor is whether the claim or cause of action is for invasion of a single primary right. Whether the same facts are involved in both suits is not conclusive." *Id.* "[A] cause of action consists of 1) a primary right possessed by the plaintiff, 2) a corresponding primary duty devolving upon the defendant, and 3) a delict or wrong done by the defendant which consists in a breach of such primary right and duty. Thus, two actions constitute a single cause of action if they both affect the same primary right." *Id.*

Here, the Phase One Judgment is a final judgment by a court having jurisdiction. In addition, Debtor and API were parties to the breach of contract phase adjudicated by the state court. The state court awarded API damages based on its breach of contract and foreclosure of mechanic's lien causes during phase one of the State Court Action. Although API now contends that the damages were not based on breach of contract and awarded solely on API's foreclosure of mechanic's lien count, the breach of contract cause of action was before the state court and the Phase One Judgment disposed of API's breach of contract and foreclosure of mechanic's lien causes of action. Despite having signed the Satisfaction of Judgment of the Phase One Judgment, API now seeks additional damages based on breach of the same Subcontract Agreement before the state court. As such, API's claim against the estate involves the same primary right already determined by the state court, and API is barred from asserting damages that were or *could have been* asserted before the state court.

C. API's Claim for Unpaid Attorneys' Fees

API also asserts that Debtor is liable for unpaid attorneys' fees incurred litigating the alter ego phase of the State Court Action. [FN3]. The record is unclear as to whether

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the state court already has awarded attorneys' fees incurred prosecuting the alter ego phase (whether before the trial or appellate courts) that remain unpaid or if API intends to request such additional attorneys' fees from the state court.

The Court will continue this hearing to **2:00 p.m. on April 25, 2019**. No later than **April 4, 2019**, API must provide evidence of its entitlement to unpaid attorneys' fees incurred litigating the second phase of the State Court Action. No later than **April 18, 2019**, the Trustee may file a response to API's evidence.

D. API's Claim for Punitive Damages

Given that this Court entered judgment in favor of Debtor on API's § 523(a)(2)(A) claim, API is not entitled to punitive damages. As explained above, because the Third Count and the Fourth Count may not proceed against Debtor or his alter ego entities in state court, API also will not have a claim of punitive damages against the estate based on an award of punitive damages that may be entered against one of the other defendants to the State Court Action.

III. CONCLUSION

The Court will continue this hearing to **2:00 p.m. on April 25, 2019**. No later than **April 4, 2019**, API must file and serve evidence of its entitlement to **unpaid** attorneys' fees incurred litigating the second phase of the State Court Action (including appeals). No later than **April 18, 2019**, the Trustee may file and serve a response to API's evidence. The Court will not entertain additional briefing on any issue other than whether API is entitled to such additional attorneys' fees, as a prevailing party in the State Court Action.

If API does not timely provide evidence of its entitlement to such attorneys' fees, or if the request for an award of such additional attorneys' fees is time barred or API is otherwise not entitled to an award of such additional attorneys' fees, the Court will disallow API's claim in full.

FOOTNOTES

1. Some relevant background facts are taken from the Court's ruling after trial in

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CONT...

Darin Davis

Chapter 7

the adversary proceeding [1:10-ap-01354-VK, doc. 219].

2. On October 15, 2014, after all the briefing on the Objection to Claim, API filed a separate claim for \$2 million, docketed as claim no. 15-1, based on the fraud action in state court. In his declaration, a representative of API stated that the \$2 million claim was meant to amend the original \$3 million claim. 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.
3. API's claim for attorneys' fees appears to be based on fees incurred during phase two of the State Court Action. To the extent API is requesting attorneys' fees incurred litigating API's fraud cause of action, API was not the prevailing party as against Debtor or his alter egos, and API is not entitled to any attorneys' fees incurred prosecuting that cause of action.

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

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1:14-11679 Aleta Francis

Chapter 7

#13.00 Debtor's motion for order disallowing claim of Marcellus Francis

Docket 38

Tentative Ruling:

Deny, to the extent the objection to claim is moot. See calendar no. 14.

Party Information

Debtor(s):

Aleta Francis

Represented By
David M Reeder
David A Tilem

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:14-11679 Aleta Francis

Chapter 7

#14.00 Trustee's motion for order approving sale of assets, subject to overbid

Docket 44

Tentative Ruling:

Deny.

The Court will prepare the order.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the declaration set forth below:

Trustee's Evidentiary Objection to the Declaration of Debtor

paras. F, K, L, O, P: sustain

paras. 10, 11, 12, H, J, N: overrule

para. D: sustain as to "therefore violate my rights to all of my claims and assertions in my State Court Case, without due process or justice" and overrule as to the balance of the paragraph

para. I: overrule as to "The Buyer still owes me support" and sustain as to the balance of the paragraph

para. M: overrule as to "The Buyer did not submit a declaration in support of his good faith intentions" and sustain the balance of the paragraph

Mr. Francis' Evidentiary Objections to the Declaration of Debtor

paras. F, L, P: sustain

paras. H, J, N: overrule

para. M: overrule as to "The Buyer did not submit a declaration in support of his good faith intentions" and sustain the balance of the paragraph

paras. 11, 12, B: sustain as to the alleged agreement of Mr. Francis

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CONT... Aleta Francis

Chapter 7

Exhs. B and C: sustain as to the alleged agreement of Mr. Francis

Exhs. F and G: overrule

Party Information

Debtor(s):

Aleta Francis

Represented By
David M Reeder
David A Tilem

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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2:00 PM

1:18-11620 Antoine R Chamoun

Chapter 7

#15.00 Trustee's application for order approving employment of
Brutzkus Gubner as general counsel effective March 1, 2019

Docket 33

Tentative Ruling:

Grant.

In the application, the chapter 7 trustee articulated several appropriate reasons to retain bankruptcy counsel, including the evaluation and pursuit of potential avoidance actions. Even in mediation, as suggested by the debtor, the chapter 7 trustee may require the assistance of bankruptcy counsel. Further, any mediation among the debtor, the chapter 7 trustee and/or third parties is not hindered by the Court's approval of this employment application. Finally, in connection with any fee applications that are filed, and in accordance with the applicable legal standards, the debtor and other parties in interest are not precluded from objecting to any professional fees sought to be approved.

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

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

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2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#16.00 Motion for order approving further post-petition financing
from members of debtor

Docket 127

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim

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2:00 PM

1:18-12607 Claudia Carola Gonzalez

Chapter 7

#17.00 Attorney's motion to withdraw as counsel for debtor Claudia Carola Gonzalez

Docket 21

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):

Claudia Carola Gonzalez

Represented By
Isaac Goss Dillon

Trustee(s):

Diane C Weil (TR)

Pro Se

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2:00 PM

1:19-10051 Rockin Artwork, LLC

Chapter 11

#18.00 Application to employ Force 10 Partners as investment banker
fr. 2/21/19; 3/7/19

Docket 26

***** VACATED *** REASON: Notice of withdrawal filed 4/16/19. [Dkt.101]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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1:19-10051 Rockin Artwork, LLC

Chapter 11

- #19.00** Motion for an order:
(1) Approving form of asset purchase agreement for stalking horse bidder and for prospective overbidders to use,
(2) Approving auction sale format, bidding procedures, and Stalking Horse bid protections; and
(3) Scheduling a court hearing to consider approval of the sale to the highest bidder

fr. 2/21/19; 3/7/19

Docket 45

***** VACATED *** REASON: Withdrawal of motion filed 4/16/19 [Dkt. 102].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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2:00 PM

1:19-10850 Papanicolaou Enterprises

Chapter 11

- #20.00 Motion in individual chapter 11 case for order authorizing debtor-in-possession to:
- (1) Pay prepetition payroll;
 - (2) Honor prepetition employment procedures; and
 - (3) Continue paying taxes

Docket 5

Tentative Ruling:

The Court will grant the motion in accordance with the terms set forth in the *Stipulation for Use of Cash Collateral and Adequate Protection* [doc. 27].

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

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1:19-10850 Papanicolaou Enterprises

Chapter 11

#21.00 Motion in individual chapter 11 case for order authorizing use of cash collateral

Docket 6

Tentative Ruling:

It appears that the debtor has not provided a proposed budget.

Otherwise, the Court will grant the motion in accordance with the terms set forth in the *Stipulation for Use of Cash Collateral and Adequate Protection* [doc. 27].

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

**United States Bankruptcy Court
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9:30 AM

1:19-10319 James Lamont Dubose

Chapter 7

#1.00 Motion for relief from stay [PP]
(2017 Lincoln Continental)

FORD MOTOR CREDIT COMPANY LLC
VS
DEBTOR

fr. 4/10/19;

Docket 24

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

Movant(s):

Ford Motor Credit Company LLC

Represented By

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CONT... James Lamont Dubose

Chapter 7

Jennifer H Wang

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

1:19-10319 James Lamont Dubose

Chapter 7

#2.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
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):

James Lamont Dubose

Represented By
Stephen L Burton

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CONT... James Lamont Dubose

Chapter 7

Movant(s):

Nationstar Mortgage LLC d/b/a Mr.

Represented By
Jennifer C Wong

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:18-12178 Jose Espino

Chapter 13

#3.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY FSB
VS
DEBTOR

fr. 4/10/19

Docket 45

Tentative Ruling:

On March 27, 2019, the debtor filed a response to the motion for relief from the automatic stay [doc. 47]. The debtor did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

Party Information

Debtor(s):

Jose Espino

Represented By
Lionel E Giron

Movant(s):

Wilmington Savings Fund Society,

Represented By
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:19-10325 Joann B Atkins

Chapter 13

#4.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 3/13/19

Docket 6

Tentative Ruling:

On March 14, 2019, the Court entered an order continuing this hearing to May 8, 2019 and ordering the debtor to, among other things, file a declaration by April 24, 2019, demonstrating that she timely made her required post-petition deed of trust and chapter 13 plan payments [doc. 21]. The debtor did not timely file a declaration. Further, the debtor has not provided evidence that she made the required payments. Consequently, the Court will deny the motion for the period following May 8, 2019.

The Court will prepare the order.

March 13, 2019 Ruling

Grant motion on an interim basis and continue hearing to **May 8, 2019 at 9:30 a.m.**

The First Bankruptcy Case

On May 12, 2016, the debtor filed a prior chapter 13 petition (the "First Case") [case no. 1:16-bk-11441-MT]. In her prior schedules, the debtor disclosed monthly income in the amount of \$2,871.81 and monthly expenses in the amount of \$2,483.00, leaving net monthly income of \$388.81 [First Case, doc. 12, p. 19].

On September 7, 2016, the Court entered an order confirming the debtor's chapter 13 plan [First Case, doc. 23]. In her prior plan, the debtor's plan payment was \$388.00 per month for 60 months [First Case, doc. 13]. Through her chapter 13 plan payments, among other things, the debtor intended to cure prepetition deed of trust arrearages in the amount of \$14,742.00.

On March 16, 2017, creditor The Bank of New York Mellon ("BONYM") filed a

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CONT...

Joann B Atkins

Chapter 13

motion for relief from stay as to real property located at 13217 Filmore Street, Los Angeles, California 91331 (the "RFS Motion") [First Case, doc. 30]. On June 14, 2017, the debtor and BONYM entered into a stipulation resolving the RFS Motion and providing for adequate protection payments [Frist Case, doc. 34]. On the same day, the Court entered an order granting the RFS Motion on the terms in that stipulation [First Case, doc. 36].

On February 14, 2018, the chapter 13 trustee (the "Trustee") filed a motion to dismiss for failure to make plan payments (the "Motion to Dismiss") [First Case, doc. 40]. On March 29, 2018, the Court entered an order dismissing the chapter 13 case for failure to make plan payments [First Case, doc. 46].

The Pending Bankruptcy Case

On February 13, 2019, the debtor filed the pending chapter 13 case. On February 14, 2019, the debtor filed a motion to continue the automatic stay as to all creditors (the "Motion to Continue Stay") [doc. 6]. In the Motion to Continue Stay, the debtor states that she is a health care provider. During the First Case, she experienced a temporary financial hardship when she lost a few of her patients. Additionally, the rental unit the debtor used to generate additional income was seized by the government because the renters were engaged in illegal activities.

In her pending case, the debtor's Schedules I and J indicate monthly income of \$2,987.41 and monthly expenses of \$2,834.00, leaving net monthly income of \$153.41 [doc. 13, p. 20]. In her chapter 13 plan, the debtor proposes a monthly payment of \$153.00 per month for months 1 through 6, then \$1,415.00 per month for months 7 through 60 [doc. 15]. The debtor's current chapter 13 plan proposes to cure deed of trust arrears in the amount of \$59,701.64.

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

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CONT...

Joann B Atkins

Chapter 13

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.

Notwithstanding the assertions in the Motion to Continue Stay, 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 less net monthly disposable income than during the First Case. Additionally, the debtor has provided no evidence that she has sufficient net monthly income to fund the step-up in her proposed chapter 13 plan.

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 April 17, 2019**, 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 March 2019 and April 2019 deed of trust payments in the amount of \$1,755.00 (as stated in her current Schedule J) as to the real property located at 13217 Filmore Street, Pacoima, California 91331; and (2) her March 2019 and April 2019 plan payments in the amount of \$153.00 to the chapter 13 trustee. **No later than April 24, 2019**, the debtor must file a declaration to demonstrate that she timely made her required post-petition deed of trust and chapter 13 plan payments.

Party Information

Debtor(s):

Joann B Atkins

Represented By
Kevin T Simon

Movant(s):

Joann B Atkins

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:16-11316 Sergio Luquin and Lorena Palacios Luquin

Chapter 13

#4.10 Motion for relief from stay [RP]

CARRINGTON MORTGAGE SERVICES, LLC
VS
DEBTOR

fr. 4/24/19

Docket 33

*** VACATED *** REASON: Stipulation for adequate protection entered
on 5/6/19 [doc. 37]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sergio Luquin

Represented By
Gregory M Shanfeld

Joint Debtor(s):

Lorena Palacios Luquin

Represented By
Gregory M Shanfeld

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:18-11729 Richard Philip Dages

Chapter 11

#5.00 Motion for relief from stay [UD]

THE REAL ESTATE PLACE INC., A CA CORP
VS
DEBTOR

fr. 4/10/19

Docket 66

Tentative Ruling:

Deny.

At the prior hearing on this motion, the Court ordered the movant to serve the motion and notice of the continued hearing and the deadline to file a written response on the 20 largest unsecured creditors by April 17, 2019. The movant did not timely serve the motion or the continued hearing on those creditors.

The Court also ordered the movant to file a response to the debtor's opposition addressing, among other things, cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) and the applicability of California Civil Procedure Code § 1161b by April 24, 2019. The movant did not timely file a response. Accordingly, the Court will deny the motion.

The debtor must submit the order within seven (7) days.

April 10, 2019 Ruling

Unless an appearance is made at the hearing on April 10, 2019, the hearing is continued to May 8, 2019 at 9:30 a.m., and movant must cure the deficiencies noted below on or before April 17, 2019.

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

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CONT... Richard Philip Dages Chapter 11

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.

On March 27, 2019, the debtor filed a response to the motion for relief from the automatic stay [doc. 68]. **By no later than April 24, 2019**, the movant must file a reply to that response addressing, among other things, cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) and the applicability of California Civil Procedure Code § 1161b.

Appearances on April 10, 2019 are excused.

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

Movant(s):

The Real Estate Plaza, Inc., A Ca

Represented By
Paul E Gold

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9:30 AM

1:18-13023 Hekmatjah Family Limited Partnership

Chapter 11

#6.00 Motion for relief from stay [AN]

MOURIS AHDOUT
VS
DEBTOR

fr. 3/6/19 (stip); 4/10/19 (stip)

Stip to continue filed

Docket 22

*** VACATED *** REASON: Order approving stip entered 5/3/19.
Hearing continued to 6/12/19 at 9:30 AM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hekmatjah Family Limited

Represented By
Stella A Havkin

Movant(s):

Mouris Ahdout

Represented By
Susan I Montgomery

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Hearing Room 301

9:30 AM

1:19-10698 Jay Cohen

Chapter 7

#7.00 Motion for relief from stay [UD]

U.S. BANK, NATIONAL ASSOCIATION
VS
DEBTOR

Docket 9

Tentative Ruling:

Unless an appearance is made at the hearing on May 8, 2019, the hearing is continued to June 5, 2019 at 9:30 a.m., and movant must cure the deficiencies noted below on or before May 13, 2019.

The notice of the motion fails to indicate a deadline for an opposition. 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 (fourteen days before the continued hearing) on the debtor, chapter 7 trustee and the United States trustee.

Party Information

Debtor(s):

Jay Cohen

Pro Se

Movant(s):

U.S. Bank, National Association, its

Represented By
Jennifer C Wong

Trustee(s):

Amy L Goldman (TR)

Pro Se

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9:30 AM

1:19-10794 Angie Miller

Chapter 7

#8.00 Motion for relief from stay [UD]

ANN DRINKWARD
VS
DEBTOR

Docket 4

Tentative Ruling:

On April 22, 2019, 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 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):

Angie Miller

Pro Se

Movant(s):

Ann Drinkward

Represented By
Joseph Trenk

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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9:30 AM

1:19-10873 Michail M Bobritsky

Chapter 7

#9.00 Motion for relief from stay [UD]

UNIVERSAL HOMES AND LAND CORP
VS
DEBTOR

Docket 11

Tentative Ruling:

On April 30, 2019, 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.

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):

Michail M Bobritsky

Pro Se

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CONT... Michail M Bobritsky

Chapter 7

Movant(s):

Universal Homes and Land Corp

Represented By
Lorraine Anderson

Trustee(s):

Amy L Goldman (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:19-10215 Gabriel Palomar Garcia

Chapter 7

#10.00 Motion for relief from stay [PP]

U.S. BANK NATIONAL ASSOCIATION
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.

Party Information

Debtor(s):

Gabriel Palomar Garcia

Represented By
Kevin T Simon

Movant(s):

U.S. Bank National Association

Represented By
Robert P Zahradka

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

Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

CONT... Gabriel Palomar Garcia

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 8, 2019

Hearing Room 301

9:30 AM

1:19-10335 Mia Danielle Boykin

Chapter 7

#11.00 Motion for relief from stay [PP]

ACAR LEASING LTD
VS
DEBTOR

Docket 22

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):

Mia Danielle Boykin

Represented By
Faith A Ford

Movant(s):

ACAR Leasing LTD dba GM

Represented By
Jennifer H Wang

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 8, 2019

Hearing Room 301

9:30 AM

1:18-10071 LOST COAST RANCH INC.

Chapter 7

#12.00 Motion for relief from stay [RP]

U.S. BANK N.A.
VS
DEBTOR

Docket 97

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.

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 prior to the foreclosure sale on January 22, 2019. Regarding the movant's awareness, movant submitted a declaration testifying that it was not notified of the debtor's bankruptcy case until February 13, 2019, which was after the sale.

**United States Bankruptcy Court
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San Fernando Valley
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9:30 AM

CONT... LOST COAST RANCH INC.

Chapter 7

On January 9, 2018, the debtor filed a voluntary chapter 7 petition. The debtor did not list an interest in the real property at issue in its schedules. The debtor did not list the movant in its master mailing list. On December 7, 2018, a deed of trust and assignments of rent was allegedly executed whereby Martin Uribe and Lorena P Uribe purported to obtain a lien in the amount of \$30,000 on the subject property from the debtor as beneficiary [Exh. F]. That deed was never recorded. The debtor never amended its schedules to include the subject property or master mailing list to include the movant. Consequently, retroactive relief from the automatic stay is appropriate in this case.

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

Debtor(s):

LOST COAST RANCH INC.

Represented By
Ronald A Norman - BK SUSPENDED -

Movant(s):

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

Represented By
Jennifer C Wong

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, May 8, 2019

Hearing Room 301

9:30 AM

1:18-10071 LOST COAST RANCH INC.

Chapter 7

#13.00 Motion for relief from stay [RP]

WILMINGTON TRUST NATIONAL ASSOCIATION
VS
DEBTOR

Docket 99

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.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

CONT... LOST COAST RANCH INC.

Chapter 7

Debtor(s):

LOST COAST RANCH INC.

Represented By

Ronald A Norman - BK SUSPENDED -

Movant(s):

Wilmington Trust, National

Represented By

Darlene C Vigil

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, May 8, 2019

Hearing Room 301

9:30 AM

1:19-10668 Baruch Glickstein and Limor Benisty

Chapter 7

#14.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 13

Tentative Ruling:

Deny.

The debtor's prior chapter 13 bankruptcy case was pending and dismissed on August 3, 2018, which is within one year before the filing of this case. The debtor filed the pending case on March 22, 2019. 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 chapter 7 trustee's motion.

Further, the chapter 7 trustee has not served the motion and provided notice of the hearing thereon and the deadline to file a response in accordance with Judge Kaufman's self-calendaring procedure for motions that are set for hearing on shortened time. The notice of the motion indicates that any written response or evidence must be filed and served at least 14 days before the hearing. Pursuant to Judge Kaufman's self-calendaring procedure, the notice should have indicated that a written response must be served and filed *two* days prior to the hearing.

The Court will prepare the order.

Party Information

Debtor(s):

Baruch Glickstein

Represented By
Eric Bensamochan

Joint Debtor(s):

Limor Benisty

Represented By
Eric Bensamochan

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

Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

CONT... Baruch Glickstein and Limor Benisty

Chapter 7

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, May 8, 2019

Hearing Room 301

9:30 AM

1:15-13658 Harry Richard Bridgen and Kim Marie Nicholson-Bridgen

Chapter 13

#15.00 Motion for relief from stay [PP]

AMERICAN HONDA FINANCE CORPORATION
VS
DEBTOR

Stip for adequate protection filed 4/25/19

Docket 35

*** VACATED *** REASON: Order approving stipulation entered
4/26/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harry Richard Bridgen

Represented By
Arsen Pogosov

Joint Debtor(s):

Kim Marie Nicholson-Bridgen

Represented By
Arsen Pogosov

Movant(s):

American Honda Finance

Represented By
Vincent V Frounjian

Trustee(s):

Elizabeth (SV) 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 8, 2019

Hearing Room 301

9:30 AM

1:18-12508 Marci Boswell

Chapter 13

#16.00 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
VS
DEBTOR

Docket 27

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):

Marci Boswell

Pro Se

Movant(s):

Toyota Lease Trust

Represented By
Dennis C. Winters

**United States Bankruptcy Court
Central District of California
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9:30 AM

CONT... Marci Boswell

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 8, 2019

Hearing Room 301

9:30 AM

1:13-12950 Katherine Marie Lake

Chapter 13

#17.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

Docket 89

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Katherine Marie Lake

Represented By
Kevin T Simon

Movant(s):

DEUTSCHE BANK NATIONAL

Represented By
April Harriott
Sean C Ferry
Eric P Enciso

Trustee(s):

Elizabeth (SV) 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 8, 2019

Hearing Room 301

9:30 AM

1:14-11327 Linda L Johnson

Chapter 13

#18.00 Motion for relief from stay [RP]

OCWEN LOAN SERVICING, LLC
VS
DEBTOR

Docket 65

Tentative Ruling:

The Court may condition any continuation of the hearing on the respondent making the postpetition mortgage payments in the amount of \$2,448.30 per month (as stated in the motion), as well as any outstanding chapter 13 plan payments in the amount of \$475.00 per month (as provided by the confirmed chapter 13 plan).

Party Information

Debtor(s):

Linda L Johnson

Represented By
Thomas B Ure

Movant(s):

Ocwen Loan Servicing, LLC

Represented By
Leslie M Klott
Eric P Enciso
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
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Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

1:18-12719 Patrick Daniel McNulty

Chapter 13

#19.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
VS
DEBTOR

Docket 29

Tentative Ruling:

On April 24, 2019, the debtor filed a response to the motion for relief from the automatic stay [doc. 32]. The debtor did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

Party Information

Debtor(s):

Patrick Daniel McNulty

Represented By
Kevin T Simon

Movant(s):

JPMORGAN CHASE BANK, NA

Represented By
Lynda D Marshall
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, May 8, 2019

Hearing Room 301

9:30 AM

1:19-10838 Marcelo Alejandro Cabrera

Chapter 13

#20.00 Amended Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 17

Tentative Ruling:

Grant the motion on an interim basis and continue hearing to **June 19, 2019 at 9:30 a.m.**

The Debtor's Prior Cases

The First Case

On March 12, 1997, Marcelo Alejandro Cabrera (the "Debtor") filed a voluntary chapter 7 petition, commencing case no. 1:97-bk-13415-KT (the "First Case"). On June 24, 1997, the Debtor received a discharge in the First Case.

The Second Case

On February 25, 2016, the Debtor filed a voluntary chapter 13 petition, commencing case no. 1:16-bk-10534-VK (the "Second Case"). On November 1, 2016, the Debtor filed a chapter 13 plan, which proposed to pay \$24,970.55 in arrears to the holder of the first deed of trust on the Debtor's residence [The Second Case, doc. 20]. On July 20, 2016, the Court entered an order dismissing the Second Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 30.

The Third Case

On October 18, 2016, the Debtor filed another voluntary chapter 13 petition, commencing case no. 1:16-bk-13000-MT (the "Third Case"). On May 9, 2016, the Debtor filed an amended chapter 13 plan, which proposed to pay \$33,085.00 in arrears to the holder of the first deed of trust on the Debtor's residence [The Third Case, doc. 10]. On January 27, 2017, the Court entered an order dismissing the Third Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 23.

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9:30 AM

CONT... **Marcelo Alejandro Cabrera**
The Fourth Case

Chapter 13

On February 24, 2017, the Debtor filed another voluntary chapter 13 petition, commencing case no. 1:17-bk-10472-MB (the “Fourth Case”). On February 24, 2017, the Debtor filed a chapter 13 plan, which proposed to pay \$38,617.00 in arrears to the holder of the first deed of trust on the Debtor’s residence [The Fourth Case, doc. 6].

On March 25, 2017, the Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 as to all creditors (the “First Motion to Continue”). *Id.* at doc. 19. In the First Motion to Continue, the Debtor stated that the Second and Third Case were dismissed for failure to make the chapter 13 plan payments. The Debtor represented that he was unable to make the plan payments in the Second Case because of a death in the family and in the Third Case because of an injury from a motor vehicle accident. The Debtor also stated that he filed the Fourth Case in order to save his residence from foreclosure, and that his son was willing to contribute to help fund his chapter 13 plan. On April 28, 2017, the Court granted the First Motion to Continue. *Id.* at doc. 28.

On October 17, 2017, the Court entered an order dismissing the Fourth Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 60.

The Fifth Case

On January 29, 2018, the Debtor filed another voluntary chapter 13 petition, commencing case no. 1:18-bk-10257-MT (the “Fifth Case”). On February 12, 2018, the Debtor filed a chapter 13 plan, which proposed to pay \$46,000.00 in arrears to the holder of the first deed of trust on the Debtor’s residence [The Fifth Case, doc. 12]. On March 13, 2018, Wells Fargo Bank, National Association as trustee for Option One Mortgage Loan Trust 2007-1, Asset-Backed Certificates, Series 2007-1 (“Wells Fargo”) filed an objection to that chapter 13 plan, stating that the prepetition arrears due to Wells Fargo were \$51,914.69, not \$46,000.00. *Id.* at doc. 19.

On February 13, 2018, the Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 as to all creditors (the “Second Motion to Continue”). *Id.* at doc. 16. In the Second Motion to Continue, the Debtor stated the Fourth Case was dismissed because he had financial hardships, which caused him to default on his chapter 13 plan payments and mortgage payments. The Debtor stated that in the Fourth Case, the

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9:30 AM

CONT... Marcelo Alejandro Cabrera

Chapter 13

Debtor relied on his son's contribution because the Debtor and his wife were not generating enough income. The Debtor represented that himself and his wife were working and earning more than during the Fourth Case. The Debtor also stated that he filed the Fifth Case in order to save his residence from foreclosure. On March 28, 2018, the Court entered an order granting the Second Motion to Continue. *Id.* at doc. 21.

On August 15, 2018, the Court entered an order dismissing the Fifth Case because the Debtor failed to appear at the § 341(a) meeting and to make pre-confirmation plan payments. *Id.* at doc. 32.

The Sixth Case

On October 24, 2018, the Debtor filed another voluntary chapter 13 petition, commencing case no. 1:18-bk-12606-VK (the "Sixth Case"). In his schedules, the Debtor disclosed monthly income in the amount of \$5,422.60 and monthly expenses in the amount of \$4,138.36, leaving net monthly income of \$1,284 [The Sixth Case, doc. 1].

On October 24, 2018, the Debtor filed a chapter 13 plan, which proposed to pay \$67,000.00 in arrears to the holder of the first deed of trust on the Debtor's residence. *Id.* at doc. 2. The Debtor's proposed plan payment was \$1,283.34 per month for sixty months. The proposed plan was a 0% plan.

On October 24, 2018, the Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 as to all creditors (the "Third Motion to Continue"). *Id.* at doc. 9. In the Third Motion to Continue, the Debtor stated that the Fifth Case was dismissed because he failed to make the chapter 13 plan payments. The Debtor stated that his daughter and his wife became ill during the Fifth Case. This caused the Debtor and his wife to miss work, making the Debtor unable to pay his mortgage and chapter 13 plan payments. The Debtor represented that he and his wife were back to work and earning their regular income. The Debtor also represented that his adult daughter and adult son started contributing to household payments. On November 21, 2018, the Court continued the hearing on the Third Motion to Continue to December 19, 2018, in order for the Debtor to serve all creditors properly.

On December 17, 2018, before the hearing on the Third Motion to Continue, the

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9:30 AM

CONT... Marcelo Alejandro Cabrera

Chapter 13

Court entered an order dismissing the Sixth Case because the Debtor failed to appear at the § 341(a) meeting and to make pre-confirmation plan payments. *Id.* at doc. 18.

The Debtor's Pending Case

On April 8, 2019, the Debtor filed another voluntary chapter 13 petition, commencing the pending case. In his pending case, the Debtor's monthly income is \$5,770.36 and his monthly expenses are \$4,028.36, leaving net monthly income of \$1,742.00 [doc. 1].

On April 8, 2019, the Debtor filed a chapter 13 plan, which proposes to pay \$74,000.00 in arrears to the holder of the first deed of trust on the Debtor's residence [doc. 2]. The Debtor's proposed plan payment is \$1,393.65 per month for sixty months. The proposed plan is a 0% plan.

On April 26, 2019, Wells Fargo, through Ocwen Loan Servicing, LLC, filed secured claim 9, in the amount of \$622,894.22. In that claim, Wells Fargo states that the Debtor owes it prepetition arrears in the amount of \$77,807.10, not \$74,000.00.

On April 10, 2019, the Debtor filed the pending motion to impose the automatic stay under 11 U.S.C. § 362 (the "Motion") [doc. 17]. Through the Motion, the Debtor seeks to impose the automatic stay as to all creditors. In the Motion, the Debtor states that prior to filing the Sixth Case, he was diagnosed with diabetes type II. The Debtor states that from December 10, 2018 through December 12, 2018, he was "severely incontinent, lost sleep and fell into a deep depression." Apparently, this caused the Debtor to fail to appear at the § 341(a) meeting of creditors. The Debtor represents that he and his wife are back to work and earning more than during the Sixth Case. Debtor also states that he adult son and daughter are living with him and are able to contribute as needed.

Discussion

Under 11 U.S.C. § 362(c)(4)(B), in order to impose the automatic stay in a case filed within one year of two or more cases which were pending within the same year but were dismissed, the debtor must show that the present case was filed in good faith as to the creditors to be stayed.

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Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

CONT... Marcelo Alejandro Cabrera

Chapter 13

Under 11 U.S.C. § 362(c)(4)(D)(i), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary) as to all creditors if--

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period; [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 this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed. . . .

Notwithstanding the assertions in the Motion and the lack of an opposition to the motion, Debtor has not provided at this time clear and convincing evidence that his financial affairs have improved since the Sixth Case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. This is the Debtor's sixth chapter 13 filing, and his seventh bankruptcy case. Despite five prior chapter 13 filings, the Debtor has yet to complete the chapter 13 process successfully and to obtain a discharge. Further, the Debtor has continued to be delinquent on his deed of trust payments for loans secured by the Debtor's residence. Moreover, 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 May 15, 2019**, 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) his May 2019 and June 2019 deed of trust payments in the amount of \$1,351.34 (as stated in his current Schedule J) as to the real property located at 8032 Burnet Avenue, Panorama City, California 91402; and (2) his May 2019 and June 2019 plan payments in the amount of \$1,139.65 to the chapter 13 trustee. **No later than June 17, 2019**, the Debtor must file a declaration to demonstrate that he timely made his required post-petition deed of trust and chapter 13 plan payments.

The Debtor must submit the order within seven (7) days.

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9:30 AM

CONT... Marcelo Alejandro Cabrera

Chapter 13

Debtor(s):

Marcelo Alejandro Cabrera

Represented By
Donald E Iwuchuku

Movant(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
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Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

1:19-10869 Lizette L. Mendez and Wilder Mendez

Chapter 13

#21.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 10

Tentative Ruling:

Grant the motion on an interim basis and continue hearing to **June 19, 2019 at 9:30 a.m.**

The First Bankruptcy Case

On September 1, 2018, Lizette L. Mendez filed a prior chapter 13 petition (the "First Case") [case no. 1:18-bk-12228-MT]. In her prior schedules, the debtor disclosed monthly income in the amount of \$5,755.00 and monthly expenses in the amount of \$4,835.00, leaving net monthly income of \$920.00 [First Case, doc. 1].

In her second amended chapter 13 plan, Ms. Mendez's proposed plan payment was \$200.00 per month for months one through three, then \$1,060.00 per month for months four through sixty [First Case, doc. 20]. Among other things, Ms. Mendez was to cure prepetition arrearages on her primary residence in the amount of \$3,839.77 through plan payments.

On March 29, 2019, the Court entered an order dismissing the First Case for failure to make the required plan payments [doc. 28].

The Pending Bankruptcy Case

On April 11, 2019, Ms. Mendez and Wilder Mendez (together, "Debtors") filed the pending case. On April 11, 2019, Debtors filed a motion to continue the automatic stay as to secured creditors (the "Motion to Continue Stay") [doc. 10]. In the Motion to Continue Stay, Debtors state that Ms. Mendez fell behind on her plan payments in the First Case when she had a family emergency involving her 11-year-old daughter. Debtors state that Ms. Mendez's daughter is stabilized, and that Ms. Mendez has been able to return to work.

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CONT... Lizette L. Mendez and Wilder Mendez

Chapter 13

In their pending case, Debtors' Schedules I & J indicate monthly income of \$4,766.00 and monthly expenses of \$3,759.50, leaving net monthly income of \$1,006.50 [doc. 1]. Debtors responded "No" to the question of whether they expected an increase in income within the first year of filing the petition.

In their plan, Debtors propose a monthly payment of \$500.00 per month for months one through two, then \$1,025.00 per month for months three through sixty [doc. 8]. Debtors' plan is a 0% plan. Debtors propose to cure arrearages on their primary residence in the amount of \$7,874.00 through plan payments. However, on April 24, 2019, secured creditor U.S. Bank Trust, N.A. filed an objection to confirmation because it claims that the approximate arrears owed are in the amount of \$9,538.42, not \$7,874.00 as stated in the proposed chapter 13 plan [doc. 18].

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 discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

In light of the standard, the Court will grant the motion on an interim basis up to the date of the continued hearing. **No later than May 15, 2019**, Debtors must file and serve notice of the continued hearing on *all* secured creditors in accordance with Fed. R. Bankr. P. 7004(b)(3) and (h). Debtors must timely pay: (1) their May 2019 and June 2019 deed of trust payments in the amount of \$828.50 (as stated in their current Schedule J) as to the real property located at 9555 Woodman Avenue, Unit 12, Pacoima, California 91331; and (2) their May 2019 and June 2019 plan payments in the amount of \$500.00 to the chapter 13 trustee. **No later than June 17, 2019**, Debtors must file a declaration to demonstrate that they timely made their required post-petition deed of trust and chapter 13 plan payments.

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

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Central District of California
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Courtroom 301 Calendar**

Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

CONT... Lizette L. Mendez and Wilder Mendez

Chapter 13

Party Information

Debtor(s):

Lizette L. Mendez

Represented By
R Grace Rodriguez

Joint Debtor(s):

Wilder Mendez

Represented By
R Grace Rodriguez

Movant(s):

Lizette L. Mendez

Represented By
R Grace Rodriguez

Wilder Mendez

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, May 8, 2019

Hearing Room 301

9:30 AM

1:19-10850 Papanicolaou Enterprises

Chapter 11

#22.00 Motion for relief from the automatic stay [UD]

YASAM LEGACY LLC, A CA LTD LIAB. CO.
VS
DEBTOR

Docket 20

Tentative Ruling:

Unless an appearance is made at the hearing on May 8, 2019, the hearing is continued to June 5, 2019 at 9:30 a.m., and movant must cure the deficiencies noted below on or before May 13, 2019.

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. 24 List of Creditors Holding 20 Largest Unsecured Claims.*

Appearances on May 8, 2019 are excused.

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

Movant(s):

Yasam Legacy LLC, A Ca Ltd. Liab.

Represented By
Paul E Gold

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

Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

1:19-10051 Rockin Artwork, LLC

Chapter 11

#23.00 Motion for relief from stay [AN]

EXPERIENCE HENDRIX, LLC AND AUTHENTIC HENDRIX, LLC
VS
DEBTOR

Docket 99

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) to the extent necessary to allow the receiver appointed in the district court action to submit his final report to the district court and to seek termination of the receivership.

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):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

Movant(s):

Authentic Hendrix, LLC

Represented By
Jason D Strabo

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

Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

CONT... **Rockin Artwork, LLC**
Experience Hendrix, LLC

Represented By
Jason D Strabo

Chapter 11

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall

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

Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

1:19-10062 Andrew Marc Pitsicalis

Chapter 11

#24.00 Motion for relief from stay [AN]

EXPERIENCE HENDRIX, LLC AND AUTHENTIC HENDRIX, LLC
VS
DEBTOR

Docket 60

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) to the extent necessary to allow the receiver appointed in the district court action to submit his final report to the district court and to seek termination of the receivership.

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):

Andrew Marc Pitsicalis

Pro Se

Movant(s):

Authentic Hendrix, LLC

Represented By
Jason D Strabo

Experience Hendrix, LLC

Represented By

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

Wednesday, May 8, 2019

Hearing Room 301

9:30 AM

CONT... Andrew Marc Pitsicalis

Jason D Strabo

Chapter 11

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall

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

Wednesday, May 8, 2019

Hearing Room 301

1:30 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

Adv#: 1:17-01017 Weil v. Cazares et al

- #25.00** Pretrial 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;
3/14/18; 1/23/19; 2/20/19 (stip)

Order appr stip to cont hrg ent 4/1/19

Docket 78

***** VACATED *** REASON: Cont to 8/21/19 at 1:30 per Order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean Albert Maury Cazares

Represented By
Ian Landsberg

Defendant(s):

Stanley Vincent

Pro Se

Oxidizer, Inc.

Pro Se

Fear Campaign, Inc.

Pro Se

Scott Koenig

Pro Se

Burton C. Bell

Pro Se

Dean Albert Maury Cazares

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, May 8, 2019

Hearing Room 301

1:30 PM

CONT... Dean Albert Maury Cazares

Chapter 7

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, May 8, 2019

Hearing Room 301

1:30 PM

1:18-10329 Ali P Dargah

Chapter 13

Adv#: 1:18-01045 Dargah v. Dargah et al

#26.00 Pre-trial 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; 12/12/18

CROSS COMPLAINT

Jeff Daragah, an individual
Cross-Complainant

v

Ali P. Dargah, an individual
Cross-Defendant

Docket 10

***** VACATED *** REASON: Order ent continuing hrg to 7/17/19 at 1:30
p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ali P Dargah

Represented By
Matthew D. Resnik

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

Wednesday, May 8, 2019

Hearing Room 301

1:30 PM

CONT... Ali P Dargah

Chapter 13

Defendant(s):

Does 1 to 10, Inclusive	Pro Se
All Persons or Entities Unknown	Pro Se
Shahla Dowlati, an individual	Pro Se
The Bank of New York Mellon fka	Pro Se
Gerakdune Granda an individual	Pro Se
Jeff Javad Dargah, an individual	Pro Se
Jeff Javad Dargah	Pro Se

Plaintiff(s):

Ali P Dargah

Represented By
Matthew D. Resnik
David M Kritzer

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 8, 2019

Hearing Room 301

1:30 PM

1:18-10385 Jorge Alberto Romero II

Chapter 7

Adv#: 1:18-01057 Acevedo v. Romero II

#27.00 Pretrial 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; 12/12/18

Docket 14

Tentative Ruling:

In the parties' joint pretrial stipulation, the plaintiff has indicated that he does not intend to call any witnesses. Does the plaintiff intend to call himself as a witness? If so, the plaintiff must amend his witness list to include his name as a witness.

The Court will continue this pretrial conference to **2:30 p.m. on June 19, 2019**, to be held in connection with the hearing on the motion for summary judgment filed by the defendant [doc. 43].

Appearances on May 8, 2019 are excused.

Party Information

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, May 8, 2019

Hearing Room 301

1:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01086 Abel v. Zuckerman et al

- #28.00** Status conference re: second amended complaint for:
- 1) Declaratory relief re: determination of validity, priority or extent of interest in property
 - 2) Declaratory 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) Nondischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)(A)
 - 5) Nondischargeability of debt pursuant to 11 U.S.C. 523(a)(2)(B)
- [28 U.S.C. sec 157(b)(2); FRBP., R. 7001]

fr. 11/14/18 (stip); 1/9/2019; 2/20/19; 3/13/19

Docket 11

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on June 5, 2019**, to be held with the hearing on the motion to dismiss [doc. 82].

Appearances on May 8, 2019 are excused.

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

Sunderland/McCutchan, Inc., a

Represented By
Edward McCutchan

Nickki B Allen, an individual

Pro Se

DOES 1-20

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, May 8, 2019

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
Phoenix Holdings, LLC a California	Pro Se
Sunderland/McCutchan LLP, a	Pro Se
B. Edward McCutchan Jr. an	Pro Se
Robert Edward Zuckerman	Pro Se
Continental Communities, LLC, a	Pro Se
Valley Circle Estates Realty Co., a	Pro Se

Plaintiff(s):

Richard Abel	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, May 8, 2019

Hearing Room 301

1:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01018 Gottlieb (TR) v. Anderson

#29.00 Status conference re: Complaint to avoid preferential transfers
and recover transfers for estate; for turnover; for conversion

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 10/31/19.

Deadline to file pretrial motions: 11/15/19.

Deadline to complete and submit pretrial stipulation in accordance with Local
Bankruptcy Rule 7016-1: 11/27/19.

Pretrial: 1:30 p.m. on 12/11/19.

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):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Kelli Anderson

Pro Se

Plaintiff(s):

David K. Gottlieb (TR)

Represented By

**United States Bankruptcy Court
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Hearing Room 301

1:30 PM

CONT... Christopher Anderson

Peter A Davidson

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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

Wednesday, May 8, 2019

Hearing Room 301

1:30 PM

1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

Adv#: 1:19-01032 Gottlieb, Chapter 7 Trustee v. Rojas et al

#30.00 Order to show cause re: remand and notice of
status conference (Removed Proceeding)

Docket 1

Tentative Ruling:

The Court will not remand this matter to state court.

I. BACKGROUND

On September 10, 2018, Aurora Frias Lee-Nelson ("Debtor") filed a complaint in state court (the "Complaint") against Kenny Rojas ("Kenny"), Christina Ceniza ("Christina"), Nicole Ceniza ("Nicole"), Leoncio Juadalso, Jr. ("Leoncio"), Danai Junpram ("Danai"), Christopher R. Donaghue ("Christopher"), Sergio Alberto Herrera ("Sergio"), Seal Rock IRA ("Seal Rock"), LT Real Estate Developments, LLC ("LT Real Estate") and Does 1-20, initiating state court case no. PC058775 (the "State Court Action"). Notice of Lodgment of State Court Pleadings ("Notice of Lodgment") [doc. 11], Exhibit 2. In the Complaint, Debtor alleged—

Debtor is over the age of 65. In September 2017, Kenny approached Debtor about purchasing the real property located at 20118 Via Cellini, Porter Ranch, CA 91326 (the "Property"). Debtor did not know that Kenny had been convicted for a prior mortgage fraud scheme. Kenny informed Debtor that he would handle everything in connection with the purchase of the Property, including arranging for a real estate agent and acting as a mortgage loan broker.

Christina was brought in by Kenny as a real estate agent; Christina was Sergio's employee. At Kenny's and Christina's urging, Debtor submitted an offer of \$1,480,000 for purchase of the Property, which offer was immediately accepted. To finance the purchase of the Property, Debtor obtained the following loans: (A) \$962,000 from Seal Rock; (B) \$74,000 from Christopher; and (C) \$210,000 from LT Real

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CONT...

Aurora Frias Lee-Nelson

Chapter 7

Estate. Debtor paid the remainder of the purchase price. The loans are secured by deeds of trust against the Property.

After Debtor purchased the Property, defendants Kenny, Christina, Nicole, Leoncio and Danai recorded, without Debtor's permission, the following: (A) three grant deeds transferring 25% of the Property to Leoncio, 25% to Danai and 25% to Kenny; (B) a deed of trust in favor of Nicole in the amount of \$50,000; (C) a deed of trust in favor of Kenny in the amount of \$50,000; (D) a deed of trust in favor of Kenny and Christina in the amount of \$210,500; and (E) a deed of trust in favor of Leoncio for \$210,000.

Defendants Kenny, Christina, Nicole, Leoncio and Danai tricked Debtor into signing these documents by presenting them to Debtor at the same time Debtor signed documents necessary to close escrow and representing to Debtor that the documents merely represented the deal for purchase of the Property. At this time, Debtor also was tricked into signing a Power of Attorney granting to Vanessa Ly and others the power to sign legal documents on behalf of Debtor, Kenny, Christina and Nicole; these defendants used the Power of Attorney to purchase luxury vehicles and real properties without authorization by Debtor.

Seal Rock, Christopher and LT Real Estate knew about the unlawful and fraudulent conduct by the other defendants and provided loans to Debtor they knew Debtor could not afford. On June 11, 2018, Seal Rock recorded a Notice of Default and Election to Sell.

Id. On these allegations, Debtor asserted the following causes of action: (A) Quiet Title; (B) Slander of Title; (C) Elder Financial Abuse; (D) Breach of Fiduciary Duties; (E) Fraud; and (F) Declaratory Relief. *Id.*

On January 10, 2019, Debtor filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee"). In her schedule A/B, Debtor listed a fee simple interest in the Property and valued the Property at \$1,400,000. Debtor also scheduled several luxury vehicles.

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CONT... Aurora Frias Lee-Nelson

Chapter 7

On March 28, 2019, the Trustee removed the State Court Action to this Court. On March 29, 2019, the Court issued the *Order to Show Cause re: Remand and Notice of Setting Status Conference (Removed Proceeding)* (the "OSC") [doc. 2]. In the OSC, the Court instructed any party who supports remand to file and serve a memorandum of points and authorities 28 days after removal of the State Court Action, and any party who opposes remand to file and serve a memorandum of points and authorities 14 days before the status conference. The Court also instructed the Trustee to serve a copy of the OSC on all other parties to the State Court Action. Finally, the Court ordered compliance with Local Bankruptcy Rule 7016-1(a), i.e., filing a status report.

On March 29, 2019, the Trustee filed and served a copy of the OSC on all other parties to the State Court Action [doc. 4]. On April 18, 2019, the Trustee and Seal Rock entered into a stipulation to dismiss Seal Rock from this action (the "Seal Rock Stipulation") [doc. 6]. On April 19, 2019, the Court entered an order approving the Seal Rock Stipulation [doc. 9], amended on April 22, 2019 [doc. 14].

On April 18, 2019, the Trustee filed a first amended complaint (the "FAC") [doc. 7]. The FAC names as defendants Kenny, Christina, Nicole, Leoncio and Danai (collectively, "Defendants"). The FAC includes similar allegations as the Complaint regarding the allegedly fraudulent grant deeds and deeds of trust recorded against the Property. Through the FAC, the Trustee asserts the following claims: (A) Avoidance of Intentional Fraudulent Transfer; (B) Avoidance and Recovery of Constructively Fraudulent Transfer; (C) Declaratory Relief; and (D) Recovery and Preservation of Avoided Intentional Transfer, Constructive Fraudulent Transfer and Unperfected Lien.

No party has timely filed a response to the OSC. On May 1, 2018, the Trustee filed a unilateral status report [doc. 16], stating that Seal Rock has been dismissed and that the only other state court defendant that had contacted the Trustee was LT, which entity the Trustee does not name as a defendant in the FAC based on an investigation by the Trustee. The Trustee notes that he filed the FAC because none of the state court defendants filed an answer to the original complaint, and, as a result, the Trustee did not need leave of Court to file an amended complaint under Federal Rule of Civil Procedure 15(a).

II. ANALYSIS

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Judge Victoria Kaufman, Presiding
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CONT... Aurora Frias Lee-Nelson

Chapter 7

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.* 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

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CONT...

Aurora Frias Lee-Nelson

Chapter 7

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:

[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,

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Chapter 7

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 apparently has subject matter jurisdiction over the State Court Action. Although the FAC, like the original Complaint, includes causes of action that do not arise under the Bankruptcy Code or arise in a bankruptcy case, the Court has "related to" jurisdiction over these claims because the Trustee, as plaintiff, may recover funds for distribution to creditors in Debtor's bankruptcy case. Moreover, the litigation involves issues regarding ownership of property of the estate, such as the Property and several vehicles listed by Debtor in her schedule A/B. As such, the action may impact administration of the estate, and the Court has subject matter jurisdiction. As to the remaining fraudulent transfer claims, the claims arise under the Bankruptcy Code and the Court "arising under" jurisdiction over those claims. Thus, the Court has subject matter jurisdiction over the State Court Action.

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*

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CONT... Aurora Frias Lee-Nelson

Chapter 7

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. C.D. Cal. 2007).

The Court will not remand this matter to state court. First, the litigation may have a major impact on administration of the estate because the outcome of the proceeding will determine whether there are assets to distribute to creditors. Given the issues regarding property of the estate raised in the Complaint and the FAC, it is more efficient for this Court to preside over both Debtor's bankruptcy case and the State Court Action. In addition, the FAC includes bankruptcy issues, and the applicable

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CONT... Aurora Frias Lee-Nelson

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law is neither difficult nor unsettled.

Further, although the matter was previously before the state court, the Trustee has indicated that Debtor did not serve all of the defendants with the Complaint; according to the Trustee, the Trustee served many of the defendants for the first time after removal of the State Court Action. As such, most of the parties involved in this action have yet to participate, and the state court has not adjudicated any matters related to those parties.

Moreover, it is not feasible to sever the action, and this matter will not be a significant burden on this Court's docket. The record also does not reflect that the Trustee engaged in forum shopping by removing the State Court Action to this Court. Given that the FAC includes claims under the Bankruptcy Code, comity is not a major concern. Finally, because the remaining defendants were not properly served until after removal to this Court, and did not participate in the State Court Action prior to removal, the possibility of prejudice to these parties is minimal.

Although the parties have a right to a jury trial as to certain claims, the matter involves the presence of nondebtor parties and the FAC includes both core and noncore claims, the remaining factors weigh against remand of this matter to state court. Consequently, the Court will not remand this matter to state court.

III. CONCLUSION

The Court will discharge the OSC. The Clerk of the Court may issue a summons on the FAC. The Court will continue the status conference to **1:30 p.m. on July 17, 2019**.

The Trustee must submit an order within seven (7) days.

Appearances on May 8, 2019 are excused.

Party Information

Debtor(s):

Aurora Frias Lee-Nelson

Represented By
Ronald D Tym

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Defendant(s):

Kenny Rojas	Pro Se
Christina Ceniza	Pro Se
Nicole Ceniza	Pro Se
Lencio Juadalso Jr.	Pro Se
Danai Junpram	Pro Se
Christopher R. Donaghue	Pro Se
Sergio Alberto Herrera	Pro Se
LT Real Estate Developments, LLC	Pro Se
Leoncio Juadalso Jr.	Pro Se

Plaintiff(s):

David K Gottlieb, Chapter 7 Trustee	Represented By D Edward Hays Laila Masud
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Trustee(s):

David Keith Gottlieb (TR)	Represented By D Edward Hays Laila Masud
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Adv#: 1:18-01106 David K. Gottlieb in his capacity as Chapter 7 Tru v. Roxe, LLC, a

#31.00 Defendant's motion to dismiss first amended complaint for failure to state a claim for which relief may be granted (FRBP 7012 / FRCP 12(b)(6))

Docket 58

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On January 7, 2016, Duane Daniel Martin ("Duane") and Tisha Michelle Martin ("Tisha," and together with Duane, "Debtors") filed a voluntary chapter 7 petition. David. K. Gottlieb was appointed chapter 7 trustee (the "Trustee"). On January 21, 2016, Debtors filed their schedules and statements [Bankruptcy Docket, doc. 16]. In their schedule A/B, Debtors listed a leasehold interest in 22401 Summitridge Circle, Chatsworth, CA 91311 (the "Property"), noting that Debtors are the lessee and that a portion of postpetition rent has been prepaid. In an attachment to their schedule A/B, Debtors also indicated that The Monaco Irrevocable Trust (the "Monaco Trust") owns 100% of Seoul-Eight Funding, LLC ("Seoul-Eight"). According to Debtors, the Monaco Trust includes Debtors and their adult niece as settlors. In the attachment, Debtors also listed an interest in The Campbell-Martin Family Trust dated August 29, 2011 (the "Campbell-Martin Trust"); Debtors stated that they are the settlors, trustees and beneficiaries of the Campbell-Martin Trust, which previously sold the Property through a short sale.

On September 6, 2016, the Trustee filed a motion to approve a settlement agreement between the Trustee and Debtors (the "Settlement Agreement") [Bankruptcy Docket, doc. 115]. In relevant part, the Settlement Agreement provided that it "*does not* alter the Trustee's rights and remedies, if any, to seek to recover any voidable transfers from, or enforce any other claims against, any non-debtor parties." Settlement Agreement, ¶ 9 (emphasis in Settlement Agreement). On October 11, 2016, the Court entered an order approving the Settlement Agreement [Bankruptcy Docket, doc. 122].

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On September 17, 2018, the Trustee filed a complaint (the "Complaint") against Roxe, LLC ("Roxe"), Derek Folk and Michael Martin ("Michael") seeking to quiet title to the Property and for turnover of the Property under 11 U.S.C. § 542. On October 24, 2018, the Trustee voluntarily dismissed Mr. Folk from this adversary proceeding [doc. 11], leaving Roxe and Michael as the remaining defendants (together, "Defendants").

On November 20, 2018, Defendants filed a motion to dismiss the Complaint (the "First Motion") [doc. 15]. In the First Motion, Defendants argued that: (i) Roxe is the legal owner of the Property; (ii) the Trustee cannot show the essential element of ownership for an alter ego claim; (iii) any fraudulent transfer claim is time barred; and (iv) the Trustee cannot seek turnover of property that is not owned by Debtors or part of the bankruptcy estate.

On January 9, 2019, the Court held a hearing on the First Motion. At that time, the Court issued a ruling granting the First Motion and dismissing the Complaint with leave to amend (the "Ruling"). In the Ruling, the Court held that the Trustee had not adequately alleged an ownership interest to show alter ego liability; that, to the extent the Trustee was asserting fraudulent transfer, the claim was time barred; and that the Trustee did not otherwise show that Duane had an interest in the Property and/or Roxe.

On April 18, 2019, the Trustee filed a first amended complaint (the "FAC") [doc. 65]. In relevant part, the Trustee alleges in the FAC:

On March 1, 2006, Debtors purchased the Property for \$900,000, funded in part by a \$650,000 loan from IndyMac Bank, FSB ("IndyMac"). On July 3, 2007, Debtors borrowed another \$1,950,000 from IndyMac to renovate the Property. Debtors defaulted under the terms of both loans. On August 10, 2012, IndyMac sent a letter to Debtors regarding the defaults offering to forbear on its right to foreclose if Debtors paid IndyMac \$1,380,000 by November 30, 2012 and Debtors made monthly interest payments in the reduced sum of \$10,000 per month. By this time, Debtors were in default on other loans and involved in litigation with other creditors, including Comerica Bank and City National Bank.

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To save the Property from foreclosure by IndyMac or levy by one of Debtors' other creditors, Duane devised a scheme to shield the Property from creditors. For this reason, Duane created Roxe, an entity completely dominated and controlled by Duane, to hold title to the Property. On October 30, 2012, Roxe was formed at the direction of Duane. In emails, the ownership of Roxe was described as "49% Derek Folk..., 49% Michael Martin... and 2% Seoul-Eight (another one of [Duane's] organized entities)." In Debtors' schedules, Debtors indicated they own 100% of Seoul-Eight through the Monaco Trust, an irrevocable trust created in 2011 with Debtors and their adult niece as settlors.

To obtain financing for purchase of the Property, Duane turned to his friend Will Smith. On November 29, 2012, after several emails with Mr. Smith's representatives, Roxe signed a secured promissory note in favor of TB Properties, LLC ("TB Properties"), Mr. Smith's company. TB Properties described the loan as the "Duane Martin / Roxe LLC Promissory Note (Interest Only)." In exchange, TB Properties obtained a first deed of trust against the Property. On November 30, 2012, Debtors transferred the Property to Roxe. On December 18, 2012, after the closing of the transaction, Beverly Hills Escrow sent to Roxe an Owners Policy of Insurance, naming TB Properties as the insured and indicating that title vested in "Duane Martin and Tisha Campbell-Martin, as Trustees of the Campbell-Martin Family Trust."

To provide cover for Debtors continuing to reside in the Property, Debtors purported to lease the Property from Roxe for \$5,000 per month. After TB Properties closed the loan, Roxe sporadically and inconsistently made lease payments to TB Properties, and the payments ended by August 2017. Duane lived on the Property and continued to renovate the Property, expending at least \$147,000 to develop the Property. Duane also held himself out as the owner of the Property. In addition, Duane held himself out as being liable for Roxe's debts. For instance, Duane would issue checks to cover the mortgage Roxe owed to TB Properties instead of the rent Debtors owed to Roxe. Duane also

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remained at all times in possession of the Property.

Roxe is a straw man for Duane. Duane continues to own 2% of Roxe through Seoul-Eight and the Monaco Trust. The attached emails reflect that third parties refer to Roxe as Duane's entity. Duane also referred to the Property as his Property. Duane regularly used Roxe's bank account to pay expenses incurred by Group 6842, LLC, a company in which Duane is an investor and member.

Roxe's bank account was initially funded with a \$10,000 check from Mowguls, LLC, an entity Duane owned and controlled. The lease with Debtors was Roxe's sole source of revenue, and Roxe is no longer capitalized and owes approximately \$100,000 in real property taxes.

In December 2017, Tisha and Duane initiated the dissolution of their marriage. After this time, Tisha learned about Duane's concealment of valuable assets. In August 2018, Tisha provided the Trustee with information regarding Duane's fraud and continuing concealment of the Property in the guise of Roxe. Because of the continuing concealment, the Trustee did not learn about the Property until August 2018.

Beginning in March 2018, Duane initiated and directed the effort to sell the Property. During these efforts, Duane and Mr. Smith's team discussed "moving" the loan from the Property to another real property to be occupied by Duane.

On these allegations, the Trustee asserts the following claims: (A) Quiet Title; (B) Avoidance of Fraudulent Conveyance; (C) Turnover; and (D) Constructive Trust. In addition, in an email attached to the FAC, Duane states that there may be \$1.5 million in equity after sale of the Property; in another email, a representative of Mr. Smith states that "Duane will receive some cash from the sale...." FAC, Exhibits S, T.

On February 21, 2019, Defendants filed a motion to dismiss the FAC (the "Motion") [doc. 58]. In the Motion, Defendants argue that: (A) the Trustee has failed to show that Duane has any ownership interest in the Property; (B) even if Duane had a

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membership interest in Roxe, California law does not provide for reverse piercing of the corporate veil; (C) Roxe is the legal owner of the Property; (D) the Trustee has not adequately alleged ownership to assert an alter ego claim; (E) the Trustee has released all claims against Duane; (F) the Trustee's fraudulent transfer claim is time barred because it was not filed four years from the date of transfer of the Property; (G) the Trustee cannot seek turnover of property that is not property of the estate; and (H) the Trustee is not entitled to a constructive trust.

On April 24, 2019, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 67]. In the Opposition, the Trustee asserts that: (A) the statute of limitations has not run on the fraudulent transfer claims because the Trustee did not discover the fraudulent nature of Duane's transfer to Roxe until August 2018 and the statute of limitations is equitably tolled; (B) the claims for relief are not reliant on a finding of alter ego liability; (C) Debtors' settlement with the Trustee does not bar this action against Defendants; and (D) the FAC adequately states claims for relief as to the Trustee's Quiet Title, Turnover and Constructive Trust claims. Regarding the Trustee's equitable tolling argument, the Trustee includes several factual assertions regarding Duane's prior testimony from his § 341(a) meeting of creditors.

On May 2, 2019, Defendants filed a reply to the Opposition (the "Reply") [doc. 68]. In the Reply, Defendants assert that the statute of limitations as to the Trustee's fraudulent transfer claim cannot be extended based on delayed discovery because Duane's prior testimony should have put the Trustee on notice regarding the nature of the transfer of the Property.

II. ANALYSIS

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

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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 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

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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. Impact of Settlement Agreement

As a preliminary matter, the Settlement Agreement does not bar this proceeding against Defendants, who are nondebtor entities. As noted above, the Settlement Agreement is between the Trustee and *Debtors* and explicitly provides that the Trustee is not barred from proceeding against nondebtor parties, such as Defendants. As such, the Settlement Agreement does not prevent this action from proceeding.

C. Quiet Title

Pursuant to California Code of Civil Procedure ("CCP") § 760.020(a), an action for quiet title "may be brought under this chapter to establish title against adverse claims to real or personal property or an interest therein." Pursuant to CCP § 760.010(a), a "[c]laim" includes a legal or equitable right, title, estate, lien, or interest in property or cloud upon title." In the FAC, the Trustee bases his quiet title on the following—

Plaintiff's claim to quiet title to the Family Home is based upon, *inter alia*: (a) Debtors' legal interest in the Family Home based upon Debtors' 2% ownership of Roxe through entities owned and controlled by Debtors; (b) Debtors' equitable interest in the Family Home resulting from Duane Martin acting at all times relevant herein as the owner of Roxe in its day to day operations; (c) Duane Martin's continuing concealment of his retention of a secret benefit of ownership in the Family Home through the guise of Roxe; and (d) Debtors' interest in the Family Home based upon a finding that Duane Martin is the alter ego of Roxe, as alleged herein.

FAC, ¶ 93.

- i. ***Duane's Alleged Legal Interest in Roxe and/or the Property***

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In the FAC, the Trustee alleges that Debtors have a legal interest in the Property based on Debtors' 2% ownership of Roxe through entities owned and controlled by Debtors. In the Opposition, the Trustee argues in a conclusory fashion that Duane is the "record owner" of 2% of Roxe. However, the FAC does not include sufficient allegations to state a plausible legal interest held by Debtors.

In their schedules, Debtors indicated that the Monaco Trust is an irrevocable trust with Debtors and their niece as settlors. The Monaco Trust owned 100% of Seoul-Eight; in turn, the Trustee alleges Seoul-Eight has a 2% membership interest in Roxe. However, the Trustee does not allege how Debtors' interest in the Monaco Trust, or the Monaco Trust's ownership of Seoul-Eight, results in a legal interest in the Property or in 2% of Roxe held by *Debtors*.

Presumably, the Trustee may be able to allege that he may recover the assets of the trust for the benefit of the estate. The parties refer to the Monaco Trust as an irrevocable trust. Generally, "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 avoidance actions." *In re Cutter*, 398 B.R. 6, 19 (B.A.P. 9th Cir. 2008), *aff'd*, 468 F.App'x 657 (9th Cir. 2011) (quoting *In re Unicom Computer Corp.*, 13 F.3d 321, 324 (9th Cir. 1994)). "That said, while assets transferred to a trust do not ordinarily become property of the bankruptcy estate of the trust's trustee, powers that a debtor who is trustee of a trust may exercise for his or her own benefit become property of the estate." *Id.* "Moreover, to the extent a debtor holds a beneficial interest in a trust, that beneficial interest becomes property of the estate, unless it is protected by a *valid* spendthrift provision. 11 U.S.C. § 541(a)(1) and (c) (2)." *Id.* (emphasis in *Cutter*). "While California law recognizes the validity of spendthrift trusts, any spendthrift provisions are invalid when the settlor is a beneficiary." *Id.*, at 20. "Assets transferred to an irrevocable trust do not become part of a bankruptcy estate unless the transfer or the trust is invalid." *United States v. Lawrence*, 189 F.3d 838, 845 (9th Cir. 1999).

Here, the only allegations in the FAC regarding the Monaco Trust refer to Debtors' schedules, in which Debtors stated that the Monaco Trust is an irrevocable trust with Debtors and their adult niece as settlors. There are no allegations in the FAC regarding whether Debtors are the beneficiaries of the Monaco Trust, or whether the

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Monaco Trust or any transfers to the Monaco Trust are otherwise invalid. As such, the Trustee cannot make a blanket assertion that Debtors or Duane are "record owners" of any of the Monaco Trust's assets without alleging why the Trustee, as representative of Debtors' estate, has a legal interest in assets of the Monaco Trust.

In addition, even if the Trustee is able to allege adequately a right to assets of the Monaco Trust, the Monaco Trust does not have an interest in Roxe. Rather, the Monaco Trust owns 100% of Seoul-Eight, a limited liability company ("LLC"), which in turn owns 2% of the membership interest in Roxe. To establish that the estate has an interest in Roxe, the Trustee must allege facts that allow the Trustee to reach Seoul-Eight's assets, such as the ability to operate the LLC as chapter 7 trustee under 11 U.S.C. § 721. At this time, the Trustee's blanket allegation that Duane has a 2% membership interest in Roxe is not supported by the remaining allegations in the FAC.

ii. Duane's Alleged Equitable Interests

Alternatively, the Trustee alleges that Debtors and/or Duane maintain an equitable interest in Roxe and/or the Property. Duane's alleged equitable interests appear to stem from two theories: (A) that Roxe is an alter ego of Duane; and (B) that Duane maintained a secret beneficial interest in the Property.

a. Alter Ego Liability

In the Opposition, the Trustee asserts that none of his claims rely on alter ego liability. Nevertheless, in the FAC, the Trustee explicitly alleges that his quiet title claim is based on, among other theories, alter ego liability.

The Trustee relies primarily on *In re Schwarzkopf*, 626 F.3d 1032 (9th Cir. 2010). In *Schwarzkopf*, prepetition, the debtors created two irrevocable trusts naming their minor child as beneficiary and a third party as trustee. *Schwarzkopf*, 626 F.3d at 1035. Simultaneously with the creation of one of the trusts, the debtors transferred all of the stock of a corporation, of which one of the debtors was the sole shareholder, into the trust. *Id.* At the time of the inception of the second trust, the debtors placed \$25 into the trust as its sole asset. *Id.* Subsequently, another one of the debtors' corporations purchased property to place into the second trust. *Id.*

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Although the debtors' minor child benefitted from both trusts, the trusts also supported the debtors; for instance, the debtors used assets from one of the trusts to purchase a home to live in rent-free. *Id.*, at 1035-36. In addition, there were inadequate books and records for both trusts, and the debtors frequently intermingled and/or transferred funds between the trusts. *Id.*, at 1036.

After the debtors filed for bankruptcy protection, the chapter 7 trustee filed an adversary proceeding to recover \$4 million in assets from the trusts. *Id.* The bankruptcy court held that one of the trusts was an alter ego of one of the debtors, but the other trust was valid because it was created for the benefit of a minor child. *Id.* On appeal, the district court held that the first trust was invalid because it was created to defraud the debtors' creditors; the district court remanded as to this issue for the bankruptcy court to determine if this claim was time barred. *Id.* The district court also disagreed that either trust was an alter ego of one of the debtors, because that debtor was neither a trustee nor a beneficiary of the trusts. *Id.*

On appeal, the Ninth Circuit Court of Appeals agreed with the district court that the first trust was invalid because it was created for the purpose of defrauding creditors. *Id.*, at 1037. As to the second trust, the chapter 7 trustee argued that one of the debtors was the equitable owner of the trust and that equitable ownership was sufficient to confer alter ego liability; the debtors asserted that, under California law, a legal ownership interest was required, and that the trustee was improperly attempting to reverse-pierce the corporate veil. *Id.*

The Court of Appeals agreed that California law does not allow reverse piercing of the corporate veil, i.e., allowing "a third party creditor [to] pierce the corporate veil to reach corporate assets to satisfy a shareholder's personal liability." *Id.*, at 1038. Nevertheless, the Court of Appeals concluded that this general rule does not apply to trusts. *Id.*

Regarding the debtors' argument that a legal ownership interest was required, the Court of Appeals stated:

California case law suggests that equitable ownership is sufficient. The California Supreme Court has noted that an individual's expectation

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that he would receive shares of a corporation "supports an inference that he was an equitable owner" and justifies imposition of alter ego liability. *Minton v. Cavaney*, 56 Cal.2d 576, 15 Cal.Rptr. 641, 364 P.2d 473, 475 (1961). And in *Troyk v. Farmers Group, Inc.*, the California Court of Appeal imposed alter ego liability on a managing agent and attorney-in-fact although it did not own the interinsurance exchange at issue. 171 Cal.App.4th 1305, 90 Cal.Rptr.3d 589, 620 (2009). Legal ownership was not necessary because, although "[a]n insurance exchange is 'owned' by the subscribers, ... given that the subscribers are required to appoint the attorney-in-fact as managerial agent, the 'ownership' element of the alter ego doctrine is not applicable in this context." *Id.* at 620 n. 27 (citation and internal quotation marks omitted). In essence, the managing agent was the equitable owner. *See also Sonora Diamond Corp. v. Superior Court*, 83 Cal.App.4th 523, 99 Cal.Rptr.2d 824, 836 (2000) (where the alter ego doctrine applies, "courts will ignore the corporate entity and deem the corporation's acts to be those of the persons or organizations actually controlling the corporation, in most instances the equitable owners").

Id., at 1038–39. On this law, the Court of Appeals stated that one of the debtors was the equitable owner of the second trust because "he acted as owner of the trust and its assets," the trustee "had no role nor took any action" other than following the debtor's instructions, he used the assets of the trust to pay for the debtors' living expenses and he used a corporation owned by the second trust as "nothing but a shell." *Id.*, at 1039.

The facts in *Schwarzkopf* are remarkably similar to the facts alleged in the FAC. In the FAC, the Trustee alleges that Duane used Roxe as a shell; that Defendants acted at the direction of Duane; that Duane frequently used his own money to pay expenses of Roxe or Roxe's funds to pay expenses related to Duane's other entities; and that Duane stopped paying rent to Roxe to live in the Property. On these allegations, the Trustee has established that Duane had an equitable ownership interest in Roxe, which interest is sufficient to show ownership for purposes of alter ego liability under *Schwarzkopf*.

The problem is that the *Schwarzkopf* court explicitly held that reverse-piercing of the corporate veil was not an issue because it did not apply to trusts. Here, reverse-

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piercing of the corporate veil remains a barrier because the Trustee is attempting to impose alter ego liability as to an LLC, not a trust, by holding the LLC liable for Duane's debts. In the Opposition, the Trustee argues that reverse-piercing of the corporate veil is not relevant because the Trustee is not attempting to hold Roxe liable for Duane's debts; however, the purpose of recovering Roxe's assets into the estate would be to pay Duane's creditors. Courts applying California law have routinely held that this practice is not permissible. *See, e.g. In re Shakib*, 2014 WL 3865232, at *2 (Bankr. C.D. Cal. Aug. 6, 2014); and *In re Castiglione*, 2010 WL 9474767, at *6-8 (Bankr. E.D. Cal. Jan. 20, 2010).

That said, if the Trustee is able to amend the FAC to include allegations regarding whether the *Monaco Trust* is an alter ego of Duane, the facts would closely mirror *Schwarzkopf*. By alleging that the Monaco Trust is an alter ego, the Trustee may be able to allege that the Trustee is entitled to the Monaco Trust's assets, including Seoul-Eight and, in turn, Roxe. For instance, should the Trustee sufficiently allege that the Monaco Trust is Duane's alter ego, the Trustee, stepping into the Debtors' shoes, might be able to dissolve Seoul-Eight and/or reach its assets. *See Castiglione*, 2010 WL 9474767, at *4-5 (discussing a chapter 7 trustee's ability to step into a debtor's shoes to operate and/or dissolve the debtor's corporation).

b. Secret Beneficial Interest in the Property

The Trustee also alleges that Duane maintained a secret beneficial interest in the Property. In the FAC, the Trustee alleges that Roxe is a sham entity created to conceal Duane's interest in the Property, and that Debtors' lease with Roxe also is a sham. The Trustee further alleges that Debtors continued to reside in the Property after the transfer from the Campbell-Martin Trust to Roxe, and that Duane stopped paying rent to live in the Property.

Moreover, the FAC includes allegations regarding Duane's control over the residual equity in the Property and that Duane intended to receive any net proceeds from the sale of the Property. For instance, in an email attached as Exhibit S to the FAC, Duane notes that there may be \$1.5 million in equity after sale of the Property. In another email attached as Exhibit T to the FAC, a representative of Mr. Smith states that "Duane will receive some cash from the sale...." Taken together, these allegations establish a secret beneficial interest held in the Property held by Duane.

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On this basis, the Court will not dismiss the quiet title claim.

Defendants assert that the "owner of an equitable interest cannot maintain an action to quiet title against the owner of legal title." *Stafford v. Ballinger*, 199 Cal.App.2d 289, 294-95 (Ct. App. 1962). Generally, this is true; however, here, the Trustee's allegations rest on the fact that Roxe, the entity which Defendants assert holds legal title, is a sham, and that Defendants had a role in concealing Duane's assets. In *Stafford*, the defendant was determined to be a legal owner, and there were no allegations that the defendant held legal title fraudulently or as a sham entity. *Id.*, at 294-95. Thus, *Stafford* is inapposite and inapplicable to the allegations in the FAC.

D. Fraudulent Transfer

Defendants assert that the Trustee's fraudulent transfer claim under California Civil Code ("CCC") § 3439.04(a) is time barred. Under CCC § 3439.04(a)—

A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor.

Pursuant to CCC § 3439.09—

(a) Under paragraph (1) of subdivision (a) of Section 3439.04, not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant.

...

(c) Notwithstanding any other provision of law, a cause of action under this chapter with respect to a transfer or obligation is extinguished if no action is brought or levy made within seven years after the transfer was made or the obligation was incurred.

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Under 11 U.S.C. § 108(a)—

If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only 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) two years after the order for relief.

Here, the Trustee alleges in the FAC, and Defendants do not dispute, that the relevant transfer from the Campbell-Martin Trust to Roxe occurred on November 30, 2012. Debtors filed their bankruptcy petition on January 7, 2016. Four years from November 30, 2012 is November 30, 2016. Because the statute of limitations had not expired as of the petition date, the statute was extended to two years beyond the petition date, i.e., January 7, 2018. As such, the statute of limitations expired under the first prong of CCC § 3439.09(a).

The second prong of CCC § 3439.09(a) extends the statute of limitations to "not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant." The Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") has addressed the question of whether the one year limitation in the second prong of CCP § 3439.09(a) runs from discovery of the transfer or discovery of the fraud. *In re Ezra*, 537 B.R. 924, 932-34 (B.A.P. 9th Cir. 2015). The BAP concluded that "the one-year period under Cal. Civ. Code § 3439.09(a)'s discovery rule does not commence until the plaintiff has reason to discover **the fraudulent nature of the transfer.**" *Id.*, at 933 (emphasis in *Ezra*). At this time, neither California nor federal courts have disagreed with this interpretation.

In the FAC, the Trustee alleges that, although Debtors listed the transfer of the Property from the Campbell-Martin Trust to Roxe in their schedule A/B, the Trustee did not discover the *fraudulent nature* of this transfer until Tisha informed the Trustee, in August 2018, about Duane's alleged secret interest in the Property.

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Defendants do not address *Ezra* or the discovery extension in the second prong of CCC § 3439.09(a) in the Motion. Rather, for the first time in the Reply, Defendants argue that this prong does not apply because the Trustee's factual assertions in the Opposition establish that the Trustee should have discovered pertinent facts sooner.

The Court need not consider arguments raised for the first time in the Reply. Nevertheless, although the Court may take judicial notice of Debtors' schedules, the remaining facts asserted by Defendants in the Reply and by the Trustee in the Opposition are not judicially noticeable, and the Court cannot consider evidence outside the FAC for purposes of a motion to dismiss. At this time, the Trustee has included sufficient allegations regarding discovery of the "fraudulent nature of the transfer." The remaining arguments regarding what the Trustee could or could not have discovered sooner are appropriately considered at an evidentiary hearing.

Because the Motion attacks the Trustee's fraudulent transfer claim solely on the basis that the claim is time barred, and because the FAC includes sufficient allegations that the Trustee could not have discovered the "fraudulent nature of the transfer" until August 2018, the Trustee's fraudulent transfer claim survives the Motion.

E. Constructive Trust

"A constructive trust is a creature of state law. In a constructive trust, a person who has engaged in fraud or other wrongful conduct holds only bare legal title to the property subject to a duty to reconvey it to the rightful owner." *F.T.C. v. Crittenden*, 823 F.Supp. 699, 703 (C.D. Cal. 1993), *aff'd*, 19 F.3d 26 (9th Cir. 1994). "Since a constructive trust is a creature of state law, the Court must look to California law to determine whether a constructive trust exists over the present receivership estate. California law does not require fraud or intentional misrepresentation as a prerequisite to a constructive trust." *Id.*

"Under California law, a court may find that a constructive trust exists if it finds merely that 'the acquisition of property was wrongful and that the keeping of the property by the defendant would constitute unjust enrichment.'" *Id.* (quoting *Calistoga Civic Club v. City of Calistoga*, 143 Cal.App.3d 111, 116 (Ct. App. 1983)). "The requirements for a constructive trust in California are: (1) the existence of a res; (2) the plaintiff's right to the res; and (3) the defendant's acquisition of the res by

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some wrongful act." *Id.* (citing *Calistoga*, 143 Cal.App.3d at 116).

Here, the Trustee has alleged the existence of a res, namely, the Property. The Trustee also has adequately alleged a secret beneficial interest held by Duane in the Property, which interest would be property of the estate under 11 U.S.C. § 541. In addition, the Trustee has adequately alleged that Defendants acquired the Property by a wrongful act, specifically, Duane's purported attempt to shield the Property through an allegedly sham entity.

F. 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 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, the Trustee's claim for turnover of the Property is dependent on whether the Trustee's other claims establish that the Property is "property of the estate." Because the Trustee has adequately alleged that Duane maintained a secret beneficial interest in the Property, and the attached emails establish that the Property has significant equity, the Trustee has adequately stated a claim for turnover.

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III. CONCLUSION

The Court will grant the Motion as to the allegations that the estate has a legal interest in Roxe or an equitable interest in Roxe based on alter ego, and provide leave for the Trustee to amend these allegations. The Court will deny the Motion as to the allegations that the estate has an interest in the Property based on Duane's secret beneficial interest. The Court also will deny the Motion as to the Trustee's fraudulent transfer, constructive trust and turnover claims.

The Trustee must submit an order within seven (7) days. If the Trustee elects to amend the FAC, the Trustee must file and serve a second amended complaint no later than **14 days** from the date of this hearing. If the Trustee elects to proceed with the FAC, the Trustee must file and serve notice that he will proceed with the FAC no later than **7 days** from the date of this hearing. If the Trustee files such a notice, Defendants must file and serve a response to the FAC no later than **14 days** from the date the Trustee files the notice.

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Defendant(s):

Roxe, LLC, a California limited

Represented By
Dawn M Coulson

Michael Martin an individual

Represented By
Dawn M Coulson

Doe 1 through DOE 10, inclusive

Pro Se

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley
Joseph R Dunn

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Plaintiff(s):

David K. Gottlieb in his capacity as

Represented By
Beth Ann R Young
Lindsey L Smith

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong
Beth Ann R Young

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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

- #32.00** Status conference re: amended complaint to:
1. Quiet title of real property located at 22401 Summitridge Circle, Chatsworth, CA 91311; and
 2. Avoidance and recovery of fraudulent transfer pursuant to California Civil Code 3439.04
 3. Turnover of Property of the estate pursuant to 11 U.S.C. sec 542
 4. Imposition of constructive trust

fr. 11/7/18(stip); 12/5/18; 12/12/18; 1/9/2019; 3/13/19; 3/20/19

Docket 48

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

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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

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Adv#: 1:18-01122 David K. Gottlieb, Chapter 7 Trustee v. Martin

#33.00 Defendant's motion to set aside default entered on April 8, 2019 pursuant to FRCP Rule 60(b)

Docket 27

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion.

I. BACKGROUND

On January 7, 2016, Duane Daniel Martin ("Defendant") and Tisha Michelle Martin (together with Defendant, "Debtors") filed a voluntary chapter 7 petition, initiating case 1:16-bk-10045-VK ("Bankruptcy Case"). David K. Gottlieb ("Plaintiff") was appointed chapter 7 trustee. On November 14, 2016, Debtors received a discharge [Bankruptcy Case, doc. 128].

On November 30, 2018, Plaintiff filed a complaint (the "Complaint") against Defendant seeking to revoke his discharge under 11 U.S.C. § 727(d)(2), (d)(3) and (e) and for turnover of property under 11 U.S.C. § 542.

On December 31, 2018, Defendant filed a motion to dismiss the Complaint (the "Motion to Dismiss") [doc. 7]. On March 20, 2019, the Court held a hearing on the Motion to Dismiss. On April 1, 2019, the Court entered an order granting in part and denying in part the Motion to Dismiss [doc. 18]. In that order, the Court ordered Defendant to file an answer to the Complaint by April 3, 2019.

On April 5, 2019, Plaintiff filed a request for entry of default [doc. 10]. On the same day, Defendant filed an answer to the Complaint [doc. 21]. On April 8, 2019, the Court entered default against Defendant [doc. 26].

On April 8, 2019, Defendant filed a motion to set aside default entered against Defendant (the "Motion") [doc. 27]. In the Motion, Defendant's counsel states that she erroneously calendared the date that Defendant's answer was due as April 5, 2019,

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rather than April 3, 2019. On April 24, 2019, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 34]. On May 1, 2019, Defendant filed a reply to the Opposition (the "Reply") [docs. 36 and 38].

II. DISCUSSION

Federal Rule of Bankruptcy Procedure ("FRBP") 7055 applies Federal Rule of Civil Procedure ("FRCP") 55 to adversary proceedings. Under that rule, "[t]he court may set aside an entry of default for good cause, and it may set aside a default judgment under [FRCP] 60(b)." FRCP 55(c).

To determine "good cause", a court must "consider[] three factors: (1) whether [the party seeking to set aside the default] engaged in culpable conduct that led to the default; (2) whether [it] had [no] meritorious defense; or (3) whether reopening the default judgment would prejudice" the other party. This standard, which is the same as is used to determine whether a default judgment should be set aside under Rule 60(b), is disjunctive, such that a finding that any one of these factors is true is sufficient reason for the district court to refuse to set aside the default. Crucially, however, "judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits."

U.S. v. Signed Personal Check No. 730 of Yubran S. Mesle, 615 F.3d 1085, 1091 (9th Cir. 2010) (alterations in original) (internal citations omitted). [FN1]

The bankruptcy court's denial of a Civil Rule 55(c) motion is reviewed for abuse of discretion. *Id.* "A court's discretion to set aside a default is 'especially broad' where no default judgment has been entered." *Id.* (citing *O'Connor v. Nevada*, 27 F.3d 357, 364 (9th Cir. 1994)).

1. Culpable Conduct

A defendant's conduct is culpable if he has "received actual or constructive notice of the filing of the action and *intentionally* failed to answer." *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697 (9th Cir. 2001) (emphasis in original). Moreover,

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the term "intentionally" means that a movant cannot be treated as culpable simply for having made a conscious choice not to answer; rather, to treat a failure to answer as culpable, the movant must have acted with bad faith, such as an "intention to take advantage of the opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process." We have "typically held that a defendant's conduct was culpable for purposes of the [good cause] factors where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." . . . [I]t is clear that simple carelessness is not sufficient to treat a negligent failure to reply as inexcusable, at least without a demonstration that other equitable factors, such as prejudice, weigh heavily in favor of denial of the motion to set aside a default.

Mesle, 615 F.3d at 1092-93 (internal citations omitted).

"Neglectful failure to answer as to which the defendant offers a credible, good faith explanation negating any intention to take advantage of the opposing party, interfere with judicial decision-making, or otherwise manipulate the legal process is not 'intentional' under default cases." *TCI Group*, 244 F.3d at 697-98.

Here, although Defendant received actual notice of the filing of the action, there is no showing that Defendant intentionally failed to file his answer timely. Defendant's counsel states that she erroneously calendared the deadline to file Defendant's answer to the Complaint as April 5, 2019, instead of April 3, 2019. In accordance with the belief that the answer was due on April 5, 2019, Defendant's counsel filed the answer on that day. Defendant's counsel's explanation negates any intention to take advantage of the opposing party, interfere with judicial decision-making or otherwise manipulate the legal process. Defendant does not appear to have acted in bad faith, such that failure to timely file the answer should be treated as culpable for purposes of good cause.

2. Meritorious Defense

"A defendant seeking to vacate a default judgment must present specific facts that would constitute a defense. But the burden on a

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party seeking to vacate a default judgment is not extraordinarily heavy." All that is necessary to satisfy the "meritorious defense" requirement is to allege sufficient facts that, if true, would constitute a defense: "the question whether the factual allegation [i]s true" is not to be determined by the court when it decides the motion to set aside the default. *Id.* Rather, that question "would be the subject of the later litigation."

Mesle, 615 F.3d at 1094 (quoting *TCL*, 244 F.3d at 700). In overturning the district court's determination that a meritorious defense was not presented, the court in *Mesle* noted "the minimal nature of the burden [the movant] was supposed to carry" and criticized the lower court for making a key factual determination in rejecting sworn assertions by [the movant]. *Id.*

Although Defendant did not address this factor in the Motion, in the Reply, Defendant alleges specific facts, that if true, could constitute a defense. Specifically, Defendant alleges that "he does not have a purported 'secret beneficial interest' in any real property, he does not have any interest in Alba, nor does he owe the Plaintiff money for residuals. Rather, as the accounting attached to the Counterclaims shows, Plaintiff owes Defendant money based on overpayment of residuals." [doc. 37, p. 7]. Further, Defendant filed an answer two days after the deadline [doc. 21]. In that answer, Defendant denied many of the allegations in the Complaint and plead eight affirmative defenses.

Defendant also alleged specific facts, that if true, could constitute a meritorious defense in his reply [doc. 13] to the opposition to the Motion to Dismiss. [FN 2] In that reply, Defendant signed a declaration, under penalty of perjury, attesting to the allegations that the he does not have an interest in Alba Designs and that he does not owe Plaintiff money for residuals. At this point, the bar is very low. Defendant has presented some facts and arguments that could conceivably serve as a defense to the Complaint. Accordingly, Defendant has established a sufficiently meritorious defense.

3. Prejudice

To be prejudicial, setting aside a judgment "must result in greater harm than simply

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delaying resolution of the case." *TCI Group*, 244 F.3d at 701 (citing *Falk*, 739 F.2d at 463). Rather, "the standard is whether [plaintiff's] ability to pursue his claim will be hindered." *Id.*

In the Opposition, Plaintiff argues that he will suffer prejudice if the Motion is granted because Defendant will continue to make Plaintiff's discovery efforts difficult and Defendant will have a greater opportunity to engage in fraud or collusion. The only prejudice Plaintiff alleges is delay and inconvenience because Defendant is being difficult; not because the delay will make discovery more difficult. This is insufficient.

Plaintiff's ability to pursue his claim against Defendant is not hindered if the Motion is granted. Defendant filed his answer two days after the deadline. Further, Defendant filed the Motion the same day that the Court entered default against Defendant. Moreover, the parties entered into a stipulation that allows Plaintiff to proceed with discovery despite default being entered against Defendant [docs. 30 and 32]. There has not been a substantial delay that would result in tangible harm such as the loss of evidence or witnesses.

Based on the factors above, particularly in light of the strong policy in favor of deciding cases on the merits, the Court will vacate the entry of default.

III. CONCLUSION

For the reasons discussed above, the Court will grant the Motion.

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

FOOTNOTES

1. Additionally, "[w]hile the same test applies for motions seeking relief from default judgment under both Rule 55(c) and Rule 60(b), the test is more liberally applied in the Rule 55(c) context," such as we consider here. In the Rule 55 context, there is no interest in the finality of the judgment with which to contend.

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Id. at 1091 n. 1 (alterations in original) (internal citations omitted).

2. The Court may take judicial notice of the pleadings in this adversary proceeding.

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Defendant(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley
Joseph R Dunn

Plaintiff(s):

David K. Gottlieb, Chapter 7 Trustee

Represented By
Monica Y Kim
Beth Ann R Young

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong
Beth Ann R Young

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1:18-11470 Asif Sheikh

Chapter 7

Adv#: 1:18-01094 Karimzad v. Sheikh et al

#34.00 Motion for approval of stipulation for judgment filed by plaintiff

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.

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

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Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:18-11470 Asif Sheikh

Chapter 7

Adv#: 1:18-01094 Karimzad v. Sheikh et al

#35.00 Stipulation for judgment

Docket 36

Tentative Ruling:

The Court will approve the stipulated judgment.

Plaintiff must submit the judgment within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the parties is 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 parties will be so notified.

Party Information

Debtor(s):

Asif Sheikh

Represented By
Steven M Gluck

Defendant(s):

Sajida Sheikh

Pro Se

Asif Sheikh

Represented By
Steven M Gluck

Joint Debtor(s):

Sajida Sheikh

Represented By
Steven M Gluck

Plaintiff(s):

Molouk Karimzad

Represented By
Farbood Majd

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Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:18-11470 Asif Sheikh

Chapter 7

Adv#: 1:18-01094 Karimzad v. Sheikh et al

#35.10 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; 11/21/18; 1/23/19; 3/6/19; 4/24/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

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

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1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01096 Karimzad v. Sheikh et al

#36.00 Motion for approval of stipulation for judgment filed by plaintiff

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.

Party Information

Debtor(s):

Atif Sheikh

Represented By
Steven M Gluck

Defendant(s):

Atif Sheikh

Represented By
Steven M Gluck

Naureen Sheikh

Represented By
Steven M Gluck

Joint Debtor(s):

Naureen Sheikh

Represented By
Steven M Gluck

Plaintiff(s):

Molouk Karimzad

Represented By
Farbood Majd

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Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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Chapter 7

Adv#: 1:18-01096 Karimzad v. Sheikh et al

#37.00 Stipulation for judgment

Docket 37

Tentative Ruling:

The Court will approve the stipulated judgment.

Plaintiff must submit the judgment within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the parties is 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 parties will be so notified.

Party Information

Debtor(s):

Atif Sheikh

Represented By
Steven M Gluck

Defendant(s):

Atif Sheikh

Represented By
Steven M Gluck

Naureen Sheikh

Represented By
Steven M Gluck

Joint Debtor(s):

Naureen Sheikh

Represented By
Steven M Gluck

Plaintiff(s):

Molouk Karimzad

Represented By
Farbood Majd

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Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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Adv#: 1:18-01096 Karimzad v. Sheikh et al

#38.00 Status conference re: amended 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; 11/21/18; 1/23/19; 3/6/19; 4/24/19

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

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**

Thursday, May 9, 2019

Hearing Room 301

10:30 AM

1:16-10058 Fredy Paniagua and Georgina Maria Perales

Chapter 7

#1.00 Trustee's final report and applications for compensation

David Gottlieb, Chapter 7 Trustee

Docket 43

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee - approve fees of \$2,983.05 and reimbursement of expenses of \$21.71.

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 will be so notified.

Party Information

Debtor(s):

Fredy Paniagua

Represented By
Sydell B Connor

Joint Debtor(s):

Georgina Maria Perales

Represented By
Sydell B Connor

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, May 9, 2019

Hearing Room 301

10:30 AM

1:16-10440 Salvador Nevarez

Chapter 7

#1.10 Trustee's final report and applications for compensation

Nancy Zamora, Chapter 7 Trustee

Larry D. Simons, Attorney for Chapter 7 Trustee

LEA Accountancy, LLP, Accountants for Chapter 7 Trustee

fr. 4/25/19

Docket 84

***** VACATED *** REASON: Order entered on 5/1/19 [doc. 90].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Salvador Nevarez

Represented By
Richard McGuire
Edmond Richard McGuire
Phillip Myer

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, May 9, 2019

Hearing Room 301

1:00 PM

1:19-10205 David Ira Caplan and Paula Tracy Caplan

Chapter 7

#2.00 U.S. Trustee's Motion to dismiss case pursuant to 11 U.S.C. § 707(b)(3)(A) with a two-year bar to refiling pursuant to 11 U.S.C. §§ 105(a) and 349(a)

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.

Party Information

Debtor(s):

David Ira Caplan	Pro Se
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Joint Debtor(s):

Paula Tracy Caplan	Pro Se
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Trustee(s):

Nancy J Zamora (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 9, 2019

Hearing Room 301

1:00 PM

1:19-10675 Michael Herbert Mueller

Chapter 11

#3.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The Court may issue an Order to Show Cause why this case should not be dismissed for having been filed in bad faith.

In his petition, the debtor indicated that he resides in Los Angeles, California. In his schedule A/B, the debtor indicated that he owns real property located in San Bernardino, California (the "Property"). The debtor did not list an interest in any other real property. The debtor also listed an interest in personal property with an aggregate value of \$32,633.15.

In his schedule D, the debtor indicated that the Property is encumbered with a lien in the amount of \$281,773.48. According to the debtor, the Property has a value of \$150,000.00. In his schedule E/F, the debtor listed nonpriority unsecured claims totaling \$570.00.

In his schedule I, the debtor represents that he earns \$2,356.78 per month in income, which includes \$900.00 per month in rental income from the Property. In his schedule J, the debtor represents that his monthly expenses are \$2,339.39, leaving net monthly income of \$17.39. The debtor's monthly expenses include a \$500.00 rental expense for his residence in Los Angeles, California. However, in his schedule J, the debtor did not include ANY expenses related to the Property, e.g., deed of trust payments, insurance or real property taxes.

On April 27, 2019, the debtor filed an untimely *First Case Status Conference Report* (the "Status Report") [doc. 20]. Contrary to the *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* [doc. 11], the Status Report is not supported by evidence in the form of declarations and supporting documents.

The Status Report represents that the debtor filed his chapter 11 petition in order to

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

Thursday, May 9, 2019

Hearing Room 301

1:00 PM

CONT... Michael Herbert Mueller

Chapter 11

stop a foreclosure sale on the Property that was scheduled to take place on March 25, 2019.

In the Status Report, the debtor represents that he has filed all required tax returns with federal and state taxing authorities. On April 3, 2019, the Internal Revenue Service filed claim 3-1 (the "IRS Claim"). Although the Status Report represents that the debtor has filed all required tax returns, the IRS Claim indicates that the debtor has not filed his income tax returns for 2014, 2017 and 2018.

Based on the debtor's lack of sufficient income to make adequate protection payments or deed of trust payments regarding the debt secured by the Property (which is **highly** overencumbered), the lack of evidence supporting the Status Report and the debtor's failure to file his 2018 income tax return with the Court (contrary to the *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* [doc. 11]), the Court may dismiss this case as a bad faith filing.

The Court will prepare the order.

Party Information

Debtor(s):

Michael Herbert Mueller

Represented By
Lionel E Giron

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

Thursday, May 9, 2019

Hearing Room 301

2:00 PM

1:15-13561 Akop Terpogosyan and E. Eyov Avtalyon Group, LTD.

Chapter 7

- #4.00** Chapter 7 Trustee's motion for order:
1. Approving sale of real property and
2. Approving overbidding procedure

Docket 215

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Akop Terpogosyan	Pro Se
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Joint Debtor(s):

Lilit Chaghayan	Pro Se
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Trustee(s):

Amy L Goldman (TR)	Represented By Leonard Pena
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 9, 2019

Hearing Room 301

2:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#5.00 Motion in individual ch 11 case for order approving a budget for the use of the debtor's cash and postpetition income

Docket 21

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):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

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

Tuesday, May 14, 2019

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, May 14, 2019

Hearing Room 301

10:30 AM

1:19-10517 Edwin Rolando Perez Mendez

Chapter 13

#34.00 Motion for order determining value of collateral with
Nissan Motor Acceptance

Docket 27

Tentative Ruling:

Grant relief to bifurcate senior lienholder's claim, subject to completion of chapter 13 plan. The claim of this senior lienholder, Nissan Motor Acceptance Corporation, in the amount of \$9,663.00 is to be treated as a secured claim, and the balance may be treated as an unsecured claim and paid through the plan pro rata with all other nonpriority 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.

Party Information

Debtor(s):

Edwin Rolando Perez Mendez

Represented By
Lionel E Giron
Crystle Jane Lindsey

Trustee(s):

Elizabeth (SV) 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 14, 2019

Hearing Room 301

10:30 AM

1:19-10589 Paul Anthony Matulewicz

Chapter 13

#35.00 Motion for order determining value of collateral with
Exeter Finance LLC

Docket 19

Tentative Ruling:

Grant. The Court will value the collateral at \$7,258.00.

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):

Paul Anthony Matulewicz

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, May 14, 2019

Hearing Room 301

10:30 AM

1:19-10589 Paul Anthony Matulewicz

Chapter 13

#36.00 Motion for order determining value of collateral with
Wells Fargo Dealer Services

Docket 20

Tentative Ruling:

Grant. The Court will value the collateral at \$18,486.00.

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):

Paul Anthony Matulewicz

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, May 14, 2019

Hearing Room 301

11:00 AM

1:14-11542 Andrea Nicole Williams-Hart

Chapter 13

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

Docket 149

Tentative Ruling:

- NONE LISTED -

Party Information

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, May 14, 2019

Hearing Room 301

11:00 AM

1:16-10666 Paula Trickey

Chapter 13

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

Docket 83

Tentative Ruling:

- NONE LISTED -

Party Information

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, May 14, 2019

Hearing Room 301

11:00 AM

1:17-10475 Princess Fletcher

Chapter 13

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

Docket 76

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 303 Calendar**

Tuesday, May 14, 2019

Hearing Room 303

11:00 AM

1:17-11443 Martin Cohn

Chapter 13

#40.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 3/12/19;

Docket 74

Tentative Ruling:

- NONE LISTED -

Party Information

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 14, 2019

Hearing Room 301

11:00 AM

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

Chapter 13

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

fr. 3/12/19;

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

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, May 14, 2019

Hearing Room 301

11:00 AM

1:17-13276 Maria De Jesus Vazquez

Chapter 13

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

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria De Jesus Vazquez

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, May 14, 2019

Hearing Room 301

11:00 AM

1:18-10661 Andres Salcedo, Jr.

Chapter 13

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

fr. 3/12/19;

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

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, May 14, 2019

Hearing Room 301

11:00 AM

1:18-11667 Christopher Michael Niblett

Chapter 13

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

Docket 51

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Michael Niblett

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, May 14, 2019

Hearing Room 301

11:00 AM

1:18-12208 Andre Lamont Brown

Chapter 13

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

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andre Lamont Brown

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 14, 2019

Hearing Room 301

11:30 AM

1:14-11489 Raymundo I Ramos

Chapter 13

#46.00 Motion re: objection of U.S. Trustee to notice of mortgage payment change filed in connection with proof of claim 3

fr. 3/12/19

Stip to continue filed 4/25/19

Docket 51

***** VACATED *** REASON: Order approving stip entered 4/26/19.
Hearing continued to 6/11/19 at 11:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raymundo I Ramos

Represented By
Richard A Loa

Trustee(s):

Elizabeth (SV) 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 14, 2019

Hearing Room 301

11:30 AM

1:17-10266 Cindy Park

Chapter 13

#47.00 Motion re: objection to claim number 1 by claimant The Bank of New York

Docket 46

Tentative Ruling:

Overrule.

I. BACKGROUND

A. Filing of the Proof of Claim

On February 1, 2017, Cindy Park ("Debtor") filed a chapter 13 petition. In her schedule A/B, Debtor listed a fee simple interest in real property located at 19400 Wyandotte Street, #11, Reseda, California 91335 (the "Property"). In her schedule D, Debtor indicated that the Property is encumbered by a deed of trust in favor of "Shellpoint" in the amount of \$220,622.05. Debtor listed the debt as disputed.

On May 15, 2017, The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2005-26CB, Mortgage Pass-Through Certificates, Series 2005-26CB ("BONYM") filed proof of claim no. 1-1, asserting a secured claim in the amount of \$317,798.81. To the proof of claim, BONYM attached a promissory note dated May 11, 2005 between America's Wholesale Lender ("AWL") and Debtor (the "Note"). Attached to the Note is a blank indorsement stating "PAY TO THE ORDER OF" with the recipient left blank, signed by an individual named David A. Specter (the "Blank Indorsement").

In relevant part, the Note provides that Debtor agrees to pay \$252,000 plus interest to the lender at 6.125% interest with a maturity date of June 1, 2035. Note, p. 1. The Note also provides that, upon default, Debtor is liable for late charges and reasonable costs and expenses incurred by the lender, including attorneys' fees. Note, p. 2. The Note also states that "the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the 'Note Holder.'" Note, p. 1.

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

Tuesday, May 14, 2019

Hearing Room 301

11:30 AM

CONT... Cindy Park

Chapter 13

BONYM also attached a deed of trust (the "DOT"), recorded May 18, 2005 and signed by Debtor. The DOT listed AWL as the lender, but included a reference to Countrywide Home Loans, Inc, ("Countrywide") on the first page. Debtor initialed each page of the DOT and signed the last page of the DOT. BONYM also attached an Assignment of Deed of Trust (the "Assignment"). Through the Assignment, dated August 11, 2011 and recorded on August 17, 2011, AWL transferred "all beneficial interest under" the DOT "together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said" DOT to BONYM. Finally, BONYM attached a statement itemizing the fees and charges owed to BONYM. Debtor's mortgage is serviced by New Penn Financial, LLC dba Shellpoint Mortgage Service ("Shellpoint").

B. The Adversary Proceeding and Motion to Dismiss

On December 10, 2018, Debtor filed a complaint against BONYM and Shellpoint (the "Complaint"), initiating an adversary proceeding [1:18-ap-01125-VK]. In the Complaint, Debtor alleged that the Note and the DOT are void because: (A) AWL is a trade name and cannot hold recorded security interests, and there is no reference to AWL being a dba or associated with any other company; and (B) AWL did not exist before or at the time of signing the Note. Debtor also alleged that the Assignment is void on the following bases: (A) MERS did not have authority to execute the Assignment; (B) the Assignment and the Blank Indorsement are "robo-signed;" (C) Countrywide was bankrupt at the time one of its representatives signed the Blank Indorsement; and (D) the Blank Indorsement was not specifically indorsed to BONYM. On these bases, Debtor asserted that BONYM does not have standing to enforce the Note or the DOT.

Debtor further alleged that BONYM included fees and charges in its proof of claim that are not supported by documentation in violation of Federal Rule of Bankruptcy Procedure ("FRBP") 3002(c), and that BONYM's filing of the proof of claim was a violation of the automatic stay. Finally, Debtor asserted that BONYM's filing of the proof of claim is a fraud upon the Court because, aside from the allegations outlined above, BONYM did not attach an "exact copy" of the Note of the DOT and the filing of the proof of claim is 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, May 14, 2019

Hearing Room 301

11:30 AM

CONT... Cindy Park

Chapter 13

On January 9, 2019, BONYM and Shellpoint filed a motion to dismiss the Complaint (the "Motion to Dismiss") [Adversary Docket, doc. 6]. Debtor opposed the Motion to Dismiss [Adversary Docket, doc. 9], asserting that: (A) the Note is a non-negotiable instrument because it was securitized, and, as a result, the Note could not be transferred using the Blank Indorsement; (B) had Debtor known she was contracting with Countrywide, she would not have entered into the Note, and, consequently, there was no "meeting of the minds" when Debtor executed the Note; and (C) the "Creator" of the Note had unclean hands.

On April 24, 2019, the Court held a hearing on the Motion to Dismiss. At that time, the Court issued a ruling (the "Ruling") [Adversary Docket, doc. 18], holding that: (A) the Complaint is dismissed as to Debtor's challenge to additional charges, fees and costs associated with BONYM's proof of claim without prejudice to Debtor challenging the charges, fees and costs in connection with the Objection; (B) Debtor has leave to amend the Complaint as to her argument regarding unclean hands; and (C) the Complaint is otherwise dismissed without leave to amend. In relevant part, the Court held that Debtor did not have standing to challenge the Assignment, and that BONYM's possession of the Note with the Blank Indorsement gave BONYM the right to enforce the Note under California law.

C. The Objection to BONYM's Claim

On March 20, 2019, Debtor filed the Objection [doc. 45]. In the Objection, Debtor argues that BONYM does not have standing because: (A) the Blank Indorsement does not specify to whom the Note is transferred; (B) BONYM is not the holder of the Note; and (C) the DOT and the Note cannot be separated.

On April 5, 2019, BONYM filed an opposition to the Objection (the "Opposition") [doc. 49], asserting that the Blank Indorsement is sufficient to give BONYM standing under California law, and that BONYM is in actual and physical possession of the Note. BONYM also asserts that a transfer of the Note automatically transfers the DOT. On April 15, 2019, Debtor filed a reply to the Opposition (the "Reply") [doc. 50]. In the Reply, Debtor argues that the: (A) the Blank Indorsement is robo-signed and invalid; (B) Mr. Specter could not sign the Blank Indorsement on Countrywide's behalf; and (C) Debtor contests the amount and extent of the claim.

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

Tuesday, May 14, 2019

Hearing Room 301

11:30 AM

CONT... Cindy Park

Chapter 13

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).").

The Court addressed most of Debtor's arguments from the Objection in the Ruling. For the same reasons stated in the Ruling, Debtor has not come forward with sufficient evidence or shown facts to defeat BONYM's claim. Regarding Debtor's standing arguments, the Court held in the Ruling that possession of the Note with the Blank Indorsement gave BONYM standing to enforce the Note. The Court further held that Debtor does not have standing to challenge the Assignment from AWL to BONYM.

The only new argument by Debtor is that BONYM must prove that it is the "rightful owner" of both the Note and DOT; in other words, it appears Debtor might be arguing that the Note and the DOT were split. However, as noted by the Court in the Ruling, Debtor has neither alleged in the Complaint nor demonstrated in the Objection that the

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

Tuesday, May 14, 2019

Hearing Room 301

11:30 AM

CONT... Cindy Park

Chapter 13

Assignment, which transferred the DOT from AWL to BONYM, was invalid. Moreover, under California law, "[t]he assignment of the debt secured by a mortgage carries with it the security." Cal. Civ. Code § 2936; see also *In re Smith*, 509 B.R. 260, 269 (Bankr. N.D. Cal. 2014) ("[E]ven if there were irregularities in the Assignment [of the deed of trust], any transfer of the note automatically carries with it a transfer of the deed of trust."). Consequently, even if the Court held that the Assignment is invalid, BONYM's possession of the Note would carry with it the right to enforce the DOT.

Although the Court's dismissal of the Complaint was without prejudice to Debtor amending her arguments challenging the charges, fees and costs in connection with the Objection, Debtor has not provided additional challenges to the charges, fees and costs attached to the proof of claim. In the Reply, Debtor vaguely mentions that she objects to the amount and extent of the claim, but does not specify the basis of her objection. As such, the Court will overrule the Objection.

III. CONCLUSION

The Court will overrule the Objection.

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

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

Trustee(s):

Elizabeth (SV) 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 14, 2019

Hearing Room 301

11:30 AM

1:17-12522 Taghreed Yaghnam

Chapter 13

#48.00 Motion for allowance and payment of administrative expense

Docket 88

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):

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, May 14, 2019

Hearing Room 301

11:30 AM

1:17-13413 Mark Efreem Rosenberg

Chapter 13

#49.00 Application for compensation for debtor's attorney,
period: 8/1/18 to 1/18/19, fee: \$7,880.00, expenses: \$90.96.

fr. 3/12/19; 4/9/19

Docket 107

Tentative Ruling:

The Court will continue this hearing to **11:30 a.m. on June 11, 2019**. No further briefing may be filed. If any such briefing is filed, any fees billed to prepare such briefs WILL NOT BE APPROVED.

Appearances on May 14, 2019 are excused.

Party Information

Debtor(s):

Mark Efreem 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, May 14, 2019

Hearing Room 301

11:30 AM

1:18-11680 Alba Interiano

Chapter 13

#50.00 Order to show cause why debtor's counsel should not be held in civil contempt and/or sanctioned for failure to comply with court order and ordered to disgorge fees

fr. 2/12/19; 3/12/19

Docket 50

Tentative Ruling:

The debtor and Mr. Reyes still have not filed amendments to the debtor's statement of financial affairs. Further, it appears that the debtor and Mr. Reyes have not obtained a chapter 13 confirmation hearing date. As of May 7, 2019, the debtor has not filed notice of the confirmation hearing.

3/12/19 Tentative Ruling

On February 12, 2019, the Court entered an order continuing the hearing on the order to show cause and setting filing deadlines (the "Order") [doc. 57]. In the Order, the Court ordered that Carlo O. Reyes file and serve on the debtor a declaration, with attached billing statements, describing services he has provided to the debtor in connection with her chapter 13 bankruptcy case and the pending civil case no later than February 25, 2019. Mr. Reyes did not timely file a declaration.

In the Order, the Court further ordered that the debtor and Mr. Reyes file amendments to the debtor's statement of financial affairs no later than February 25, 2019. The debtor and Mr. Reyes did not timely file amendments to the debtor's statement of financial affairs.

2/12/19 Tentative Ruling

On July 03, 2018, the Alba Interiano (the "Debtor") filed a chapter 13 petition. On August 6, 2018, the Debtor filed a *Disclosure of Compensation of Attorney for Debtor(s)* ("Disclosure of Compensation") [doc. 14, at p. 31], which indicated that Mr. Reyes agreed to accept \$0.00 for his services in the Debtor's chapter 13 case. Also, on August 6, 2018, the Debtor filed a *Rights and Responsibilities Agreement*

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CONT... Alba Interiano

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Between Chapter 13 Debtors and Their Attorneys (“RARA”) [doc. 15]. The RARA indicated that Mr. Reyes would receive \$0.00 for his services.

On December 11, 2018, the Court held a continued chapter 13 plan confirmation hearing. Martin Weingarten appeared as an appearance attorney on behalf of the Debtor and Mr. Reyes. Based on the issues raised at the hearing, the Court determined that Mr. Reyes’ personal appearance was required to facilitate confirmation of a chapter 13 plan. Accordingly, the Court continued the plan confirmation hearing to January 8, 2019 at 9:30 a.m. and issued an order requiring Mr. Reyes to appear personally at the continued confirmation hearing (the “Order to Appear”) [doc. 45].

On January 8, 2019 at 9:30 a.m., the Court held a continued chapter 13 plan confirmation hearing. Contrary to the Order to Appear, Mr. Reyes did not appear, and his nonappearance was not excused by the Court. Martin Weingarten appeared as an appearance attorney on behalf of the Debtor and Mr. Reyes.

At the hearing, contrary to the Disclosure of Compensation and the RARA, someone allegedly assisting the Debtor stated that the Debtor claims that she has paid Mr. Reyes \$8,000.00. The Debtor did not disclose this payment on her Statement of Financial Affairs [doc. 14, at pp. 24-29]. The Debtor also requested that the Court dismiss her bankruptcy case. The Debtor stated that Mr. Reyes did not explain to her why she was in a chapter 13 bankruptcy case and mislead her into filing her petition. On January 9, 2019, the Court entered an order dismissing the Debtor’s chapter 13 case [doc. 49].

On January 9, 2019, the Court issued an *Order to Show Cause Why Debtor’s Counsel Should Not Be Held in Civil Contempt and/or Sanctioned for Failure to Comply with Court Order and Ordered to Disgorge Fees* (the “OSC”) [doc. 50] on the grounds that Mr. Reyes failed to do the following: (i) comply with the Order to Appear; (ii) disclose the payments made to him by the Debtor and what services he provided to Debtor in connection with those payments; (iii) effectively communicate with the Debtor; and (iv) provide proper representation of the Debtor in her chapter 13 case.

The Debtor was ordered to file and serve on Mr. Reyes a declaration regarding the amount, timing, and rationale for any payments she made to Mr. Reyes or his law office no later than January 15, 2019. The Court further ordered that the Debtor’s

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CONT... Alba Interiano

Chapter 13

declaration must be supported by evidence of proof of payment. Mr. Reyes was ordered to file and serve on the Debtor a written response to the OSC no later than January 29, 2019.

On January 10, 2019, Mr. Reyes filed an *Amended Disclosure of Compensation of Attorney for Debtor(s)* [doc. 52] (the "Amended Disclosure of Compensation"), which indicated that he agreed to accept \$4,500.00 for his services in the Debtor's chapter 13 case. The Amended Disclosure of Compensation indicated that Mr. Reyes received \$1,000.00 pre-petition, and \$3,500.00 was the remaining balance. Mr. Reyes has not filed an amended RARA.

On January 14, 2019, the Debtor filed her response (the "Debtor's Response") [doc. 55]. Contrary to the OSC, the Debtor did not file a declaration signed under penalty of perjury, and she did not include proof of service on Mr. Reyes of the Debtor's Response.

Party Information

Debtor(s):

Alba Interiano

Represented By
Carlo Reyes

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

11:30 AM

1:18-11857 Robert Winn, Jr

Chapter 13

#51.00 Motion for order disallowing claim of Real Time Resolutions,
claim no. 9

Order appv stip to cont ent 5/9/19

Docket 83

***** VACATED *** REASON: Continued to 8/13/19 per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Winn Jr

Represented By
Julie J Villalobos

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-11857 Robert Winn, Jr

Chapter 13

#52.00 Motion for order disallowing claim of Wilmington Trust, N.A.
claim no. 1

Docket 84

Tentative Ruling:

Grant. 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.

Party Information

Debtor(s):

Robert Winn Jr

Represented By
Julie J Villalobos

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-13024 Kenneth C. Scott

Chapter 13

#53.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper.

Docket 55

Tentative Ruling:

The Court will stay this matter and adjudicate these issues in connection with the adversary proceeding between the parties [1:19-ap-01046-VK].

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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11:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#54.00 Creditor H. Samuel Hopper's motion to dismiss debtor
Kenneth C. Scott's chapter 13 petition

Docket 70

Tentative Ruling:

For the reasons discussed below, the Court will deny the motion.

I. BACKGROUND

On December 18, 2018, Kenneth C. Scott (the "Debtor") filed a voluntary chapter 13 petition. The Debtor has no prior bankruptcy filings.

Prior to the Debtor filing his petition, on November 7, 2018, Samuel Hopper filed a complaint in the California Superior Court, County of Los Angeles against the Debtor for, among other things, various wage claims, civil penalties, statutory penalties, interest and attorneys' fees and costs (the "State Court Action") [doc. 70, Exh. 1]. On December 11, 2018, the Debtor was apparently served with the summons and the complaint in the State Court Action [doc. 20, Exh. 2].

In his schedule A/B [doc. 1], the Debtor did not list an interest in any real property. The Debtor listed an interest in personal property with an aggregate value of \$126,817.28. In his amended schedule C [doc. 35], the Debtor claimed exemptions in \$126,817.28 of that personal property.

In his schedule D [doc. 1], the Debtor did not list any secured creditors. In his schedule E/F [doc. 1], the Debtor listed nonpriority unsecured claims totaling \$123,841.73. Those nonpriority unsecured claims consisted of: (1) a \$9,069.00 claim in favor of Bank of America for a revolving credit account; (2) a \$30,000.00 claim in favor of Mr. Hopper for the State Court Action; (3) a \$35,600.00 claim in favor of JoAnn Scott, who is the Debtor's mother; and (4) a \$49,172.73 claim in favor of Johanna Scott for an obligation arising out of a separation agreement. In his statement of financial affairs ("SOFA") [doc. 1], the Debtor indicated that he was married.

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CONT... Kenneth C. Scott

Chapter 13

As of May 9, 2019, five creditors have filed claims in the Debtor's case. American Honda Finance Corporation filed claim 1, which indicates that it holds a secured claim in the amount of \$19,469.73 based on a lease. Bank of America, N.A. filed claim 2, which indicated that it holds a nonpriority unsecured claim in the amount of \$8,944.00 based on a consumer credit card. Mr. Hopper filed claim 3-2, which indicates that he holds a nonpriority unsecured claim in the amount of \$206,975.25. The Debtor has filed an objection to Mr. Hopper's claim. JoAnn Scott filed claim 4, which indicates that she holds a nonpriority unsecured claim in the amount of \$35,600.00 based on a contract. Johanna Scott filed claim 5, which indicates that she holds a nonpriority unsecured claim in the amount of \$49,172.00 based on a marital separation agreement.

In his petition [doc. 1], the Debtor indicated that he rents his residence. In his schedule G [doc. 1], the Debtor listed two unexpired leases: a vehicle lease with American Honda Finance and a residential lease with Decon Corp.

In his schedules I and J [doc. 1], the Debtor represented that his monthly income is \$4,255.87 and his monthly expenses are \$3,983.05, leaving net monthly income of \$272.82. The Debtor indicated that he is employed as a therapist at My Private Practice. In his schedule A/B, the Debtor indicated that he owns a 100% interest in My Private Practice.

On March 6, 2019, the Debtor filed an amended SOFA [doc. 34]. In the amended SOFA, the Debtor indicates that he has an interest in My Private Practice and Kenneth Scott-Psy'd, Inc. The Debtor represents that Kenneth Scott-Psy'd, Inc. is the same as My Private Practice.

On December 18, 2018, the Debtor filed a chapter 13 plan [doc. 2]. The chapter 13 trustee and Mr. Hopper filed objections to that plan [docs. 27 and 28]. On March 6, 2019, the Debtor filed an amended chapter 13 plan (the "Plan") [doc. 31]. In the Plan, the Debtor proposes to make plan payments in the amount of \$272.82 per month (all of the Debtor's net monthly income, according to his schedule J) for 60 months. The Plan is a 5.52% plan. As of May 9, 2019, the chapter 13 trustee has not objected to confirmation of the Plan. However, Mr. Hopper has [doc. 77].

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Chapter 13

On April 19, 2019, Mr. Hopper filed the Motion [doc. 70]. Mr. Hopper did not serve the debtor and all creditors as required by Local Bankruptcy Rule 3015-1(q)(3). In the Motion, Mr. Hopper argues that the Court should dismiss the case based on the Debtor's bad faith.

On April 30, 2019, the Debtor filed an opposition to the Motion (the "Opposition") [doc. 73]. On May 7, 2019, Mr. Hopper filed a reply to the Opposition (the "Reply") [doc. 84].

II. ANALYSIS

Pursuant to 11 U.S.C. § 1307(c):

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;

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Chapter 13

(6) material default by the debtor with respect to a term of a confirmed plan;

(7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;

(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;

(9) only on request of the United States trustee, failure of the debtor 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(a);

(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or

(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1307(c). In deciding whether a chapter 13 case should be dismissed or converted, courts apply 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.'" *Nelson v Meyer (In re Nelson)*, 343 B.R. 671, 675 (9th Cir. B.A.P. 2006).

Here, Mr. Hopper does not argue for dismissal based on any of the enumerated causes listed in § 1307(c). Rather, Mr. Hopper argues that bad faith is additional cause for dismissal. A chapter 13 case filed in bad faith may be dismissed for cause under 11 U.S.C. § 1307(c). *In re Leavitt*, 171 F.3d 1219, 1224–25 (9th Cir. 1999); *In re Eisen*, 14 F3d 469, 470 (9th Cir. 1994). Bad faith is determined by evaluating the totality of circumstances, including the following factors: (1) whether the debtor misrepresented

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facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his chapter 13 petition or plan in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor only intended to defeat state court litigation; (4) whether egregious behavior is present. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999). Mr. Hopper's main arguments are that: (1) the Debtor filed his petition to avoid litigating the State Court Action; and (2) the Debtor filed false or incomplete schedules.

Regarding Mr. Hopper's first argument, "[w]hile a debtor's resort to bankruptcy to improve his or her position in pending litigation is relevant to the analysis, that single factor is not determinative in resolving the good faith issue." *In re King*, No. BAP/AZ-07-1317-PAJUK, 2008 WL 8444814, at *5 (B.A.P. 9th Cir. Mar. 12, 2008) (citing *In re Powers*, 135 B.R. 980, 992 (Bankr.C.D.Cal.1991)).

Here, it does not appear that the Debtor has filed his petition for an improper purpose. Although the Debtor filed his petition shortly after being served with the complaint in the State Court Action, it does not appear that the Debtor filed this case only to defeat the State Court Action. After being implicated in litigation, many debtors file bankruptcy petitions to address their debts, including those that are disputed and not yet liquidated.

Regarding Mr. Hopper's second argument, the evidence does not show significant inaccuracies in the Debtor's schedules. Mr. Hopper argues that the scheduled claims in favor of the Debtor's mother and estranged wife are possibly fraudulent. Mr. Hopper contends, among other things, that at the time of filing the Motion, neither the Debtor's mother nor his estranged wife had filed claims. A scheduled creditor not filing a proof of claim does not necessarily indicate fraud. Further, at this point, the Debtor's mother and his estranged wife have filed proofs of claim. Mr. Hopper also argues that the Debtor has not listed Kenneth Scott-Psy'd, Inc. on any of the Debtor's schedules, either as an asset or as his employer. However, the Debtor did list Kenneth Scott-Psy'd, Inc. in his amended SOFA. Mr. Hopper also argues that the Debtor has claimed improper exemptions in his personal property. Mr. Hopper has filed an objection to the Debtor's exemptions which is set for hearing on June 11, 2019. At that time, the Court will address Mr. Hopper's arguments regarding the Debtor's claims of exemption.

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CONT... Kenneth C. Scott

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The Debtor does not have a prior history of any bankruptcy proceedings. Mr. Hopper has not shown that the Debtor has unfairly manipulated the Bankruptcy Code. Further, the Debtor does not appear to have engaged in egregious behavior. Accordingly, the Court will deny the Motion.

III. CONCLUSION

Deny.

The Debtor must submit the order within seven (7) days.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

The Debtor's Objection to the Declaration of Daniel Jett [doc. 74]

paras. 2, 3, 4, 6, 7, 8: overruled

para. 15: sustained

Exhs. 1, 2, 4, 5, 6, 7: overruled

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#1.00 Motion for relief from stay [AN]

H. Samuel Hopper
VS
DEBTOR .

fr. 4/24/19

Docket 38

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. On April 19, 2019, movant filed an adversary proceeding against the debtor, asserting claims for relief that include claims under 11 U.S.C. §§ 523(a)(2) and 523(a)(4). If movant contends that his claims are nondischargeable in nature, this Court may make such a nondischargeability determination within the context of the pending adversary proceeding.

Deny request for annulment of the automatic stay to validate post-petition acts. “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.* Movant filed the first amended complaint in the state court action on February 21, 2019, when he had knowledge of the debtor's bankruptcy case. Further, the day before filing the amended complaint, movant questioned the debtor at a § 341(a) meeting of creditors. The equities therefore weigh against retroactive annulment.

Notwithstanding the foregoing, movant may proceed against the non-debtor defendants in the nonbankruptcy action.

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Chapter 13

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-13024 Kenneth C. Scott

Chapter 13

#2.00 Order to show cause why Samuel Hopper and Daniel Jett should not be held in civil contempt for violation of the automatic stay

Docket 64

Tentative Ruling:

The Court will grant the motion in part and continue this hearing to **July 17, 2019 at 9:30 a.m.**

I. BACKGROUND

On November 7, 2018, Samuel Hopper filed a complaint in the Superior Court of the State of California, County of Los Angeles against My Private Practice, Inc. ("My Private Practice") and Kenneth C. Scott (the "Debtor") for damages and injunctive relief based on alleged violations of California employment laws (the "State Court Action") [doc. 36, Exh. 1].

On December 18, 2018, the Debtor filed a voluntary chapter 13 petition. In his schedule A/B, the Debtor listed a 100% ownership interest in My Private Practice [doc. 1]. On December 18, 2018, the Debtor served Mr. Hopper, care of his attorney, Daniel Jett, with notice of his bankruptcy petition and other supporting documents [doc. 25].

On January 2, 2019, the Debtor's attorney sent an email to Mr. Jett inquiring whether Mr. Jett received the notice of bankruptcy and other documents and reiterating that the State Court Action was stayed [doc. 36, Exh. 3]. On January 4, 2019, Mr. Jett responded to that email, confirming his receipt of the notice of bankruptcy and other documents. *Id.* at Exh. 4. Mr. Jett stated in the email that Mr. Hopper intended to pursue the corporate entity, My Private Practice, in the State Court Action without obtaining relief from the automatic stay.

On February 21, 2019, Mr. Hopper filed a first amended complaint in the State Court Action [doc. 36, Exh. 5]. The proof of service attached to the first amended complaint indicates that Mr. Jett served the Debtor with the first amended complaint by United

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Chapter 13

States mail on February 20, 2019. In an email dated March 7, 2019, Mr. Jett wrote: "This afternoon, we effectuated personal service of the First Amended Complaint (FAC) in the Los Angeles Superior Court action on Dr. Scott **as an individual**. . . . (emphasis added). The email continues: "Dr. Hopper still intends to seek relief from the automatic stay. . . ." [doc. 36, Exh. 6].

Mr. Hopper contends that, "[t]he FAC as it pertains to adding a Fourteenth Cause of Action for annulment of a transfer in fraud of creditors does not violate the scope of the automatic stay under Section 362 because none of the allegations pertaining to Debtor's pre-petition obligations to Dr. Hopper was [*sic*] revised or amended. Any debt or legal obligation arising on or before December 18, 2018, remains subject to the stay as to the Debtor. However, once Debtor acted to thwart Dr. Hopper's interests by creating a new corporate entity and looting MPPI of its assets, new legal liability arose that is beyond the scope of the automatic stay." [doc. 41, p. 9].

The fourteenth cause of action in the first amended complaint alleges (the "FAC") [doc. 36, Exh. 5], in relevant part, that,

157. On or about December 18, 2018, MPPI was the owner and in possession and control of checking and savings accounts holding at least \$17,274.00. On or about December 19, 2018, and thereafter, MPPI transferred the full amount of those accounts to SCOTT and/or KSP for no consideration, proof of which will be offered at the trial herein. Thus, MPPI did not receive reasonably equivalent value in exchange for the cash in its bank accounts.

158. Although on the respective dates of the aforementioned transfer no part of Plaintiff's claims HAd [*sic*] been reduced to judgment, Plaintiff is informed and believes, and thereon alleges, that the transfer was made with actual knowledge of Plaintiff's claim and with the actual intent to hinder, delay or defraud MPPI's present and future creditors, *including Plaintiff, in the collection of their claims*. (emphasis added).

. . .

161. Plaintiff is further informed and believes, and thereon alleges, that the cash assets in MPPI's bank accounts was received by SCOTT with knowledge

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of Plaintiff's claims and knowledge that MPPI intended to hinder, delay and defraud *the collection of Plaintiff's claims* and the claims of all then and future creditors of MPPI. SCOTT had knowledge of Plaintiff's claims by virtue of his position as the CEO and sole shareholder of MPPI, which was a party to this action at the time of the transfer. (emphasis added).

On March 11, 2019, the Debtor filed a *Motion for an OSC re Contempt Against Samuel Hopper and Daniel Jett, Jointly and Severally and Sanctions in the Amount of \$4,025.00* (the "Motion") [doc. 36]. On March 18, 2019, Mr. Hopper filed an opposition to the Motion [doc. 41]. On April 3, 2019, the Debtor filed a reply to that opposition [doc. 59].

On March 13, 2019, Mr. Hopper filed a motion for relief from the automatic stay in a non-bankruptcy forum (the "RFS Motion") [doc. 38]. The hearing on the RFS Motion is set to be heard contemporaneously with this *Order to Show Cause Why Samuel Hopper and Daniel Jett Should Not Be Held in Civil Contempt for Violation of the Automatic Stay* (the "OSC") [doc. 64].

On April 12, 2019, the Court issued the OSC. On April 30, 2019, Mr. Hopper and Mr. Jett filed a response to the OSC (the "Response") [doc. 76]. In the Response, Mr. Jett states: "On March 7, 2019, service of process was effected on Debtor individually as a Defendant in the FAC. I made the decision to direct the process server to effect service of process as to the FAC on Debtor; Dr. Hopper was not involved in that decision at all." Declaration of Daniel Parker Jett ("Jett Decl."), ¶ 11. Mr. Jett further explains that "[t]he FAC was intended to remedy Debtor's post-petition fraudulent conduct in creating a new, successor corporation to MPPI and in looting the assets of MPPI to prevent Dr. Hopper from *collecting his wages and expenses*." *Id.* at ¶ 9 (emphasis added). On May 7, 2019, the Debtor filed a reply to the Response (the "Reply") [doc. 88].

II. ANALYSIS

A. Violation of Stay

11 U.S.C. § 362(a) provides in pertinent part:

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Chapter 13

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;
- ...
- (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)). Because such actions are void, they have no force or effect—it is not up to the Debtor to undo the act. *Schwarz*, 202 F.3d at 571. However, 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.

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.'"

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CONT... Kenneth C. Scott

Chapter 13

Garner, at *3 (quoting *Sternberg v. Johnston*, 595 F.3d 937, 945 (9th Cir. 2010)).

Mr. Hopper and Mr. Jett argue that they should be not subject to contempt because the FAC pertains to the Debtor's post-petition fraudulent conduct and non-debtor, third party entities. Mr. Hopper and Mr. Jett are correct that the automatic stay under 11 U.S.C. § 362(a) does not apply to post-petition claims and non-debtor parties.

The automatic stay protects against any act or continuation of a proceeding to recover a claim against the debtor that arose before the commencement of the case. Mr. Jett states that the fourteenth cause of action in the FAC only alleged post-petition conduct, and therefore, is not subject to the stay. However, Mr. Jett and Mr. Hopper alleged the fourteenth cause of action in order to recover on a pre-petition claim. Mr. Jett admits that "[t]he FAC was intended to remedy Debtor's post-petition fraudulent conduct in creating a new, successor corporation to MPPI and in looting the assets of MPPI to prevent Dr. Hopper from *collecting his wages and expenses*." at ¶ 9 (emphasis added). Mr. Hopper's alleged unpaid wages and expenses is a claim that arose pre-petition. Although the Debtor's alleged actions were post-petition, the claim that Mr. Hopper and Mr. Jett are trying to recover arose pre-petition. As such, continuing the state court litigation by filing and serving the FAC was a violation of the automatic stay.

B. Damages under 362(k)

11 U.S.C. § 362(k) provides the following:

- (1) 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. *Fernandez v. GE Capital Mortgage Servs., Inc. (In re Fernandez)*, 227 B.R. 174, 181 (9th Cir. BAP 1998).

i. Willful Violation of Stay

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A willful violation of the automatic stay does not require specific intent to violate the automatic stay. *In re Abrams*, 127 B.R. 239, 243 (9th Cir. BAP 1991). "A violation of the automatic stay is 'willful' if 1) the creditor knew of the stay and 2) the creditor's actions, which violated the automatic stay, were intentional." *Eskanos & Adler, P.C. v. Roman (In re Roman)*, 283 B.R. 1, 8 (9th Cir. BAP 2002). Moreover, a recent Ninth Circuit case emphasized an affirmative duty to comply with the automatic stay and to remedy any automatic stay violation. *Sternberg v. Johnston*, 595 F.3d 937, 944-45 (9th Cir. 2010). Also, the case noted that the alleged violator "needed neither to make some collection effort nor to know that his actions were unlawful for his violation to be willful." *Id.* at 945.

Here, Mr. Jett committed a willful violation of the automatic stay. Mr. Jett acknowledged that he received notice of the Debtor's bankruptcy filing and was aware of the automatic stay [doc. 36, Exh. 4]. Further, Mr. Jett admitted filing the FAC and employing a process server to serve the Debtor in his individual capacity were intentional. Jett Decl., ¶¶ 9 and 11. So although Mr. Jett may have believed in good faith that his actions were not a violation of the automatic stay, the test for willfulness does not require a specific intent. Mr. Jett committed a willful violation of the automatic stay.

Regarding Mr. Hopper, it does not appear that Mr. Hopper committed a willful violation of the automatic stay. It does appear that Mr. Hopper knew of the stay. However, it does not appear that Mr. Hopper's actions were intentional. Although Mr. Hopper has not submitted a declaration, Mr. Jett stated that Mr. Hopper was not involved in the decision to serve the Debtor with the FAC. Jett Decl., ¶ 11. The Debtor has not presented conflicting evidence.

ii. Damages

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*, 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

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finding of a stay violation).

Chapter 13

With regard to punitive damages, they are provided for under 11 U.S.C. § 362(k). However, courts have "traditionally been reluctant to grant punitive damages absent some showing of reckless or callous disregard for the law or rights of others." *In re Bloom*, 875 F.2d 224, 228 (9th Cir. 1989) (citing *Protectus Alpha Navigation Co. v. North Pacific Grain Growers, Inc.*, 767 F.2d 1379, 1385 (9th Cir. 1985)). "[P]unitive damages are appropriate where an arrogant defiance of federal law is demonstrated." *In re Novak*, 223 B.R. 363, 368 (Bankr. M.D. Fla. 1997) (citing *Matter of Mullarkey*, 81 B.R. 280, 284 (Bankr. D. N.J. 1987) (quoting *In re Tel-A-Communications, Inc.*, 50 B.R. 250, 255 (Bankr. D. Conn. 1985))).

As set forth above, victims of willful stay violations are entitled to actual damages, including attorney's fees and costs. The Debtor does not provide a breakdown of the actual costs. In the Motion, the Debtor requests \$4,025, consisting of 4.5 hours for the Debtor's attorney to draft the Motion, and an estimated 2.5 hours for the Debtor's attorney to review an opposition and draft reply papers and an estimated 4.5 hours to drive to court. In the Reply, the Debtor requests an additional \$2,100. The Debtor did not provide a breakdown for the additional damage request. While, the Debtor is entitled to actual damages under § 362(k), the Debtor must provide a breakdown of fees for actual work done (not estimated) or actual damages incurred in connection with the automatic stay violations to award these damages properly.

Regarding punitive damages requested by the Debtor in the Motion, it does not appear that punitive damages are appropriate in this case. It does not appear that Mr. Jett was acting with reckless or callous disregard for the law or the rights of the Debtor. It appears that Mr. Jett acted under a good faith belief that his actions were not a violation of the stay.

III. CONCLUSION

For the reasons discussed above, the Court finds that Mr. Jett willfully violated the automatic stay. The Debtor is entitled to actual damages in connection with the violation. **By no later than May 29, 2019**, the Debtor's attorney must file and serve on Mr. Jett a declaration with a breakdown of the Debtor's attorney's actual fees and costs associated with remedying the violation of stay. **By no later than June 26**,

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2019, Mr. Jett may file and serve any opposition to that declaration. The Court will continue this hearing to **9:30 a.m. on July 17, 2019**, in order to assess the Debtor's damages in connection with the violation of stay.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

#3.00 Motion for relief from stay [PP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Docket 59

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):

Aurora Frias Lee-Nelson

Represented By
Ronald D Tym

Movant(s):

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

Represented By
Jennifer H Wang

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CONT... Aurora Frias Lee-Nelson

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

#4.00 Motion for relief from stay [PP]

BANK OF AMERICA, N.A.
VS
DEBTOR

Docket 63

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):

Aurora Frias Lee-Nelson

Represented By
Ronald D Tym

Movant(s):

Bank of America, N.A.

Represented By
Megan E Lees

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CONT... Aurora Frias Lee-Nelson

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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1:18-11255 Ellen Marie Hopko

Chapter 7

#5.00 Motion for relief from stay [RP]

TRUSTEES UNDER THE WILL AND OF THE ESTATE OF
BERNICE PAUAHI BISHOP, DECEASED, DBA KAMEHAMEHA SCHOOLS
VS
DEBTOR

fr. 4/24/19(stip)

Docket 41

Tentative Ruling:

Based on the pleadings filed with the Court, the Court is not capable of making a determination that the subject property is property of the chapter 7 bankruptcy estate. Consequently, the Court will deny the motion as moot.

Alternatively, the Court will continue the hearing on the motion, in order for the parties to submit evidence demonstrating that the subject property constitutes property of the chapter 7 estate.

Party Information

Debtor(s):

Ellen Marie Hopko

Represented By
Maria C Hehr

Trustee(s):

David Seror (TR)

Pro Se

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1:18-11118 Teri Leslie Yanez

Chapter 13

#6.00 Motion for relief from stay [AN]

AMERICREDIT FINANCIAL SERVICES, INC.
VS
DEBTOR

Docket 35

Tentative Ruling:

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

Movant states that it seeks recovery from applicable insurance.

Movant also retains the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in the debtor's bankruptcy case.

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):

Teri Leslie Yanez

Represented By
Karine Karadjian

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CONT... Teri Leslie Yanez

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Movant(s):

Americredit Financial Services,

Represented By

Mandy D Youngblood

Jennifer H Wang

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:17-10984 Alina Negrin Saint Albin

Chapter 13

#7.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
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.

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

Debtor(s):

Alina Negrin Saint Albin

Represented By

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CONT... Alina Negrin Saint Albin

Chapter 13

Joshua L Sternberg

Movant(s):

U.S. Bank National Association, as

Represented By
Darren J Devlin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:16-13380 Sheree Gaynelle Solieman

Chapter 7

Adv#: 1:18-01054 Goldman v. Soliemanzadeh

- #8.00** Trustee's pretrial 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)

fr. 7/18/18; 2/13/19

Docket 1

*** VACATED *** REASON: Order of dismissal entered 3/21/19. [Dkt.11]

Tentative Ruling:

- NONE LISTED -

Party Information

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

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Sheree Gaynelle Solieman

Leonard Pena

Chapter 7

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1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01023 Post Confirmation Committee of Unsecured Creditors v. J J Foil Company,

#9.00 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

Docket 1

Tentative Ruling:

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on August 7, 2019.**

Upon entry of default by the Clerk of Court, 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 **July 15, 2019.**

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 May 15, 2019 is excused.

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

J J Foil Company, Inc.

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01024 Post Confirmation Committee of Unsecured Creditors v. Access Consulting

#10.00 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

Docket 1

*** VACATED *** REASON: Adversary dismissed 04/23/2019

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

Access Consulting Group, Inc.

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01025 Post Confirmation Committee of Unsecured Creditors v. Ross Bindery, Inc.

#11.00 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

Docket 1

Tentative Ruling:

On May 10, 2109, the plaintiff filed a *Notice of Settlement* [doc. 10].

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

Ross Bindery, Inc.

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01026 Post Confirmation Committee of Unsecured Creditors v. Standard Printing

#12.00 Status conference re: complaint to avoid and recover preferential transfers

Docket 1

Tentative Ruling:

On May 1, 2109, the plaintiff filed a *Notice of Settlement of Complaint to Avoid and Recover Preferential Transfers* [doc. 6].

In the unilateral status report filed by the plaintiff [doc. 7], the plaintiff notes that the plaintiff will dismiss this adversary proceeding upon receipt of a settlement payment. Has the plaintiff received the settlement payment? If so, does the plaintiff intend to dismiss this action?

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

Standard Printing Company, Inc.

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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1:30 PM

1:17-11358 Thomas Jang Young Yoon

Chapter 7

Adv#: 1:17-01093 Zamora v. Yoon

#13.00 Pretrial 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); 10/3/18

Stip to continue filed 2/12/19

Docket 1

***** VACATED *** REASON: Order entered 2/12/19 approving stip to continue hearing to 7/17/19 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

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Thomas Jang Young Yoon

Anthony A Friedman

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1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:18-01077 The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

#14.00 Motion to reconsider entry of consent order

Docket 24

Tentative Ruling:

I. BACKGROUND

On March 16, 2017, Hermann Muennichow ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee"). During the pendency of the bankruptcy case, Debtor passed away.

On June 29, 2018, The Lincoln National Life Insurance Company, an Indiana Corporation ("Lincoln National") filed a complaint for interpleader (the "Complaint"). In the Complaint, Lincoln National alleged, in relevant part:

Lincoln National assumed responsibility for a life insurance policy issued on April 27, 2006 insuring the life of Debtor (the "Policy"). In the Policy, Debtor designated Helayne Muennichow, his wife at the time, as the sole primary beneficiary. On March 27, 2013, Debtor submitted an Ownership Change for Life Policy form transferring ownership of the Policy to the Van Dyke Trust. On April 25, 2013, the Van Dyke Trust modified the beneficiary designation under the Policy to designate the Van Dyke Trust as the sole primary beneficiary and removed Ms. Muennichow as a beneficiary.

On November 11, 2017, Debtor died. The amount due under the Policy is \$1,003,240.92, comprised of a \$1 million death benefit and a \$3,240.92 premium refund, which became payable to the proper beneficiary upon Debtor's death. In December 2017, Ms. Muennichow sent a letter to Lincoln National claiming an interest in the Policy; Ms. Muennichow alleges that the Policy was purchased during her marriage to Debtor and is a community property asset and that Debtor unlawfully transferred ownership of the Policy without her knowledge

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CONT...

Hermann Muennichow
or consent.

Chapter 7

The Van Dyke Trust, Ms. Muennichow and the Trustee have asserted a claim to the Policy. Lincoln National has deposited the Policy's funds with the Court pending a determination regarding which party has an interest in the Policy.

On September 11, 2018, the Court entered a consent order (the "Consent Order") [doc. 11]. In the Consent Order, the parties agreed, among other things, that: (A) Lincoln National will deposit \$1 million, plus applicable interest, into the Registry of the Court; (B) upon deposit of the funds, Lincoln National will be dismissed from this action with prejudice; (C) Lincoln will be discharged from any and all liability with respect to the Policy, the deposited funds and payment of the deposited funds; (D) the claimants to the funds will be enjoined from commencing or prosecuting any other action against Lincoln National with respect to the Policy, the deposited funds and payment of the deposited funds; (E) Lincoln National waives any right to attorneys' fees and costs in connection with this action; and (F) no costs will be taxed against Lincoln National. Gary Kurtz, Ms. Muennichow's prior attorney, signed the Consent Order on behalf of Ms. Muennichow.

On December 10, 2018, Ms. Muennichow filed a Substitution of Attorney, substituting Robert J. McKennon in place of Mr. Kurtz [doc. 18]. On January 17, 2019, the parties to this adversary proceeding attended a global mediation in an attempt to settle this adversary proceeding as well as two other adversary proceedings related to Debtor's bankruptcy case. *See* Status Report [1:17-ap-01069-VK, doc. 72]. The parties did not settle. *Id.* As such, on February 22, 2019, the Court entered an order setting a briefing schedule for the parties to file responses to the Complaint [doc. 21]. In that order, the Court required parties to file responses no later than March 13, 2019.

On March 12, 2019, one day before the deadline for parties to file responses to the Complaint, Ms. Muennichow filed the Motion [doc. 24], asserting that, under California law, Mr. Kurtz lacked authority to dispose of Ms. Muennichow's claims against Lincoln National. Ms. Muennichow also filed a declaration by Mr. Kurtz [doc. 28], in which Mr. Kurtz testifies that he did not consult with Ms. Muennichow about the specifics of the Consent Order, but generally spoke to Ms. Muennichow

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about the fact that Lincoln National would deposit the \$1 million with the Court. Declaration of Gary Kurtz [doc. 28], ¶ 6. In her own declaration, Ms. Muennichow testifies that she learned about the specifics of the Consent Order, including the disposal of her claims against Lincoln National, on November 13, 2018. Declaration of Helayne Muennichow [doc. 26], ¶ 12.

On March 15, 2019, Ms. Muennichow filed an answer to the Complaint and a counterclaim against Lincoln National (the "Counterclaim"). In relevant part, Ms. Muennichow alleges in the Counterclaim:

For most of the time the Policy was in force, the premiums were paid using community property funds generated by community property and acquired during the course of Debtor's and Ms. Muennichow's marriage. The change-of-ownership form signed by Debtor specifically states that the "Signature of all owners will be required to exercise any contractual right under policy/certificate." Ms. Muennichow was a partial owner of the Policy with a beneficial interest.

Lincoln National failed to investigate whether the transfer of the Policy was made with Ms. Muennichow's consent, and failed to determine if the transfer was made without duress. Lincoln National should have been aware that Ms. Muennichow was Debtor's wife and that California is a community property state. Lincoln National also failed to investigate when the Van Dyke Trust changed the beneficiary from Ms. Muennichow to the Van Dyke Trust.

On these allegations, Ms. Muennichow asserts a claim for Breach of the Implied Covenant of Good Faith and Fair Dealing and a claim for Breach of Fiduciary Duty. Ms. Muennichow requests damages in the form of benefits under the Policy, compensatory and consequential damages, emotional distress damages, punitive damages, interest and attorneys' fees and costs.

On March 26, 2019, Lincoln National filed an opposition to the Motion (the "Opposition") [doc. 36]. In the Opposition, Lincoln National argues that Ms. Muennichow did not meet the standard under Federal Rule of Civil Procedure

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("Rule") 60(b); Lincoln National does not address the attorney authorization arguments in the Motion. On March 28, 2019, the Trustee filed a statement in response to the Motion [doc. 40], asserting that granting the Motion will bring uncertainty to the adversary proceeding but otherwise not adopting Lincoln National's arguments from the Opposition. On May 1, 2019, Ms. Muennichow filed a reply to the Opposition [doc. 51].

II. ANALYSIS

A. Authority of an Attorney to Bind a Client to Settlement

Lincoln National asserts that Ms. Muennichow has not established a basis for relief under Rule 60(b). However, although the parties address the Motion in the context of Rule 60(b), the first issue is not whether Ms. Muennichow should be granted relief from the Consent Order under Rule 60(b), but whether Ms. Muennichow was ever bound by the Consent Order at all. The crux of Ms. Muennichow's argument is that Mr. Kurtz did not have authority to settle her claims against Lincoln National; without such authority, Ms. Muennichow would not be bound by the terms of the Consent Order.

The Ninth Circuit Court of Appeals has repeatedly held that "state contract law governs whether [parties] reached an enforceable agreement settling the federal and state law claims alleged in [the plaintiffs'] complaint." *Wilcox v. Arpaio*, 753 F.3d 872, 876 (9th Cir. 2014); *see also United Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992) ("The construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally. This is true even though the underlying cause of action is federal.").

Nevertheless, the Court of Appeals has never decided the issue of whether state or federal law applies when federal courts must decide if an attorney had authority to settle a claim on behalf of a party. On this point, courts are split—

The Ninth Circuit has not held directly on this issue and there appears to be a split among the circuits that have. Several circuits apply the rule of federal common law when determining whether an attorney had authority to bind the client, with its presumption favoring the

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attorney. *See, e.g., Michaud v. Michaud*, 932 F.2d 77, 79 (1st Cir.1991); *Fennell v. TLB Kent Co.*, 865 F.2d 498, 501 (2d Cir.1989); *Garabedian v. Allstates Eng'g Co.*, 811 F.2d 802, 803 (3rd Cir.1987); *Mid-South Towing Co. v. Har-Win, Inc.*, 733 F.2d 386, 389 (5th Cir.1984); *Larson v. Heritage Square Assoc.*, 952 F.2d 1533, 1537 (8th Cir.1992). Courts have explained this use of federal common law on the basis that the parties are appearing in federal court and their "substantive rights and liabilities ... derive from federal law." *Mid-South Towing*, 733 F.2d at 389.

Several circuits, however, have declined to adopt this rule. *See Pohl v. United Airlines, Inc.*, 213 F.3d 336, 338 (7th Cir.2000); *United States v. McCall*, 235 F.3d 1211, 1215 (10th Cir.2000); *Hayes v. Nat'l Serv. Indus.*, 196 F.3d 1252, 1254 (11th Cir.1999); *Makins v. District of Columbia*, 277 F.3d 544, 547-48 (D.C.Cir.2002).

Anand v. California Dep't of Developmental Servs., 626 F. Supp. 2d 1061, 1064-65 (E.D. Cal. 2009).

The standards under federal common law and California law are different. Under federal law, "there is a presumption that an attorney has authority to settle a matter for his client, rebuttable only when the party meets a 'heavy burden' to show that the attorney was acting outside the scope of his authority." *Id.*, at 1064 (citing *In re Artha Management, Inc.*, 91 F.3d 326, 329 (2d Cir. 1996)). "Under California law, however, this presumption does not exist. Instead, because an attorney must have express authority to settle his client's claims, there is no presumption that settlement agreed to by the attorney binds his client." *Id.* (citing *Linsk v. Linsk*, 70 Cal.2d 272 (1969) and *Blanton v. Womancare, Inc.*, 38 Cal.3d 396, 404 (1985)).

In *Anand*, after noting that the Ninth Circuit Court of Appeals has not held on the issue, the court referenced *Mallott & Peterson v. Dir., Office of Workers' Comp.*, 98 F.3d 1170, 1173 (9th Cir. 1996), *cert. denied*, 520 U.S. 1239, 117 S.Ct. 1842, 137 L.Ed.2d 1046 (1997), in which case the Court of Appeals "considered an attorney's authority to settle his client's claims in the context of the Longshore and Harbor Workers' Compensation Act," a federal statutory scheme. *Id.* (citing *Mallott*, 98 F.3d at 1173). In *Mallott*, the Court of Appeals used California law to assess whether an

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attorney had authority to settle his client's claims, and to analyze whether the employee subsequently ratified her attorney's settlement. *Mallott*, 98 F.3d at 1173-74. In a footnote, the court affirmed the use of California law to decide the ratification issue—

Employer contends that Federal law applies, and that under Federal law, a client is bound by the acts of her attorney. The instances in which the courts are authorized to fashion federal common law are restricted to those in which a federal rule of decision is necessary to protect uniquely federal interests, and those in which Congress has given the courts the power to develop substantive law. *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640, 101 S.Ct. 2061, 2067, 68 L.Ed.2d 500 (1981) (citations omitted). Neither category is relevant here. *See Slavin v. Commissioner*, 932 F.2d 598, 601 (7th Cir. 1991) ("Normally the authority of an agent (a lawyer is just a specialized agent) derives from state law; that the substantive dispute concerns federal law does not matter.").

Id., at 1173 n.2. The *Anand* court relied on these statements as "among the strongest guidance for this court on the proper approach" in its case." *Anand*, 626 F.Supp.2d at 1066.

The *Anand* court also hesitated to apply the federal standard because federal common law should be applied in limited circumstances—

The concept of "federal common law" has come to have a more circumscribed application in recent years. *See Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640–41, 101 S.Ct. 2061, 68 L.Ed.2d 500 (1981). The federal courts do not have authority to establish a federal common law simply by virtue of their jurisdiction or even in those areas in which Congress possesses authority to act but has not done so. *Id.* Instead, federal courts may only create federal common law "in such narrow areas as those concerned with the rights and obligations of the United States," where application of state law would be offensive. *Id.* at 641, 101 S.Ct. 2061.

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In some cases, federal courts may apply federal common law where there is a strong federal interest in creation of a uniform rule. *See Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 711–12, 126 S.Ct. 2121, 165 L.Ed.2d 131 (Breyer, J., dissenting) (collecting cases). This includes, for example, rules governing the tort liability of federal officials acting in their official capacities, *Boyle v. United Technologies Corp.*, 487 U.S. 500, 505, 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988), and the liabilities of individuals performing duties pursuant to contracts with the federal government. *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18, 60 S.Ct. 413, 84 L.Ed. 554 (1940). This exception is to be narrowly applied, however. For instance, the Court has held that "[c]ontroversies directly affecting the operation of federal programs," such as federal loan programs, "although governed by federal law, do not inevitably require resort to uniform federal rules." *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 727–28, 99 S.Ct. 1448, 59 L.Ed.2d 711 (1979). One leading commentator has summarized the Court's approach as recognizing "reasons for the presumption in favor of state law—the inner logic of federalism, the substantive advantages of local solutions to local problems, the protection of important substantive state policies, and the order and certainty of well developed bodies of state law," which only warrant displacement by federal common law where there is a "defined, important federal interest" at issue. 19 Charles Allen Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4514 (2009).

Id., at 1066–67. Finally, the court noted that "the attorney-client relationship is simply a form of agency, and federal courts typically rely on a state's agency laws when those issues arise." *Id.*, at 1067 (citing *C.A.R. Transp. Brokerage Co., Inc. v. Darden Restaurants, Inc.*, 213 F.3d 474, 479 (9th Cir. 2000)). Several district courts in California have agreed with the reasoning and holding in *Anand*. *See, e.g. Jones v. Cty. of Sacramento*, 2018 WL 3197841, at *2 (E.D. Cal. Jun. 26, 2018); *Johnson v. First Riverbank, L.P.*, 2018 WL 1709949, at *5-6 (E.D. Cal. Apr. 9, 2018); and *Hess v. Hanneman*, 2017 WL 6027015, at *5 (S.D. Cal. Dec. 4, 2017).

Given the Court of Appeals' repeated holding that state law applies to enforcement of

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settlement agreements, the Court finds *Anand* persuasive. Here, the Consent Order provides that Lincoln National is "discharged from any and all liability with respect to the Policy" and the deposited funds and that the remaining parties, including Ms. Muennichow, are "enjoined from commencing or prosecuting any other action against" Lincoln National with respect to the Policy and the funds. Consent Order, p. 3. As such, the Consent Order operates as a settlement of any claims against Lincoln National that involve the Policy or the deposited funds. Ms. Muennichow apparently intends to assert state law claims against Lincoln National. Nevertheless, even if Ms. Muennichow's claims were under federal law, any settlement between the parties, including whether the parties' attorneys had authority to settle on behalf of their clients, would be governed by California law barring narrow circumstances not present in this case.

As noted above, under California law, there is no presumption that a settlement agreed by an attorney binds the attorney's client. *Anand*, 626 F.Supp.2d at 1064. "Counsel must have 'specific authorization' to enter into a settlement on his client's behalf." *Id.*, at 1067 (quoting *Bice v. Stevens*, 160 Cal.App.2d 222, 231-32 (Ct. App. 1958)).

Where a party contends that her attorney acted without authorization in settling or dismissing her claims, the court must conduct a factual inquiry into whether the attorney acted with her authority. Under Circuit precedent, this factual inquiry *must take the form of an evidentiary hearing*, where [the client asserting that her previous attorney acted without authority] must bear the burden to show that her previous attorney did not have her authority to settle her claims or that she should not otherwise be bound by her attorney's acts through her subsequent ratification.

Id. (internal citations omitted) (emphasis added); see *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987) (requiring evidentiary hearing).

Whether an attorney had authority to act on behalf of a client is not limited to express authority; an attorney may have apparent or ostensible authority to act. Although attorneys are generally authorized to bind clients in *procedural* matters, "[a]n attorney is not authorized... merely by virtue of his retention in litigation, to impair the client's substantial rights or the cause of action itself." *Blanton*, 38 Cal.3d at 403-04. "While

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employment alone does not give an attorney authority to settle on his or her client's behalf, general agency principles have traditionally been applied to determine whether a lawyer has been vested with express, apparent or ostensible authority to enter into a settlement." *Inamed Corp. v. Kuzmak*, 275 F.Supp.2d 1100, 1118 (C.D. Cal. 2002) *aff'd*, 64 F.App'x 241 (Fed. Cir. 2003). For instance, in *Inamed*, the court held that an attorney had apparent authority to act on behalf of a client—

"A principal is liable 'when the principal knows the agent holds himself or herself out as clothed with certain authority and remains silent.'" *NORCAL Mutual Ins. Co. v. Newton*, 84 Cal.App.4th 64, 78, 100 Cal.Rptr.2d 683 (2000) (quoting *Jacoves v. United Merchandising Corp.*, 9 Cal.App.4th 88, 103, 11 Cal.Rptr.2d 468 (1992)). If the Kuzmaks took the position that Hunt had authority to negotiate, but not to finalize, a settlement on their behalf, they had an affirmative obligation, in the context of the parties' negotiations, to advise Inamed of this fact. See *NORCAL*, *supra*, 84 Cal.App.4th at 79, 100 Cal.Rptr.2d 683 ("A principal's failure to promptly disaffirm an agent's conduct on her behalf constitutes a ratification"); *Gates v. Bank of America Nat. Trust & Savings Ass'n.*, 120 Cal.App.2d 571, 576–77, 261 P.2d 545 (1953) ("where the rights of third persons depend on his election, the rule is a principal must disaffirm an unauthorized act of his agent within a reasonable time after acquiring knowledge thereof, else his silence may be deemed ratification or acquiescence in order to protect an unsuspecting third party"). Their failure to do so is fatal to Kuzmak's lack of authority defense.

Id., at 1119.

The Consent Order provides for dismissal of Lincoln National from this adversary proceeding and for disposal of any claims against Lincoln National involving the Policy. In the Counterclaim, Ms. Muennichow's claims against Lincoln National involve the Policy. As such, the Consent Order impairs Ms. Muennichow's substantial rights and causes of action as specified in the Counterclaim. Under the authorities above, the Court must set an evidentiary hearing regarding whether Mr. Kurtz had authority, whether express or apparent, to bind Ms. Muennichow to the terms of the Consent Order.

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At this time, although Mr. Kurtz has testified that he never informed Ms. Muennichow about the pertinent terms in the Consent Order, the record is devoid of any facts regarding whether Mr. Kurtz acted with apparent authority on Ms. Muennichow's behalf. In addition, Lincoln National has not been afforded an opportunity to cross-examine the declarants regarding whether Mr. Kurtz had express authority to sign the Consent Order. Moreover, given that Ms. Muennichow knew about the disposal of her claims as of November 13, 2018 and did not raise the issue of authorization until March 12, 2019, the parties also should be given an opportunity to determine whether Ms. Muennichow ratified the Consent Order. As such, the parties must be prepared to discuss dates and deadlines regarding an evidentiary hearing on these issues.

B. Relief under Rule 60(b)

To the extent Mr. Kurtz did not have authority to sign the Consent Order, Ms. Muennichow will not be bound by the Consent Order, and the parties' Rule 60(b) arguments will be moot. If Mr. Kurtz *did* have authority to bind Ms. Muennichow, Ms. Muennichow will properly be bound by the Consent Order, and Ms. Muennichow has not demonstrated a basis for relief under Rule 60(b).

Rule 60(b), applicable via 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."

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 (1993). Although *Pioneer* dealt with

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excusable neglect in the context of Federal Rule of Bankruptcy Procedure 9006(b), the Ninth Circuit 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 Ninth Circuit 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*). The Court in *Lemoge* also 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 at 1195.

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).").

Here, to the extent Ms. Muennichow is bound by the Consent Order, Ms. Muennichow's basis for relief is attorney misconduct, i.e., Mr. Kurtz's failure to consult with Ms. Muennichow before settling her claims against Lincoln National. This type of misconduct is not within the purview of Rule 60(b), and Ms. Muennichow would not be entitled to relief on this basis alone. In any event, the factors under *Pioneer* do not warrant relief.

1. Prejudice to Other Parties

Granting the Motion would greatly prejudice the other parties to this adversary proceeding. Lincoln National relied on the Consent Order when it deposited \$1 million with the Court registry and agreed not to pursue attorneys' fees and costs

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against the other parties. The other parties also relied on the Consent Order in releasing their own claims against Lincoln National. Granting Ms. Muennichow the relief she requests will undo the negotiations not just between Ms. Muennichow and Lincoln National, but between Lincoln National and the other defendants to this action. As noted by the Trustee, altering the Consent Order will bring uncertainty and may result in the possible removal of the \$1 million from the Court's registry. Consequently, the parties will be prejudiced by modification of the Consent Order.

2. 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.

Here, the Court entered the Consent Order on September 11, 2018. Ms. Muennichow did not file the Motion until March 12, 2019, over six months after entry of the Consent Order. During that delay, the parties attended mediation and engaged in substantial settlement discussions. The Court also set dates and deadlines for the parties to file responses to the Complaint, due the day after Ms. Muennichow filed the Motion. Given that Ms. Muennichow waited until the day before this deadline, many of the parties likely filed their responses to the Complaint without having adequate time to assess the Motion and its impact on their responses.

3. Reason for the Delay/Delay in Reasonable Control of the Movant

Ms. Muennichow has not provided any reason for the delay in filing the Motion. In her declaration, Ms. Muennichow testifies that she learned of the Consent Order on November 13, 2018. Nevertheless, Ms. Muennichow did not file the Motion until March 12, 2019. There is no explanation for this delay.

4. Whether Movant Acted in Good Faith

In determining whether a movant acted in good faith, the court should look at whether

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the "errors resulted from negligence and carelessness," or from "deviousness or willfulness." *Bateman*, 231 F.3d at 1225. There is no indication at this time that Ms. Muennichow acted in bad faith. In any event, the remaining factors weigh heavily in favor of denying relief under Rule 60(b).

III. CONCLUSION

The Court will set an evidentiary hearing on the following issues: (A) whether Mr. Kurtz had express, apparent or ostensible authority to sign the Consent Order on behalf of Ms. Muennichow; and (B) even if Mr. Kurtz did not have authority, whether Ms. Muennichow subsequently ratified the Consent Order. To the extent Mr. Kurtz had authority to sign the Consent Order, the Court will not grant Ms. Muennichow relief under Rule 60(b).

The parties should be prepared to discuss dates and deadlines regarding the evidentiary hearing.

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Defendant(s):

Duane Van Dyke Irrevocable Trust

Represented By
Kelly Warren

Helayne Muennichow

Represented By
Robert J McKennon
Gary A Kurtz

David Seror

Represented By
Richard Burstein

Plaintiff(s):

The Lincoln National Life Insurance

Represented By
Erin Illman

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Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

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Adv#: 1:18-01077 The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

#14.10 Status conference re: complaint for interpleader

fr. 9/12/18; 11/21/18; 2/20/19; 4/3/19

Cross-claim

David Seror, soley in his capacity as the Chapter 7 Trustee for the bankruptcy estate of debtor Hermann Muennichow

v.

Helayne Muennichow, an individual; Duane Van Dyke Irrevocable Trust, an entity of unknown form; and John Van Duke, trustee of the Duane Van Dyke Irrevocable trust

Cross-claim

Helayne Muennichow,\

v.

Duane Van Dyke Irrevocable Trust; David Seror; and chapter 7 trustee

Docket 1

Tentative Ruling:

4/3/2019 Tentative:

The Court intends to set the motion to reconsider the consent order (the "Motion to

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Reconsider") [doc. 24], filed by Helayne Muennichow, for hearing at **2:30 p.m. on May 15, 2019**. Should the Court stay this adversary proceeding until entry of an order on the Motion to Reconsider? If the parties do not request a stay, the parties should be prepared to discuss the following:

Deadline to complete discovery: 10/1/19.

Deadline to file pretrial motions: 10/15/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 11/6/19.

Pretrial: 1:30 p.m. on 11/20/19.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the chapter 7 trustee 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):

Duane Van Dyke Irrevocable Trust

Pro Se

Helayne Muennichow

Pro Se

David Seror

Represented By
Richard Burstein

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Plaintiff(s):

The Lincoln National Life Insurance

Represented By
Erin Illman

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

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1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#15.00 Defendants' motion for judgment on the pleadings and/or motion to dismiss, because of plaintiffs lack of standing

Docket 91

Tentative Ruling:

The Court will dismiss this adversary proceeding.

I. BACKGROUND

On August 21, 2017, Yegiya Kutyan and Haykush Helen Kutyan ("Debtors") filed a voluntary chapter 11 petition. On November 27, 2017, Pogos Araik Melkonian filed a complaint against Debtors, requesting denial of Debtors' discharge and nondischargeability of the alleged debt owed to Mr. Melkonian. After multiple motions to dismiss, the only claim pending against Debtors is a request for denial of Debtors' discharge under 11 U.S.C. § 727(a)(4)(A).

On December 20, 2017, Mr. Melkonian filed a proof of claim in Debtors' bankruptcy case (the "Claim"). On October 11, 2018, Debtors objected to the Claim (the "Objection to Claim") [Bankruptcy Docket, doc. 94]. On February 26, 2019, the Court held an evidentiary hearing on the statute of limitations issues raised in the Objection to Claim. On February 27, 2019, the Court issued a ruling (the "Disallowance Ruling") [Bankruptcy Docket, doc. 152], holding that, even if Mr. Melkonian otherwise has a valid claim against Debtors, the claim is time barred. As a result, on March 6, 2019, the Court entered an order disallowing Mr. Melkonian's claim against the estate (the "Disallowance Order") [Bankruptcy Docket, doc. 153]. On March 12, 2019, Mr. Melkonian filed a Notice of Appeal with the United States District Court.

On March 12, 2019, Debtors filed the Motion [doc. 91]. On May 1, 2019, Mr. Melkonian filed a response to the Motion (the "Response") [doc. 96]. In the Response, Mr. Melkonian does not dispute that he does not have standing; rather, Mr. Melkonian requests a stay of this adversary proceeding until the District Court decides

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Yegiya Kutyan

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the appeal. However, Mr. Melkonian provides no authority or analysis in support of his request for a stay of this adversary proceeding. On May 8, 2019, Debtors filed a reply to the Response (the "Reply") [doc. 97]. Debtors assert the appeal should not bar dismissal of this action.

II. ANALYSIS

"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 *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*, 2013 WL 6906375 at * 10 (citing *In re O'Kelley*, 2010 WL 3984666, at *4 (D. Haw. 2010)). The party requesting a stay bears the burden of "showing that the circumstances justify an exercise of that discretion." *Nken*, 556 U.S. at 433-34.

Courts consider four factors when determining whether to issue a stay pending appeal:

1. Whether the stay applicant has made a strong showing that he is likely to succeed on the merits
2. Whether the applicant will be irreparably 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).

Here, Mr. Melkonian has made no showing as to any of the factors above. In the Response, Mr. Melkonian asks for a stay of the adversary proceeding without any legal or factual support for his request. Given that Mr. Melkonian has the burden of showing circumstances that warrant a stay of this proceeding, the fact that Mr.

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CONT... **Yegiya Kutyan**

Chapter 11

Melkonian's request is without support is sufficient to deny his request.

In any event, the factors above weigh against a stay of this proceeding. For the same reasons stated in the Disallowance Ruling, Mr. Melkonian has not made a strong showing that he is likely to succeed on the merits. In addition, Mr. Melkonian will not be irreparably harmed; if an appellate court reverses the Disallowance Order, Mr. Melkonian may move for relief under Rule 60(b).

In addition, 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"); *see also 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.'").

Although Debtors may not be substantially injured by a stay of this adversary proceeding, Debtors will be subject to a delay and the remaining factors weigh against staying this adversary proceeding. Given that Mr. Melkonian otherwise conceded he does not have standing to prosecute this action, the Court will dismiss this adversary proceeding.

III. CONCLUSION

The Court will dismiss this adversary proceeding.

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

Party Information

Debtor(s):

Yegiya Kutyan

Represented By
Sheila Esmaili

Defendant(s):

Yegiya Kutyan

Represented By
Sheila Esmaili

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Haykush Helen Kutyan

Sanaz S Bereliani

Represented By
Sheila Esmaili
Sanaz S Bereliani

Joint Debtor(s):

Haykush Helen Kutyan

Represented By
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By
Vahe Khojayan

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1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#16.00 Motion for a protective order to (1) Have depositions occur only after the Court determines an evidentiary hearing is necessary on defendants claim objection and (2) Bar plaintiff from attending defendants depositions

fr. 1/17/19; 4/3/19; 4/10/19;

Docket 69

Tentative Ruling:

In light of the Court's dismissal of this adversary proceeding, this matter is moot.

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
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By
Vahe Khojayan

**United States Bankruptcy Court
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San Fernando Valley
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Wednesday, May 15, 2019

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2:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#17.00 Plaintiff's motion to compel defendants to appear at deposition
and for sanctions

fr. 1/16/19; 1/23/19; 4/3/19; 4/10/19;

Docket 77

Tentative Ruling:

In light of the Court's dismissal of this adversary proceeding, this matter is moot.

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
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By
Vahe Khojayan

**United States Bankruptcy Court
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Wednesday, May 15, 2019

Hearing Room 301

2:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#18.00 Plaintiff's motion for order compelling defendants to produce additional documents in response to requests for production of documents, and for sanctions

fr. 1/16/19; 1/23/19; 4/3/19; 4/10/19;

Docket 72

Tentative Ruling:

In light of the Court's dismissal of this adversary proceeding, this matter is moot.

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
Sheila Esmaili

Plaintiff(s):

Pogos Araik Melkonian

Represented By
Vahe Khojayan

**United States Bankruptcy Court
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Hearing Room 301

2:30 PM

1:17-12214 Yegiya Kutyan

Chapter 11

Adv#: 1:17-01098 Melkonian v. Kutyan et al

#19.00 Pretrial 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/ 8/1/18; 1/23/19(stip); 4/3/19; 4/10/19;

Docket 42

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
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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; 10/4/18(stip); 11/8/18;
2/7/19(stip)

Stip to continue filed 4/29/19

Docket 114

***** VACATED *** REASON: Order entered 4/30/19 continuing hearing to
8/8/19 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
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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; 10/4/18(stip); 11/8/18; 2/7/19(stip)

Docket 1

***** VACATED *** REASON: Order entered 4/30/19 continuing hearing to
8/8/19 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
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Hearing Room 301

1:00 PM

1:17-13142 Amir Elosseini

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 2/8/18; 8/16/18; 11/15/18, 1/24/19; 3/14/19; 4/25/19

Docket 1

Tentative Ruling:

Has the debtor paid United States trustee quarterly fees for the first quarter of 2019?

On March 14, 2019, after holding a hearing on the adequacy of the debtor's proposed disclosure statement, the Court denied approval of that disclosure statement [doc. 124]. When does the debtor anticipate filing an amended chapter 11 plan of reorganization and related disclosure statement?

Party Information

Debtor(s):

Amir Elosseini

Represented By
Kevin Tang

**United States Bankruptcy Court
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1:00 PM

1:17-13142 Amir Elosseini

Chapter 11

#3.10 Motion in Individual Ch 11 Case for Order Employing Professional
Donald Pyne as Certified Public Accountant Nunc Pro Tunc (LBR 2014-1)

Stip to resolve matter filed 5/13/19

Docket 120

Tentative Ruling:

The Court will approve employment of Donald Pyne on the terms set forth in the *Stipulation Resolving Objection of United States Trustee to Debtor's Application to Employ Accountant Nunc Pro Tunc* [doc. 130].

The United States trustee must submit the order within seven (7) days.

Appearances on May 16, 2019 are excused.

Party Information

Debtor(s):

Amir Elosseini

Represented By
Kevin Tang
David Miller

**United States Bankruptcy Court
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Thursday, May 16, 2019

Hearing Room 301

1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#4.00 Status conference re: chapter 11 case

fr. 5/17/18; 6/7/18; 10/11/18; 10/18/18; 3/14/19

Docket 1

Tentative Ruling:

On May 1, 2019, the debtor filed a chapter 11 plan [doc. 152] and related proposed disclosure statement [doc. 151]. A hearing on the adequacy of the debtor's disclosure statement is set to take place on **June 20, 2019 at 1:00 p.m.**

What is the status of scheduling a mediation session among the debtor, related chapter 11 debtor and debtor in possession Integrated Dynamic Solutions, Inc. and creditor Vitavet Labs, Inc.?

Party Information

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

**United States Bankruptcy Court
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Thursday, May 16, 2019

Hearing Room 301

1:00 PM

1:18-11125 Marcelo Martinez

Chapter 11

#5.00 Confirmation hearing re: chapter 11 plan of reorganization

Docket 78

Tentative Ruling:

Confirm Chapter 11 Plan dated January 7, 2019 [doc. 78]. No later than **September 30, 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 **October 17, 2019 at 1:00 p.m.**

The debtor must submit the confirmation order within seven (7) days.

Party Information

Debtor(s):

Marcelo Martinez

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
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Thursday, May 16, 2019

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; 12/13/18; 1/17/19; 3/7/19

Docket 1

Tentative Ruling:

Has the debtor paid the United State trustee quarterly fees for the first quarter of 2019?

Party Information

Debtor(s):

Marcelo Martinez

Represented By
Matthew D Resnik

**United States Bankruptcy Court
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Thursday, May 16, 2019

Hearing Room 301

1:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#7.00 Status conference re: chapter 11 case

fr. 10/11/18; 10/18/18; 3/14/19;

Docket 1

Tentative Ruling:

On May 1, 2019, the debtor filed a *Status Conference Report* (the "Status Report") [doc. 167]. Contrary to the *Order Granting Debtor's Motion Extending Time to File Plan and Disclosure Statement* [doc. 154], the Status Report is not supported by evidence in the form of a declaration and supporting documents.

Has the debtor paid the United States trustee fees for the first quarter of 2019?

A hearing on the adequacy of the debtor's disclosure statement is set to take place on **June 20, 2019 at 1:00 p.m.**

What is the status of scheduling a mediation session among the debtor, related chapter 11 debtor and debtor in possession Nasrollah Gashtili and creditor Vitavet Labs, Inc.?

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

**United States Bankruptcy Court
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Thursday, May 16, 2019

Hearing Room 301

2:00 PM

1:19-10670 Shannon Scott Barton and Sarah Elizabeth Barton

Chapter 7

#8.00 Order to show cause re dismissal for failure to comply with Rule 1006(b)

Docket 17

***** VACATED *** REASON: Second installment payment paid 5/14/19.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shannon Scott Barton	Pro Se
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Joint Debtor(s):

Sarah Elizabeth Barton	Pro Se
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Trustee(s):

David Seror (TR)	Pro Se
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**United States Bankruptcy Court
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Tuesday, May 21, 2019

Hearing Room 301

8:30 AM

1:18-12702 Arthur Bayardo

Chapter 7

#1.00 Reaffirmation agreement between debtor and Santander Consumer USA Inc.
fr. 3/19/19

Docket 10

Party Information

Debtor(s):

Arthur Bayardo

Represented By
Elena Steers

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, May 21, 2019

Hearing Room 301

8:30 AM

1:19-10216 Martha Isabel Rostran

Chapter 7

#2.00 Reaffirmation agreement with Ally Bank

Docket 14

Party Information

Debtor(s):

Martha Isabel Rostran

Represented By
Daniel King

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 21, 2019

Hearing Room 301

8:30 AM

1:19-10320 Edwin R Valderrama

Chapter 7

#3.00 Reaffirmation agreement with LBS Financial Credit Union

Docket 9

Party Information

Debtor(s):

Edwin R Valderrama

Represented By
Lauren M Foley

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 21, 2019

Hearing Room 301

8:30 AM

1:19-10475 Carlos A Hernandez

Chapter 7

#4.00 Reaffirmation agreement with Bank of The West

Docket 11

Party Information

Debtor(s):

Carlos A Hernandez

Represented By
Steven A Alpert

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 21, 2019

Hearing Room 301

8:30 AM

1:19-10545 Gunther Shia

Chapter 7

#5.00 Reaffirmation agreement with Cab West, LLC

Docket 10

Party Information

Debtor(s):

Gunther Shia

Represented By
Allan D Sarver

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, May 22, 2019

Hearing Room 301

9:30 AM

1:19-10531 CFC California Fabrication, Inc.

Chapter 7

#1.00 Motion for relief from stay [UD]

ALABAMA 7901, LLC
VS
DEBTOR

fr. 4/24/19(stip)

Docket 4

Tentative Ruling:

Based on the *Stipulation Regarding Rejection of Lease and Allowance of Landlord's Administrative Claim* [doc. 21], which was approved by the Court on May 20, 2019 [doc. 23], the movant must submit an order within seven (7) days granting the motion effective as of July 1, 2019.

Appearances on May 22, 2019 are excused.

Party Information

Debtor(s):

CFC California Fabrication, Inc.

Represented By
David R Hagen

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, May 22, 2019

Hearing Room 301

9:30 AM

1:18-11620 Antoine R Chamoun

Chapter 7

#2.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 3/20/19(stip)

Ord appr stip to cont ent 5/20/19

Docket 28

***** VACATED *** REASON: Continued to 7/3/19 per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, May 22, 2019

Hearing Room 301

9:30 AM

1:19-10319 James Lamont Dubose

Chapter 7

#2.10 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

fr. 5/8/19

Docket 33

Tentative Ruling:

At the prior hearing on the motion, the Court ordered the debtor to file evidence in support of his late filed response [doc. 37] by May 15, 2019. The debtor did not timely file a declaration signed under penalty of perjury or other evidentiary support for the assertions in his response.

Tentative Ruling from May 8, 2019

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.

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9:30 AM

CONT... James Lamont Dubose

Chapter 7

Party Information

Debtor(s):

James Lamont Dubose

Represented By
Stephen L Burton

Movant(s):

Nationstar Mortgage LLC d/b/a Mr.

Represented By
Jennifer C Wong

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, May 22, 2019

Hearing Room 301

9:30 AM

1:19-10874 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. 4/17/19

Docket 6

Tentative Ruling:

At the prior hearing on April 17, 2019, the Court ordered the debtor to file a declaration to demonstrate that she timely made her required post-petition deed of trust payments and chapter 13 plan payment no later than May 17, 2019.

On May 14, 2019, the debtor filed a declaration demonstrating that she timely made her May 2019 deed of trust payments as to her two real properties [doc. 19]. However, the debtor did not timely file a declaration that she made her May 2019 plan payment in the amount of \$863.00 to the chapter 13 trustee.

Ruling from April 17, 2019

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **May 22, 2019 at 9:30 a.m. No later than April 24, 2019**, 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 May 2019 deed of trust payments in the aggregate amount of \$3,307.00 (as stated in her current Schedule J) as to the real property located at 14658 Haynes Street, Van Nuys, California 91411 and 291 S. 16th Avenue, Show Low, Arizona 85901; and (2) her May 2019 plan payment in the amount of \$863.00 to the chapter 13 trustee. **No later than May 17, 2019**, the debtor must file a declaration to demonstrate that she timely made her required post-petition deed of trust payments and chapter 13 plan payment.

Party Information

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9:30 AM

CONT... Caridad Salas Hileman

Chapter 13

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
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Wednesday, May 22, 2019

Hearing Room 301

9:30 AM

1:19-10785 Attilio E Armeni

Chapter 11

#4.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 4/24/19

Docket 9

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.

Ruling from April 24, 2019

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **May 22, 2019 at 9:30 a.m.**

No later than April 29, 2019, 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). In the motion, the debtor states that he intends to accept the terms of the loan modification agreement [Exh. A] provided to him by the servicer of the mortgage and he proposes to make adequate protection payments based on that loan modification agreement. The debtor must timely pay his proposed adequate protection payments as to the real property located at 3116 N. Summit Pointe Drive, Topanga, California 90290 in the amount of \$8,332.25 (as stated in the proposed loan modification agreement). The debtor must pay his April 2019 adequate protection payment by **April 30, 2019** and his May 2019 adequate protection payment by **May 15, 2019**. **No later than May 20, 2019**, the debtor must file a declaration to demonstrate that he timely made these adequate protection payments.

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9:30 AM

CONT... Attilio E Armeni

Chapter 11

The movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

**United States Bankruptcy Court
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9:30 AM

1:18-11432 Anusha Gerard Silva

Chapter 7

#5.00 Motion for relief from stay [RP]

BANK OF AMERICA, N.A.
VS
DEBTOR

Docket 29

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):

Amy L Goldman (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:18-12993 Nam Nhat Nguyen

Chapter 13

#6.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC
VS
DEBTOR

Stip for adequate protection filed 5/14/19

Docket 25

*** VACATED *** REASON: Order approving stip entered 5/14/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nam Nhat Nguyen

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, May 22, 2019

Hearing Room 301

9:30 AM

1:19-10224 Alpha Real Estate Investment & Development Propert

Chapter 11

#7.00 Motion for relief from stay [RP]

NORMANDY CAPITAL TRUST
VS
DEBTOR

Docket 28

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.

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 that involved either (a) transfer of all or part ownership of, or other interest in, the real property at issue without the consent of the secured creditor or court approval or (b) multiple bankruptcy filings affecting such real 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
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9:30 AM

CONT... Alpha Real Estate Investment & Development Propert

Chapter 11

Party Information

Debtor(s):

Alpha Real Estate Investment &

Represented By
R Grace Rodriguez

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, May 22, 2019

Hearing Room 301

1:30 PM

1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01028 Post Confirmation Committee of Unsecured Creditors v. Printing Industries

#8.00 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

Docket 1

Tentative Ruling:

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on August 7, 2019.**

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 **July 15, 2019.**

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 May 22, 2019 is excused.

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

Printing Industries Benefit Trust

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, May 22, 2019

Hearing Room 301

1:30 PM

1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01033 Post Confirmation Committee of Unsecured Creditors v. American Express

#9.00 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

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: 8/30/19.

Deadline to complete one day of mediation: 9/16/19.

Deadline to file pretrial motions: 9/30/19.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 10/9/19.

Pretrial: 1:30 p.m. on 10/23/19.

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
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Hearing Room 301

1:30 PM

CONT... ColorFX, Inc.

Chapter 11

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

American Express Travel Related

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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

Wednesday, May 22, 2019

Hearing Room 301

1:30 PM

1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01034 Post Confirmation Committee of Unsecured Creditors v. United Parcel

#10.00 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

Docket 1

Tentative Ruling:

In their joint status report [doc. 6], the parties agreed to extend the deadline for the defendant to file and serve an answer to May 27, 2019. Given this extension, the Court will continue the status conference to **1:30 p.m. on July 17, 2019**. The parties must file a joint status report no later than **July 3, 2019**.

Appearances on May 22, 2019 are excused.

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

United Parcel Service Inc

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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

Wednesday, May 22, 2019

Hearing Room 301

1:30 PM

1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:19-01009 Goldman v. Pavehzadeh et al

- #11.00** Status conference re complaint:
(1) for declaratory relief;
(2) Injunctive relief;
(3) An accounting;
(4) Constructive trust; and
(5) Turnover of property of the estate

fr. 4/10/19

Docket 1

*** VACATED *** REASON: Matter continued to 11/20/19 at 1:30 p.m. -
jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Hadizadeh

Represented By
Stella A Havkin

Defendant(s):

Houshang Pavehzadeh

Pro Se

Shahnam Ebrahimi

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Anthony A Friedman

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Anthony A Friedman

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

Wednesday, May 22, 2019

Hearing Room 301

1:30 PM

1:19-10288 Masoud A. Harandi

Chapter 13

Adv#: 1:19-01030 Harandi v. California 544 Properties, LLC et al

- #12.00** Status conference re: complaint for
1. Financial abuse of elder
2. Turnover of property of the estate

Docket 1

Tentative Ruling:

Based on the submitted joint status report, the parties anticipate dismissal of the debtor's chapter 13 case.

Given that the Court will not have have jurisdiction over this adversary proceeding upon dismissal of the debtor's bankruptcy case, will the parties stipulate to dismissal of this adversary proceeding?

Party Information

Debtor(s):

Masoud A. Harandi

Represented By
Glenn Ward Calsada

Defendant(s):

California 544 Properties, LLC

Pro Se

Joe Cohen

Pro Se

Fresno Option, LLC

Pro Se

Armen Mard

Pro Se

Plaintiff(s):

Masoud A. Harandi

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**

Wednesday, May 22, 2019

Hearing Room 301

2:30 PM

1:17-13375 Adir Setton

Chapter 7

Adv#: 1:18-01035 Kessler v. Setton

#13.00 Plaintiff's motion to vacate dismissal

fr. 3/20/19; 4/17/19

Docket 45

Tentative Ruling:

The Court will award the defendant \$4,600 in attorneys' fees and costs. The plaintiff must pay the defendant the full amount of the award no later than **June 12, 2019**. If the plaintiff does not timely make this payment, the Court will not vacate the order dismissing this adversary proceeding.

The Court will prepare the order.

Party Information

Debtor(s):

Adir Setton

Represented By
Stephen S Smyth
William J Smyth
Andrew Edward Smyth

Defendant(s):

Adir Setton

Represented By
Andrew Edward Smyth

Plaintiff(s):

Avigdor Kessler

Represented By
Martin S Wolf
Andrew Edward Smyth

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, May 22, 2019

Hearing Room 301

2:30 PM

1:18-10329 Ali P Dargah

Chapter 13

Adv#: 1:18-01045 Dargah v. Dargah et al

#14.00 Debtor's motion for summary judgment regarding the first amended complaint

fr. 4/10/19;

Docket 36

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On February 5, 2018, Ali P. Dargah ("Plaintiff") filed a chapter 13 petition. Prepetition, Plaintiff filed a complaint against Jeff Javad Dargah ("Defendant") in state court. On April 23, 2018, Plaintiff removed the State Court Action to this Court.

A. Plaintiff's Acquisition of the Subject Property

Plaintiff and Defendant are brothers. Declaration of Ali P. Dargah ("Dargah Declaration"), ¶ 3. In 2004, Defendant purchased real property located at 5865 Texhoma Avenue, Encino, California 91316 (the "Property"). *Id.*, ¶ 4. According to Plaintiff, the brothers worked together to expand the Property, and Plaintiff contributed all of the money and labor to that effort. *Id.*

In late 2005, Defendant promised Plaintiff that, in exchange for Plaintiff's agreement to make mortgage, insurance and tax payments and to assume the care of the parties' parents, Defendant would transfer the Property to Plaintiff. *Id.*, ¶ 5. On December 8, 2005, Defendant executed a grant deed transferring the Property to Plaintiff. *Id.*, ¶¶ 2, 5, Exhibit A. On December 13, 2005, Plaintiff recorded the grant deed. *Id.* According to Plaintiff, there were no conditions attached to this transfer and title remained undisturbed. *Id.*, ¶ 6.

B. Defendant's History of Bankruptcy Filings

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CONT... Ali P Dargah

Chapter 13

Plaintiff requests judicial notice of Plaintiff's and Defendant's past bankruptcy filings. On May 17, 2011, Defendant filed a chapter 13 petition and did not list an interest in the Property in his schedules or statements. On August 19, 2011, Plaintiff and Defendant filed separate chapter 13 petitions [1:11-bk-19997-VK and 1:11-bk-19984-AA]. Defendant did not file a proof of claim in Plaintiff's bankruptcy case asserting an interest in the Property, and Defendant's chapter 13 petition was dismissed before Defendant filed schedules and statements.

On April 3, 2015, Defendant and his spouse filed a joint chapter 7 petition [1:15-bk-11152-MB]. Defendant did not list an interest in the Property. On July 13, 2015, Defendant and his wife received a discharge and, the following day, the joint case was closed.

C. The 2017 Grant Deed

On August 3, 2017, Plaintiff received an envelope from the Los Angeles County Recorder's Office which contained a copy of a grant deed dated February 10, 2017 (the "2017 Grant Deed"). *Id.*, ¶ 17, Exhibit C. The 2017 Grant Deed was recorded on July 13, 2017. *Id.* According to Plaintiff, this is the first time Plaintiff discovered the 2017 Grant Deed. *Id.*

Plaintiff states in his declaration that he never intended to transfer the Property, did not sign the 2017 Grant Deed, did not authorize its preparation or recording and did not appear before the notary public who acknowledged the 2017 Grant Deed. *Id.*, ¶ 18. Plaintiff also contends that the signature on the 2017 Grant Deed is not Plaintiff's signature. *Id.* In August 2017, Plaintiff filed a police report for real estate fraud with the Los Angeles Police Department. *Id.*, ¶ 19, Exhibit D. Plaintiff also contacted the notary public who acknowledged the 2017 Grant Deed, who informed Plaintiff that she no longer had any records of Plaintiff's signature or of Plaintiff's attendance in her office. *Id.*, ¶ 20. In addition, Plaintiff discovered that multiple judgment liens based on judgments against the Defendant now encumber the Property. *Id.*, ¶ 26; Declaration of Lisa Sorrentino, ¶¶ 4-5, Exhibit E.

D. The State Court Action and Removal to this Court

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Ali P Dargah

Chapter 13

On August 14, 2017, Plaintiff filed a lawsuit in state court, asserting causes of action for Fraud, Quiet Title and Declaratory Relief (the "State Court Action"). *Id.*, ¶ 21. On September 27, 2017, Defendant filed a cross-complaint against Plaintiff, asserting causes of action for Fraud, Quiet Title, Declaratory Relief, Breach and Enforcement of Resulting Trust and Breach of the Implied Warranty of Good Faith and Fair Dealing. *Id.*, ¶ 22.

On February 5, 2018, Plaintiff filed his chapter 13 petition. On April 23, 2018, Plaintiff removed the State Court Action to this Court. On August 21, 2018, Plaintiff filed a first amended complaint (the "FAC") [doc. 10]. On November 6, 2018, Defendant filed an answer to the FAC [doc. 18] and a single counterclaim against Plaintiff for a resulting trust. On February 4, 2019, Plaintiff filed a request for entry of default against the notary public, Geraldine Granda [doc. 32]. On the same day, the clerk entered default against Ms. Granda [doc. 33]. On February 8, 2019, Plaintiff filed the Motion [doc. 36] and attached a statement of uncontroverted facts (the "SUF"). The SUF mirrors the Dargah Declaration as to the pertinent facts.

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

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Ali P Dargah

Chapter 13

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 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. *Forgery and Cancellation of Instrument*

Plaintiff bases the Motion on two arguments: the first is that Defendant fraudulently

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Chapter 13

forged the 2017 Grant Deed, and the second is that Defendant is judicially estopped from claiming an interest in the Property (discussed below). Regarding the fraud and forgery argument, Plaintiff cites Cal. Civ. Code § 3294(c)(3), which defines fraud for purposes of exemplary damages. Thus, this statute is irrelevant to Plaintiff's fraud and forgery claims in this adversary proceeding.

Under California law, a forgery is "either... the false making or alteration of a document without authority or the uttering (making use) of such a document with the intent to defraud." *Wells Fargo Bank, N.A. v. Heintz*, 2012 WL 9496361, at *3 (C.D. Cal. Jan. 18, 2012) (citing *People v. McKenna*, 11 Cal.2d 327, 332 (1938)). "A document is forged where, when taken on its face, the document, 'will have the effect of defrauding one who acts upon it as genuine.'" *Id.* "Forged documents in a chain of title are *void ab initio*." *Id.* (citing *Wutzke v. Bill Reid Painting Service, Inc.*, 151 Cal.App.3d 36, 43 (Ct. App. 1984)).

Pursuant to Cal. Civ. Code § 3412, which provides for cancellation of instruments such as grant deeds—

A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

Here, Plaintiff's declaration and the SUF establish that the 2017 Grant Deed was a forgery. According to Plaintiff, Plaintiff never intended to transfer of the Property, did not sign the 2017 Grant Deed, did not authorize the preparation or recording of the 2017 Grant Deed and did not appear before Ms. Granda. Plaintiff also testified that the signature on the 2017 Grant Deed is not Plaintiff's signature, and that Ms. Granda does not have any records showing that Plaintiff attended her office or signed the 2017 Grant Deed. Despite being served with the Motion, the Dargah Declaration and the SUF, neither Defendant nor Ms. Granda have filed an opposition. As such, Plaintiff has established that the 2017 Grant Deed was forged. As a forged document, which "will have the effect of defrauding one who acts upon it as genuine," the 2017 Grant Deed is void.

In addition, given that leaving a forged grant deed outstanding will cause serious

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Chapter 13

injury to Plaintiff, the Court also may order the 2017 Grant Deed canceled under Cal. Civ. Code § 3412. Consequently, the Court will enter judgment in favor of Plaintiff as to Plaintiff's claims of forgery and cancellation of written instrument.

C. Plaintiff's Remaining Claims

In the conclusion section of the Motion, Plaintiff also requests judgment as to fraud and slander of title. However, Plaintiff does not discuss any of these causes of action. To properly demonstrate fraud under California law, Plaintiff would have to show the following:

- (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages.

West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 792 (Ct. App. 2013).

Here, although Plaintiff discusses certain representations made by Defendant regarding why Defendant originally transferred the Property to Plaintiff, Plaintiff does not articulate how Plaintiff was damaged by those representations and why those representations were fraudulent at the time they were made.

Regarding slander of title, Plaintiff must show "(1) a publication, (2) which is without privilege or justification, (3) which is false, and (4) which causes direct and immediate pecuniary loss." *Manhattan Loft, LLC v. Mercury Liquors, Inc.*, 173 Cal.App.4th 1040, 1051 (2009) (citation omitted). Plaintiff has not discussed these elements in the Motion and, in fact, does not even mention slander of title until the conclusion section of the Motion. For instance, nothing in the Dargah Declaration or SUF includes information regarding a direct and immediate pecuniary loss. Given that the 2017 Grant Deed is void and canceled under different grounds, and given that Plaintiff has not discussed any additional pecuniary damages that would result from slander of title, the Court will not grant the Motion as to this cause of action.

D. Judicial Estoppel

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CONT... Ali P Dargah

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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.

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

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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).

Plaintiff also asserts that Defendant's claims should be barred based on the doctrine of judicial estoppel. However, Plaintiff has not articulated why judicial estoppel would apply when the 2017 Grant Deed, which purports to transfer the Property to Defendant, was not executed until 2017, approximately two years after Defendant filed his schedules in his last bankruptcy case. To the extent Plaintiff is arguing that Defendant is judicially estopped because Defendant should have scheduled the Counterclaim, Defendant also did not assert these claims until 2017. As such, Plaintiff has not explained why Defendant would be judicially estopped based on filings that predated Defendant's asserted interest in the Property based on the 2017 Grant Deed or Defendant's 2017 counterclaims against Plaintiff.

III. CONCLUSION

The Court will grant the Motion as to Plaintiff's claims of forgery and cancellation of instrument and order the 2017 Grant Deed void and canceled. The Court will otherwise deny the Motion.

Plaintiff must submit a proposed judgment 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):

Ali P Dargah

Represented By
Matthew D. Resnik

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CONT... Ali P Dargah

Chapter 13

Defendant(s):

Jeff Javad Dargah	Represented By Matthew D. Resnik
Jeff Javad Dargah, an individual	Pro Se
Geraldine Granda, an individual	Pro Se
The Bank of New York Mellon fka	Represented By Jeffrey S Allison
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
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Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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1:18-10329 Ali P Dargah

Chapter 13

Adv#: 1:18-01045 Dargah v. Dargah et al

#15.00 Debtor's motion to dismiss cross-complaint

fr. 4/10/19;

Docket 26

Tentative Ruling:

Grant.

I. BACKGROUND

On February 5, 2018, Ali P. Dargah ("Plaintiff") filed a chapter 13 petition. Prepetition, Plaintiff filed a complaint against Jeff Javad Dargah ("Defendant") in state court, asserting causes of action for Fraud, Quiet Title and Injunctive Relief (the "State Court Action"). Notice of Removal, ECF p. 69. On September 27, 2017, Defendant filed a verified answer and a verified cross-complaint against Plaintiff, asserting the following causes of action: (A) Fraud; (B) Quiet Title; (C) Declaratory Relief; (D) Breach and Enforcement of Resulting Trust; and (E) Breach of Implied Warranty of Good Faith and Fair Dealing. Notice of Removal, pp. 43, 54. On November 27, 2017, Plaintiff filed an answer to the cross-complaint. Notice of Removal, p. 35.

On April 23, 2018, Plaintiff removed the State Court Action to this Court. At a status conference held on August 1, 2018, Plaintiff obtained leave of this Court to file an amended complaint. On August 21, 2018, Plaintiff filed a first amended complaint (the "FAC") [doc. 10]. In relevant part, Plaintiff alleges in the FAC that Defendant transferred real property located at 5865 Texhoma Avenue, Encino, California 91316 (the "Property") to Plaintiff, and Plaintiff has owned the Property since that transfer. Plaintiff further alleges that, in 2017, Defendant fraudulently forged a grant deed transferring the Property back to Defendant (the "2017 Grant Deed").

On November 6, 2018, Defendant filed an answer to the FAC and included a single counterclaim against Plaintiff for a resulting trust (the "Counterclaim") [doc. 18]. In

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his answer, Defendant denies most of the pertinent allegations against him, including Plaintiff's allegation that Defendant forged a grant deed transferring the Property to Defendant. In his Counterclaim, Defendant alleges that: (A) Defendant initially transferred the subject property to Plaintiff for Plaintiff to hold in trust for the brothers' other family members; (B) Defendant paid a significant amount into the Property; (C) when Defendant attempted to approach Plaintiff to refinance the Property, the parties fought; (D) after the fight, Defendant retained an attorney to obtain a judicial finding of a resulting trust; and (E) although Plaintiff is the legal owner of the Property, Defendant is the equitable owner.

On January 16, 2019, Plaintiff filed an untimely motion to dismiss (the "Motion") [doc. 26]. In the Motion, Plaintiff argues that Defendant's amendment to the Counterclaim is invalid because Defendant did not seek leave of Court to amend the Counterclaim. Plaintiff also argues that the doctrine of judicial estoppel bars Defendant's claim of a resulting trust.

On April 10, 2019, the Court held a hearing on the Motion. At that time, the Court continued the hearing for Plaintiff to serve Defendant with the Motion and notice of the continued hearing on the Motion. The Court also allowed Plaintiff to file a supplemental brief regarding why Plaintiff should be given retroactive extension of the deadline to file a response to the Counterclaim.

On April 22, 2019, Plaintiff filed a supplemental brief [doc. 42], asking the Court to consider the Motion and retroactively extend the deadline under Federal Rule of Civil Procedure ("Rule") 6(b). No party has opposed the Motion or filed a response to the supplemental brief.

II. ANALYSIS

A. Retroactive Extension of the Deadline to File the Motion under Rule 6(b)

Pursuant to Rule 6(b)—

- (1) *In General*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

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- (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or
- (B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Here, the request for an extension of the time to file the Motion was made after the time had expired, and, as a result, Plaintiff must show excusable neglect. "To determine whether neglect is excusable [under Rule 6(b)], a court must consider four factors: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *In re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 973 (9th Cir. 2007) (internal quotation omitted).

Plaintiff asserts there was excusable neglect. In the Declaration of David M. Kritzer, attached to the supplemental brief, Mr. Kritzer contends that Plaintiff and Defendant were engaged in informal settlement discussions which continued for several weeks, and during which time the parties did not file any responsive pleadings. Mr. Kritzer also notes that Defendant did not seek entry of default against Plaintiff during this time.

Given Mr. Kritzer's declaration, Plaintiff has shown excusable neglect allowing for a retroactive extension. First, there is no indication of a lack of good faith; it appears Plaintiff missed deadlines while attempting to negotiate a settlement with Defendant. Second, any danger of prejudice to Defendant is mitigated by the fact that Defendant does not oppose the Motion or Plaintiff's request for a retroactive extension of the deadline to file the Motion. Finally, the delay amounted to approximately a month and a half and did not significantly impact this litigation. On these facts, the Court will provide relief under Rule 6(b).

B. *Filing of the Counterclaim*

Plaintiff requests dismissal of the Counterclaim on the basis that Defendant should have sought leave of Court to amend his original cross-complaint against Plaintiff. Pursuant to Rule 15—

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(a) Amendments Before Trial.

(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.

Defendant could have amended as a matter of course within 21 days after serving his original cross-complaint, or within 21 days after Plaintiff filed an answer to the cross-complaint. As such, at the latest, Defendant could have amended by December 2017. Defendant did not file the Counterclaim until November 6, 2018. Thus, Defendant was required to seek leave of Court to file the amended Counterclaim. Defendant did not, and the Court will dismiss the Counterclaim as improperly filed without obtaining leave of this Court.

C. *Judicial Estoppel*

Plaintiff also argues that Defendant is judicially estopped from claiming an interest in the Property or by asserting a claim for a resulting trust. For the same reasons explained in the Court's tentative ruling on Plaintiff's motion for summary judgment (calendar no. 14), Plaintiff has not shown that judicial estoppel applies to the Counterclaim.

III. CONCLUSION

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The Court will dismiss the Counterclaim on the basis that Defendant did not seek leave of Court to file the Counterclaim. In light of the dismissal, Defendant's original cross-complaint will be the operative pleading. Given that Plaintiff filed an answer to the original cross-complaint and the deadline for Plaintiff to file pretrial motions expired on April 15, 2019 [Scheduling Order, doc. 24], the Court will proceed with the parties' pretrial conference set for 1:30 p.m. on July 17, 2019 [doc. 47]. The parties must file a joint pretrial stipulation no later than July 3, 2019.

Plaintiff must submit a proposed 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):

Ali P Dargah

Represented By
Matthew D. Resnik

Defendant(s):

Jeff Javad Dargah

Represented By
Matthew D. Resnik

Jeff Javad Dargah, an individual

Pro Se

Geraldine Granda, an individual

Pro Se

The Bank of New York Mellon fka

Represented By
Jeffrey S Allison

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

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Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:11-18591 NOOR NORRIS and HELY NORRIS

Chapter 7

#1.00 Trustee's final report and applications for compensation

Nancy Hoffmeier Zamora, Chapter 7 Trustee

Brutzkus Gubner, Attorneys for Ch 7 Trustee

Law Office of Brad S. Sures, Special Counsel for Ch 7 Trustee

Samuel R. Biggs, CPA, Accountants to Ch 7 Trustee

Docket 532

Tentative Ruling:

Nancy Hoffmeier Zamora, Esq., chapter 7 trustee – approve fees of \$88,553.39 and reimbursement of expenses of \$5,591.22, pursuant to 11 U.S.C. § 330, on a final basis. The trustee is authorized to collect 100% of the approved fees and expenses.

Law Office of Brad S. Sures, special counsel to chapter 7 trustee – approve fees of \$1,072.50 and reimbursement of expenses of \$488.99, pursuant to 11 U.S.C. § 330, on a final basis. The Law Office of Brad S. Sures is authorized to collect 100% of the approved fees and expenses.

SLBiggs, A Division of SingerLewak (“SLBiggs”), accountant to chapter 7 trustee – approve fees of \$48,701.00 and reimbursement of expenses of \$683.81. SLBiggs is authorized to collect 100% of the approved fees and expenses.

Brutzkus Gubner, general counsel to chapter 7 trustee – approve fees of \$239,206.00 and reimbursement of expenses of \$11,050.18. Brutzkus Gubner is authorized to collect 100% of the approved fees and expenses. The Court will not approve \$11,226.50 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

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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 accordance with the foregoing, the Court will not approve the following fees because they appear unnecessary and/or excessive as the same service was provided by a different attorney on the same day:

Category	Timekeeper	Date	Description	Time	Rate	Fee
Asset Disposition	DS	9/6/16	Receive and review title report re Kettering property	0.3	\$625.00	\$187.50
Zamora v. Norris – Adv. No. 17-1033	DS	5/9/17	Review Defendants’ answer to complaint and email re case strategy	0.4	\$652.00	\$250.00

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) (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:

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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	Rate	Fee
Asset Disposition	JLB	2/25/15	Review proposed marketing brochure re Avenue J property	0.1	\$425.00	\$42.50
Asset Disposition	JT	3/8/16	Attention to and review issues re abandonment of real property, prepare notice and confer with R. Bernet	0.3	\$270.00	\$81.00
Asset Disposition	DS	8/30/16	Receive and review MLS report	0.2	\$625.00	\$125.00
Claims Administration	JLB	5/29/15	Email to Howard Steinberg re RREF claims, related to Avenue J property	0.2	\$425.00	\$85.00
Claims Administration	JLB	6/1/15	Review and analysis of withdrawal of claims 2 and 12 (.1), memo to Trustee re same (.1)	0.2	\$425.00	\$85.00

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Claims Administration	DS	9/18/15	Receive and review email and file review re motion all re demand from prior interested party re administrative claim	0.3	\$625.00	\$187.50
Claims Administration	JLB	7/7/17	Review and analysis of withdrawal of tax claims (.2), review and respond to inquiry email from Donna LaPorte re same (.1)	0.3	\$425.00	\$127.50
Fee/Employment Applications	DS	2/23/15	Review and revise employment app for Econo property	0.2	\$625.00	\$125.00
Fee/Employment Applications	JLB	2/23/15	Review and revise Rodeo Realty employment application re sale of real properties	0.2	\$425.00	\$85.00
Fee/Employment Applications	JLB	8/11/15	Email to Trustee re employment of broker for sales of vacant land and Ahwanee properties	0.1	\$425.00	\$42.50

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:

Category	Timekeeper	Date	Description	Time	Rate	Fee
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Asset Analysis & Recovery	KB	9/15/16	Bates number all documents produced [.4]; Redact personal identifiers in group of documents excluding tax returns for creditor production [2.7]	3.1	\$280.00	\$868.00
Asset Disposition	KB	12/7/18	Research addresses for sale motion – Rahim M. Safdari and Fatima Safdari – and prepare reports	0.4	\$280.00	\$1120.00
Business Operations	MTZ	2/17/15	Prepare exhibits (.4) and finalize Motion to Operate Ahwanee and Ave J properties for court filing (.4); Finalize notice of motion thereto and tile (.6)	1.4	\$240.00	\$336.00
Case Administration	MTZ	2/18/15	Prepare for court filing (.4) and revise service instructions (.2)	0.6	\$240.00	\$144.00
Case Administration	MTZ	2/18/15	And prepare for court filing (.3)	0.3	\$240.00	\$72.00
Case Administration	MTZ	2/19/15	Attention to court notice re motion to operate	0.2	\$240.00	\$48.00
Case Administration	MTZ	3/11/15	Review court docket for objections to motion to operate (.1)	0.1	\$240.00	\$24.00
Case Administration	MTZ	3/16/15	Finalize and prepare declaration of non-opposition re motion to operate for court filing	0.4	\$240.00	\$96.00
Case Administration	MTZ	3/16/15	Finalize order for lodging with the court	0.3	\$240.00	\$72.00
Zamora v. Norris – Adv. No. 17-1033	SR	1/4/18	Preparation of exhibits for Pre-Trial Stipulation	1.5	\$260.00	\$390.00
Zamora v. Norris – Adv. No. 17-1033	SR	1/5/18	Attend to document production	0.3	\$260.00	\$78.00
Zamora v. Norris – Adv. No. 17-1033	SR	1/8/18	Attend to issues related to trial exhibits	0.3	\$260.00	\$78.00
Zamora v. Norris – Adv. No. 17-1033	JT	2/12/18	Preliminary review of certified copies of recorded deeds. Prepare for use as trial exhibits	0.3	\$270.00	\$81.00

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Zamora v. Norris – Adv. No. 17-1033	TD	2/12/18	Analyze certified copies received and update file re same, marking each with trial exhibit number	0.2	\$240.00	\$48.00
Zamora v. Norris – Adv. No. 17-1033	KB	4/25/18	Trial Preparation: Attention to issues to complete set of original and copies of transcripts in case	0.2	\$280.00	\$56.00
Zamora v. Norris – Adv. No. 17-1033	KB	5/17/18	Analysis of trial preparation requirements per stipulation and order [1.6]; Begin preparing exhibits for trial [.7]	2.3	\$280.00	\$644.00
Zamora v. Norris – Adv. No. 17-1033	KB	5/17/18	Continued preparation of trial exhibit book	0.9	\$280.00	\$252.00
Zamora v. Norris – Adv. No. 17-1033	KB	5/18/18	Continued preparation of exhibits and transcripts for trial preparation	3.9	\$280.00	\$1,092.00
Zamora v. Norris – Adv. No. 17-1033	TD	5/21/18	Begin preparing Plaintiff's Exhibit tags for trial binder (1-65)	0.1	\$240.00	\$24.00
Zamora v. Norris – Adv. No. 17-1033	TD	5/22/18	Continuing preparing Plaintiff's exhibit tabs for trial preparation	0.2	\$240.00	\$48.00
Zamora v. Norris – Adv. No. 17-1033	TD	5/24/18	Analyze and process tax returns for use as trial exhibits, redact same and save as separate documents	2.9	\$240.00	\$696.00
Zamora v. Norris – Adv. No. 17-1033	KB	5/24/18	Continued preparation of trial exhibits	0.6	\$280.00	\$168.00
Zamora v. Norris – Adv. No. 17-1033	TD	5/24/18	Begin analysis of other tax returns for redaction purposes, in exhibits	0.3	\$240.00	\$72.00
Zamora v. Norris – Adv. No. 17-1033	TD	5/31/18	Analyze tax returns to be used as Exhibits, and confirm all redactions have been done	1.1	\$240.00	\$264.00
Zamora v. Norris – Adv. No. 17-1033	KB	6/7/18	Trial prep – complete redaction of trial exhibits and attention to preparation of initial trial notebook	1.4	\$280.00	\$392.00
Zamora v. Norris – Adv. No. 17-1033	KB	6/11/18	Continued preparation trial exhibit binders and other preparation for trial	1.4	\$280.00	\$392.00

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Zamora v. Norris – Adv. No. 17-1033	TD	6/12/18	Prepare Plaintiff's yellow exhibits tabs for Judge's trial binder	0.3	\$240.00	\$72.00
Zamora v. Norris – Adv. No. 17-1033	KB	9/13/18	Prepare copies of marked transcripts and email to opposing counsel re same	0.3	\$280.00	\$84.00
Zamora v. Norris – Adv. No. 17-1033	KB	9/17/18	Attention to final preparation of exhibits books and transcripts for trial	1.3	\$280.00	\$364.00

In addition to violating the Local Rules, lumped or blocked billing is generally frowned upon by courts because it prevents the court from "fairly evaluating whether individual tasks were expeditiously performed within a reasonable time frame." *In re Thomas*, 2009 WL 7751299, *5 (9th Cir. BAP), quoting *In re Hudson*, 364 B.R. 875, 880 (Bankr. N.D.N.Y. 2007). When fee applications contain lumped billing, courts disallow or reduce the lumped entries. See *In re Breeden*, 180 B.R. 802, 810 (Bankr. N.D. W.Va. 1995) (court disallowed all lumped fee entries solely because their format); *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942 at 948 (9th Cir. 2007) (court may properly impose a reduction for block billing).

The time entries listed below contain entries with lumped services. In addition to lumping services, the following entries also constitute secretarial/clerical work, which is noncompensable under 11 U.S.C. § 330. Accordingly, the Court does not approve the fees billed for the services identified below:

Category	Timekeeper	Date	Description	Time	Rate	Fee
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Zamora v. Norris – Adv. No. 17-1033	TD	9/17/18	Finalize Exhibit Binders for trial by adding plaintiff’s exhibit stickers onto master copy for Clerk, and marking other copies for Judge and Witness; Conform all binders as to exhibits in each and mark face and spin of each binder; Research and compile, with new signatures received, the transcripts to be lodged with Court at the same time as binders are delivered; Cross-check; Revise and finalize Plaintiff’s Notice of Portions of Testimony Marked by Plaintiff and Countermarked by Defendants, with Declaration, to be submitted together with binders and transcripts	3.4	\$240.00	\$816.00
Zamora v. Norris – Adv. No. 17-1033	TD	9/19/18	Prepare Notice of Lodgment of Transcripts, and prepare for filing; Oversee and compile multiple documents to be hand delivered to Court (required before trial next week), and prepare instructions for delivery of same; Multiple telephone calls with clerks at the court.	3.8	\$240.00	\$912.00

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

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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):

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
David Seror

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

Chapter 11

#2.00 Amended motion for payment of final fees and/or expenses

fr. 3/7/19; 4/11/19

Docket 106

Tentative Ruling:

Michael R. Totaro and Totaro & Shanahan ("Applicant"), general counsel to debtor in possession – approve fees of \$33,055.00 and reimbursement of expenses of \$0.00, pursuant to 11 U.S.C. § 330, on a final basis. Applicant may collect 100% of approved fees. The Court will not approve \$3,630.00 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.

In accordance with the foregoing, the Court will reduce the following fees as they appear excessive:

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CONT... **Roger Ronald Steinbeck and Stannis Veronica Steinbeck**

Chapter 11

Timekeeper	Description	Time	Rate	Adjusted Time	Adjusted Fee
MT	Plan and Disclosure Statement	24.60	\$13,530.00	18.00	\$9,900.00

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):

Roger Ronald Steinbeck

Represented By
Michael R Totaro

Joint Debtor(s):

Stannis Veronica Steinbeck

Represented By
Michael R Totaro

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1:18-11729 Richard Philip Dages

Chapter 11

#3.00 Status conference re chapter 11 case

fr. 8/16/18; 1/10/19; 3/14/19

Docket 1

Tentative Ruling:

In reviewing the debtor's monthly operating reports ("MOR") in preparation for this status conference, the Court noticed that the debtor, for the first time, has started using his tax account. In his March 2019 MOR, the debtor represented that \$653.91 was deposited into the account and \$653.91 was disbursed from the account, leaving an ending balance of \$0.00. The debtor did not attach bank statements to the MOR supporting these transactions. Nor did the debtor indicate that tax account number or institution where the account is located.

Further, in his April 2019 MOR, the debtor represented that \$3,485.55 was deposited into the tax account and \$3,485.55 was disbursed from the account, leaving an ending balance of \$0.00. The debtor still did not indicate the tax account number or institution where the account is located. However, the debtor attached a bank statement from an account ending in 3713. This is the first time that the debtor has attached a bank statement for this account to any of his MORs. The bank statement indicates that the account had a beginning balance of \$1,633.96 on April 1, 2019, and an ending balance of \$1,333.55 on April 30, 2019.

Ruling from March 14, 2019

On March 1, 2019, the Court entered an order extending the deadline for the debtor to file a chapter 11 plan of reorganization and related disclosure statement to May 1, 2019 [doc. 59]. The Court will continue this status conference to **May 23, 2019 at 1:00 p.m.**, to assess if the debtor has timely filed a proposed chapter 11 plan and related disclosure statement by the extended deadline.

If the debtor has not timely filed a plan and related disclosure statement, the debtor

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1:00 PM

CONT... Richard Philip Dages Chapter 11

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 May 9, 2019**. The status report **must be supported by evidence** in the form of declarations and supporting documents and explain why the debtor did not timely file the documents.

Appearances on March 14, 2019 are excused.

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**

Thursday, May 23, 2019

Hearing Room 301

1:00 PM

1:19-10224 Alpha Real Estate Investment & Development Propert

Chapter 11

#4.00 U.S. Trustee motion to dismiss or convert case

Docket 30

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 1112(b)(1) and (4)(B), (4)(F) and (4)(H), this case will be converted to a chapter 7 case. Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, filed on January 30, 2019 [doc. 1] and amended as to schedules A/B, E/F and G on May 20, 2019 [doc. 37], and the claims docket, the Court concludes that it is in the best interest of creditors and the estate to convert this case.

The U.S. 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):

Alpha Real Estate Investment &

Represented By
R Grace Rodriguez

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

Thursday, May 23, 2019

Hearing Room 301

1:00 PM

1:19-10299 Paula Parisi

Chapter 11

#5.00 Status conference re chapter 11 case

fr. 4/25/19

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: **August 1, 2019.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on August 22, 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.

At the continued status conference on August 22, 2019, the Court may dismiss or convert the case to one under chapter 7 pursuant to 11 U.S.C. §§ 105(a) and 1112(b) if the debtor(s) in possession or any appointed chapter 11 trustee has not timely: (1) filed a proposed chapter 11 plan of reorganization and related disclosure statement; (2) filed each monthly operating report (which has been properly completed) due for the post-petition period through July 2019; and (3) paid the United States trustee quarterly fees due for the post-petition period through July 2019.

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):

Paula Parisi

Pro Se

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

Thursday, May 23, 2019

Hearing Room 301

1:00 PM

CONT... Paula Parisi

Chapter 11

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

Thursday, May 23, 2019

Hearing Room 301

1:00 PM

1:19-10734 Ashok Reddy Sreepathi

Chapter 11

#6.00 U.S. Trustee's motion to dismiss or convert

Docket 17

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 1112(b)(1) and (4)(C), (4)(F) and (4)(K), this case will be dismissed. Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, filed on April 26, 2019, and the claims docket, the Court concludes that it is in the best interest of creditors and the estate to dismiss this case.

The U.S. 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):

Ashok Reddy Sreepathi

Pro Se

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

Thursday, May 23, 2019

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

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"): **July 31, 2019.**

Deadline to mail notice of Bar Date: **May 31, 2019.**

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: **August 30, 2019.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on September 19, 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):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

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

Thursday, May 23, 2019

Hearing Room 301

1:00 PM

1:19-10845 Jose Cabrera

Chapter 7

#8.00 U.S. Trustee's motion to dismiss case pursuant to 11 U.S.C. § 707(b)(3)(A) with a two-year bar to refiling pursuant to 11 U.S.C. §§ 105(a) and 349(a)

Docket 9

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):

Jose Cabrera

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, May 23, 2019

Hearing Room 301

1:00 PM

1:19-10850 Papanicolaou Enterprises

Chapter 11

#9.00 U.S. Trustee motion to dismiss or convert Case

Docket 38

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 1112(b)(1) and (4)(F) and (4)(H), this case will be converted to a chapter 7 case. Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, filed on April 23, 2019 [doc. 24], and the claims docket, the Court concludes that it is in the best interest of creditors and the estate to convert this case.

The U.S. 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):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

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

Thursday, May 23, 2019

Hearing Room 301

1:00 PM

1:19-10850 Papanicolaou Enterprises

Chapter 11

#10.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

See calendar no. 9.

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

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

Thursday, May 23, 2019

Hearing Room 301

2:00 PM

1:16-10934 Amparo Cetina

Chapter 7

#11.00 Motion to avoid creditor lien with LVNV Funding LLC

fr. 4/11/19

Docket 15

Tentative Ruling:

Deny.

At the prior hearing on the motion on April 11, 2019, the Court ordered the debtor file: (1) mortgage statements or other evidence, dated close in time to the date of the petition, regarding the liens of HSBC Mortgage Corporation ("HSBC"); (2) adequate evidence of the value of the subject property as of the petition date; and (3) a written reply addressing the other arguments raised in the opposition (the "Opposition") [doc. 19] filed by LVNV Funding, LLC ("LVNV").

On May 8, 2019, the debtor filed a reply declaration (the "Reply") [doc. 24]. In the Reply, the debtor provided two deeds of trust against the subject property executed in 2006; one for \$500,000 and one for \$150,000 [Exh. A]. The debtor did not provide mortgage statements or other evidence, dated close in time to the petition date of March 30, 2016, regarding the balance of each of HSBC's liens against the property.

In the Reply, the debtor also provided two appraisals of the subject property; one valuing the property as of March 31, 2016 [Exh. B] and one valuing the property as of April 22, 2019 [Exh. C]. Neither appraisal was accompanied by a declaration signed under penalty of perjury by the appraiser.

Further, the Reply does not adequately address the arguments raised by LVNV in the Opposition. Consequently, the Court will deny the motion without prejudice.

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

Ruling from April 11, 2019

First, the debtor has not provided a mortgage statement or other evidence, dated close in time to the date that the debtor filed the bankruptcy petition, regarding the alleged

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

Thursday, May 23, 2019

Hearing Room 301

2:00 PM

CONT... Amparo Cetina

Chapter 7

junior lien of Diana R. Harrison against the subject property.

Second, the debtor has not provided a mortgage statement, dated close in time to the date that the debtor filed the bankruptcy petition, regarding the alleged lien of HSBC Mortgage Corporation against the subject property.

Third, the debtor has not provided adequate evidence of the value of the subject property. The debtor states in the motion that the value of the subject property as of the petition date was \$587,850. However, the debtor did not attach any evidence to the motion in support of this valuation.

The Court will continue this hearing to **2:00 p.m. on May 23, 2019**. No later than **May 9, 2019**, the debtor must file and serve on LVNV Funding, LLC ("LVNV"): (1) evidence curing the deficiencies described above; and (2) a written reply addressing the other arguments raised in LVNV's opposition to the motion [doc. 19].

Appearances on April 11, 2019 are excused.

Party Information

Debtor(s):

Amparo Cetina

Represented By
Beatriz Chen

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 23, 2019

Hearing Room 301

2:00 PM

1:18-11488 Christopher Anderson

Chapter 7

#12.00 Motion of chapter 7 trustee for order approving the sale of real property free and clear of certain liens and interests (10000 Nita Avenue, Chatsworth, CA 91311)

Docket 112

Tentative Ruling:

Grant.

On June 12, 2018, Christopher Anderson ("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 real property located at 10000 Nita Avenue, Chatsworth, CA 91311 (the "Property"). In his schedule D, Debtor listed three encumbrances against the Property, including a lien in favor of Jerome Biddle in the amount of \$525,000.

On April 17, 2019, the Trustee filed a complaint against Mr. Biddle and Susan Biddle (together, the "Biddles"), initiating an adversary proceeding [1:19-ap-01044-VK]. In the complaint, the Trustee requests avoidance of the lien in favor of the Biddles, damages from the allegedly usurious underlying loan and recovery of fraudulent and preferential transfers.

On April 26, 2019, the Trustee filed a motion to sell the Property free and clear of liens [doc. 112]. On May 9, 2019, the Biddles filed a conditional opposition to the Motion (the "Opposition") [doc. 126]. In the Opposition, the Biddles state that they are not opposed to the sale as long as they get paid in full, unless the Trustee successfully prosecutes the adversary proceeding. The Biddles request a replacement lien attach to the sale proceeds. On May 16, 2019, the Trustee filed a reply to the Opposition [doc. 127], asserting that the Court can approve the sale free and clear of the Biddles' liens because the lien is in bona fide dispute. The Trustee also notes that the Biddles' lien will attach to sale proceeds until resolution of the adversary proceeding.

Pursuant to 11 U.S.C. § 363(f)—

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

Thursday, May 23, 2019

Hearing Room 301

2:00 PM

CONT... Christopher Anderson

Chapter 7

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Here, there is a bona fide dispute between the parties; the Trustee has initiated an adversary proceeding challenging the validity of the Biddles' lien against the Property. As such, the Court will approve the sale of the Property free and clear of the Biddles' lien under § 363(f)(4). It appears the parties are in agreement that the Biddles' lien will attach to the sale proceeds until resolution of the adversary proceeding. As such, the remaining disputes between the parties may be addressed in connection with the adversary proceeding.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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

Friday, May 31, 2019

Hearing Room 301

9:30 AM

1:18-10071 LOST COAST RANCH INC.

Chapter 7

#1.00 Motion for relief from stay [RP]
[EVIDENTIARY HEARING]

BOBS, LLC
VS
DEBTOR

fr. 3/6/19; 3/27/19

Docket 82

*** VACATED *** REASON: Order vacating hearing entered 5/28/19
[doc#112] - jc

Party Information

Debtor(s):

LOST COAST RANCH INC.

Represented By
Ronald A Norman - BK SUSPENDED -

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, June 5, 2019

Hearing Room 301

9:30 AM

1:19-10698 Jay Cohen

Chapter 7

#1.00 Motion for relief from stay [UD]

U.S. BANK, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 5/8/19

Docket 9

Judge:

Tentative Ruling:

On May 14, 2019, 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.

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 property, not a creditor whose claim is secured by an interest in the property, as specified in the statute.

Movant must submit 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, June 5, 2019

Hearing Room 301

9:30 AM

CONT... Jay Cohen

Chapter 7

Debtor(s):

Jay Cohen

Pro Se

Movant(s):

U.S. Bank, National Association, its

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, June 5, 2019

Hearing Room 301

9:30 AM

1:19-10850 Papanicolaou Enterprises

Chapter 11

#2.00 Motion for relief from stay [UD]

YASAM LEGACY LLC, A CA LTD LIAB. CO.
VS
DEBTOR

fr. 5/8/19

Docket 20

*** VACATED *** REASON: On May 29, 2019, the debtor was dismissed [doc. 67]. The motion is moot.

Judge:

- NONE LISTED -

Tentative Ruling:

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

Movant(s):

Yasam Legacy LLC, A Ca Ltd. Liab.

Represented By
Paul E Gold

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

Wednesday, June 5, 2019

Hearing Room 301

9:30 AM

1:19-10755 Aida Tovmasyan

Chapter 7

#3.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT 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):

Aida Tovmasyan

Represented By
Henrik Mosesi

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, June 5, 2019

Hearing Room 301

9:30 AM

CONT... Aida Tovmasyan

Austin P Nagel

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 303 Calendar**

Wednesday, June 5, 2019

Hearing Room 303

9:30 AM

1:19-10755 Aida Tovmasyan

Chapter 7

#4.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 11

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):

Aida Tovmasyan

Represented By
Henrik Mosesi

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

Wednesday, June 5, 2019

Hearing Room 303

9:30 AM

CONT... Aida Tovmasyan

Chapter 7

Movant(s):

Toyota Motor Credit Corporation,

Represented By
Austin P Nagel

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 5, 2019

Hearing Room 301

9:30 AM

1:19-10797 Sonia Silvia Perez

Chapter 7

#5.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC
VS
DEBTOR

Docket 7

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):

Sonia Silvia Perez

Represented By
Lauren M Foley

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

Wednesday, June 5, 2019

Hearing Room 301

9:30 AM

CONT... Sonia Silvia Perez

Chapter 7

Movant(s):

Santander Consumer USA Inc.

Represented By
Jennifer H Wang

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 5, 2019

Hearing Room 301

9:30 AM

1:19-10790 Nelson Sargsyan

Chapter 7

#6.00 Motion for relief from stay [RP]

MAXIM COMMERCIAL CAPITAL, LLC
VS
DEBTOR

Docket 18

Judge:

- NONE LISTED -

Tentative Ruling:

The Court will continue this hearing to **9:30 a.m. on July 3, 2019**.

The movant did not serve notice of the hearing on all parties entitled to notice under Local Bankruptcy Rule ("LBR") 4001-1(c)(1)(B) and (C) and Fed. R. Bankr. P. 4001(a)(1) in accordance with Fed. R. Bankr. P. 9014 and 7004(b)(3) and (h). Further, the movant did not serve the State of California Franchise Tax Board at the address listed in Appendix D: Register of Federal & State Government Unit Addresses [FRBP 5003(e)] in the Court Manual available at https://www.cacb.uscourts.gov/sites/cacb/files/documents/court-manual/CtManual_Sec7_Append_D.pdf. **No later than June 12, 2019**, the movant must file and serve notice of the continued hearing, and the deadline to file a response thereto, on all parties entitled to notice in accordance with Fed. R. Bankr. P. 5003(e) and 7004(b)(3) and (h).

In the motion, the movant contends that debtor conveyed his interest in the real property to Nazaret Chakrian on September 30, 2016. In his opposition to the motion [doc. 25], the debtor did not refute this assertion. **No later than June 19, 2019**, the debtor must file and serve on the movant and all other parties entitled to notice under LBR 4001-1, additional briefing regarding his alleged interest in the real property at issue, supported by evidence in the form of declarations and other supporting documents. Any written response to that briefing must be filed and served **no later than June 26, 2019**.

Appearances on June 5, 2019 are excused.

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

Wednesday, June 5, 2019

Hearing Room 301

9:30 AM

CONT... Nelson Sargsyan

Chapter 7

Party Information

Debtor(s):

Nelson Sargsyan

Represented By
Thomas B Ure

Movant(s):

Maxim Commercial Capital, LLC

Represented By
Andrew K Alper

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 5, 2019

Hearing Room 301

9:30 AM

1:19-11018 Javier Ramos

Chapter 13

#7.00 Motion for relief from stay [UD]

ORCHID HEIGHTS LLC
VS
DEBTOR

Case dismissed 05/14/2019

Docket 7

*** VACATED *** REASON: Debtor dismissed on May 14, 2019 [doc. 9].
The motion is moot.

Judge:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Javier Ramos

Pro Se

Movant(s):

Orchid Heights LLC

Represented By
Agop G Arakelian

Trustee(s):

Elizabeth (SV) 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 5, 2019

Hearing Room 301

9:30 AM

1:16-13377 Nahed Talei

Chapter 13

#8.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 60

Judge:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nahed Talei

Represented By
Michael F Frank

Movant(s):

U.S. Bank National Association, as

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, June 5, 2019

Hearing Room 301

9:30 AM

1:17-11373 Luis Valdez

Chapter 13

#9.00 Motion for relief from stay [RP]

SPECIALIZED LOAN SERVICING, LLC
VS
DEBTOR

Docket 37

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.

Party Information

Debtor(s):

Luis Valdez

Represented By
Rebecca Tomilowitz

Movant(s):

Specialized Loan Servicing LLC

Represented By

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

Wednesday, June 5, 2019

Hearing Room 301

9:30 AM

CONT... Luis Valdez

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, June 5, 2019

Hearing Room 301

9:30 AM

1:18-11408 Medina Ilagan Garcia

Chapter 13

#10.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

Docket 59

Judge:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Medina Ilagan Garcia

Represented By
Kevin T Simon

Movant(s):

Deutsche Bank National Trust

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, June 5, 2019

Hearing Room 301

9:30 AM

1:19-10675 Michael Herbert Mueller

Chapter 11

#11.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC
VS
DEBTOR

Docket 25

Judge:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Herbert Mueller

Represented By
Lionel E Giron
Crystle Jane Lindsey

Movant(s):

Ford Motor Credit Company LLC

Represented By
Randall P Mroczynski

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

Wednesday, June 5, 2019

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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

#12.00 Defendant's motion to dismiss first amended complaint for failure to state a claim for which relief may be granted (FRBP 7012 / FRCP 12(b)(6))

[FOR RULING ONLY]

fr. 5/8/19

Docket 58

Judge:

Grant in part and deny in part.

I. BACKGROUND

On January 7, 2016, Duane Daniel Martin ("Duane") and Tisha Michelle Martin ("Tisha," and together with Duane, "Debtors") filed a voluntary chapter 7 petition. David. K. Gottlieb was appointed chapter 7 trustee (the "Trustee"). On January 21, 2016, Debtors filed their schedules and statements [Bankruptcy Docket, doc. 16]. In their schedule A/B, Debtors listed a leasehold interest in 22401 Summitridge Circle, Chatsworth, CA 91311 (the "Property"), noting that Debtors are the lessee and that a portion of postpetition rent has been prepaid. In an attachment to their schedule A/B, Debtors also indicated that The Monaco Irrevocable Trust (the "Monaco Trust") owns 100% of Seoul-Eight Funding, LLC ("Seoul-Eight"). According to Debtors, the Monaco Trust includes Debtors and their adult niece as settlors. In the attachment, Debtors also listed an interest in The Campbell-Martin Family Trust dated August 29, 2011 (the "Campbell-Martin Trust"); Debtors stated that they are the settlors, trustees and beneficiaries of the Campbell-Martin Trust, which previously sold the Property through a short sale.

On September 6, 2016, the Trustee filed a motion to approve a settlement agreement between the Trustee and Debtors (the "Settlement Agreement") [Bankruptcy Docket, doc. 115]. In relevant part, the Settlement Agreement provided that it *does not* alter

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the Trustee's rights and remedies, if any, to seek to recover any voidable transfers from, or enforce any other claims against, any non-debtor parties." Settlement Agreement, ¶ 9 (emphasis in Settlement Agreement). On October 11, 2016, the Court entered an order approving the Settlement Agreement [Bankruptcy Docket, doc. 122].

On September 17, 2018, the Trustee filed a complaint (the "Complaint") against Roxe, LLC ("Roxe"), Derek Folk and Michael Martin ("Michael") seeking to quiet title to the Property and for turnover of the Property under 11 U.S.C. § 542. On October 24, 2018, the Trustee voluntarily dismissed Mr. Folk from this adversary proceeding [doc. 11], leaving Roxe and Michael as the remaining defendants (together, "Defendants").

On November 20, 2018, Defendants filed a motion to dismiss the Complaint (the "First Motion") [doc. 15]. In the First Motion, Defendants argued that: (i) Roxe is the legal owner of the Property; (ii) the Trustee cannot show the essential element of ownership for an alter ego claim; (iii) any fraudulent transfer claim is time barred; and (iv) the Trustee cannot seek turnover of property that is not owned by Debtors or part of the bankruptcy estate.

On January 9, 2019, the Court held a hearing on the First Motion. At that time, the Court issued a ruling granting the First Motion and dismissing the Complaint with leave to amend (the "Ruling"). In the Ruling, the Court held that the Trustee had not adequately alleged an ownership interest to show alter ego liability; that, to the extent the Trustee was asserting fraudulent transfer, the claim was time barred; and that the Trustee did not otherwise show that Duane had an interest in the Property and/or Roxe.

On April 18, 2019, the Trustee filed a first amended complaint (the "FAC") [doc. 65]. In relevant part, the Trustee alleges in the FAC:

On March 1, 2006, Debtors purchased the Property for \$900,000, funded in part by a \$650,000 loan from IndyMac Bank, FSB ("IndyMac"). On July 3, 2007, Debtors borrowed another \$1,950,000 from IndyMac to renovate the Property. Debtors defaulted under the terms of both loans. On August 10, 2012, IndyMac sent a letter to Debtors regarding the defaults offering to forbear on its right to foreclose if Debtors paid IndyMac \$1,380,000 by November 30, 2012

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and Debtors made monthly interest payments in the reduced sum of \$10,000 per month. By this time, Debtors were in default on other loans and involved in litigation with other creditors, including Comerica Bank and City National Bank.

To save the Property from foreclosure by IndyMac or levy by one of Debtors' other creditors, Duane devised a scheme to shield the Property from creditors. For this reason, Duane created Roxe, an entity completely dominated and controlled by Duane, to hold title to the Property. On October 30, 2012, Roxe was formed at the direction of Duane. In emails, the ownership of Roxe was described as "49% Derek Folk..., 49% Michael Martin... and 2% Seoul-Eight (another one of [Duane's] organized entities)." In Debtors' schedules, Debtors indicated they own 100% of Seoul-Eight through the Monaco Trust, an irrevocable trust created in 2011 with Debtors and their adult niece as settlors.

To obtain financing for purchase of the Property, Duane turned to his friend Will Smith. On November 29, 2012, after several emails with Mr. Smith's representatives, Roxe signed a secured promissory note in favor of TB Properties, LLC ("TB Properties"), Mr. Smith's company. TB Properties described the loan as the "Duane Martin / Roxe LLC Promissory Note (Interest Only)." In exchange, TB Properties obtained a first deed of trust against the Property. On November 30, 2012, Debtors transferred the Property to Roxe. On December 18, 2012, after the closing of the transaction, Beverly Hills Escrow sent to Roxe an Owners Policy of Insurance, naming TB Properties as the insured and indicating that title vested in "Duane Martin and Tisha Campbell-Martin, as Trustees of the Campbell-Martin Family Trust."

To provide cover for Debtors continuing to reside in the Property, Debtors purported to lease the Property from Roxe for \$5,000 per month. After TB Properties closed the loan, Roxe sporadically and inconsistently made lease payments to TB Properties, and the payments ended by August 2017. Duane lived on the Property and continued to renovate the Property, expending at least \$147,000 to develop the

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Property. Duane also held himself out as the owner of the Property. In addition, Duane held himself out as being liable for Roxe's debts. For instance, Duane would issue checks to cover the mortgage Roxe owed to TB Properties instead of the rent Debtors owed to Roxe. Duane also remained at all times in possession of the Property.

Roxe is a straw man for Duane. Duane continues to own 2% of Roxe through Seoul-Eight and the Monaco Trust. The attached emails reflect that third parties refer to Roxe as Duane's entity. Duane also referred to the Property as his Property. Duane regularly used Roxe's bank account to pay expenses incurred by Group 6842, LLC, a company in which Duane is an investor and member.

Roxe's bank account was initially funded with a \$10,000 check from Mowguls, LLC, an entity Duane owned and controlled. The lease with Debtors was Roxe's sole source of revenue, and Roxe is no longer capitalized and owes approximately \$100,000 in real property taxes.

In December 2017, Tisha and Duane initiated the dissolution of their marriage. After this time, Tisha learned about Duane's concealment of valuable assets. In August 2018, Tisha provided the Trustee with information regarding Duane's fraud and continuing concealment of the Property in the guise of Roxe. Because of the continuing concealment, the Trustee did not learn about the Property until August 2018.

Beginning in March 2018, Duane initiated and directed the effort to sell the Property. During these efforts, Duane and Mr. Smith's team discussed "moving" the loan from the Property to another real property to be occupied by Duane.

On these allegations, the Trustee asserts the following claims: (A) Quiet Title; (B) Avoidance of Fraudulent Conveyance; (C) Turnover; and (D) Constructive Trust. In addition, in an email attached to the FAC, Duane states that there may be \$1.5 million in equity after sale of the Property; in another email, a representative of Mr. Smith states that "Duane will receive some cash from the sale...." FAC, Exhibits S, T.

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On February 21, 2019, Defendants filed a motion to dismiss the FAC (the "Motion") [doc. 58]. In the Motion, Defendants argue that: (A) the Trustee has failed to show that Duane has any ownership interest in the Property; (B) even if Duane had a membership interest in Roxe, California law does not provide for reverse piercing of the corporate veil; (C) Roxe is the legal owner of the Property; (D) the Trustee has not adequately alleged ownership to assert an alter ego claim; (E) the Trustee has released all claims against Duane; (F) the Trustee's fraudulent transfer claim is time barred because it was not filed four years from the date of transfer of the Property; (G) the Trustee cannot seek turnover of property that is not property of the estate; and (H) the Trustee is not entitled to a constructive trust.

On April 24, 2019, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 67]. In the Opposition, the Trustee asserts that: (A) the statute of limitations has not run on the fraudulent transfer claims because the Trustee did not discover the fraudulent nature of Duane's transfer to Roxe until August 2018 and the statute of limitations is equitably tolled; (B) the claims for relief are not reliant on a finding of alter ego liability; (C) Debtors' settlement with the Trustee does not bar this action against Defendants; and (D) the FAC adequately states claims for relief as to the Trustee's Quiet Title, Turnover and Constructive Trust claims. Regarding the Trustee's equitable tolling argument, the Trustee includes several factual assertions regarding Duane's prior testimony from his § 341(a) meeting of creditors.

On May 2, 2019, Defendants filed a reply to the Opposition (the "Reply") [doc. 68]. In the Reply, Defendants assert that the statute of limitations as to the Trustee's fraudulent transfer claim cannot be extended based on delayed discovery because Duane's prior testimony should have put the Trustee on notice regarding the nature of the transfer of the Property.

II. ANALYSIS

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

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plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. 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,

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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. Impact of Settlement Agreement

As a preliminary matter, the Settlement Agreement does not bar this proceeding against Defendants, who are nondebtor entities. As noted above, the Settlement Agreement is between the Trustee and *Debtors* and explicitly provides that the Trustee is not barred from proceeding against nondebtor parties, such as Defendants. As such, the Settlement Agreement does not prevent this action from proceeding.

C. Quiet Title

Pursuant to California Code of Civil Procedure ("CCP") § 760.020(a), an action for quiet title "may be brought under this chapter to establish title against adverse claims to real or personal property or an interest therein." Pursuant to CCP § 760.010(a), a "[c]laim" includes a legal or equitable right, title, estate, lien, or interest in property or cloud upon title." In the FAC, the Trustee bases his quiet title on the following—

Plaintiff's claim to quiet title to the Family Home is based upon, *inter alia*: (a) Debtors' legal interest in the Family Home based upon Debtors' 2% ownership of Roxe through entities owned and controlled by Debtors; (b) Debtors' equitable interest in the Family Home resulting from Duane Martin acting at all times relevant herein as the owner of Roxe in its day to day operations; (c) Duane Martin's continuing concealment of his retention of a secret benefit of ownership in the Family Home through the guise of Roxe; and (d) Debtors' interest in the Family Home based upon a finding that Duane Martin is the alter ego of Roxe, as alleged herein.

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FAC, ¶ 93.

i. ***Duane's Alleged Legal Interest in Roxe and/or the Property***

In the FAC, the Trustee alleges that Debtors have a legal interest in the Property based on Debtors' 2% ownership of Roxe through entities owned and controlled by Debtors. In the Opposition, the Trustee argues in a conclusory fashion that Duane is the "record owner" of 2% of Roxe. However, the FAC does not include sufficient allegations to state a plausible legal interest held by Debtors.

In their schedules, Debtors indicated that the Monaco Trust is an irrevocable trust with Debtors and their niece as settlors. The Monaco Trust owned 100% of Seoul-Eight; in turn, the Trustee alleges Seoul-Eight has a 2% membership interest in Roxe. However, the Trustee does not allege how Debtors' interest in the Monaco Trust, or the Monaco Trust's ownership of Seoul-Eight, results in a legal interest in the Property or in 2% of Roxe held by *Debtors*.

Presumably, the Trustee may be able to allege that he may recover the assets of the trust for the benefit of the estate. The parties refer to the Monaco Trust as an irrevocable trust. Generally, "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 avoidance actions." *In re Cutter*, 398 B.R. 6, 19 (B.A.P. 9th Cir. 2008), *aff'd*, 468 F.App'x 657 (9th Cir. 2011) (quoting *In re Unicom Computer Corp.*, 13 F.3d 321, 324 (9th Cir. 1994)). "That said, while assets transferred to a trust do not ordinarily become property of the bankruptcy estate of the trust's trustee, powers that a debtor who is trustee of a trust may exercise for his or her own benefit become property of the estate." *Id.* "Moreover, to the extent a debtor holds a beneficial interest in a trust, that beneficial interest becomes property of the estate, unless it is protected by a *valid* spendthrift provision. 11 U.S.C. § 541(a)(1) and (c) (2)." *Id.* (emphasis in *Cutter*). "While California law recognizes the validity of spendthrift trusts, any spendthrift provisions are invalid when the settlor is a beneficiary." *Id.*, at 20. "Assets transferred to an irrevocable trust do not become part of a bankruptcy estate unless the transfer or the trust is invalid." *United States v. Lawrence*, 189 F.3d 838, 845 (9th Cir. 1999).

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Here, the only allegations in the FAC regarding the Monaco Trust refer to Debtors' schedules, in which Debtors stated that the Monaco Trust is an irrevocable trust with Debtors and their adult niece as settlors. There are no allegations in the FAC regarding whether Debtors are the beneficiaries of the Monaco Trust, or whether the Monaco Trust or any transfers to the Monaco Trust are otherwise invalid. As such, the Trustee cannot make a blanket assertion that Debtors or Duane are "record owners" of any of the Monaco Trust's assets without alleging why the Trustee, as representative of Debtors' estate, has a legal interest in assets of the Monaco Trust.

In addition, even if the Trustee is able to allege adequately a right to assets of the Monaco Trust, the Monaco Trust does not have an interest in Roxe. Rather, the Monaco Trust owns 100% of Seoul-Eight, a limited liability company ("LLC"), which in turn owns 2% of the membership interest in Roxe. To establish that the estate has an interest in Roxe, the Trustee must allege facts that allow the Trustee to reach Seoul-Eight's assets, such as the ability to operate the LLC as chapter 7 trustee under 11 U.S.C. § 721. At this time, the Trustee's blanket allegation that Duane has a 2% membership interest in Roxe is not supported by the remaining allegations in the FAC.

ii. Duane's Alleged Equitable Interests

Alternatively, the Trustee alleges that Debtors and/or Duane maintain an equitable interest in Roxe and/or the Property. Duane's alleged equitable interests appear to stem from two theories: (A) that Roxe is an alter ego of Duane; and (B) that Duane maintained a secret beneficial interest in the Property.

a. Alter Ego Liability

In the Opposition, the Trustee asserts that none of his claims rely on alter ego liability. Nevertheless, in the FAC, the Trustee explicitly alleges that his quiet title claim is based on, among other theories, alter ego liability.

"The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests. In certain circumstances the court will disregard the corporate entity and will hold the individual shareholders liable for the actions of the corporation." *Mesler v.*

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Bragg Management Co., 39 Cal.3d 290, 300 (1985)(internal citations omitted). "[T]he corporate form will be disregarded only in narrowly defined circumstances and only when the ends of justice so require." *Neilson v. Union Bank*, 290 F.Supp.2d 1101, 1115 (C.D. Cal. 2003)(internal quotations omitted).

In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and its shareholders do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone.

Sonora Diamond Corp. v. Superior Court, 83 Cal.App.4th 523, 526 (Ct. App. 2000).

1. Equitable Ownership as an Ownership Interest

The parties first dispute whether an equitable ownership is sufficient to show "ownership" for purposes of alter ego liability. The Trustee relies primarily on *In re Schwarzkopf*, 626 F.3d 1032 (9th Cir. 2010). In *Schwarzkopf*, prepetition, the debtors created two irrevocable trusts naming their minor child as beneficiary and a third party as trustee. *Schwarzkopf*, 626 F.3d at 1035. Simultaneously with the creation of one of the trusts, the debtors transferred all of the stock of a corporation, of which one of the debtors was the sole shareholder, into the trust. *Id.* At the time of the inception of the second trust, the debtors placed \$25 into the trust as its sole asset. *Id.* Subsequently, another one of the debtors' corporations purchased property to place into the second trust. *Id.*

Although the debtors' minor child benefitted from both trusts, the trusts also supported the debtors; for instance, the debtors used assets from one of the trusts to purchase a home to live in rent-free. *Id.*, at 1035-36. In addition, there were inadequate books and records for both trusts, and the debtors frequently intermingled and/or transferred funds between the trusts. *Id.*, at 1036.

After the debtors filed for bankruptcy protection, the chapter 7 trustee filed an adversary proceeding to recover \$4 million in assets from the trusts. *Id.* The bankruptcy court held that one of the trusts was an alter ego of one of the debtors, but

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the other trust was valid because it was created for the benefit of a minor child. *Id.* On appeal, the district court held that the first trust was invalid because it was created to defraud the debtors' creditors; the district court remanded as to this issue for the bankruptcy court to determine if this claim was time barred. *Id.* The district court also disagreed that either trust was an alter ego of one of the debtors, because that debtor was neither a trustee nor a beneficiary of the trusts. *Id.*

On appeal, the Ninth Circuit Court of Appeals agreed with the district court that the first trust was invalid because it was created for the purpose of defrauding creditors. *Id.*, at 1037. As to the second trust, the chapter 7 trustee argued that one of the debtors was the equitable owner of the trust and that equitable ownership was sufficient to confer alter ego liability; the debtors asserted that, under California law, a legal ownership interest was required, and that the trustee was improperly attempting to reverse-pierce the corporate veil. *Id.* Regarding the debtors' argument that a legal ownership interest was required, the Court of Appeals stated:

California case law suggests that equitable ownership is sufficient. The California Supreme Court has noted that an individual's expectation that he would receive shares of a corporation "supports an inference that he was an equitable owner" and justifies imposition of alter ego liability. *Minton v. Cavaney*, 56 Cal.2d 576, 15 Cal.Rptr. 641, 364 P.2d 473, 475 (1961). And in *Troyk v. Farmers Group, Inc.*, the California Court of Appeal imposed alter ego liability on a managing agent and attorney-in-fact although it did not own the interinsurance exchange at issue. 171 Cal.App.4th 1305, 90 Cal.Rptr.3d 589, 620 (2009). Legal ownership was not necessary because, although "[a]n insurance exchange is 'owned' by the subscribers, ... given that the subscribers are required to appoint the attorney-in-fact as managerial agent, the 'ownership' element of the alter ego doctrine is not applicable in this context." *Id.* at 620 n. 27 (citation and internal quotation marks omitted). In essence, the managing agent was the equitable owner. *See also Sonora Diamond Corp. v. Superior Court*, 83 Cal.App.4th 523, 99 Cal.Rptr.2d 824, 836 (2000) (where the alter ego doctrine applies, "courts will ignore the corporate entity and deem the corporation's acts

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to be those of the persons or organizations actually controlling the corporation, in most instances the equitable owners").

Id., at 1038–39. On this law, the Court of Appeals stated that one of the debtors was the equitable owner of the second trust because "he acted as owner of the trust and its assets," the trustee "had no role nor took any action" other than following the debtor's instructions, he used the assets of the trust to pay for the debtors' living expenses and he used a corporation owned by the second trust as "nothing but a shell." *Id.*, at 1039.

The facts in *Schwarzkopf* are remarkably similar to the facts alleged in the FAC. In the FAC, the Trustee alleges that Duane used Roxe as a shell; that Defendants acted at the direction of Duane; that Duane frequently used his own money to pay expenses of Roxe or Roxe's funds to pay expenses related to Duane's other entities; and that Duane stopped paying rent to Roxe to live in the Property. On these allegations, the Trustee has established that Duane had an equitable ownership interest in Roxe, which interest is sufficient to show ownership for purposes of alter ego liability under *Schwarzkopf*.

Nevertheless, as discussed below, the Trustee has not adequately alleged that the alter ego doctrine applies to the allegations in the FAC.

2. *Reverse Piercing the Corporate Veil*

"California courts reject outside reverse piercing. Under California law, 'a third party creditor may not pierce the corporate veil to reach corporate assets to satisfy a shareholder's personal liability.'" *In re Shakib*, 2014 WL 3865232, at *2 (Bankr. C.D. Cal. Aug. 6, 2014) (citing *Postal Instant Press, Inc. v. Kaswa Corp.*, 162 Cal.App.4th 1510, 1512 (2008)).

We agree with the sound reasoning and analysis of the cases rejecting outside reverse piercing of the corporate veil. The court in *Olympic Capital Corp. v. Newman* (C.D. Cal. 1967) 276 F.Supp. 646, 658 described outside reverse piercing as "a complete distortion of the alter ego doctrine." The court continued: "That doctrine has been invoked when fairness and justice require that the property of

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individual stockholders be made subject to the debts of the corporation. To apply such a doctrine here would be asking the court to apply the doctrine in one manner, i.e., make the property of the corporation the property of a stockholder, for the purposes of obtaining jurisdiction of the person of the stockholder and then to reverse the procedure, i.e., make the action of the individual stockholder the action of the corporation for purposes of creating liability in the name of the corporation. Neither reason nor law compel[s] such a gymnastic."
(*Ibid.*)

Kaswa, 162 Cal.App.4th at 1519-20 (quoting *Olympic Capital Corp. v. Newman*, 276 F.Supp. 646, 658 (C.D. Cal. 1967); see also *In re Shakib*, 2014 WL 3865232, at *2 (Bankr. C.D. Cal. Aug. 6, 2014); and *In re Castiglione*, 2010 WL 9474767, at *6-8 (Bankr. E.D. Cal. Jan. 20, 2010). "We 'must follow the decision of the intermediate appellate courts of the state unless there is convincing evidence that the highest court of the state would decide differently.'" *Schwarzkopf*, 626 F.3d at 1038 (quoting *Owen By and Through Owen v. United States*, 713 F.2d 1461, 1464 (9th Cir.1983)).

Under the authorities above, alter ego liability is a doctrine used to hold owners of a corporation liable for the debts of the entity. Here, the Trustee is not attempting to hold an owner liable for the debts of a corporation. By reference to alter ego liability, the Trustee is attempting to "reverse pierce the corporate veil," which is impermissible under California law.

Schwarzkopf does not change this result. In *Schwarzkopf*, the Court of Appeals agreed that California law does not allow reverse piercing of the corporate veil, i.e., allowing "a third party creditor [to] pierce the corporate veil to reach corporate assets to satisfy a shareholder's personal liability." *Schwarzkopf*, 626 F.3d at 1038. The Court of Appeals concluded that this general rule does not apply to trusts; the court did not change the law on reverse piercing the corporate veil as to other entities. *Id.*

Here, reverse-piercing of the corporate veil remains a barrier because the Trustee is attempting to impose alter ego liability as to an LLC, not a trust. The Trustee's reference to *Tatung Co., Ltd. v. Shu Tze Hsu*, 217 F.Supp.3d 1138 (C.D. Cal. 2016), also does not warrant a different conclusion. In *Tatung*, the court held that an equitable ownership interest in a corporate entity is sufficient to demonstrate

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ownership for purposes of alter ego liability. *Tatung*, 217 F.Supp.3d at 1177-79. As noted above, the Court agrees with this holding. However, *Tatung* involved a party attempting to hold the equitable owners of a company liable for the debts of the entity, i.e., the usual situation to which alter ego liability applies; *Tatung* is silent as to reverse piercing the corporate veil, and, as a result, *Tatung* does not help the Trustee overcome the barrier of reverse piercing the corporate veil.

In any event, as discussed below, the Trustee has sufficiently alleged that Duane has a secret beneficial interest in the Property because Roxe is a sham entity. As such, the Trustee need not rely on alter ego liability to reach Roxe's assets. The allegations in the FAC sufficiently state a claim that Roxe is not a legitimate entity at all, and alter ego liability is not necessary to reach Roxe's assets.

b. Secret Beneficial Interest in the Property

The Trustee also alleges that Duane maintained a secret beneficial interest in the Property. In the FAC, the Trustee alleges that Roxe is a sham entity created to conceal Duane's interest in the Property, and that Debtors' lease with Roxe also is a sham. The Trustee further alleges that Debtors continued to reside in the Property after the transfer from the Campbell-Martin Trust to Roxe, and that Duane stopped paying rent to live in the Property.

Moreover, the FAC includes allegations regarding Duane's control over the residual equity in the Property and that Duane intended to receive any net proceeds from the sale of the Property. For instance, in an email attached as Exhibit S to the FAC, Duane notes that there may be \$1.5 million in equity after sale of the Property. In another email attached as Exhibit T to the FAC, a representative of Mr. Smith states that "Duane will receive some cash from the sale...." Taken together, these allegations establish a secret beneficial interest held in the Property held by Duane. On this basis, the Court will not dismiss the quiet title claim.

Defendants assert that the "owner of an equitable interest cannot maintain an action to quiet title against the owner of legal title." *Stafford v. Ballinger*, 199 Cal.App.2d 289, 294-95 (Ct. App. 1962). Generally, this is true; however, here, the Trustee's allegations rest on the fact that Roxe, the entity which Defendants assert holds legal title, is a sham, and that Defendants had a role in concealing Duane's assets. In

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Stafford, the defendant was determined to be a legal owner, and there were no allegations that the defendant held legal title fraudulently or as a sham entity. *Id.*, at 294-95. Thus, *Stafford* is inapposite and inapplicable to the allegations in the FAC.

D. Fraudulent Transfer

Defendants assert that the Trustee's fraudulent transfer claim under California Civil Code ("CCC") § 3439.04(a) is time barred. Under CCC § 3439.04(a)—

A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor.

Pursuant to CCC § 3439.09—

(a) Under paragraph (1) of subdivision (a) of Section 3439.04, not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant.

...

(c) Notwithstanding any other provision of law, a cause of action under this chapter with respect to a transfer or obligation is extinguished if no action is brought or levy made within seven years after the transfer was made or the obligation was incurred.

Under 11 U.S.C. § 108(a)—

If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—

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- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2) two years after the order for relief.

Here, the Trustee alleges in the FAC, and Defendants do not dispute, that the relevant transfer from the Campbell-Martin Trust to Roxe occurred on November 30, 2012. Debtors filed their bankruptcy petition on January 7, 2016. Four years from November 30, 2012 is November 30, 2016. Because the statute of limitations had not expired as of the petition date, the statute was extended to two years beyond the petition date, i.e., January 7, 2018. As such, the statute of limitations expired under the first prong of CCC § 3439.09(a).

The second prong of CCC § 3439.09(a) extends the statute of limitations to "not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant." The Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") has addressed the question of whether the one year limitation in the second prong of CCP § 3439.09(a) runs from discovery of the transfer or discovery of the fraud. *In re Ezra*, 537 B.R. 924, 932-34 (B.A.P. 9th Cir. 2015). The BAP concluded that "the one-year period under Cal. Civ. Code § 3439.09(a)'s discovery rule does not commence until the plaintiff has reason to discover **the fraudulent nature of the transfer.**" *Id.*, at 933 (emphasis in *Ezra*). At this time, neither California nor federal courts have disagreed with this interpretation.

In the FAC, the Trustee alleges that, although Debtors listed the transfer of the Property from the Campbell-Martin Trust to Roxe in their schedule A/B, the Trustee did not discover the *fraudulent nature* of this transfer until Tisha informed the Trustee, in August 2018, about Duane's alleged secret interest in the Property. Defendants do not address *Ezra* or the discovery extension in the second prong of CCC § 3439.09(a) in the Motion. Rather, for the first time in the Reply, Defendants argue that this prong does not apply because the Trustee's factual assertions in the Opposition establish that the Trustee should have discovered pertinent facts sooner.

The Court need not consider arguments raised for the first time in the Reply. Nevertheless, although the Court may take judicial notice of Debtors' schedules, the

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remaining facts asserted by Defendants in the Reply and by the Trustee in the Opposition are not judicially noticeable, and the Court cannot consider evidence outside the FAC for purposes of a motion to dismiss. At this time, the Trustee has included sufficient allegations regarding discovery of the "fraudulent nature of the transfer." The remaining arguments regarding what the Trustee could or could not have discovered sooner are appropriately considered at an evidentiary hearing.

Because the Motion attacks the Trustee's fraudulent transfer claim solely on the basis that the claim is time barred, and because the FAC includes sufficient allegations that the Trustee could not have discovered the "fraudulent nature of the transfer" until August 2018, the Trustee's fraudulent transfer claim survives the Motion.

E. Constructive Trust

"A constructive trust is a creature of state law. In a constructive trust, a person who has engaged in fraud or other wrongful conduct holds only bare legal title to the property subject to a duty to reconvey it to the rightful owner." *F.T.C. v. Crittenden*, 823 F.Supp. 699, 703 (C.D. Cal. 1993), *aff'd*, 19 F.3d 26 (9th Cir. 1994). "Since a constructive trust is a creature of state law, the Court must look to California law to determine whether a constructive trust exists over the present receivership estate. California law does not require fraud or intentional misrepresentation as a prerequisite to a constructive trust." *Id.*

"Under California law, a court may find that a constructive trust exists if it finds merely that 'the acquisition of property was wrongful and that the keeping of the property by the defendant would constitute unjust enrichment.'" *Id.* (quoting *Calistoga Civic Club v. City of Calistoga*, 143 Cal.App.3d 111, 116 (Ct. App. 1983)). "The requirements for a constructive trust in California are: (1) the existence of a res; (2) the plaintiff's right to the res; and (3) the defendant's acquisition of the res by some wrongful act." *Id.* (citing *Calistoga*, 143 Cal.App.3d at 116).

Here, the Trustee has alleged the existence of a res, namely, the Property. The Trustee also has adequately alleged a secret beneficial interest held by Duane in the Property, which interest would be property of the estate under 11 U.S.C. § 541. In addition, the Trustee has adequately alleged that Defendants acquired the Property by a wrongful act, specifically, Duane's purported attempt to shield the Property through an

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allegedly sham entity.

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F. 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 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, the Trustee's claim for turnover of the Property is dependent on whether the Trustee's other claims establish that the Property is "property of the estate." Because the Trustee has adequately alleged that Duane maintained a secret beneficial interest in the Property, and the attached emails establish that the Property has significant equity, the Trustee has adequately stated a claim for turnover.

III. CONCLUSION

The Court will grant the Motion as to the allegations that the estate has a legal interest in Roxe or an equitable interest in Roxe based on alter ego, and provide leave for the Trustee to amend these allegations. The Court will deny the Motion as to the allegations that the estate has an interest in the Property based on Duane's

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secret beneficial interest. The Court also will deny the Motion as to the Trustee's fraudulent transfer, constructive trust and turnover claims.

The Trustee must submit an order within seven (7) days. If the Trustee elects to amend the FAC, the Trustee must file and serve a second amended complaint no later than **14 days** from the date of this hearing. If the Trustee elects to proceed with the FAC, the Trustee must file and serve notice that he will proceed with the FAC no later than **7 days** from the date of this hearing. If the Trustee files such a notice, Defendants must file and serve a response to the FAC no later than **14 days** from the date the Trustee files the notice.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Defendant(s):

Roxe, LLC, a California limited

Represented By
Dawn M Coulson

Michael Martin an individual

Represented By
Dawn M Coulson

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
Lindsey L Smith

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Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong
Beth Ann R Young

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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

- #13.00** Status conference re: amended complaint to:
1. Quiet title of real property located at 22401 Summitridge Circle, Chatsworth, CA 91311; and
 2. Avoidance and recovery of fraudulent transfer pursuant to California Civil Code 3439.04
 3. Turnover of Property of the estate pursuant to 11 U.S.C. sec 542
 4. Imposition of constructive trust
- fr. 11/7/18(stip); 12/5/18; 12/12/18; 1/9/2019; 3/13/19; 3/20/19; 5/8/19

Docket 48

Judge:

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 7/1/2019.

Deadline to file pretrial motions: 7/15/2019.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 8/7/19.

Pretrial: 1:30 p.m. on 8/21/19.

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).

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Chapter 7

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

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong
Beth Ann R Young

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1:16-10045 Duane Daniel Martin

Chapter 7

Adv#: 1:18-01122 David K. Gottlieb, Chapter 7 Trustee v. Martin

- #14.00** Status conference re: complaint for:
(1) Revocation of discharge pursuant to 11 U.S.C. sec 727(d)(2)
and (3) and sec 727(e)(2) and
(2) Recovery of property of the estate

fr. 2/6/19; 3/20/19

COUNTERCLAIM

Duane Daniel Martin, Counter-claimant
v
David K. Gottlieb, Ch. 7 Trustee, Counter-defendant

Docket 1

Judge:

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 8/30/19.

Deadline to file pretrial motions: 9/16/19.

Deadline to complete and submit pretrial stipulation in accordance with Local
Bankruptcy Rule 7016-1: 10/2/19.

Pretrial: 1:30 p.m. on 10/16/19.

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).

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Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Defendant(s):

Duane Daniel Martin

Pro Se

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley
Joseph R Dunn

Plaintiff(s):

David K. Gottlieb, Chapter 7 Trustee

Represented By
Monica Y Kim
Beth Ann R Young

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong
Beth Ann R Young

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1:16-13382 Christopher Sabin Nassif

Chapter 11

Adv#: 1:18-01114 Nassif et al v. THE BANK OF NEW YORK MELLON fka THE BANK OF

- #15.00** Pretrial conference re: complaint for:
1. Violation of California homeowner bill of rights;
 2. Breach of written agreement;
 3. Breach of vovenant of good faith and fair dealing;
 4. Negligence;
 5. Unlawful business practices

fr. 1/9/2019

Stip to cont hrg fld 3/28/19

Docket 1

***** VACATED *** REASON: Order approving stip entered 4/1/19.
Hearing continued to 9/4/19 at 1:30 PM.**

Judge:

Tentative Ruling:

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

Defendant(s):

THE BANK OF NEW YORK

Pro Se

Nationstar Mortgage LLC, A

Pro Se

Bank of America, N.A, a National

Pro Se

Aztec Foreclosure Corporation., a

Pro Se

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CONT... Christopher Sabin Nassif

Chapter 11

Plaintiff(s):

Christopher Sabin Nassif

Represented By
Matthew D. Resnik

Robin Nassif

Represented By
Matthew D. Resnik

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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

fr. 12/19/18; 2/6/19

Docket 10

Judge:

Tentative Ruling:

If the chapter 7 trustee (the "Trustee") will not withdraw his motion to dismiss (the "Motion") [doc. 10], the Court will deny the Motion. Given that the Trustee now consents to remand of this action in its entirety, the Court will remand this proceeding to state court.

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

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

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CONT... LOST COAST RANCH INC.

Chapter 7

Trustee(s):

David Seror (TR)

Represented By
Talin Keshishian
Richard Burstein

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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; 12/19/18; 2/6/19

Docket 1

Judge:

Tentative Ruling:

In light of the status report filed by the chapter 7 trustee [doc. 33], the Court will remand any remaining claims to state court.

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

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

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1:18-11243 Jeff Davani

Chapter 7

Adv#: 1:18-01098 Johnson v. Davani an individual, doing business as Arina Buil

#18.00 Pretrial 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; 12/12/18; 1/9/2019;

Docket 8

Judge:

Tentative Ruling:

On May 20, 2019, the defendant filed and served the *Declaration of Michael H. Raichelson re: Local Bankruptcy Rule 7016-1 and Pre-Trial Conference Set For June 5, 2019* (the "Raichelson Declaration") [doc. 27]. In the Raichelson Declaration, the defendant's counsel states that the plaintiff did not provide the defendant with a proposed joint pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1(c). The plaintiff also has not timely filed a unilateral status report or otherwise responded to the Raichelson Declaration.

In light of the above, the Court will dismiss this adversary proceeding for failure to prosecute.

The Court will prepare the order.

Party Information

Debtor(s):

Jeff Davani

Pro Se

Defendant(s):

Jeff Davani an individual, doing

Represented By
Michael H Raichelson

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CONT... Jeff Davani

Chapter 7

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

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1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01011 Gottlieb (TR) v. Flores

#19.00 Status conference re complaint to determine extent and
validity of lien

fr. 4/24/19

Docket 1

*** VACATED *** REASON: Notice of dismissal pursuant to Rule 7041
and Rule 41(a)(1)(i) filed 5/3/19

Judge:

Tentative Ruling:

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Juan Scsi Flores

Pro Se

Plaintiff(s):

David K. Gottlieb (TR)

Represented By
Peter A Davidson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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1:18-11150 Robert Edward Zuckerman
Adv#: 1:18-01081 Albin et al v. Zuckerman

Chapter 7

#20.00 Plaintiff's motion for summary judgment against debtor
Robert Edward Zuckerman

Docket 50

Judge:

- NONE LISTED -

Tentative Ruling:

I. BACKGROUND

A. *The State Court Trial*

Dozens of individuals and entities ("Plaintiffs") filed a complaint against Robert E. Zuckerman ("Defendant"), initiating state court case no. SCV-245738 (the "State Court Action"). Request for Judicial Notice ("RJN") [doc. 57], Exhibit 1. On September 10, 2012, Plaintiffs may have voluntarily dismissed multiple plaintiffs from the State Court Action (the "Request for Dismissal"). Declaration of Sandford L. Frey (the "Frey Declaration") [doc. 76], ¶¶ 3-4, Exhibit A. On October 5, 2016, the state court held a trial on the issues presented in the State Court Action. RJN, Exhibit 1.

As relevant to this action, Raul Garcia, Defendant's attorney at the time, appeared on behalf of Defendant. *Id.* Prior to trial, the state court heard Defendant's motion in limine pursuant to California Code of Civil Procedure ("CCP") §§ 583.310 and 583.360(a) (the "Motion in Limine"). *Id.* Through the Motion in Limine, Defendant argued that the State Court Action must be dismissed because Plaintiffs did not bring the matter to trial within five years, as prescribed by CCP §§ 583.310 and 583.360(a). The court denied the Motion in Limine on the basis that Defendant had previously stipulated that CCP §§ 583.310 and 583.360(a) would not apply to the State Court Action. *Id.*

At that time, Mr. Garcia, on behalf of Defendant, requested a stay of the State Court

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Action for Defendant to file a Writ of Prohibition with an appellate court. Trial Transcript [doc. 78], pp. 13-14. [FN1]. After the state court denied the stay and instructed the parties to proceed with trial, Mr. Garcia moved to withdraw as Defendant's attorney, stating that he was not ready to proceed. *Id.*, pp. 14-15. The state court denied Mr. Garcia's motion to withdraw as Defendant's counsel. *Id.* In relevant part, the trial transcript reflects the following exchange between the court and Mr. Garcia:

MR. GARCIA: Strategically our plan was not to proceed with the trial, Your Honor. I mean, is the Court asking me to stay here?

THE COURT: Yeah, I think you need to. You're the attorney.

MR. GARCIA: But I'm not going to ask any questions.

THE COURT: I can't tell you what to do. All I can do is tell you I'm denying your Motion to Withdraw.

...

THE COURT: I'm interested, is your client planning to be here or not?

MR. GARCIA: No, Your Honor. Because as I indicated, tactically, we were going to ask for a stay. If the Court granted the stay, the no need for my –

THE COURT: Where is your client?

MR. GARCIA: Woodland Hills, Your Honor. He just came out of surgery on Friday. That's what I was told, Your Honor.

THE COURT: Okay. There's some disagreement about that.

MR. GARCIA: Thank you, Your Honor.

THE COURT: You're going to leave us? Okay.

MR. GARCIA: I don't know what to do. I just can't sit here, doing nothing, Your Honor.

Id., pp. 15-16. Mr. Garcia left the courtroom, and the state court proceeded to take evidence during trial.

B. The State Court Judgment and Amended Judgment

On October 6, 2016, the state court entered judgment against Defendant. RJN, Exhibit 2. On April 4, 2017, the state court entered an amended judgment against Defendant

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Chapter 7

(the "Amended Judgment"). RJN, Exhibit 1. In relevant part, the state court first noted that, pursuant to an order entered March 7, 2014 (the "Admission Order"), certain material facts were deemed admitted against Defendant. *Id.* These material facts included:

1. Defendant... engaged in fraud intentional misrepresentation as alleged in the second amended complaint's first cause of action.
2. Defendant... engaged in fraud – concealment as alleged in the second amended complaint's second cause of action.
3. Defendant... engaged in fraud – promise without intent to perform as alleged in the second amended complaint's third cause of action.
...
4. Defendant... engaged in a conspiracy to defraud as alleged in the second amended complaint's eleventh cause of action.

Id. Based on the Admission Order and the evidence presented at trial, including expert testimony, the state court entered judgment against Defendant "who engaged in a joint venture to intentionally, purposefully and maliciously defraud each of the plaintiffs in this matter finding damages under the plaintiffs' third amended complaint's causes of action for intentional misrepresentation, concealment, promise without intent to perform and elder abuse...." *Id.* The court also made the following specific findings:

The court finds that [Defendant] fraudulently obtained \$6,435,000.00 in loans from [P]laintiffs, many who were elders, at 13.5% per annum, brokered by real estate broker Charlene Goodrich, with no intent whatsoever to use the money in the Malibu land development project as Robert Zuckerman represented in writing.

The court finds that no part of [P]laintiffs' collective \$6,435,000.00 loan was ever used in any manner for this Malibu land development project. The security for this \$6,435,000.00 collective loan had grossly inflated values and the security was only four legal and developable

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parcels as opposed to the 13 legal and developable parcels that each were fraudulently represented to have approximately a two (2) acre building pads by the named defendant herein as to [P]laintiffs' \$6,435,000.00 collective loan where there were no building pads constructed ever. The six (6) months interest at 13.5% on the loan paid to [P]laintiffs was from an impound account of [P]laintiffs' very own monies. Defendant, Robert Zuckerman made no payments to [P]laintiffs whatsoever on the \$6,435,000 collective loan.

The court further finds that Robert E. Zuckerman, who has been a real estate broker in the State of California since March 28, 1982 (license number 0083365) and based upon the evidence presented, was the central figure in charge of this fraudulent land development scheme of the thirteen (13) represented legal and developable properties (which they were not) in Malibu, California that severely damaged the [P]laintiffs herein where many of them were elders as defined within California's Welfare & Institutions Code.

Id. Based on these findings, the court "adjudged and decreed that the remaining named [P]laintiffs... shall have judgment against defendant Robert E. Zuckerman based upon the plead causes of action for intentional misrepresentation, concealment (fraud), promises without intent to perform, breach of contract, conspiracy to defraud and elder abuse...." *Id.*

On top of other damages, the court also awarded Plaintiffs punitive damages. *Id.* As to punitive damages, the court stated:

The court finds by clear and convincing evidence that defendant Robert E. Zuckerman willfully, purposely, maliciously, intentionally, oppressively, maliciously and wrongfully engaged in fraudulent conduct including elder abuse under California Civil Code § 3294 as alleged in the Third Amended Complaint herein as to the intentional misrepresentation, concealment, promise without intent to perform and elder abuse... causes of action as to all [P]laintiffs in that the security for the [P]laintiffs' initial loans was purposefully way overvalued by Robert E. Zuckerman as part of a fraudulent joint venture. Defendant

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Robert E. Zuckerman never provided [P]laintiffs with any information as to where their loan monies went and the security for the loans on the Malibu land to be developed never had any improvements made by the defendant.

The court finds that Robert E. Zuckerman never had any intention to repay [P]laintiffs any part of their \$6,435,000.00 collective loan that the secured Malibu property for this loan never had any developments and could not be developed as represented by the defendant and that the conduct of the defendant named herein was reprehensible and severely damaged all the [P]laintiffs.

Id. The court concluded: "It is hereby adjudged and decreed that all named [P]laintiffs... shall have judgment against defendant Robert E. Zuckerman per their percentages of investment based upon the plead causes of action for intentional misrepresentation, concealment (fraud), promises without intent to perform, conspiracy to defraud and elder abuse... finding a fraudulent and deceitful joint venture involving Robert E. Zuckerman...."

C. The Adversary Proceeding

On May 4, 2018, Defendant filed a voluntary chapter 11 petition (now converted to a chapter 7 case). On July 20, 2018, Plaintiffs filed a complaint against Defendant, requesting nondischargeability of the debt owed to them pursuant to the Amended Judgment under 11 U.S.C. § 523(a)(2)(A).

On March 25, 2019, Plaintiffs filed a motion for summary judgment (the "MSJ") [doc. 50], asserting that the Amended Judgment precludes litigation of the issues in this adversary proceeding. On May 15, 2019, Defendant filed an opposition to the MSJ (the "Opposition") [doc. 74]. In the Opposition, Defendant argues that: (A) it is unclear from the Amended Judgment that the issue of fraud was "actually litigated" and that Defendant was denied a full and fair opportunity to litigate because Mr. Garcia "abandoned" him at trial; (B) Defendant was not present at trial because of his medical issues and because the matter had not been litigated within five years in accordance with §§ 583.310 and 583.360(a), and did not know that Mr. Garcia would withdraw as counsel; (C) the state court did not make express findings as to whether

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Defendant engaged in fraud and reached its decision based on the Admission Order and a cursory investigation of witnesses; (D) application of issue preclusion would violate public policy; and (E) summary judgment is inappropriate as to certain plaintiffs who dismissed their claims prior to entry of the Amended Judgment.

On May 22, 2019, Plaintiffs filed a reply to the Opposition [doc. 79]. Plaintiffs do not address Defendant's assertion that certain plaintiffs were dismissed prior to entry of the Amended Judgment. Instead, Plaintiffs object to the Request for Dismissal on the basis that the Request for Dismissal is not certified and Defendant has not provided evidence that the named plaintiffs were actually dismissed in response to the Request for Dismissal.

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. . . .

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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. 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:

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- (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)).

"The party asserting preclusion bears the burden of establishing the threshold requirements." *Id.*, 250 F.3d at 1245. "This means providing 'a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action.'" *Plyam*, 530 B.R. at 462 (quoting *In re Kelly*, 182 B.R. 255, 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*, 182 B.R. at 258.

a. Whether Issue Preclusion Applies

Defendant does not dispute that the fourth and fifth elements of issue preclusion are met; the Amended Judgment is final and on the merits, and the parties here are the same or in privity with the parties in the State Court Action. As to the first element, to the extent Defendant disputes that the issues are not identical, the elements of fraud under § 523(a)(2)(A) mirror the elements of fraud under California law. *In re Younie*, 211 B.R. 367, 373-74 (B.A.P. 9th Cir. 1997), *aff'd*, 163 F.3d 609 (9th Cir. 1998). Given that the state court explicitly stated in the Amended Judgment that Defendant is liable for fraud, this element is satisfied.

Defendant's main arguments relate to the second and third elements, i.e., whether the issues in this adversary proceeding were actually litigated and necessarily decided by the state court. Defendant contends that, because the state court did not make specific or express findings as to each element of § 523(a)(2)(A), these elements of issue preclusion are not met.

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The "express finding" requirement is generally considered when a court is deciding the preclusive effect of a default judgment. *See, e.g. Harmon*, 250 F.3d at 1248-49. The Amended Judgment is not a default judgment, and the Amended Judgment and the trial transcript demonstrate that the state court actually litigated Plaintiffs' fraud claims and necessarily decided the fraud issues by expressly holding that Defendant defrauded Plaintiffs.

Nevertheless, to the extent the facts in this case are analogous to a judgment obtained by default, the "express finding" requirement is met. In *Harmon*, the Ninth Circuit Court of Appeals held that even default judgments have preclusive effect unless: (A) the defendant is unaware of the litigation; and (B) it is not clear that the issues were necessarily decided. *Harmon*, 250 F.3d at 1247-48. For instance, "a court's silence concerning a pleaded allegation does not constitute adjudication of the issue." *Id.*, at 1247.

Here, there is no dispute that Defendant was aware of the State Court Action. As to whether the fraud issues were actually litigated, the court must either include "express findings" as to the issues, or "the express finding requirement can be waived if the court in the prior proceeding necessarily decided the issue...." *Id.* "As a conceptual matter, if an issue was necessarily decided in a prior proceeding, it was actually litigated." *Id.*

The Amended Judgment makes clear that the state court necessarily decided the fraud issues. In addition, although Defendant argues that the state court's findings are not clear enough on the issue, the state court repeatedly held that Defendant is liable for fraud. Amended Judgment, pp. 5-12 ("each were fraudulently represented... by the named defendant herein"); (Defendant "engaged in a joint venture to intentionally, purposefully and maliciously defraud each of the plaintiffs in this matter"); ("Robert E. Zuckerman... was the central figure in charge of this fraudulent land development scheme"); ("[P]laintiffs... shall have judgment against Robert E. Zuckerman based upon the plead causes of action for intentional misrepresentation, concealment (fraud), promises without intent to perform... conspiracy to defraud and elder abuse"); and ("Robert E. Zuckerman willfully, purposely, maliciously, intentionally, oppressively... and wrongfully engaged in fraudulent conduct... as alleged in the Third Amended Complaint herein as to the intentional misrepresentation, concealment, promise without intent to perform and elder abuse... causes of action").

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Because the state court necessarily decided each element of § 523(a)(2)(A) before entering a judgment of fraud against Defendant, under *Harmon*, the state court also actually litigated the fraud issues. Defendant's reference to *In re Tobin*, 258 B.R. 199 (B.A.P. 9th Cir. 2001), is inapposite; there, the prior judgment was against a different entity, and it was unclear if the state court found alter ego for purposes of imputing fraud onto the defendant. Here, the Amended Judgment is against Defendant and makes clear that Defendant was the only remaining defendant at the time of trial. Amended Judgment, p. 4.

Defendant further asserts that the state court used the Admission Order and a cursory examination of witnesses; in essence, Defendant argues that the state court did not do enough to reach its decision. However, the authorities do not require this Court to question *how* the state court reached its decision. That type of inquiry would amount to a collateral attack on the Amended Judgment. Similarly, Defendant's contention that the testimony from trial should not have led the state court to enter judgment against Defendant is irrelevant to whether the Amended Judgment precludes this Court's litigation of the issues. Once again, this Court may not question how or why the state court entered the Amended Judgment. 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments). Consequently, for the reasons noted above, the issues before this Court were necessarily decided and actually litigated in the State Court Action.

b. Whether Public Policy Prevents Application of Issue Preclusion

Defendant also asserts that applying issue preclusion in this case is against public policy because Defendant's attorney "abandoned" Defendant on the day of trial. "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*, at 1245). "[T]he California Supreme Court has identified three fundamental policies that support the application of issue preclusion in appropriate cases: 'preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation.'" *In re Bouzaglou*, 2018 WL 4062299, at *8 (B.A.P. 9th Cir. Aug. 13, 2018) (quoting *Lucido v. Superior Court*, 51 Cal.3d 335, 343 (1990)). "[U]nder *Lucido*, the trial court's decision to apply issue

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preclusion ultimately is a matter of discretion, which turns on whether its application is consistent with these policies." *Id.* (citing *Lucido*, 51 Cal.3d at 343-44).

Defendant has not provided a compelling policy reason to prevent application of issue preclusion. In fact, preserving the integrity of the judicial system requires the opposite conclusion. Both Defendant's declaration and the trial transcript reflect that Defendant was aware of Mr. Garcia's strategy at trial, i.e., to attempt to dismiss or postpone trial based on CCP §§ 583.310 and 583.360(a) and Defendant's health issues. The state court denied the request for dismissal and proceeded with the trial. Even if Defendant was unaware that Mr. Garcia would move to withdraw at the time, there was a risk that trial would proceed, yet Defendant decided not to appear. Disregarding a judgment on this basis would improperly encourage defendants not to appear at trial and subsequently to attack the judgment on the basis that they did not have an opportunity to litigate their defense.

Moreover, the integrity of the judicial system depends on federal courts giving full faith and credit to state court judgments. Here, the state court considered and rejected Defendant's argument regarding CCP §§ 583.310 and 583.360(a). The state court also was aware of Defendant's health issues and decided against postponing trial. Given that these facts were before the state court, Defendant cannot use these facts as a basis for preventing application of issue preclusion. The state court considered these arguments before electing to proceed with trial. Defendant could have requested relief from the Amended Judgment from the state court; Defendant did not. To the extent Defendant believes Mr. Garcia should have requested such relief or otherwise prosecuted the appeal of the Amended Judgment, Defendant may have a malpractice claim against Mr. Garcia.

Defendant's citation to *Daley v. Butte County*, 227 Cal.App.2d 380 (Ct. App. 1964), does not compel a different result. First, *Daley* involved a request to vacate an order dismissing a case for lack of prosecution presented to the same court that entered the dismissal order. *Daley*, 227 Cal.App.2d at 383-84. Unlike this proceeding, *Daley* did not involve the question of whether issue preclusion applies to a judgment entered by a different court. Because this Court did not enter the Amended Judgment, this Court does not have the power to vacate the Amended Judgment.

In addition, the California Supreme Court has held that the attorney abandonment

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theory set forth by *Daley* should be narrowly applied only where the record shows a "de facto severance of the attorney-client relationship." *Carroll v. Abbott Laboratories, Inc.*, 32 Cal.3d 892, 900-01 (1982). In *Daley*, the court found abandonment where the plaintiff's attorney delayed serving a necessary party, failed to appear at pretrial conferences, did not communicate with the plaintiff, opposing counsel or the court and did not file a substitution of counsel form after agreeing to withdraw. *Daley*, 227 Cal.App.2d at 387-88, 391-92. In addition, the plaintiff had attempted to contact the attorney between 12 and 15 times and could not reach him before the court dismissed the action for failure to prosecute. *Id.*, at 386. In contrast, Defendant acknowledges in his declaration that he knew about Mr. Garcia's strategy prior to trial.

Defendant's citation to *In Matter of Doran*, 1998 WL 283048 (Cal. Bar Ct. May 22, 1998), also is unavailing. *Doran* involved the State Bar Court of California disciplining an attorney for violating the Rules of Professional Conduct. The case is silent as to the preclusive effect of a judgment.

Judicial economy also mandates application of issue preclusion. Plaintiffs prosecuted the State Court Action to completion. It would be prejudicial to Plaintiffs to require them to retry the State Court Action before this Court. Further, because the issues presented in this adversary proceeding were already adjudicated by another court, it would be a waste of judicial resources to conduct a second trial. Finally, there is no indication in the record that litigants involved in this proceeding are harassing each other by vexatious litigation. As a result, the policy considerations set forth by the California Supreme Court mandate application of issue preclusion, and the Court will give the Amended Judgment preclusive effect.

C. *The Allegedly Dismissed Plaintiffs*

The Request for Dismissal reflects that Plaintiffs requested the dismissal of multiple plaintiffs prior to entry of the Judgment or the Amended Judgment. In their evidentiary objections to the Frey Declaration, Plaintiffs object to the inclusion of the Request for Dismissal on the basis that the Request for Dismissal is not a certified copy and that Defendant has not provided evidence that the court entered the dismissal. If Defendant supplements the record with evidence that these plaintiffs were dismissed from the State Court Action, or if Plaintiffs stipulate to the dismissal

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of these plaintiffs, the Court will not enter summary judgment as to the plaintiffs named in the Request for Dismissal.

III. CONCLUSION

The Court will enter summary judgment in favor of Plaintiffs in accordance with 11 U.S.C. § 523(a)(2)(A). However, the Court will continue the hearing to **2:30 p.m. on July 17, 2019**, to allow Defendant to supplement the record as to the dismissal of certain Plaintiffs.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations is set forth below:

Plaintiffs' Evidentiary Objections to the Declaration of Robert Edward Zuckerman
paras. 3-4, 10: overrule
paras. 5-9: sustain
exs. A-B: overrule

Plaintiffs' Evidentiary Objections to the Declaration of Sandford L. Frey
paras. 3-5: overrule
ex. A: overrule

Plaintiffs' Evidentiary Objections to the Declaration of Dr. John Chaves
paras. 3-4: sustain

FOOTNOTES

1. Mr. Garcia's testimony during the state court trial may be admitted as non-hearsay under Federal Rule of Evidence ("FRE") 801(d)(2)(C) and (d)(2)(D) (statements "made by a person whom the party authorized to make a statement on the subject" and "made by a party's agent or employee on a matter within the scope of that relationship and while it existed"); *see also In re Bay Area Material Handling, Inc.*, 76 F.3d 384 (9th Cir. 1996) ("Courts have interpreted both [FRE 801(d)(2)(C) and FRE 801(d)(2)(D)] to include statements by attorneys."); *and In re Younie*, 211 B.R. 367, 376 (B.A.P. 9th Cir. 1997) (holding attorneys may be the agent of a client for purposes of FRE 801(d)(2)(D)).

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Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey

Plaintiff(s):

Katherine Mann

Represented By
Edward McCutchan

Jim Nord (Mein Trust)

Represented By
Edward McCutchan

Evelina Dale Peritore

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

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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
Edward McCutchan

Nansi Weil Represented By
Edward McCutchan

Matthew Zdanek Represented By
Edward McCutchan

Frederick Mann Represented By
Edward McCutchan

Vito Lovero Represented By
Edward McCutchan

Lillian Lapham Represented By
Edward McCutchan

Edward Keane Represented By
Edward McCutchan

Edward P Albini Represented By
Edward McCutchan

Patricia Barnes Represented By
Edward McCutchan

Ken Bowerman Represented By

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	Edward McCutchan
Chris Bowerman	Represented By Edward McCutchan
Henry P Crigler	Represented By Edward McCutchan
Henry Crigler	Pro Se
K Owyong 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
Bill Hing	Represented By Edward McCutchan
Vern Fung	Represented By Edward McCutchan
Gary Holbrook	Represented By Edward McCutchan
Jim Nord (Patrick Family Trust)	Represented By

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Trustee(s):

Diane C Weil (TR)

Pro Se

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Adv#: 1:18-01086 Abel v. Zuckerman et al

#21.00 Motion to dismiss Richard Abel's March 27, 2019 second amended complaint's re first and second claims for declaratory relief against defendants

Docket 82

Judge:

- NONE LISTED -

Tentative Ruling:

On March 18, 2019, the Court entered an order converting the debtor's chapter 11 case to one under chapter 7 [1:18-bk-11150-VK, doc. 129]. Subsequently, David Seror was appointed chapter 7 trustee in the debtor's case. On March 22, 2019, Mr. Seror filed a withdrawal of appointment as chapter 7 trustee because of a conflict [1:18-bk-11150-VK, doc. 134]. On April 9, 2019, Diane C. Weil (the "Trustee") was appointed chapter 7 trustee in the debtor's case [[1:18-bk-11150-VK, doc. 138].

On March 27, 2019, Richard Abel ("Plaintiff") filed a second amended complaint ("SAC") in this adversary proceeding [doc. 75]. The defendants identified in the SAC are: (1) Robert Zuckerman, as an individual and debtor in possession; (2) Continental Communities, LLC; (3) Valley Circle Estates Realty Co.; (4) Zuckerman Building Company; (5) Continental San Jacinto, LLC; (6) San Jacinto Z, LLC; (7) Rezinate San Jacinto, LLC; (8) Maravilla Center, LLC; (9) Pheonix Holdings, LLC; (10) Sunderland/McCutchan, Inc.; (11) Sunderland/McCutchan LLP; (12) B. Edward McCutchan Jr.; and (13) Nikki B. Allen.

When the SAC was filed, the Trustee had not yet been appointed as chapter 7 trustee. The Trustee, as the chapter 7 trustee, has not been properly served and apprised of this litigation.

In the SAC, Plaintiff requests declaratory relief regarding: (1) preferential transfers the Trustee may recover on behalf of the estate and (2) other property of the bankruptcy estate. Until the Trustee has been named, in that capacity, as a defendant, and properly

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served with the SAC, Plaintiff cannot properly pursue these causes of action.

Accordingly, the Court will continue this hearing to **August 28, 2019 at 2:30 p.m. No later than June 14, 2019**, Plaintiff must amend the SAC to add the Trustee, in that capacity, as a defendant, and promptly and timely thereafter, serve a summons and the amended SAC on the Trustee. The summons must be served upon the Trustee within 14 days of its issuance by the Court, pursuant to Fed. R. Bankr. P. 7004 and Local Bankr. R. 7004-1(b).

Appearances on June 5, 2019 are excused.

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

B. Edward McCutchan Jr. an

Represented By
Edward McCutchan

Sunderland/McCutchan LLP, a

Represented By
Edward McCutchan

Phoenix Holdings, LLC a California

Pro Se

DOES 1-20

Pro Se

Nickki B Allen, an individual

Pro Se

Sunderland/McCutchan, Inc., a

Represented By
Edward McCutchan

Maravilla Center, LLC, a California

Pro Se

San Jacinto Z, LLC, a California

Pro Se

Contiental San Jacinto, LLC, a

Pro Se

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Zuckerman Building Company, a Pro Se

Valley Circle Estates Realty Co., a Pro Se

Continental Communities, LLC, a Pro Se

Robert Edward Zuckerman Represented By
Sandford L. Frey

Rezinate San Jacinto, LLC, a Pro Se

Plaintiff(s):

Richard Abel Pro Se

Trustee(s):

Diane C Weil (TR) Pro Se

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Chapter 11

Adv#: 1:18-01086 Abel v. Zuckerman et al

- #22.00** Status conference re: second amended complaint for:
- 1) Declaratory relief re: determination of validity, priority or extent of interest in property
 - 2) Declaratory 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) Nondischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)(A)
 - 5) Nondischargeability of debt pursuant to 11 U.S.C. 523(a)(2)(B) [28 U.S.C. sec 157(b)(2); FRBP., R. 7001]

fr. 11/14/18 (stip); 1/9/2019; 2/20/19; 3/13/19; 5/8/19

Docket 11

Judge:

Tentative Ruling:

In light of the Court's ruling in calendar no. 21, the Court will continue this status conference to **August 28, 2019 at 2:30 p.m.**, to be held in connection with the continued hearing on the motion to dismiss.

Appearances on June 5, 2019 are excused.

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

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

Wednesday, June 5, 2019

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman Chapter 11

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

Tuesday, June 11, 2019

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 11, 2019

Hearing Room 301

10:30 AM

1:13-16852 Manuel Luque Araujo and Claudia Lorena Araujo

Chapter 13

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

Docket 73

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Luque Araujo	Pro Se
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Joint Debtor(s):

Claudia Lorena Araujo	Pro Se
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Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 11, 2019

Hearing Room 301

10:30 AM

1:15-14067 Brian Igbini

Chapter 13

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

Docket 70

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Igbini

Represented By

Anthony Obehi Egbase

Crystle Jane Lindsey

Edie 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 11, 2019

Hearing Room 301

10:30 AM

1:16-13190 JeanPaul Reneaux

Chapter 13

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

fr. 3/12/19; 4/9/19

Docket 78

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**

Tuesday, June 11, 2019

Hearing Room 301

10:30 AM

1:16-13657 Mary Elizabeth Grant

Chapter 13

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

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Elizabeth Grant

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, June 11, 2019

Hearing Room 301

10:30 AM

1:17-10038 Oganesh Pashayan and Anahit Pashayan

Chapter 13

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

Docket 51

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**

Tuesday, June 11, 2019

Hearing Room 301

10:30 AM

1:17-10158 Bryan David Blair

Chapter 13

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

fr. 4/9/19

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

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**

Tuesday, June 11, 2019

Hearing Room 301

10:30 AM

1:17-10880 LaFaye Francisco

Chapter 13

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

Docket 63

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**

Tuesday, June 11, 2019

Hearing Room 301

10:30 AM

1:17-13189 Ulysses Juarez

Chapter 13

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

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ulysses Juarez

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, June 11, 2019

Hearing Room 301

10:30 AM

1:17-13276 Maria De Jesus Vazquez

Chapter 13

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

fr. 5/14/19

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria De Jesus Vazquez

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, June 11, 2019

Hearing Room 301

10:30 AM

1:18-10264 Joe Lopez, Jr.

Chapter 13

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

Docket 49

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, June 11, 2019

Hearing Room 301

10:30 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

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

fr. 4/9/19

Docket 90

Tentative Ruling:

- NONE LISTED -

Party Information

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 11, 2019

Hearing Room 301

10:30 AM

1:18-10661 Andres Salcedo, Jr.

Chapter 13

#51.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 3/12/19; 05/14/19;

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

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, June 11, 2019

Hearing Room 301

10:30 AM

1:18-11667 Christopher Michael Niblett

Chapter 13

#52.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 5/14/19

Docket 51

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Michael Niblett

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, June 11, 2019

Hearing Room 301

11:00 AM

1:14-11489 Raymundo I Ramos

Chapter 13

#53.00 Motion re: objection of U.S. Trustee to notice of mortgage payment change filed in connection with proof of claim 3

fr. 3/12/19; 5/14/19

Stip to continue filed

Docket 51

***** VACATED *** REASON: Order approving stip entered 5/23/19.
Hearing continued to 7/2/19 at 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raymundo I Ramos

Represented By
Richard A Loa

Trustee(s):

Elizabeth (SV) 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 11, 2019

Hearing Room 301

11:00 AM

1:16-13190 JeanPaul Reneaux

Chapter 13

#54.00 Motion re: objection to claim number 2 by claimant Wells Fargo Bank, N.A., et al. c/o Carrington Mortgage Services, LLC.

fr. 12/11/18; 2/12/19; 3/12/19(stip); 4/9/19

Docket 66

***** VACATED *** REASON: Voluntary dismissal of motion filed 6/5/19.**

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**

Tuesday, June 11, 2019

Hearing Room 301

11:00 AM

1:17-13413 Mark Efreem Rosenberg

Chapter 13

#55.00 Application for compensation for debtor's attorney,
period: 8/1/18 to 1/18/19, fee: \$7,880.00, expenses: \$90.96.

fr. 3/12/19; 4/9/19; 5/14/19;

Docket 107

Tentative Ruling:

On January 18, 2019, Richard Mark Garber (“Applicant”) filed an application for additional fees and related expenses in a pending chapter 13 case subject to a Rights and Responsibilities Agreement (the “Application”) [doc. 107]. The Court previously awarded Applicant \$6,696.26 in additional fees and expenses in connection with his services in this case [doc. 73]. On January 29, 2019, Trinity Financial Services, LLC (“Trinity”) filed an opposition to the Application (the “Opposition”) [doc. 108].

Applicant, counsel for the debtor – approve fees of \$7,080.00 and reimbursement of expenses of \$90.96. The Court has not awarded \$800.00 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). "[T]he 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). Except in a "chapter 13 case in which the debtor is an individual, the court may allow reasonable

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

Tuesday, June 11, 2019

Hearing Room 301

11:00 AM

CONT... Mark Efreem Rosenberg

Chapter 13

compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section." 11 U.S.C. § 330(4)(B).

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 accordance with the foregoing, the Court will disallow the following fees for the reasons discussed below:

On November 2, 2018, Applicant incurred the following fees:

Description	Hours	Rate	Amount
Reply of Debtor to the Objection of Trinity to Debtor's plan confirmation	3.00	\$400.00	\$1,200.00

On September 13, 2018, the debtor filed a reply to the plan confirmation objections of the chapter 13 trustee and Trinity [doc.79]. On November 2, 2018, the debtor filed another reply to the plan confirmation objections of the chapter 13 trustee and Trinity [doc. 86]. The two replies are substantially similar, including large portions of the exact same language. Many of the arguments made in the November 2, 2018 reply were also made in the September 13, 2018 reply, and no new authorities were cited in the November 2, 2018 reply. In light of the foregoing, the Court finds that \$1,200.00 in fees incurred for this reply is excessive and unreasonable. Such fees will be reduced to \$400.00.

On January 17, 2019, Applicant incurred the following fees:

Description	Hours	Rate	Amount
Draft of Memorandum of Points & Authorities in Support of Debtor's 3 rd Amended Plan; Declaration of Richard Garber	2.3	\$400.00	\$920.00

On January 18, 2019, the debtor filed a memorandum of points and authorities in support of the debtor's third amended plan [doc. 106]. It was filed the same day as the debtor's third amended chapter 13 plan [doc. 105]. Trinity argues that it was unnecessary for Applicant to incur fees drafting this memorandum, as no opposition to the third amended chapter 13 plan had been filed. However, Trinity subsequently filed an opposition to the third amended plan [doc. 110], and Applicant then filed a

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

Tuesday, June 11, 2019

Hearing Room 301

11:00 AM

CONT... Mark Efreem Rosenberg

Chapter 13

reply to that opposition [doc. 113]. Applicant has not billed the estate for the preparation of that reply. Accordingly, it appears that the fees incurred to prepare the memorandum filed with the third amended plan were reasonable and necessary to the administration of the case.

On September 10, 2018, Applicant incurred \$1,200.00 in fees researching the permissibility of the debtor's parochial school expense, charitable contributions and day care expenses and the debtor's commitment period. In the Opposition, Trinity argues that the Court should disallow these fees because the research was not necessary to the administration of the case or reasonably likely to benefit the estate. Specifically, Trinity contends that: (1) the Court sustained Trinity's objection as to the parochial school expense; (2) Applicant's research resulted in non-binding pre-BAPCPA cases; and (3) Applicant should have researched the issues before filing the original chapter 13 plan.

Applicant represents that he did not charge for an additional three hours that he spent researching disputed issues involved in this case. Neither side presented, nor could the Court find binding precedent in the Ninth Circuit regarding these issues. Further, before the debtor filed his original chapter 13 plan, Applicant did not know whether Trinity and the chapter 13 trustee would object to confirmation of the chapter 13 plan. The Court finds that \$1,200.00 in fees researching the disputed issues involved in this case is reasonable and was necessary to the administration of the case.

On September 13, 2018, Applicant incurred \$1,800.00 in fees drafting a reply to the objections to confirmation of the chapter 13 trustee and Trinity, and \$200.00 in fees drafting a declaration of Rabbi Eidlitz regarding the importance of attending a religious Jewish day school. In the Opposition, Trinity argues that the Court should disallow these fees because, among other things, they were a continuation of the September 10, 2018 research.

Contrary to Trinity's position, it appears that this brief and declaration were necessary to the administration of the case and benefitted the estate. The Court carefully considered the debtor's arguments and Applicant's research in making its decision

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

Tuesday, June 11, 2019

Hearing Room 301

11:00 AM

CONT... Mark Efreem Rosenberg

Chapter 13

regarding Trinity's and the chapter 13 trustee objections to plan confirmation. The Court also considered the rabbi's declaration about the importance of parochial school. The reply is 36 pages. It does not appear that 4.5 hours is an unreasonable amount of time to draft a 36-page document. Further, Applicant represents that he has not charged for 1.5 additional hours that he spent drafting the reply.

On November 9, 2018, Applicant incurred \$800.00 in fees drafting a response to Trinity's motion for a Federal Rule of Bankruptcy Procedure ("Rule") 2004 examination. In the Opposition, Trinity argues that the Court should disallow these fees because Applicant provided the requested documents to Trinity and Trinity withdrew the motion.

In the Rule 2004 examination motion, Trinity requested that the debtor appear for oral examination and produce his state and federal income tax returns for 2015, 2016 and 2017, the state and federal income tax returns for his business for 2015, 2016 and 2017, his three most recent paystubs and his three most recent bank statements. After the debtor filed the response and provided Trinity with his 2017 corporate tax returns, Trinity withdrew the Rule 2004 examination motion. If the debtor would have had to appear for a Rule 2004 examination and produce the entirety of the requested documents, it would have cost the estate much more than filing the response. It appears that these fees were reasonable and likely benefitted the debtor's estate.

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

Party Information

Debtor(s):

Mark Efreem Rosenberg

Represented By
Richard Mark Garber

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

Tuesday, June 11, 2019

Hearing Room 301

11:00 AM

CONT... Mark Efrem Rosenberg

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 11, 2019

Hearing Room 301

11:00 AM

1:18-12467 Colin Basil MacLean

Chapter 13

#56.00 Debtor's first amended motion for order disallowing claim filed by Cach LLC (claim no. 2)

fr. 4/9/19

Docket 45

Tentative Ruling:

Objection sustained.

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):

Colin Basil MacLean

Represented By
William E. Winfield

Trustee(s):

Elizabeth (SV) 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 11, 2019

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#57.00 Creditor H. Samuel Hopper's objection to debtor's claim of exemptions to property

Docket 0

Tentative Ruling:

At a hearing held on May 14, 2019, the parties stipulated on the record to continue this hearing to July 2, 2019. Accordingly, the Court will continue this hearing to July 2, 2019 at 11:00 a.m.

Appearances on June 11, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) 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 11, 2019

Hearing Room 301

11:00 AM

1:19-10517 Edwin Rolando Perez Mendez

Chapter 13

#58.00 Motion re: objection to claim filed by Motor Credit Company, LLC to disallow pursuant to 11 U.S.C. sec 502(B)(1)

Docket 31

Tentative Ruling:

Deny as moot.

On May 6, 2019, the debtor filed an objection (the "Objection") to proof of claim 2-1 filed by Ford Motor Credit Company LLC ("Claimant") [doc. 31]. In its proof of claim 2-1, Claimant asserted a claim in the amount of \$28,021.27 (the "Claim"), secured by the debtor's 2018 Ford Focus (the "Vehicle"). Claimant also indicated that on the petition date, the debtor owed \$1,631.23 in arrears. In the Objection, the debtor states that the Vehicle was repossessed on March 4, 2019 [Declaration of Edwin Rolando Perez Mendez, ¶ 5]. The debtor seeks disallowance of the Claim on the grounds that Claimant no longer holds a secured claim.

On May 17, 2019, Claimant filed amended proof of claim 2-2 (the "Amended Claim"). The Amended Claim indicates that Claimant holds a nonpriority unsecured claim in the amount of \$13,808.31. In light of the Amended Claim, the Court will deny the Objection as moot.

The debtor 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):

Edwin Rolando Perez Mendez

Represented By
Lionel E Giron
Crystle Jane Lindsey

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

Tuesday, June 11, 2019

Hearing Room 301

11:00 AM

CONT... Edwin Rolando Perez 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**

Tuesday, June 11, 2019

Hearing Room 301

11:00 AM

1:19-10613 Qadir Gilani Mohiuddin

Chapter 13

#59.00 Motion to commence loan modification management program

Docket 16

Tentative Ruling:

Grant.

On May 6, 2019, the debtor filed a motion (the "Motion") [doc. 16] to commence the loan modification management program ("LMM") with Wells Fargo Home Mortgage ("Wells Fargo") as the secured creditor. On May 20, 2019, Wells Fargo filed an opposition to the Motion (the "Opposition") [doc. 16], arguing that the Court should deny the Motion because the loan was previously reviewed for a loan modification within the last 60 days and was denied.

On May 28, 2019, the debtor filed a reply to the Opposition (the "Reply") [doc. 22], arguing that the debtor would like to enter into the LMM to ensure that Wells Fargo fairly assesses the debtor's loan for a modification agreement and to ensure that Wells Fargo has considered all programs for which the debtor may be eligible.

Although the debtor previously was denied a loan modification, the Court agrees that it is worthwhile to participate in the LMM. The cost of the program for Wells Fargo is relatively small, and during the LMM period, the debtor must make deed of trust payments to Wells Fargo in the amount of \$2,664.53 per month. Accordingly, the Court will grant the Motion.

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Qadir Gilani Mohiuddin

Represented By
Michael E Clark

Trustee(s):

Elizabeth (SV) 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 11, 2019

Hearing Room 301

11:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

#60.00 Debtor's motion for order determining value of collateral

Docket 45

Tentative Ruling:

Grant relief to bifurcate lienholder's claim subject to completion of chapter 13 plan. The claim of this lienholder, Santander Consumer USA Inc., in the amount of \$14,500.00 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.

Party Information

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, June 12, 2019

Hearing Room 301

9:30 AM

1:13-12950 Katherine Marie Lake

Chapter 13

#1.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

fr. 5/8/19

Docket 89

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Katherine Marie Lake

Represented By
Kevin T Simon

Movant(s):

DEUTSCHE BANK NATIONAL

Represented By
April Harriott
Sean C Ferry
Eric P Enciso

Trustee(s):

Elizabeth (SV) 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 12, 2019

Hearing Room 301

9:30 AM

1:18-12178 Jose Espino

Chapter 13

#2.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY FSB
VS
DEBTOR

fr. 4/10/19; 5/8/19

Stipulation resolving motion filed 6/3/19

Docket 45

***** VACATED *** REASON: Order entered on 6/3/19 approving the stipulation resolving the motion [doc. 53].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Espino

Represented By
Lionel E Giron

Movant(s):

Wilmington Savings Fund Society,

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, June 12, 2019

Hearing Room 301

9:30 AM

1:18-12719 Patrick Daniel McNulty

Chapter 13

#3.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 5/8/19

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patrick Daniel McNulty

Represented By
Kevin T Simon

Movant(s):

JPMORGAN CHASE BANK, NA

Represented By
Lynda D Marshall
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, June 12, 2019

Hearing Room 301

9:30 AM

1:18-11729 Richard Philip Dages

Chapter 11

#4.00 Motion for relief from stay [UD]

THE REAL ESTATE PLACE INC., A CA CORP
VS
DEBTOR

fr. 4/10/19; 5/8/19

Docket 66

Tentative Ruling:

Deny.

At the prior hearing on May 8, 2019, the Court ordered movant to file a reply to the debtor's response [doc. 68] addressing, among other things, cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) and the applicability of California Civil Procedure Code ("CCP") § 1161b by June 5, 2019. On June 5, 2019, movant filed a reply addressing 11 U.S.C. § 362(d)(1) and (d)(2). However, movant did not address CCP § 1161b. Consequently, the Court will deny the motion.

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

Tentative Ruling from May 8, 2019

Deny.

At the prior hearing on this motion, the Court ordered the movant to serve the motion and notice of the continued hearing and the deadline to file a written response on the 20 largest unsecured creditors by April 17, 2019. The movant did not timely serve the motion or the continued hearing on those creditors.

The Court also ordered the movant to file a response to the debtor's opposition addressing, among other things, cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) and the applicability of California Civil Procedure Code § 1161b by April 24, 2019. The movant did not timely file a response. Accordingly,

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CONT... **Richard Philip Dages**
the Court will deny the motion.

Chapter 11

The debtor must submit the order within seven (7) days.

April 10, 2019 Ruling

Unless an appearance is made at the hearing on April 10, 2019, the hearing is continued to May 8, 2019 at 9:30 a.m., and movant must cure the deficiencies noted below on or before April 17, 2019.

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.

On March 27, 2019, the debtor filed a response to the motion for relief from the automatic stay [doc. 68]. **By no later than April 24, 2019**, the movant must file a reply to that response addressing, among other things, cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) and the applicability of California Civil Procedure Code § 1161b.

Appearances on April 10, 2019 are excused.

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

Movant(s):

The Real Estate Plaza, Inc., A Ca

Represented By
Paul E Gold

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9:30 AM

1:18-13023 Hekmatjah Family Limited Partnership

Chapter 11

#5.00 Motion for relief from stay [AN]

MOURIS AHDOUT
VS
DEBTOR

fr. 3/6/19 (stip); 4/10/19 (stip); 5/8/19(stip)

Docket 22

Tentative Ruling:

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

"[T]he automatic stay does not stay actions against property that is not property of the estate. *In re Brittain*, 435 B.R. 318, 321 (Bankr. D. S.C. 2010). "While federal law creates the bankruptcy estate, the determination of property rights is controlled by state law." *Id.* at 321-22. Under California law, "a member in a limited liability company does not hold any interest in the real property owned by the limited liability company." *Fashion Valley Mall, LLC v. County of San Diego*, 176 Cal.App.4th 871, 886 (2009). "Instead, a member possesses a personal property interest in its limited liability company interest." *Id.*; *see also* Cal. Corp. Code § 17300.

Here, Debtor does not hold any interest in the condominium building owned by 9315 Alcott LLC. Rather, Debtor holds a personal property interest in 9315 Alcott LLC. Accordingly, the condominium building is not property of Debtor's bankruptcy estate, and the automatic stay does not apply to the condominium building.

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. To the extent insurance coverage exists for movant's claim, movant may proceed against applicable insurance.

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

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

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CONT... Hekmatjah Family Limited Partnership

Chapter 11

Party Information

Debtor(s):

Hekmatjah Family Limited

Represented By
Stella A Havkin

Movant(s):

Mouris Ahdout

Represented By
Susan I Montgomery

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9:30 AM

1:19-10051 Rockin Artwork, LLC

Chapter 7

#6.00 Motion for relief from stay [UD]

20720 VENTURA, LLC
VS
DEBTOR

Docket 119

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.

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):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

Trustee(s):

Heide Kurtz (TR)

Represented By

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CONT...

Rockin Artwork, LLC

Lei Lei Wang Ekvall

Chapter 7

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9:30 AM

1:19-10472 Frederick James Cleere

Chapter 7

#7.00 Motion for relief from stay [PP]

WESCOM CREDIT UNION
VS
DEBTOR

Docket 12

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):

Frederick James Cleere	Pro Se
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Trustee(s):

Nancy J Zamora (TR)	Pro Se
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9:30 AM

1:18-11432 Anusha Gerard Silva

Chapter 7

#8.00 Motion for relief from stay [RP]

TIAA, FSB DBA TIAA BANK F.K.A. EVERBANK
VS
DEBTOR

Docket 31

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):

Anusha Gerard Silva

Represented By
Henrik Mosesi

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CONT... Anusha Gerard Silva

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:19-11058 Ramona R Carrasco

Chapter 7

#9.00 Motion for relief from stay [RP]

HOME POINT FINANCIAL CORPORATION
VS
DEBTOR

Docket 18

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):

Ramona R Carrasco

Represented By
Alfred O Anyia

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CONT... Ramona R Carrasco

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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9:30 AM

1:19-11103 Susana Ravina

Chapter 7

#10.00 Motion for relief from stay [RP]

VILLAGE PARK CONDOMINIUMS
VS
DEBTOR

Docket 11

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

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CONT... Susana Ravina

Chapter 7

Debtor(s):

Susana Ravina

Pro Se

Trustee(s):

Diane C Weil (TR)

Pro Se

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Wednesday, June 12, 2019

Hearing Room 301

9:30 AM

1:19-11196 David Fox

Chapter 13

#11.00 Motion for relief from stay [UD]

PMI CIELO, LLC
VS
DEBTOR

Docket 7

*** VACATED *** REASON: Debtor dismissed on 6/3/19. The motion is moot.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Fox Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR) Pro Se

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9:30 AM

1:18-13020 Alfred Anthony Guerrero, Jr. and Marivel Maria Rodriguez

Chapter 13

#12.00 Motion for relief from stay [PP]

FIRST CITY CREDIT UNION
VS
DEBTOR

Docket 27

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):

Alfred Anthony Guerrero Jr.

Represented By
Daniel King

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CONT... Alfred Anthony Guerrero, Jr. and Marivel Maria Rodriguez

Chapter 13

Joint Debtor(s):

Marivel Maria Rodriguez

Represented By
Daniel King

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

#13.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 97

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mitchell S. Cohen

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:18-11288 Neli Maria Negrea

Chapter 13

#14.00 Motion for relief from stay [RP]

BANK OF AMERICA, N.A.
VS
DEBTOR

Stip re: adequate protection filed 5/24/19

Docket 78

*** VACATED *** REASON: Order approving stipulation entered on
5/28/19 [doc. 82].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Neli Maria Negrea

Represented By
Stella A Havkin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:19-11149 Orlando Rivas Huete, Sr.

Chapter 13

#15.00 Motion in individual case for order confirming termination of stay under 11 U.S.C. 362(j) or that no stay is in effect under 11 U.S.C. 362(c)(4)(A)(ii) .

Docket 13

Tentative Ruling:

Grant with 4001(a)(3) waiver and confirmation that no stay is in effect. 11 U.S.C. § 362(c)(4)(A)(i) and (ii). The debtor, an individual, has had two cases pending and dismissed within a year prior to the commencement of this case, other than a case refiled under 11 U.S.C. § 707(b), and the Court is denying the debtor's motion requesting imposition of the stay. *See* calendar no. 16.

Movant to submit 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):

Orlando Rivas Huete Sr.

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-11149 Orlando Rivas Huete, Sr.

Chapter 13

#16.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 14

Tentative Ruling:

For the reasons discussed below, the Court will deny the motion.

The Debtor's Prior Cases

The First Case

On June 22, 2009, Orlando Rivas Huete, Sr. (the "Debtor") filed a voluntary chapter 13 petition, commencing case no. 1:09-bk-17660-GM (the "First Case"). On the same day, the Debtor filed a chapter 13 plan which proposed to pay \$60,000 in arrears to the holder of the first deed of trust on the Debtor's residence [The First Case, doc. 4]. On August 20, 2009, the Court entered an order dismissing the First Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 13.

The Second Case

On August 23, 2013, the Debtor filed a voluntary chapter 13 petition, commencing case no. 1:13-bk-15561-AA (the "Second Case"). On September 6, 2013, the Debtor filed a chapter 13 plan, which proposed to pay \$10,408.47 in arrears to the holder of the first deed of trust on the Debtor's residence [The Second Case, doc. 7]. On December 9, 2019, the Court entered an order dismissing the Second Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 13.

The Third Case

On January 27, 2014, the Debtor filed another voluntary chapter 13 petition, commencing case no. 1:14-bk-10400-MT (the "Third Case"). On February 10, 2014, the Debtor filed a chapter 13 plan, which proposed to pay \$11,012.20 in arrears to the holder of the first deed of trust on the Debtor's residence and \$22,187.55 in arrears to the homeowner's association (the "HOA") on the Debtor's residence [The Third Case,

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Chapter 13

doc. 10]. On March 31, 2014, the Court entered an order dismissing the Third Case because the Debtor failed to make the required chapter 13 payments. *Id.* at doc. 19.

The Fourth Case

On June 6, 2018, the Debtor filed another voluntary chapter 13 petition, commencing case no. 1:18-bk-11444-VK (the “Fourth Case”). On June 20, 2018, the Debtor filed a chapter 13 plan, which proposed to pay \$20,000.00 in arrears to the holder of the first deed of trust on the Debtor’s residence and \$45,517.00 in claims to the HOA [The Fourth Case, doc. 12].

On August 24, 2018, the holder of the first deed of trust on the Debtor’s residence filed a motion for relief from the automatic stay (the “RFS Motion”). *Id.* at doc. 20. The hearing on the RFS Motion was continued to October 17, 2018. *Id.* at doc. 26.

On October 9, 2018, the Court entered an order dismissing the Fourth Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 30. Subsequently, the Court dismissed the RFS as moot. *Id.* at doc. 40.

The Fifth Case

On November 9, 2018, the Debtor filed another voluntary chapter 13 petition, commencing case no. 1:18-bk-12738-MT (the “Fifth Case”). In his schedules, the Debtor disclosed monthly income in the amount of \$6,871.00 and monthly expenses in the amount of \$5,259.27, leaving net monthly income of \$1,611.73 [The Fifth Case, doc. 19].

On November 21, 2018, the Debtor filed a chapter 13 plan, which proposed to pay \$29,100.00 in arrears to the holder of the first deed of trust on the Debtor’s residence and \$48,316.56 in claims to the HOA. *Id.* at doc. 22. The Debtor’s proposed plan payment was \$1,609.00 per month for sixty months. The proposed plan was a 0% plan.

On November 14, 2018, the Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 as to all creditors (the “Motion to Continue”). *Id.* at doc. 9. In the Motion to Continue, the Debtor stated the Fourth Case was dismissed because he was delinquent on his chapter 13 plan payments. The Debtor stated that he had to

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Chapter 13

consistently travel out of the country for his employment, and that he was not organized to ensure that his payments were being made timely. The Debtor also stated that his income was inconsistent. The Debtor represented that since the dismissal of the Fourth Case, he had organized the times that he would be traveling out of the country to ensure that his plan payments were made timely and that his income was more consistent.

On December 10, 2018, the Court entered an order granting the Motion to Continue on an interim basis and continuing the hearing. *Id.* at doc. 26. On February 19, 2019, the Court entered an order granting the Motion to Continue. *Id.* at doc. 35.

On March 12, 2019, the Court entered an order dismissing the Fifth Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 38.

The Debtor's Pending Case

On May 8, 2019, the Debtor filed another voluntary chapter 13 petition, commencing the pending case. In his pending case, the Debtor's monthly income is \$7,305.00 [FN1] and his monthly expenses are \$5,471.02, leaving net monthly income of \$1,833.98 [doc. 1]. In his schedule I, the Debtor indicated that he did not expect an increase in income within the year after filing.

On April 8, 2019, the Debtor filed a chapter 13 plan, which proposes to pay \$40,582.29 in arrears to the holder of the first deed of trust on the Debtor's residence and \$46,945.00 in arrears to the HOA [doc. 2]. The Debtor's proposed plan payment is \$1,000.00 per month for months 1 thru 12, then \$2,043.98 per month for months 13 thru 60. The proposed plan is a 0% plan.

On May 22, 2019, the holder of the first deed of trust on the Debtor's residence filed an opposition to confirmation of the Debtor's chapter 13 plan, arguing among other things, that the Debtor's plan is not feasible and that the Debtor filed the pending case in bad faith. *Id.* at doc. 17.

On May 23, 2019, the holder of the first deed of trust on the Debtor's residence filed a motion for relief from the automatic stay as to the Debtor's residence (the 'RFS Motion') [doc. 18]. In the RFS Motion, the holder of the first deed of trust on the Debtor's residence requests 11 U.S.C. § 362(d)(4) relief. The hearing on the RFS

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Chapter 13

Motion is set for June 19, 2019.

On May 17, 2019, the Debtor filed the pending motion to impose the automatic stay under 11 U.S.C. § 362 (the "Motion") [doc. 14]. Through the Motion, the Debtor seeks to impose the automatic stay as to all creditors. In the Motion, the Debtor states that the Fifth Case was dismissed because his prior bankruptcy attorney did not inform him of where to tender his post-petition mortgage payments and did not tell him the amount of his chapter 13 plan payment until 30 minutes prior to the § 341(a) meeting of creditors. The Debtor states that he has retained new counsel, who has explained the bankruptcy procedures and amount of his chapter 13 plan payment. The Debtor also states that he is receiving \$1,900.00 monthly in income from family contributions.

Discussion

Under 11 U.S.C. § 362(c)(4)(B), in order to impose the automatic stay in a case filed within one year of two or more cases which were pending within the same year but were 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)(4)(D)(i), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary) as to all creditors if--

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period; [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 this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed. . . .

Notwithstanding the assertions in the Motion and the lack of an opposition to the motion, Debtor has not provided at this time clear and convincing evidence that his financial affairs have improved since the Fifth Case, such that the pending chapter 13

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Chapter 13

case will result in a confirmed plan that will be fully performed. This is the Debtor's sixth chapter 13 case. Despite five prior chapter 13 filings, the Debtor has yet to complete the chapter 13 process successfully and to obtain a discharge. Further, the Debtor has continued to be delinquent on his deed of trust payments for loans secured by the Debtor's residence and on his monthly payments to the HOA.

Moreover, the Debtor's proposed chapter 13 plan does not appear feasible. The Debtor has provided no evidence that he has sufficient net monthly income to fund the step-up in his proposed chapter 13 plan. Additionally, the Debtor has not provided evidence of his family's ability to contribute \$1,900.00 per month to the Debtor. Without that contribution, Debtor will not be able to afford his proposed plan payment. Further, the holder of the first deed of trust on the Debtor's residence has filed an objection to the Debtor's proposed chapter 13 plan and the RFS Motion, which requests 11 U.S.C. § 362(d)(4) relief.

In light of the foregoing, the Court will deny the Motion.

The Court will prepare the order.

FOOTNOTES

1. The Debtor's putative income is comprised of: (a) \$3,500 from interest and dividends; (b) \$1,900 from family contributions; (c) \$750 from his son-in-law for a BMW vehicle; and (d) \$1,155.00 from his spouse's income from social security.

Party Information

Debtor(s):

Orlando Rivas Huete Sr.

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-11194 Hector Guerrero

Chapter 13

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

Docket 22

Tentative Ruling:

The Court will deny the motion.

The First Case

On August 7, 2018, Hector Guerrero (the "Debtor") filed a voluntary chapter 11 petition, initiating case 1:18-bk-12000-VK (the "First Case"). On August 21, 2018, the Debtor filed a motion to extend the deadline to file schedules and statements [the First Case, doc. 9]. The Court granted that motion and extended the deadline for the Debtor to file schedules and statements to September 7, 2018. *Id.* at doc. 11.

The Debtor failed to file his schedules and statements by that date. On September 14, 2018, the Debtor and Reliance Aerotech Services, Inc. filed a stipulation to dismiss the First Case. *Id.* at doc. 14. On September 17, 2018, the Court entered orders granting that stipulation and dismissing the First Case. *Id.* at docs. 16 and 17.

The Pending Case

On May 14, 2019, the Debtor filed a voluntary chapter 13 petition, commencing the pending case. In his pending case, the Debtor's purported monthly income is \$25,000 and his monthly expenses are \$20,203, leaving net monthly income of \$4,797. In his schedule I, the Debtor states that he is self-employed. However, according to the Debtor's statement of financial affairs [doc. 15], for 2017, 2018 and January 2019 to the petition date, the Debtor received \$0.00 in income from operating a business. In the Debtor's schedule D [doc. 15], the Debtor listed \$1,674,649.48 in secured claims.

On May 28, 2019, the Debtor filed a chapter 13 plan, which proposes to pay \$92,000 in arrears to the holder of the first deed of trust on the Debtor's residence and \$50,468.37 in arrears to the Los Angeles County Treasurer and Tax Collector for unpaid property taxes on the Debtor's residence [doc. 16]. The Debtor's proposed

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Chapter 13

plan payment is \$ 4,784.87 per month for 60 months. The proposed plan is a 100% plan.

On May 29, 2019, the Debtor filed the pending motion to continue the automatic stay under 11 U.S.C. § 362 (the "Motion") [doc. 22]. Through the Motion, the Debtor seeks to continue the automatic stay as to all creditors. In the Motion, the Debtor states that he filed the First Case because a judgment was being placed on the Debtor's residence. The Debtor states that he filed the pending chapter 13 to stop a foreclosure of his residence. The Debtor indicates that he plans on refinancing his residence and will have enough equity to pay all his creditors. In the motion, the Debtor states that he intends to convert the pending chapter 13 case to one under chapter 11 on or before the confirmation hearing set for July 2, 2019.

On June 10, 2019, the beneficiary of the first deed of trust on the Debtor's residence filed its opposition to the Motion [doc. 24].

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 discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

Notwithstanding the assertions in the Motion, the Debtor has not provided at this time clear and convincing evidence that his financial affairs have improved since the First Case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. Based on the debtor's Schedule D and the proofs of claim already filed, the debtor's noncontingent, liquidated, secured debts exceed \$1,257,850. Consequently, the debtor is not eligible to be a debtor under chapter 13. 11 U.S.C. § 109(e).

Moreover, the Debtor's proposed chapter 13 plan does not appear feasible. The Debtor has provided no evidence that he has sufficient net monthly income to fund his

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proposed chapter 13 plan. The Debtor's statement of financial affairs indicates that he has received \$0.00 in income for the last three years. Further, the Debtor has not explained or provided evidence of how his income has gone from \$0.00 annually to \$25,000 per month.

In the Motion, the Debtor states that he intends to refinance his residence. It is unclear how the Debtor intends to refinance his residence given his income history.

Accordingly, the Debtor has not presented clear and convincing evidence that the Debtor's financial affairs have improved since the First Case, such that the pending case will result in a confirmed plan under chapter 13 or chapter 11.

In light of the foregoing, the Court will deny the Motion.

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

Party Information

Debtor(s):

Hector Guerrero

Represented By
Daniel A DeSoto
Matthew D. Resnik

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-11729 Richard Philip Dages

Chapter 11

#17.00 Motion for relief from stay [UD]

THE REAL ESTATE PLAZA, INC.
VS
DEBTOR

Docket 76

*** VACATED *** REASON: Motion duplicates calendar no. 4.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

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1:30 PM

1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01116 Bars v. Sheikh

#18.00 Pretrial conference re complaint to determine dischargeability
and in objection to discharge [11 U.S.C. §§727(a)(4)(A)' 523(a) (2)

fr. 1/9/2019

Docket 1

Tentative Ruling:

In accordance with Local Bankruptcy Rule ("LBR") 7016-1(b)(1), (c), (e)(1), (f)(4) and (g), the Court will dismiss this adversary proceeding for failure to prosecute. Contrary to LBR 7016-1(e)(1), the plaintiff has not timely filed a proposed pretrial stipulation and a declaration asserting the failure of the other party and/or counsel for the party to respond.

The Court will prepare the order.

Party Information

Debtor(s):

Atif Sheikh

Represented By
Steven M Gluck

Defendant(s):

Atif Sheikh

Pro Se

Joint Debtor(s):

Naureen Sheikh

Represented By
Steven M Gluck

Plaintiff(s):

Candace Marie Bars

Represented By
David C Bernstein

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CONT... Atif Sheikh

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

United States Bankruptcy Court
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1:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01043 Gottlieb v. Houghton et al

#19.00 Status conference re: complaint to avoid lien; to preserve avoided lien for estate; to determine extent and validity of lien

Stip for entry of judgment filed 6/10/19

Docket 1

*** VACATED *** REASON: Order approving stipulation entered 6/11/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Denise A. Houghton

Pro Se

Houghton Law Group

Pro Se

Plaintiff(s):

David K. Gottlieb

Represented By
Peter A Davidson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#20.00 Status conference re: complaint to avoid lien; to avoid and recover fraudulent transfer; to preserve avoided lien for estate; to recover damages for usury; to avoid and recover preference payments; to determine extent and validity of lien

Docket 1

***** VACATED *** REASON: Order approving stip entered 5/28/19 [Doc # 6]. Status conference continued to 8/7/19 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Jerome Biddle

Pro Se

Susan Biddle

Pro Se

Plaintiff(s):

David K. Gottlieb

Represented By
Peter A Davidson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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1:30 PM

1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:18-01131 Goldman v. Pavehzadeh et al

#21.00 Pre-trial conference re complaint:
(1) for declaratory relief;
(2) sale of interest of co-owner in property of the estate;
(3) turnover of property of the estate
[11U.S.C. §§ 363(h) and 542]

Docket 1

***** VACATED *** REASON: Order ent continuing hrg to 8/7/19 at 1:30
p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Hadizadeh

Represented By
Stella A Havkin

Defendant(s):

Houshang Pavehzadeh

Represented By
Joel S Seidel

Mona Soleimani

Pro Se

Plaintiff(s):

Amy L. Goldman

Represented By
Todd A Frealy
Anthony A Friedman

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Anthony A Friedman

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Hearing Room 301

1:30 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 11

Adv#: 1:19-01010 Strategic Funding Source, Inc. v. Armand Zaharian et al

#22.00 Status conference re: complaint to determine nondischargeability of debt

fr. 4/24/19 (stip)

Stip to continue filed 5/30/19

Docket 1

***** VACATED *** REASON: Order approving stip entered 5/31/19.
Hearing continued to 8/7/19 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

Defendant(s):

Armand Zaharian

Pro Se

Elizabeth Y. Zaharian

Pro Se

Plaintiff(s):

Strategic Funding Source, Inc.

Represented By
Brian T Harvey

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1:30 PM

1:19-10062 Andrew Marc Pitsicalis

Chapter 11

Adv#: 1:19-01040 Experience Hendrix, LLC et al v. Pitsicalis

#23.00 Status conference re: complaint to determine the non-dischargeability of a debt

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): 6/26/19.

Deadline to submit joint status report: 7/3/19.

Continued status conference 7/17/19 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the 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):

Andrew Marc Pitsicalis	Pro Se
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Defendant(s):

Andrew Marc Pitsicalis	Pro Se
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Plaintiff(s):

Experience Hendrix, LLC	Represented By Jason D Strabo
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Authentic Hendrix, LLC	Represented By Jason D Strabo
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CONT... Andrew Marc Pitsicalis

Chapter 11

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall

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10:30 AM

1:18-11181 Rowena Benito Macedo

Chapter 11

#1.00 Application for compensation for legal services rendered and reimbursement of expenses incurred by attorney for chapter 11 debtor in possession

Docket 91

Tentative Ruling:

Contrary to Local Bankruptcy Rule 2016-1(a)(1)(J) and (c)(2), the applicant has not filed a "declaration from the client indicating that the client has reviewed the fee application and has no objection it" or, if the client refused to provide such a declaration, "a declaration describing the steps that were taken to obtain the client's declaration and the client's response thereto."

Party Information

Debtor(s):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

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1:00 PM

1:18-12325 12 Cumpston Partnership

Chapter 11

#2.00 Status conference re chapter 11 case

fr. 11/15/18; 1/10/19; 2/7/19; 2/21/19; 3/14/19; 4/4/19

Docket 1

***** VACATED *** REASON: Order ent continuing hrg to 7/18/19 at 1:00 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

12 Cumpston Partnership

Represented By
Mark E Goodfriend

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1:00 PM

1:18-12354 **MidiCi Group, LLC**

Chapter 11

#3.00 Confirmation Hearing re: first amended chapter 11 plan

Docket 139

Tentative Ruling:

The Court will deny confirmation of the *Debtor's First Amended Chapter 11 Plan* (the "Plan") [doc. 139].

As an initial matter, contrary to the *Order Approving Debtor's First Amended Disclosure Statement Describing First Amended Plan* [doc. 135], the debtor has not filed with the Court the actual ballots it received. Before the Court will confirm a related chapter 11 plan of reorganization, the debtor must file these ballots.

A. Impaired Classes Under the Plan

The Plan contains nine impaired classes. Classes 1, 2, 3, 4, 5, 6, and 7 voted to accept the Plan. Class 8, consists of the Master Kingdom of Saudi Arabia Franchisee. Under the Plan, the member in class 8 will have its franchise agreement assumed and will receive additional benefits to assist the member with its development of a foreign market. The member in class 8 did not return a ballot. Because the member of class 8 did not vote, class 8 is deemed to have rejected the plan. *In re M. Long Arabians*, 103 B.R. 211, 215–16 (B.A.P. 9th Cir. 1989) ("[T]he failure or inability of a creditor to vote on confirmation of a plan is not equivalent to acceptance of the plan.").

The final impaired class, class 9, consists of the disputed claims of general unsecured creditors. Under the Plan, the debtor proposes to pay members of class 9 a pro rata share of \$150,000 up to, and not exceeding, 40% of their allowed claims. Class 9 voted to reject the Plan [doc. 157].

B. Absolute Priority Rule

Because not all impaired classes voted to accept the Plan, the Court may not confirm the Plan under § 1129(a) alone. However, the Court may confirm the Plan if it complies with all applicable requirements under § 1129(a) (except for § 1129(a)(8)) and if the debtor shows that the Plan does not discriminate unfairly and is fair and

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equitable with respect to each impaired class of claims or interests that has rejected the Plan.

Upon review of the debtor's Plan, it appears that the Plan complies with the provisions of § 1129(a), except for § 1129(a)(8). 11 U.S.C. § 1129(b)(1) provides:

Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(2) provides:

For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

...

(B) With respect to a class of unsecured claims--

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

(C) With respect to a class of interests--

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

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(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property. . . .

The Plan satisfies § 1129(b)(1) to the extent that the Plan does not discriminate unfairly among members of an impaired, non-accepting class. Under the Plan, the member in class 8 will have its franchise agreement assumed and receive additional benefits and all members of class 9 will receive a pro rate share of \$150,000, up to 40% of their allowed claims.

Under § 1129(b)(1), a plan may be confirmed despite non-accepting classes if the plan is fair and equitable as to impaired, non-accepting classes. Under § 1129(b)(2), a plan is fair and equitable as to unsecured creditors if such creditors (i) receive an amount equivalent to the full value of their claim on the effective date of the plan; or (ii) no junior claim or interest receives or retains any property under plan, except for post-petition income in individual chapter 11 cases.

The Plan violates the absolute priority rule. "With one exception, that general rule prohibits the bankruptcy court from confirming the Plan if any of the debtor's former equity holders retain any equity interest in the estate without also providing to senior objecting creditors cash or other property equal to the present value of their claim." *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 654 (9th Cir. 1997). Here, under the Plan, the debtor's members retain their equity interests, so class 9—unsecured creditors classified senior to the debtor's members—must be paid the full present value of their claim.

The unsecured class 9 claims will not be paid in full under the Plan as of the effective date. In addition, the debtor proposes that its members will retain their equity interests while paying unsecured creditors less than the full value of their claims. Accordingly, the Plan is not fair and equitable as to class 9 under § 1129(b)(2). The Court cannot confirm the Plan at this time.

C. New Value to the Estate

"Because the Plan plainly violates the general absolute priority rule, we must consider whether it satisfies the exception or 'corollary.'" *Ambanc La Mesa Ltd. P'ship*, 115 F.3d at 654 (citing *In re Bonner Mall Partnership*, 2 F.3d 899 (9th Cir.1993), *mot. to*

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vacate denied and cert. dismissed, 513 U.S. 18, 115 S.Ct. 386, 130 L.Ed.2d 233 (1994)). “Allowing old equity to retain an interest does not violate the absolute priority rule if the former equity holders provide new value to the reorganized debtor, under the ‘new value corollary’ to the absolute priority rule.” *Id.*

“The new value corollary requires that former equity holders offer value under the Plan that is (1) new, (2) substantial, (3) in money or money's worth, (4) necessary for successful reorganization, and (5) reasonably equivalent to the value or interest received.” *Ambanc La Mesa Ltd. P'ship*, 115 F.3d at 654

Generally, chapter 11 plans that attempt to give existing equity holders the exclusive right to contribute new value in exchange for retaining their ownership interest violate the absolute priority rule. *Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 119 S. Ct. 1411, 143 L. Ed. 2d 607 (1999). Here, the Plan attempts to give existing equity holders the exclusive right to contribute new value. Accordingly, it violates the absolute priority rule.

D. Money or Money's Worth

“Under the ‘money or money's worth’ requirement, the new capital contribution of the former equity holders (1) must consist of money or property which is freely traded in the economy, and (2) must be a present contribution, taking place on the effective date of the Plan rather than a future contribution.” *Ambanc La Mesa Ltd. P'ship*, 115 F.3d at 655. “Only those contributions from . . . partners that will actually be paid on the effective date of the Plan may be considered as money or money's worth under the new value corollary.” *Id.*

A promise to contribute future services, *i.e.* labor, management or expertise, is insufficient because it “cannot be exchange for something of value to creditors *today*.” *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 204, 108 S. Ct. 963, 967, 99 L. Ed. 2d 169 (1988) (emphasis in original). Further, the release of claims by insiders is not an up-front infusion of money or money's worth. *In re Sun Valley Newspapers, Inc.*, 171 B.R. 71, 78 (B.A.P. 9th Cir. 1994).

Here, the debtor states that under the Plan, the debtor's members will provide upwards of \$7,000,000 in new value to the estate, which consists of the following: (a) \$425,000 in cash that will be available on the effective date of the Plan; (b) salary

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contributions valued at \$180,000 on an annual basis for each member who is engaged in the daily operations of the debtor; (c) subordination of \$1,267,012.20 in pre-petition claims against the estate in connection with loans extended by the member to the debtor; and (d) subordination of \$260,000 in post-petition claims against the estate in connection with the two sets of post-petition financing extended by the members to the debtor. Pursuant to the above cited authorities, only the \$425,000 cash contribution that will be available on the effective date of the Plan constitutes new value to the estate.

E. Substantial

“[T]he new value contribution [must] be ‘substantial’ in comparison to such things as” (1) the total unsecured claims against the debtor, (2) the claims being discharged, or (3) the dividend being paid on unsecured claims by virtue of the contribution.” *Ambanc La Mesa Ltd. P’ship*, 115 F.3d at 655; *see also Matter of Woodbrook Assocs.*, 19 F.3d 312 (7th Cir. 1994) (finding that a \$100,000 contribution was not substantial because it represented 3.8% of \$2,600,000 in unsecured debt) *and In re Olson*, 80 B.R. 935, 937 (Bankr. C.D. Ill. 1987), *aff’d*, No. 88-4052, 1989 WL 330439 (C.D. Ill. Feb. 8, 1989) (finding that a \$5,000 contribution was not substantial because it represented 1.56% of \$320,000 in unsecured debt).

Here, the total unsecured claims, looking at the debtor’s schedule E/F and the claims register, are \$8,393,942. Accordingly, the new value represents 5% in allowed unsecured debt, as of this time.

Pursuant to the terms of the Plan, upon consummation of the Plan, the debtor will receive a discharge of pre-confirmation debts, except the discharge will not discharge the debtor from any debts that are found to be nondischargeable under 11 U.S.C. § 523 or are obligations created by the Plan. As the debtor has no secured debt and none of the unsecured claims have been found to be nondischargeable under 11 U.S.C. § 523, the debtor will apparently receive a discharge of all its unsecured claims. Accordingly, the new value represents 5% of the claims being discharged.

The debtor will use \$68,350.42 of the new value to pay creditors in class 1 approximately 40% of the allowed nonpriority unsecured claims, with each holder (except for Menchie’s Group, Inc.) receiving its pro rata share [Plan, Exh. A]. Of the \$425,000 new value contribution, the debtor will set aside \$150,000 earmarked for

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payment towards any disputed claims that are allowed in class 9 [Plan, Exh. B]. The total amount of claims in class 9 is \$2,440,680 [Plan, Exh. A]. At the conclusion or termination of all claims objections proceedings, each claimant in class 9 will be paid its pro rata share of the \$150,000 reserve, up to, and not exceeding, 40% of the amount of its allowed claim. Based on *currently* allowed claims, the new value being used to pay the claimants in class 9 represents 6% of the allowed claims. Accordingly, the new value is not substantial.

F. Reasonably Equivalent to the Value or Interest Received

The "new value" contributed must be reasonably equivalent to the value of the interest received or retained. *Ambanc La Mesa Ltd. P'ship*, 115 F.3d at 654-656. "[The] equivalency requirement ensures that equity holders will not eviscerate the absolute priority rule by means of gratuitous, token cash infusions proposed primarily to 'buy' cheap financing." *In re Crosscreek Apts., Ltd.*, 213 BR 521, 548 (Bankr. E.D. Tenn. 1997) (internal quotes omitted). Determining whether the new value is reasonably equivalent to the interest received ordinarily requires the value of the debtor in possession's business to be determined on a 'going concern' basis. *Consol. Rock Prod. Co. v. Du Bois*, 312 U.S. 510, 525-26, 61 S. Ct. 675, 685, 85 L. Ed. 982 (1941). The going concern value is generally determined by estimating the debtor in possession's future earnings and discounting those earnings to present value using an appropriate discount rate. *Crosscreek Apts., Ltd.*, 213 BR at 548.

Here, the debtor has provided an appraisal of the fair market value of a 100% interest in the debtor as of February 28, 2019 [doc. 138, Exh. M]. That appraisal states that the fair market value of a 100% interest in the debtor is \$10. The Committee of Unsecured Creditors (the "Committee") filed an objection to the Plan (the "Objection") [doc. 153]. In the Objection, the Committee argues that the value of the debtor as a going concern is much higher than \$10. However, the Committee has not yet provided dispositive evidence in support of this position.

The Committee requests an evidentiary hearing on the going concern value, in order to present expert testimony that the debtor's going concern value is more than \$10. The parties should address the timing for setting such an evidentiary hearing.

In the Objection, the Committee also requests that the Court provide a process whereby interested persons may come in and offer to contribute more new value than

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the debtor's members are proposing. The debtor should be prepared to discuss the creation and implementation of such a process.

G. Bad Faith

In the Objection, the Committee argues, among other things, that the Plan was filed in bad faith. Specifically, the Committee contends that the debtor filed the pending chapter 11 case in order to avoid pre-petition litigation. The debtor effectively refutes this assertion in its *Brief in Support of Confirmation of First Amended Chapter 11 Plan* [doc. 154], and the Court concludes that the Plan was not filed in bad faith.

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim

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1:18-12354 MidiCi Group, LLC

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#4.00 Status conference re chapter 11 case

fr. 11/8/18, 1/24/19;2/21/19; 4/4/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim

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1:19-10734 Ashok Reddy Sreepathi

Chapter 11

#5.00 Status conference re: chapter 11 case

Docket 0

***** VACATED *** REASON: Order of dismissal entered 5/29/19
[Doc.#29].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ashok Reddy Sreepathi

Pro Se

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San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 13, 2019

Hearing Room 301

2:00 PM

1:14-13456 **Gingko Rose Ltd.**

Chapter 11

#6.00 Motion of debtor to voluntarily dismiss chapter 11 proceeding pursuant to §§ 1017 and 9014

Docket 491

Tentative Ruling:

Grant.

I. BACKGROUND

On July 18, 2014, Gingko Rose, Ltd. ("Debtor") filed a voluntary chapter 11 petition. In Debtor's last-amended schedule A [doc. 93], Debtor listed seven real properties. Of these real properties, Debtor indicated two of the properties are overencumbered, with the remaining properties having some equity. In Debtor's last-amended schedule F [doc. 24], Debtor listed three groups of unsecured claims: (A) a \$5,831 debt owed to the Department of Building and Safety; (B) a \$795,000 debt owed to Nede Management stemming from "loans;" and (C) a total of \$1,943,662 owed to Carlos Rodriguez, Dennis Goldson, Ernest Johnson, Esmeralda Hernandez, Jack Vaughn and Wayne Hart ("Judgment Creditors") stemming from a prepetition judgment against Debtor. In Debtor's most recent schedule B [doc. 218], Debtor listed \$0 in personal property.

In its most recent Statement of Financial Affairs ("SOFA") [doc. 93], Debtor listed four lawsuits, three of which were initiated by Judgment Creditors. The three lawsuits initiated by Judgment Creditors in state court were described as follows: (A) the original lawsuit from which the prepetition debt owing to Judgment Creditors arose (the "Underlying Action") and which was on appeal; (B) a malicious prosecution action (the "MP Action"), also on appeal; and (C) a fraudulent transfer action (the "FT Action") which was still pending in trial court.

Aside from Debtor's listed unsecured claims, the following creditors also filed claims: (A) a priority claim in favor of the Franchise Tax Board in the amount of \$800; (B) a claim in favor of the City of Los Angeles in the amount of \$2,451.23, with \$1,778.42 listed as a priority claim; and (C) a claim in favor of Lisa Rosenthal in the amount of

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CONT... Gingko Rose Ltd.

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\$17,750.65. The remaining claims on the claims register are either secured or have been withdrawn or amended to zero.

On January 28, 2015, Debtor filed a motion to dismiss this case (the "First Motion") [doc. 207]. In the First Motion, Debtor requested dismissal of the case on the basis that an undertaking in the amount of \$1,384,445.89 had been filed in the Underlying Action, which at the time was on appeal. The \$1,384,445.89 represented Debtor's share of damages in the Underlying Action.

On February 5, 2015, Judgment Creditors opposed the First Motion [doc. 230]. Judgment Creditors asserted that Debtor was attempting to thwart collection by the Judgment Creditors and that Judgment Creditors would be prejudiced by dismissal because, without this bankruptcy case, Debtor would transfer assets out of the reach of Judgment Creditors.

On February 25, 2015, the parties appeared for a hearing on the First Motion. The Court denied the First Motion and, 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 [MP Action] or until further order of the [C]ourt (the "Interim Period") pursuant to 11 U.S.C. § 305(a)..." The Court also provided that, during the Interim Period, the FT Action "shall be stayed as to Debtor and any applicable statutes of limitation shall be tolled accordingly."

On August 24, 2017, Debtor filed a second motion to dismiss this case (the "Second Motion") [doc. 414]. Judgment Creditors opposed the Second Motion [doc. 416], again asserting that Judgment Creditors would be prejudiced if Debtor transferred assets upon dismissal of this case. On September 14, 2017, the Court held a hearing on the Second Motion. At that time, the Court issued a ruling denying the Second Motion [doc. 420], noting that Judgment Creditors may be prejudiced if the Court dismissed the bankruptcy case prior to completion of the MP Action because Judgment Creditors would not be able to collect on an award if they prevailed.

On May 3, 2019, Debtor filed a third motion to dismiss (the "Motion") [doc. 491]. In a declaration attached to the Motion, Debtor's principal asserts that: (A) all claims have been paid in full or withdrawn; (B) the MP Action has concluded in Debtor's

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CONT... Gingko Rose Ltd.

Chapter 11

favor; and (C) Judgment Creditors are protected by any transfer of property by a *lis pendens*. Debtor also notes that the appeal of the MP Action will likely take another two years.

On May 30, 2019, Judgment Creditors filed an opposition to the Motion (the "Opposition") [doc. 494]. In the Opposition, Judgment Creditors assert that this case should remain stayed until conclusion of the appeal in the MP Action. Judgment Creditors also refer to another action filed by non-debtor insiders, among other plaintiffs, against Judgment Creditors and their attorneys which Judgment Creditors assert involves property of the estate (the "Nondebtor Action"). Moreover, Judgment Creditors assert they will be prejudiced if this case is dismissed because Debtor will transfer assets and make itself judgment proof.

II. ANALYSIS

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).

"[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

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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, creditors will not suffer prejudice from dismissal of this bankruptcy case. At this time, all claims to creditors, including Judgment Creditors, have been paid in full. Although Judgment Creditors may prevail in the appeal of the MP Action, at this time, judgment has been entered in favor of Debtor. Debtor is not a party to the Nondebtor Action, such that the Nondebtor Action does not have bearing on whether this action should be dismissed.

In addition, Judgment Creditors are protected by a *lis pendens* and may argue against any attempt to remove the *lis pendens* in state court. To the extent there is a risk of a fraudulent transfer, Judgment Creditors also may pursue other avenues of relief under California law. At this time, the Court has stayed Debtor's bankruptcy case for over four years. Given that there are currently no claims against the estate and Judgment Creditors have state law remedies to protect their interests, Judgment Creditors have not offered a compelling reason for Debtor to keep incurring costs during the pendency of this case. Consequently, the Court will dismiss this case.

III. CONCLUSION

The Court will dismiss this case.

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

Party Information

Debtor(s):

Gingko Rose Ltd.

Represented By
Marc A Lieberman
Michael R Totaro
James J Little

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Philip H Stillman

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1:19-10335 Mia Danielle Boykin

Chapter 7

#7.00 Motion to convert case from chapter 7 to 13

Docket 25

Tentative Ruling:

Deny.

I. BACKGROUND

On January 24, 2019, Mia Danielle Boykin ("Debtor") filed a voluntary chapter 7 petition [1:19-bk-10183-VK]. On February 11, 2019, the Court entered an order dismissing this case for failure to file schedules or statements [1:19-bk-10183-VK, doc. 14]. On February 13, 2019, Debtor filed this chapter 7 petition. Diane C. Weil was appointed the chapter 7 trustee (the "Trustee").

In her schedule A/B, Debtor listed \$35,911 in assets, including a 100% interest in EW Boykin Construction Company, Inc. ("EW Boykin") and a 0.5% interest in WSTREE-Inc. In her schedule C, Debtor claimed exemptions in her assets totaling \$28,411. In her schedule E/F, Debtor listed \$37,115.82 in unsecured debt; Debtor scheduled many of these unsecured debts, which Debtor indicated arise from contract disputes, at an estimated \$1.00. Among the scheduled creditors are Fortis Development, LLC and Jeffrey Thomas (together, "Creditors"). In Debtor's Statement of Financial Affairs ("SOFA"), Debtor indicates that she was a defendant in a state court action initiated by Creditors that was pending at the time Debtor filed her bankruptcy case.

In her schedule I, Debtor indicated she receives \$8,333.33 per month in gross wages. In her schedule J, Debtor listed a negative monthly net income in the amount of (\$497.55). In her SOFA, Debtor indicated she received \$3,846 in gross income from January 1, 2019 through February 13, 2019. Debtor also indicated she received \$88,461.45 in gross income in 2018 and \$92,307.60 in gross income in 2017.

On April 28, 2019, Debtor filed a motion to convert this case to a chapter 13 case (the "Motion") [doc. 25]. On April 29, 2019, Debtor attended a continued § 341(a)

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CONT... Mia Danielle Boykin

Chapter 7

meeting of creditors (the "Meeting of Creditors") [doc. 41]. At the Meeting of Creditors, the Trustee asked Debtor to: (A) schedule her 0.1% interest in multiple Wing Stop restaurants; (B) provide the Trustee with an invoice from creditor Ben Bridges; (C) amend her schedules to include two bank accounts and life insurance policies; and (D) provide documentation regarding payments made to vendors of EW Boykin.

The U.S. Trustee (the "UST") also questioned Debtor regarding whether she takes draws from EW Boykin; Debtor conceded that EW Boykin pays some of Debtor's personal expenses. The UST instructed Debtor to amend her schedules to list the amount that EW Boykin pays as Debtor's income. Finally, the UST asked for documentation regarding large payouts made to Sigma from Debtor's personal account; Debtor contended these payments were made on behalf of Wing Stop, Debtor's employer, and that the cash used originated from revenue generated by Wing Stop. The Trustee continued the Meeting of Creditors to June 7, 2019.

On May 11, 2019, Creditors filed an opposition to the Motion [doc. 32]. In the Opposition, Creditors assert that Debtor's request for conversion should be denied because Debtor made false statements and omissions in her bankruptcy filings. Specifically, Creditors contend that:

- (A) Debtor omitted an interest in a sole proprietorship named Boykin Construction, which maintains an active contractor's license;
- (B) although Debtor schedules business equipment, Debtor's schedule I indicates that Debtor is an employee of a different business and omits any income from construction businesses, and Creditors believe Debtor operates three different construction companies;
- (C) Debtor did not include income derived from operation of her construction businesses for the years 2017 and 2018 in her SOFA, despite having previously revealed in state court that she received \$359,876 in payments under a subcontract;
- (D) Debtor falsely asserts in her SOFA that her sole proprietorship ceased to exist in 2016;
- (E) Debtor falsely lists the amount owed to Creditors as \$1.00 each, despite a state court order requiring Debtor to pay Creditors \$24,742 in attorneys' fees;

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- (F) Debtor did not disclose that she transferred her contactor's license to EW Boykin;
- (G) Debtor did not disclose multiple bank accounts, contracts and/or accounts receivable from her business;
- (H) Debtor has not disclosed an interest in trusts or annuities despite having previously represented to Creditors that Debtor will make a payment to Creditors from a trust and from an annuity;
- (I) Debtor undervalued her jewelry; and
- (J) Debtor did not schedule her interest in Wing Stop franchises.

Declaration of Alexandre Ian Cornelius ("Cornelius Declaration"), ¶¶ 2-20, Exhibits 1-15. Creditors also contend that Debtor transfers assets and commingles funds between all her construction businesses. Cornelius Declaration, ¶ 16, Exhibit 10.

Creditors also refer to Debtor's alleged prepetition conduct, as briefly outlined below (the "Prepetition Conduct"). According to Creditors, Debtor violated a subcontract agreement between the parties by failing to pay a lumber supplier or otherwise using payments made by Creditors to Debtor for purposes other than paying labor and materials in full. Creditors allege that Debtor engaged in fraudulent conduct by misrepresenting facts to Creditors at the time the parties entered into the subcontract agreement, which allegedly resulted in damages Creditors had to pay to suppliers as well as delay damages. Creditors also allege that Debtor embezzled and/or converted funds given to Debtor by Creditors under the subcontract agreement and that Debtor breached fiduciary duties owed to Creditors under the subcontract agreement. Debtor has not timely filed a reply to the Opposition.

On May 24, 2019, the UST filed a motion to extend the deadline for the UST to file a complaint objecting to Debtor's discharge under 11 U.S.C. § 727 or a motion to dismiss this case under § 707(b) (the "Motion to Extend") [doc. 39]. In the Motion to Extend, the UST contends that the UST has requested information regarding Debtor's construction businesses, income from those businesses, possible undisclosed bank accounts and "unusual financial transactions" related to Debtor's employment. According to the UST, Debtor has not furnished this information to the UST. Specifically, in a declaration attached to the Motion to Extend, counsel for the UST states that: (A) Debtor may be using her sole proprietorship to pay a "significant amount" of her personal expenses, none of which were disclosed in Debtor's

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schedules or the Means Test; (B) Debtor provided incomplete bank statements; (C) the statements provided to the UST reflected a number of transfers of funds for which Debtor had not accounted; and (D) to date, Debtor has not provided any of the information requested by the UST.

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 \$394,725¹ and noncontingent, liquidated, secured debts of less than \$1,184,200¹, 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 \$394,725¹ and noncontingent, liquidated, secured debts of less than \$1,184,200¹ 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 §

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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 Supreme Court noted that, under § 1307(c), prepetition bad faith conduct may constitute "cause" warranting dismissal or conversion. *Id.*, at 373. Thus, a debtor's prepetition bad faith conduct could be grounds to deny a motion for conversion under § 706. *Id.* The type of bad faith conduct contemplated by the *Marrama* court is "conduct that is atypical and extraordinary." *Id.*, at 382 (internal quotations omitted).

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 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.

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In re Leavitt, 171 F.3d 1219, 1224 (9th Cir. 1999).

Here, Debtor has engaged in the type of bad faith conduct contemplated by *Marrama*. The Opposition, the declaration attached to the Motion to Extend and the transcript from the Meeting of Creditors reflect that Debtor has not accurately or fully completed her schedules and statements. Debtor has apparently failed to schedule an interest in several business entities, has not disclosed income received from certain entities and has undervalued her assets and liabilities. As noted by the UST, although the UST and the Trustee asked Debtor to provide additional information and to amend her schedules and statements, Debtor has done neither despite having a reasonable amount of time to comply.

Moreover, Debtor previously filed a chapter 7 case that was dismissed for Debtor's failure to file complete schedules and statements. As such, despite the fact that this is Debtor's second bankruptcy case, there continues to be information missing from Debtor's schedules and statements. In addition, Debtor filed her bankruptcy case while the state court action initiated by Creditors was pending; that Debtor appears to have omitted assets and income from her schedules may signal an intent to prevent Creditors from collecting the attorneys' fees incurred in the state court action.

Finally, although Debtor's behavior may not rise to the level of egregiousness at this time, Debtor requests a conversion to a chapter 13 case despite having scheduled a *negative* monthly net income. In addition, Debtor's SOFA reflects a total of \$3,846 in gross income (before deductions and exclusions) received from January 1, 2019 through February 13, 2019; this is less than the amount Debtor indicates she receives on a monthly basis in her schedule I. Debtor has provided no evidence or explanation regarding how Debtor intends to fund a chapter 13 plan. Debtor also has not filed a reply to the Opposition refuting any of Creditors' contentions. On these facts, the Court will deny Debtor's request to convert this case to a chapter 13 case.

III. CONCLUSION

The Court will deny the Motion.

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

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Chapter 7

Party Information

Debtor(s):

Mia Danielle Boykin

Represented By
Faith A Ford

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:19-10675 Michael Herbert Mueller

Chapter 11

#8.00 Motion for order determining value of collateral

Docket 22

Tentative Ruling:

In light of the opposition filed by U.S. Bank, N.A. ("U.S. Bank") on May 28, 2019 [doc. 38], the Court will continue this hearing to **August 29, 2019 at 2:00 p.m.** in order for U.S. Bank to take discovery on issues pertinent to the motion, such as whether the real property is the debtor's primary residence, and to obtain an appraisal of the property.

Any supplemental opposition by U.S. Bank, including evidence in support thereof, must be filed and served no later than August 15, 2019. Any reply by the debtor, including evidence in support thereof, must be filed and served by August 22, 2019.

Appearances on June 13, 2019 are excused.

Party Information

Debtor(s):

Michael Herbert Mueller

Represented By
Lionel E Giron
Crystle Jane Lindsey

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1:19-10850 Papanicolaou Enterprises

Chapter 11

#9.00 Motion to assume non-residential real property lease located
at 11329 Magnolia Blvd., North Hollywood, CA 91601

Docket 53

***** VACATED *** REASON: Case dismissed on 5/29/19 [doc. 67].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

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9:30 AM

1:19-10668 Baruch Glickstein and Limor Benisty

Chapter 7

#1.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 5/8/19

Docket 13

Tentative Ruling:

Deny as moot.

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):

Baruch Glickstein

Represented By
Eric Bensamochan

Joint Debtor(s):

Limor Benisty

Represented By
Eric Bensamochan

Trustee(s):

David Seror (TR)

Represented By
Nancy H Zamora

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Hearing Room 301

9:30 AM

1:14-11327 Linda L Johnson

Chapter 13

#2.00 Motion for relief from stay [RP]

OCWEN LOAN SERVICING, LLC
VS
DEBTOR

fr. 5/8/19

Docket 65

Tentative Ruling:

The Court may condition any continuation of the hearing on the respondent making the postpetition mortgage payments in the amount of \$2,448.30 per month (as stated in the motion). In light of the status of this chapter 13 case, and the approaching conclusion of the chapter 13 plan, irrespective of this motion, the automatic stay will terminate in the near future.

Party Information

Debtor(s):

Linda L Johnson

Represented By
Thomas B Ure

Movant(s):

Ocwen Loan Servicing, LLC

Represented By
Leslie M Klott
Eric P Enciso
Sean C Ferry

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-10869 Lizette L. Mendez and Wilder Mendez

Chapter 13

#3.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 5/8/19

Docket 10

Tentative Ruling:

Deny.

At the prior hearing on May 8, 2019, the Court ordered the debtors to file and serve notice of the continued hearing on all secured creditors no later than May 15, 2019. Debtors did not file and serve notice of the continued hearing.

The Court further ordered the debtors to file a declaration, no later than June 17, 2019, to demonstrate that they timely made their required post-petition deed of trust payments and chapter 13 plan payments.

On June 6, 2019, the debtors filed a declaration demonstrating that they timely made their May 2019 and June 2019 deed of trust payments as to their real property [doc. 23]. However, the debtors did not timely file a declaration that they made their May 2019 and June 2019 plan payments in the amount of \$500.00 each to the chapter 13 trustee.

The Court will prepare the order.

Ruling from May 8, 2019

Grant the motion on an interim basis and continue hearing to **June 19, 2019 at 9:30 a.m.**

The First Bankruptcy Case

On September 1, 2018, Lizette L. Mendez filed a prior chapter 13 petition (the "First Case") [case no. 1:18-bk-12228-MT]. In her prior schedules, the debtor disclosed monthly income in the amount of \$5,755.00 and monthly expenses in the amount of

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Chapter 13

\$4,835.00, leaving net monthly income of \$920.00 [First Case, doc. 1].

In her second amended chapter 13 plan, Ms. Mendez's proposed plan payment was \$200.00 per month for months one through three, then \$1,060.00 per month for months four through sixty [First Case, doc. 20]. Among other things, Ms. Mendez was to cure prepetition arrearages on her primary residence in the amount of \$3,839.77 through plan payments.

On March 29, 2019, the Court entered an order dismissing the First Case for failure to make the required plan payments [doc. 28].

The Pending Bankruptcy Case

On April 11, 2019, Ms. Mendez and Wilder Mendez (together, "Debtors") filed the pending case. On April 11, 2019, Debtors filed a motion to continue the automatic stay as to secured creditors (the "Motion to Continue Stay") [doc. 10]. In the Motion to Continue Stay, Debtors state that Ms. Mendez fell behind on her plan payments in the First Case when she had a family emergency involving her 11-year-old daughter. Debtors state that Ms. Mendez's daughter is stabilized, and that Ms. Mendez has been able to return to work.

In their pending case, Debtors' Schedules I & J indicate monthly income of \$4,766.00 and monthly expenses of \$3,759.50, leaving net monthly income of \$1,006.50 [doc. 1]. Debtors responded "No" to the question of whether they expected an increase in income within the first year of filing the petition.

In their plan, Debtors propose a monthly payment of \$500.00 per month for months one through two, then \$1,025.00 per month for months three through sixty [doc. 8]. Debtors' plan is a 0% plan. Debtors propose to cure arrearages on their primary residence in the amount of \$7,874.00 through plan payments. However, on April 24, 2019, secured creditor U.S. Bank Trust, N.A. filed an objection to confirmation because it claims that the approximate arrears owed are in the amount of \$9,538.42, not \$7,874.00 as stated in the proposed chapter 13 plan [doc. 18].

Discussion

Under 11 U.S.C. § 362(c)(3), in order to extend the automatic stay in a case filed

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CONT... Lizette L. Mendez and Wilder Mendez

Chapter 13

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 light of the standard, the Court will grant the motion on an interim basis up to the date of the continued hearing. **No later than May 15, 2019**, Debtors must file and serve notice of the continued hearing on *all* secured creditors in accordance with Fed. R. Bankr. P. 7004(b)(3) and (h). Debtors must timely pay: (1) their May 2019 and June 2019 deed of trust payments in the amount of \$828.50 (as stated in their current Schedule J) as to the real property located at 9555 Woodman Avenue, Unit 12, Pacoima, California 91331; and (2) their May 2019 and June 2019 plan payments in the amount of \$500.00 to the chapter 13 trustee. **No later than June 17, 2019**, Debtors must file a declaration to demonstrate that they timely made their required post-petition deed of trust and chapter 13 plan payments.

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

Party Information

Debtor(s):

Lizette L. Mendez

Represented By
R Grace Rodriguez

Joint Debtor(s):

Wilder Mendez

Represented By
R Grace Rodriguez

Movant(s):

Lizette L. Mendez

Represented By
R Grace Rodriguez

Wilder Mendez

Represented By

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CONT...

Lizette L. Mendez and Wilder Mendez

R Grace Rodriguez

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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1:19-10838 Marcelo Alejandro Cabrera

Chapter 13

#4.00 Amended Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 5/8/19

Docket 17

Tentative Ruling:

Deny.

At the prior hearing on May 8, 2019, the Court ordered the debtor to file a declaration to demonstrate that he timely made his required post-petition deed of trust payments and chapter 13 plan payments no later than June 17, 2019.

On May 13, 2019, the debtor filed a declaration demonstrating that he timely made his May 2019 deed of trust payment as to his real property [doc. 24]. However, the debtor did not timely file a declaration that he made his June 2019 deed of trust payment and his May 2019 and June 2019 plan payments in the amount of \$1,1393.65 to the chapter 13 trustee.

The Court will prepare the order.

Ruling from May 8, 2019

Grant the motion on an interim basis and continue hearing to **June 19, 2019 at 9:30 a.m.**

The Debtor's Prior Cases

The First Case

On March 12, 2019, Marcelo Alejandro Cabrera (the "Debtor") filed a voluntary chapter 7 petition, commencing case no. 1:97-bk-13415-KT (the "First Case"). On June 24, 2019, the Debtor received a discharge in the First Case.

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CONT... Marcelo Alejandro Cabrera
The Second Case

Chapter 13

On February 25, 2016, the Debtor filed a voluntary chapter 13 petition, commencing case no. 1:16-bk-10534-VK (the “Second Case”). On November 1, 2016, the Debtor filed a chapter 13 plan, which proposed to pay \$24,970.55 in arrears to the holder of the first deed of trust on the Debtor’s residence [The Second Case, doc. 20]. On July 20, 2016, the Court entered an order dismissing the Second Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 30.

The Third Case

On October 18, 2016, the Debtor filed another voluntary chapter 13 petition, commencing case no. 1:16-bk-13000-MT (the “Third Case”). On May 9, 2016, the Debtor filed an amended chapter 13 plan, which proposed to pay \$33,085.00 in arrears to the holder of the first deed of trust on the Debtor’s residence [The Third Case, doc. 10]. On January 27, 2017, the Court entered an order dismissing the Third Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 23.

The Fourth Case

On February 24, 2017, the Debtor filed another voluntary chapter 13 petition, commencing case no. 1:17-bk-10472-MB (the “Fourth Case”). On February 24, 2017, the Debtor filed a chapter 13 plan, which proposed to pay \$38,617.00 in arrears to the holder of the first deed of trust on the Debtor’s residence [The Fourth Case, doc. 6].

On March 25, 2017, the Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 as to all creditors (the “First Motion to Continue”). *Id.* at doc. 19. In the First Motion to Continue, the Debtor stated that the Second and Third Case were dismissed for failure to make the chapter 13 plan payments. The Debtor represented that he was unable to make the plan payments in the Second Case because of a death in the family and in the Third Case because of an injury from a motor vehicle accident. The Debtor also stated that he filed the Fourth Case in order to save his residence from foreclosure, and that his son was willing to contribute to help fund his chapter 13 plan. On April 28, 2017, the Court granted the First Motion to Continue. *Id.* at doc. 28.

On October 17, 2017, the Court entered an order dismissing the Fourth Case arising

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CONT... Marcelo Alejandro Cabrera

Chapter 13

from the chapter 13 confirmation hearing. *Id.* at doc. 60.

The Fifth Case

On January 29, 2018, the Debtor filed another voluntary chapter 13 petition, commencing case no. 1:18-bk-10257-MT (the “Fifth Case”). On February 12, 2018, the Debtor filed a chapter 13 plan, which proposed to pay \$46,000.00 in arrears to the holder of the first deed of trust on the Debtor’s residence [The Fifth Case, doc. 12]. On March 13, 2018, Wells Fargo Bank, National Association as trustee for Option One Mortgage Loan Trust 2007-1, Asset-Backed Certificates, Series 2007-1 (“Wells Fargo”) filed an objection to that chapter 13 plan, stating that the prepetition arrears due to Wells Fargo were \$51,914.69, not \$46,000.00. *Id.* at doc. 19.

On February 13, 2018, the Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 as to all creditors (the “Second Motion to Continue”). *Id.* at doc. 16. In the Second Motion to Continue, the Debtor stated the Fourth Case was dismissed because he had financial hardships, which caused him to default on his chapter 13 plan payments and mortgage payments. The Debtor stated that in the Fourth Case, the Debtor relied on his son’s contribution because the Debtor and his wife were not generating enough income. The Debtor represented that himself and his wife were working and earning more than during the Fourth Case. The Debtor also stated that he filed the Fifth Case in order to save his residence from foreclosure. On March 28, 2018, the Court entered an order granting the Second Motion to Continue. *Id.* at doc. 21.

On August 15, 2018, the Court entered an order dismissing the Fifth Case because the Debtor failed to appear at the § 341(a) meeting and to make pre-confirmation plan payments. *Id.* at doc. 32.

The Sixth Case

On October 24, 2018, the Debtor filed another voluntary chapter 13 petition, commencing case no. 1:18-bk-12606-VK (the “Sixth Case”). In his schedules, the Debtor disclosed monthly income in the amount of \$5,422.60 and monthly expenses in the amount of \$4,138.36, leaving net monthly income of \$1,284 [The Sixth Case, doc. 1].

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CONT... Marcelo Alejandro Cabrera

Chapter 13

On October 24, 2018, the Debtor filed a chapter 13 plan, which proposed to pay \$67,000.00 in arrears to the holder of the first deed of trust on the Debtor's residence. *Id.* at doc. 2. The Debtor's proposed plan payment was \$1,283.34 per month for sixty months. The proposed plan was a 0% plan.

On October 24, 2018, the Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 as to all creditors (the "Third Motion to Continue"). *Id.* at doc. 9. In the Third Motion to Continue, the Debtor stated that the Fifth Case was dismissed because he failed to make the chapter 13 plan payments. The Debtor stated that his daughter and his wife became ill during the Fifth Case. This caused the Debtor and his wife to miss work, making the Debtor unable to pay his mortgage and chapter 13 plan payments. The Debtor represented that he and his wife were back to work and earning their regular income. The Debtor also represented that his adult daughter and adult son started contributing to household payments. On November 21, 2018, the Court continued the hearing on the Third Motion to Continue to December 19, 2018, in order for the Debtor to serve all creditors properly.

On December 17, 2018, before the hearing on the Third Motion to Continue, the Court entered an order dismissing the Sixth Case because the Debtor failed to appear at the § 341(a) meeting and to make pre-confirmation plan payments. *Id.* at doc. 18.

The Debtor's Pending Case

On April 8, 2019, the Debtor filed another voluntary chapter 13 petition, commencing the pending case. In his pending case, the Debtor's monthly income is \$5,770.36 and his monthly expenses are \$4,028.36, leaving net monthly income of \$1,742.00 [doc. 1].

On April 8, 2019, the Debtor filed a chapter 13 plan, which proposes to pay \$74,000.00 in arrears to the holder of the first deed of trust on the Debtor's residence [doc. 2]. The Debtor's proposed plan payment is \$1,393.65 per month for sixty months. The proposed plan is a 0% plan.

On April 26, 2019, Wells Fargo, through Ocwen Loan Servicing, LLC, filed secured claim 9, in the amount of \$622,894.22. In that claim, Wells Fargo states that the Debtor owes it prepetition arrears in the amount of \$77,807.10, not \$74,000.00.

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CONT... Marcelo Alejandro Cabrera

Chapter 13

On April 10, 2019, the Debtor filed the pending motion to impose the automatic stay under 11 U.S.C. § 362 (the "Motion") [doc. 17]. Through the Motion, the Debtor seeks to impose the automatic stay as to all creditors. In the Motion, the Debtor states that prior to filing the Sixth Case, he was diagnosed with diabetes type II. The Debtor states that from December 10, 2018 through December 12, 2018, he was "severely incontinent, lost sleep and fell into a deep depression." Apparently, this caused the Debtor to fail to appear at the § 341(a) meeting of creditors. The Debtor represents that he and his wife are back to work and earning more than during the Sixth Case. Debtor also states that he adult son and daughter are living with him and are able to contribute as needed.

Discussion

Under 11 U.S.C. § 362(c)(4)(B), in order to impose the automatic stay in a case filed within one year of two or more cases which were pending within the same year but were 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)(4)(D)(i), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary) as to all creditors if--

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period; [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 this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed. . . .

Notwithstanding the assertions in the Motion and the lack of an opposition to the motion, Debtor has not provided at this time clear and convincing evidence that his financial affairs have improved since the Sixth Case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. This is the Debtor's sixth chapter 13 filing, and his seventh bankruptcy case. Despite five prior chapter 13

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CONT... Marcelo Alejandro Cabrera

Chapter 13

filings, the Debtor has yet to complete the chapter 13 process successfully and to obtain a discharge. Further, the Debtor has continued to be delinquent on his deed of trust payments for loans secured by the Debtor's residence. Moreover, 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 May 15, 2019**, 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) his May 2019 and June 2019 deed of trust payments in the amount of \$1,351.34 (as stated in his current Schedule J) as to the real property located at 8032 Burnet Avenue, Panorama City, California 91402; and (2) his May 2019 and June 2019 plan payments in the amount of \$1,1,393.65 to the chapter 13 trustee. **No later than June 17, 2019**, the Debtor must file a declaration to demonstrate that he timely made his required post-petition deed of trust and chapter 13 plan payments.

The Debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Marcelo Alejandro Cabrera

Represented By
Donald E Iwuchuku

Movant(s):

Marcelo Alejandro Cabrera

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:19-11194 Hector Guerrero

Chapter 13

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

fr. 6/12/19

Docket 22

Tentative Ruling:

Has the debtor decided to convert his case to one under chapter 7?

In a chapter 7, 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 not be concluded with a chapter 7 discharge. *See In re Castaneda*, 342 B.R. 90, 94 n.5 (Bankr. S.D. Cal. 2006).

Tentative Ruling 6/12/19

The Court will deny the motion.

The First Case

On August 7, 2018, Hector Guerrero (the "Debtor") filed a voluntary chapter 11 petition, initiating case 1:18-bk-12000-VK (the "First Case"). On August 21, 2018, the Debtor filed a motion to extend the deadline to file schedules and statements [the First Case, doc. 9]. The Court granted that motion and extended the deadline for the Debtor to file schedules and statements to September 7, 2018. *Id.* at doc. 11.

The Debtor failed to file his schedules and statements by that date. On September 14, 2018, the Debtor and Reliance Aerotech Services, Inc. filed a stipulation to dismiss the First Case. *Id.* at doc. 14. On September 17, 2018, the Court entered orders

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CONT... Hector Guerrero

Chapter 13

granting that stipulation and dismissing the First Case. *Id.* at docs. 16 and 17.

The Pending Case

On May 14, 2019, the Debtor filed a voluntary chapter 13 petition, commencing the pending case. In his pending case, the Debtor's purported monthly income is \$25,000 and his monthly expenses are \$20,203, leaving net monthly income of \$4,797. In his schedule I, the Debtor states that he is self-employed. However, according to the Debtor's statement of financial affairs [doc. 15], for 2017, 2018 and January 2019 to the petition date, the Debtor received \$0.00 in income from operating a business. In the Debtor's schedule D [doc. 15], the Debtor listed \$1,674.649.48 in secured claims.

On May 28, 2019, the Debtor filed a chapter 13 plan, which proposes to pay \$92,000 in arrears to the holder of the first deed of trust on the Debtor's residence and \$50,468.37 in arrears to the Los Angeles County Treasurer and Tax Collector for unpaid property taxes on the Debtor's residence [doc. 16]. The Debtor's proposed plan payment is \$ 4,784.87 per month for 60 months. The proposed plan is a 100% plan.

On May 29, 2019, the Debtor filed the pending motion to continue the automatic stay under 11 U.S.C. § 362 (the "Motion") [doc. 22]. Through the Motion, the Debtor seeks to continue the automatic stay as to all creditors. In the Motion, the Debtor states that he filed the First Case because a judgment was being placed on the Debtor's residence. The Debtor states that he filed the pending chapter 13 to stop a foreclosure of his residence. The Debtor indicates that he plans on refinancing his residence and will have enough equity to pay all his creditors. In the motion, the Debtor states that he intends to convert the pending chapter 13 case to one under chapter 11 on or before the confirmation hearing set for July 2, 2019.

On June 10, 2019, the beneficiary of the first deed of trust on the Debtor's residence filed its opposition to the Motion [doc. 24].

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

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CONT... Hector Guerrero

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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.

Notwithstanding the assertions in the Motion, the Debtor has not provided at this time clear and convincing evidence that his financial affairs have improved since the First Case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. Based on the debtor's Schedule D and the proofs of claim already filed, the debtor's noncontingent, liquidated, secured debts exceed \$1,257,850.

Consequently, the debtor is not eligible to be a debtor under chapter 13. 11 U.S.C. § 109(e).

Moreover, the Debtor's proposed chapter 13 plan does not appear feasible. The Debtor has provided no evidence that he has sufficient net monthly income to fund his proposed chapter 13 plan. The Debtor's statement of financial affairs indicates that he has received \$0.00 in income for the last three years. Further, the Debtor has not explained or provided evidence of how his income has gone from \$0.00 annually to \$25,000 per month.

In the Motion, the Debtor states that he intends to refinance his residence. It is unclear how the Debtor intends to refinance his residence given his income history.

Accordingly, the Debtor has not presented clear and convincing evidence that the Debtor's financial affairs have improved since the First Case, such that the pending case will result in a confirmed plan under chapter 13 or chapter 11.

In light of the foregoing, the Court will deny the Motion.

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

Party Information

Debtor(s):

Hector Guerrero

Represented By
Daniel A DeSoto
Matthew D. Resnik

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CONT... Hector Guerrero

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, June 19, 2019

Hearing Room 301

9:30 AM

1:19-10981 Mehdi Zemrani

Chapter 7

#5.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
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.

Party Information

Debtor(s):

Mehdi Zemrani

Represented By
Donald E Iwuchuku

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, June 19, 2019

Hearing Room 301

9:30 AM

1:19-11285 David Young

Chapter 13

#6.00 Motion for relief from stay [UD]

VIOLET Y. YERMIAN AND 7011 VASSAR, LLC
VS
DEBTOR

Docket 7

Tentative Ruling:

On June 10, 2019, 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.

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 property, not a creditor whose claim is secured by an interest in the property, as specified in the statute.

Deny any other request for relief.

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

Party Information

Debtor(s):

David Young

Pro Se

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CONT... David Young

Chapter 13

Movant(s):

Violet Y Yermian

Represented By
Luke P Daniels

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, June 19, 2019

Hearing Room 301

9:30 AM

1:18-12349 Chinweike Okonkwo

Chapter 13

#7.00 Motion for relief from stay [PP]

DAIMLER TRUST
VS
DEBTOR

Docket 52

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):

Chinweike Okonkwo

Represented By
Laleh Ensafi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:19-10939 Lamont Dushawn Hall

Chapter 13

#8.00 Motion for relief from stay [RP]

MATADORS COMMUNITY CREDIT UNION
VS
DEBTOR

Stip re adequate protection filed 6/11/19

Docket 14

*** VACATED *** REASON: Order entered on 6/12/19 approving of stipulation resolving the motion [doc. 20].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lamont Dushawn Hall

Represented By
D Justin Harelik

Movant(s):

Matadors Community Credit Union

Represented By
Alana B Anaya

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:19-11149 Orlando Rivas Huete, Sr.

Chapter 13

#9.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 18

Tentative Ruling:

For the reasons discussed below, the Court will grant relief from the automatic stay under 11 U.S.C. § 362(d)(4).

On October 30, 2006, Orlando Rivas Huete, Sr. (“Debtor”) executed a promissory note in the principal sum of \$376,000, which was made payable to Resmae Mortgage Corporation. [doc. 18, Exh. A]. That note is secured by a deed of trust, executed by Debtor, encumbering the real property located at 12235 Clover Road, #169, Pacoima, California 91331 (the “Property”). *Id.* at Exh. B. Subsequently, that deed of trust was assigned to U.S. Bank National Association, as Indenture Trustee on Behalf of and with Respect to Ajax Mortgage Loan Trust 2017-A, Mortgage-Backed Notes, Series 2017-A (“U.S. Bank”). *Id.* at Exh. C.

The First Case

On June 22, 2009, Debtor filed a voluntary chapter 13 petition, commencing case no. 1:09-bk-17660-GM (the “First Case”). On the same day, Debtor filed a chapter 13 plan which proposed to pay \$60,000 in arrears to the holder of the first deed of trust on the Property [First Case, doc. 4]. On August 20, 2009, the Court entered an order dismissing the First Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 13.

The Second Case

On August 23, 2013, Debtor filed a voluntary chapter 13 petition, commencing case no. 1:13-bk-15561-AA (the “Second Case”). On September 6, 2013, Debtor filed a chapter 13 plan, which proposed to pay \$10,408.47 in arrears to the holder of the first

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CONT... Orlando Rivas Huete, Sr.

Chapter 13

deed of trust on the Property [Second Case, doc. 7]. On December 9, 2013, the Court entered an order dismissing the Second Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 13.

The Third Case

On January 27, 2014, Debtor filed another voluntary chapter 13 petition, commencing case no. 1:14-bk-10400-MT (the “Third Case”). On February 10, 2014, Debtor filed a chapter 13 plan, which proposed to pay \$11,012.20 in arrears to the holder of the first deed of trust on the Property and \$22,187.55 in arrears to the homeowner’s association (the “HOA”) on the Property [Third Case, doc. 10]. On March 31, 2014, the Court entered an order dismissing the Third Case because Debtor failed to make the required chapter 13 payments. *Id.* at doc. 19.

The Fourth Case

On June 6, 2018, Debtor filed another voluntary chapter 13 petition, commencing case no. 1:18-bk-11444-VK (the “Fourth Case”). On June 20, 2018, Debtor filed a chapter 13 plan, which proposed to pay \$20,000.00 in arrears to U.S. Bank and \$45,517.00 in claims to the HOA [Fourth Case, doc. 12].

On August 24, 2018, U.S. Bank filed a motion for relief from the automatic stay (the “RFS Motion”). *Id.* at doc. 20. The hearing on the RFS Motion was continued to October 17, 2018. *Id.* at doc. 26.

On October 9, 2018, the Court entered an order dismissing the Fourth Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 30. Subsequently, the Court dismissed the RFS Motion as moot. *Id.* at doc. 40.

The Fifth Case

On November 9, 2018, Debtor filed another voluntary chapter 13 petition, commencing case no. 1:18-bk-12738-MT (the “Fifth Case”). On November 21, 2018, Debtor filed a chapter 13 plan, which proposed to pay \$29,100.00 in arrears to U.S. Bank and \$48,316.56 in claims to the HOA [Fifth Case, doc. 22]. Debtor’s proposed plan payment was \$1,609.00 per month for sixty months. The proposed plan was a 0% plan.

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CONT... Orlando Rivas Huete, Sr.

Chapter 13

On November 14, 2018, Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 as to all creditors (the “Motion to Continue”). *Id.* at doc. 9. In the Motion to Continue, Debtor stated the Fourth Case was dismissed because he was delinquent on his chapter 13 plan payments. Debtor stated that he had to travel out of the country consistently for his employment, and that he was not organized to ensure that his payments were being made timely. Debtor also stated that his income was inconsistent. Debtor represented that since the dismissal of the Fourth Case, he had organized the times that he would be traveling out of the country to ensure that his plan payments were made timely and that his income was more consistent.

On December 10, 2018, the Court entered an order granting the Motion to Continue on an interim basis and continuing the hearing. *Id.* at doc. 26. On February 19, 2019, the Court entered an order granting the Motion to Continue. *Id.* at doc. 35.

On March 12, 2019, the Court entered an order dismissing the Fifth Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 38.

The Pending Case

On March 21, 2019, U.S. Bank recorded a notice of default against the Property, reflecting a default in the amount of \$35,811.61 [doc. 18, Exh. D].

On May 8, 2019, Debtor filed another voluntary chapter 13 petition, commencing the pending case. In his pending case, Debtor’s monthly income purportedly is \$7,305.00 [FN1] and his monthly expenses purportedly are \$5,471.02, leaving net monthly income of \$1,833.98 [doc. 1]. In his schedule I, Debtor indicated that he did not expect an increase in income within the year after filing.

On April 8, 2019, Debtor filed a chapter 13 plan, which proposes to pay \$40,582.29 in arrears to U.S. Bank and \$46,945.00 in arrears to the HOA [doc. 2]. Debtor’s proposed plan payment is \$1,000.00 per month for months 1 thru 12, then \$2,043.98 per month for months 13 thru 60. The proposed plan is a 0% plan.

On May 22, 2019, U.S. Bank filed an opposition to confirmation of Debtor’s chapter 13 plan, arguing among other things, that Debtor’s plan is not feasible, and that Debtor filed the pending case in bad faith [doc. 17].

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9:30 AM

CONT... Orlando Rivas Huete, Sr.

Chapter 13

On May 17, 2019, Debtor filed a motion to impose the automatic stay under 11 U.S.C. § 362 (the "Motion to Impose Stay") [doc. 14]. In the Motion to Impose Stay, Debtor represented that the Fifth Case was dismissed because his prior bankruptcy attorney did not inform him of where to tender his post-petition mortgage payments and did not tell him the amount of his chapter 13 plan payment until 30 minutes prior to the § 341(a) meeting of creditors. Debtor represented that he retained new counsel, who explained the bankruptcy procedures and amount of his chapter 13 plan payment. Debtor also represented that he is receiving \$1,900.00 monthly in income from family contributions.

On June 12, 2019, the Court held a hearing on the Motion to Impose Stay. During that hearing, the Court held that Debtor has not met the applicable standard for the Court to impose the automatic stay, as set forth in the Court's ruling [doc. 25]. Accordingly, on June 14, 2019, the Court entered an order denying the Motion to Impose Stay [doc. 26].

On May 23, 2019, U.S. Bank filed a motion for relief from the automatic stay as to Debtor's residence (the "Motion") [doc. 18]. In the Motion, U.S. Bank states that as of April 1, 2018, and all months thereafter, Debtor has defaulted on his monthly deed of trust payments. As of June 13, 2019, Debtor had not filed an opposition to the Motion.

Discussion

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

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CONT...

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Chapter 13

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 Debtor's filing of the petition in this chapter 13 case was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property. This is Debtor's sixth bankruptcy case affecting the Property. Despite five prior chapter 13 filings, Debtor has yet to complete the bankruptcy process successfully and to obtain a discharge. Debtor has continued to be delinquent on his deed of trust payments for loans secured by the Property and on his monthly payments to the HOA.

In addition to the foregoing, Debtor's proposed chapter 13 plan does not appear feasible. Debtor has provided no evidence that he has sufficient net monthly income to fund the step-up in his proposed chapter 13 plan. Additionally, Debtor has not provided evidence of his family's ability to contribute \$1,900.00 per month to Debtor. Without that contribution, Debtor will not be able to afford his proposed plan payment. The foregoing reasons justify relief from the automatic stay 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.

Upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, Debtor is a

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CONT... Orlando Rivas Huete, Sr.

Chapter 13

borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C).

Any other request for relief is denied.

U.S. Bank must submit an order within seven (7) days.

FOOTNOTES

1. Debtor's putative income is comprised of: (a) \$3,500 from interest and dividends; (b) \$1,900 from family contributions; (c) \$750 from his son-in-law for a BMW vehicle; and (d) \$1,155.00 from his spouse's income from social security.

Party Information

Debtor(s):

Orlando Rivas Huete Sr.

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-11388 Schonte Patrice Hamilton

Chapter 13

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

Docket 7

Tentative Ruling:

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **August 7, 2019 at 9:30 a.m. No later than June 26, 2019**, 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 her July 2019 and August 2019 plan payments in the amount of \$1,065 as stated in the debtor's proposed chapter 13 plan [doc. 2]. **No later than August 5, 2019**, the debtor must file a declaration to demonstrate that she timely made these chapter 13 plan payments.

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Schonte Patrice Hamilton

Represented By
Michael E Clark

Movant(s):

Schonte Patrice Hamilton

Represented By
Michael E Clark

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:30 PM

1:17-10266 Cindy Park

Chapter 13

Adv#: 1:18-01125 Park v. New Penn Financial, LLC dba Shellpoint Mortgage Se

- #10.00** Status conference re: first amended complaint of the plaintiff pursuant to 11 U.S.C. section 506(a),(d) and Bankruptcy Rule 3012 to determine;
- 1) The fraud upon the court,
 - 2) The validity of creditor's proof of claim,
 - 3) The value of the security, and,
 - 4) Claim for damages, sanctions and injunctive relief

fr. 2/13/19; 4/24/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on August 28, 2019**, to be held with the hearing on the motion to dismiss filed by the defendants [doc. 25].

Appearances on June 19, 2019 are excused.

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

Defendant(s):

New Penn Financial, LLC dba

Pro Se

The Bank of New York Mellon fka

Pro Se

Plaintiff(s):

Cindy Park

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01025 Post Confirmation Committee of Unsecured Creditors v. Ross Bindery, Inc.

#11.00 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

fr. 5/15/19

Docket 1

Tentative Ruling:

At the last hearing, the plaintiff informed the Court that it would move to dismiss this adversary proceeding upon clearance of a settlement check. What is the status of the settlement payment?

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

Ross Bindery, Inc.

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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1:30 PM

1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01026 Post Confirmation Committee of Unsecured Creditors v. Standard Printing

#12.00 Status conference re: complaint to avoid and recover preferential transfers

fr. 5/15/19

Docket 1

Tentative Ruling:

At the last hearing, the plaintiff informed the Court that it would move to dismiss this adversary proceeding upon clearance of a settlement check. What is the status of the settlement payment?

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

Standard Printing Company, Inc.

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #13.00** Status conference re: complaint for:
- 1) Declaratory relief re nondischargeability of civil penalties [11U.S.C. § 523(a)(7)]
 - 2) Declaratory relief re nondischargeability of civil penalties [11U.S.C. § 523(a)(2), (4)]
 - 3) Declaratory relief re ownership of \$17,247 in business account
 - 4) Disgorgement of and constructive trust over unauthorized post-petition transfer [11 U.S.C. § 549]
 - 5) Recovery of damages for fraud
 - 6) Recovery of civil penalties for unlawful retaliation [Cal. Lab. Code, § 98.6(b)(3)]
 - 7) Recovery of civil penalties for unlawful retaliation [Cal. Lb. Code, § 1102.5(f)]

Docket 1

***** VACATED *** REASON: Continued to 07/17/2019 at 1:30 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Defendant(s):

Kenneth C. Scott

Pro Se

My Private Practice, Inc. a

Pro Se

Plaintiff(s):

H. Samuel Hopper

Represented By
Daniel Parker Jett

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CONT... Kenneth C. Scott

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:30 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:19-01045 Coast to Coast Holdings, LLC v. Leonardi

#14.00 Status conference re: complaint for:
(1) Breach of contract; (2) Breach of implied covenant of good faith and fair dealing; (3) Fraud in forming a contract; (4) Tortious fraud; (5) Negligent misrepresentation; (6) Statue of frauds - declaratory relief; (7) Avoidance of fraudulent transfer; (8) Preservation of avoided transfers and avoided liens; (9) Slander of title; (10) Waste; (11) Right to setoff of recoupment (12) Turnover of property of the estate (rents); (13) Turnover of property of the estate (real property); (14) Violation of the automatic stay; (15) Disallowance of claim; (16) Avoidance of lien

Counter-claim filed 5/17/19:

Joseph Leonardi, counter-claimant
vs
Coast to Coast Holdings, LLC; Oscar Torres;
Elizabeth Ramos; and Jeff Turner, counter-defendants

Docket 1

Tentative Ruling:

Given that the plaintiff's answer to the counterclaim filed by the defendant is not due until June 20, 2019, the Court will continue this status conference to **1:30 p.m. on July 17, 2019**. No later than **June 26, 2019**, the parties must comply with FRBP 7026 and FRCP 26(a)(1), (f) and (g). No later than **July 3, 2019**, the parties must submit an updated joint status report.

The parties currently have three pending adversary proceedings involving similar claims and allegations [1:19-ap-01045-VK; 1:19-ap-01047-VK; and 1:19-ap-01063-VK]. The parties should discuss how to consolidate these adversary proceedings in their updated status report.

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CONT... Coast to Coast Holdings, LLC

Chapter 11

In light of the parties' request for mediation and the multiple disputes between the parties, prior to the next status conference, the parties should discuss their choice of Mediator and Alternate Mediator. The parties should contact their mediator candidates before the continued status conference to determine if their candidates can accommodate the mediation.

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):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

Defendant(s):

Joseph Leonardi

Pro Se

Plaintiff(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:19-01047 Leonardi v. Coast to Coast Holdings, LLC a Wyoming Limited Lia

- #15.00** Status conference re: complaint to determine nondischargeability of debt
- 1) Fraudulent misrepresentation
 - 2) Injunctive relief
 - 3) Conversion
 - 4) Alter ego

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on July 17, 2019.**

The Court intends to prepare and issue an order to show cause for the dismissal of this adversary proceeding, in light of the debtor defendant's status as a corporation, the inapplicability of the referenced claims under 11 U.S.C. §§ 523 and 727 against the debtor defendant and the other defendants and the overlap with other pending adversary proceedings involving the same parties.

Appearances on June 19, 2019 are excused.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

Defendant(s):

Coast to Coast Holdings, LLC a

Pro Se

Oscar Torres

Pro Se

Jeff Turner

Pro Se

Elizabeth Ramos

Pro Se

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CONT... Coast to Coast Holdings, LLC

Chapter 11

DOES 1 to 25

Pro Se

Plaintiff(s):

Joseph Leonardi

Represented By
Emanuel D Zola

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1:30 PM

1:19-10288 Masoud A. Harandi

Chapter 13

Adv#: 1:19-01030 Harandi v. California 544 Properties, LLC et al

#16.00 Status conference re: complaint for
1. Financial abuse of elder
2. Turnover of property of the estate

fr. 5/22/19

Docket 1

***** VACATED *** REASON: Order of dismissal entered 6/17/19. [Dkt.13]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Masoud A. Harandi

Represented By
Glenn Ward Calsada

Defendant(s):

California 544 Properties, LLC

Pro Se

Joe Cohen

Pro Se

Fresno Option, LLC

Pro Se

Armen Mard

Pro Se

Plaintiff(s):

Masoud A. Harandi

Represented By
Glenn Ward Calsada

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:30 PM

1:18-11243 Jeff Davani

Chapter 7

Adv#: 1:18-01098 Johnson v. Davani an individual, doing business as Arina Buil

#16.01 Pretrial 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; 12/12/18; 1/9/2019;

Docket 8

Tentative Ruling:

Contrary to Local Bankruptcy Rule 7016-1(b)(2)(D), the plaintiff has not provided a description of exhibits that is sufficient for identification. The plaintiff must amend her exhibit list to add detail to her list of exhibits, such as dates, invoice or receipt numbers, account identifiers, etc.

The Court will otherwise approve the parties' joint pretrial stipulation [doc. 28].

The Court intends to set this matter for trial **from September 23, 2019, beginning at 9:30 a.m., through September 27, 2019.**

The parties should be prepared to discuss setting a prior hearing date, and establishing a briefing schedule, regarding any motions in limine.

TRIAL BRIEFS:

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:

The Court will take all direct testimony by declaration, with the exception of the

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CONT... Jeff Davani

Chapter 7

opposing party called as an adverse witness and any other hostile witnesses. Witnesses may be cross-examined live at trial.

Declarations filed by the plaintiff in lieu of live direct testimony must be filed and served no later than **28 days** before trial.

Declarations filed by the defendant in lieu of live direct testimony and any evidentiary objections to the declarations filed by the plaintiff must be filed and served no later than **21 days** before trial.

Any evidentiary objections to the declarations filed by the defendant and any responses to the defendant's evidentiary objections must be filed and served no later than **14 days** before trial.

Any responses to the plaintiff's evidentiary objections must be filed and served no later than **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 direct examination (if applicable) 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 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.**

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.

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CONT... Jeff Davani

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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.

Party Information

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

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2:30 PM

1:10-17214 Darin Davis

Chapter 7

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

#17.00 Motion for attorney's fees

Docket 275

*** VACATED *** REASON: Order ent continuing hrg to 9/4/19 at 2:30
p.m. - jc

Tentative Ruling:

- NONE LISTED -

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

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2:30 PM

1:18-10385 Jorge Alberto Romero II

Chapter 7

Adv#: 1:18-01057 Acevedo v. Romero II

#18.00 Motion for summary judgment

Docket 43

***** VACATED *** REASON: Continued to 8/7/19 per order [55]**

Tentative Ruling:

- NONE LISTED -

Party Information

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

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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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; 10/11/18; 4/11/19

Docket 214

***** VACATED *** REASON: Case dismissed on 6/13/19.**

Tentative Ruling:

- NONE LISTED -

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
Dennis P Riley

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CONT... Gingko Rose Ltd.

Chapter 11

Esmeralda Hernandez

Represented By
Dennis P Riley

Jack Vaughn

Represented By
Dennis P Riley

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1:00 PM

1:14-13456 Gingko Rose Ltd.

Chapter 11

#2.00 Order to show cause why the order to show cause [Doc.214]
should not be discharged as moot

Docket 486

*** VACATED *** REASON: Case dismissed on 6/13/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gingko Rose Ltd.

Represented By
Marc A Lieberman
Michael R Totaro
James J Little
Philip H Stillman

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1:14-13456 Gingko Rose Ltd.

Chapter 11

#3.00 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; 10/11/18; 4/11/19

Docket 1

***** VACATED *** REASON: Case dismissed on 6/13/19.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gingko Rose Ltd.

Represented By
Alan W Forsley

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1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#4.00 Disclosure statement hearing on debtor's disclosure statement dated April 29, 2019

Stip to cont hrg fld 6/12/19

Docket 151

***** VACATED *** REASON: Order approving stip entered 6/13/19
continuing hearing to 7/18/19 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

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1:18-10715 Nasrollah Gashtili

Chapter 11

#5.00 Status conference re: chapter 11 case

fr. 5/17/18; 6/7/18; 10/11/18; 10/18/18; 3/14/19; 5/16/19

Docket 1

Tentative Ruling:

On June 13, 2019, the Court entered an order [doc. 165] approving of the stipulation between the debtor, Integrated Dynamic Solutions, Inc. and the Internal Revenue Service to continue the hearing on the adequacy of the debtor's disclosure statement to July 18, 2019 at 1:00 p.m. The Court will continue this status conference to **July 18, 2019 at 1:00 p.m.** to be held in connection with the hearing on the adequacy of the debtor's disclosure statement. **No later than July 3, 2019**, the debtor must file an updated case status report supported by evidence in the form of declarations and supporting documents.

Appearances on June 20, 2019 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, June 20, 2019

Hearing Room 301

1:00 PM

1:18-11580 Kaliston Jose Nader

Chapter 11

#6.00 Status conference re: chapter 11 case

from: 8/2/18; 1/17/19; 2/21/19; 4/25/19

Docket 1

Tentative Ruling:

Has the debtor filed his income tax returns for 2018?

Fourteen days prior to the next scheduled status conference, the debtor must provide satisfactory documentary evidence that he currently has a legal interest in each of the real properties identified in his last amended Schedule A, and file declarations, signed under penalty of perjury, of the debtor AND the borrower(s) under any related promissory notes, as to why the debtor has a legal or an equitable interest in each of those real properties, when a third party is obligated to make the deed of trust payments, pursuant to the promissory note and the related deed of trust.

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, June 20, 2019

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#7.00 Status conference re chapter 11 case

fr. 10/11/18; 12/6/18; 2/21/19; 4/11/2019

Docket 1

***** VACATED *** REASON: Continued to 8/8/19 at 1:00 PM pursuant to
order entered 5/3/19.**

Tentative Ruling:

- NONE LISTED -

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, June 20, 2019

Hearing Room 301

1:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#8.00 Disclosure statement hearing re debtor's disclosure statement
dated April 29, 2019

Docket 165

***** VACATED *** REASON: Order ent continuing hrg to 7/18/19 at 1:00
p.m. - jc**

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, June 20, 2019

Hearing Room 301

1:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#9.00 Status conference re: chapter 11 case

fr. 10/11/18; 10/18/18; 3/14/19; 5/16/19

Docket 1

Tentative Ruling:

On June 12, 2019, the Court entered an order [doc. 179] approving of the stipulation between the debtor, Nasrollah Gashtili and the Internal Revenue Service to continue the hearing on the adequacy of the debtor's disclosure statement to July 18, 2019 at 1:00 p.m. The Court will continue this status conference to **July 18, 2019 at 1:00 p.m.** to be held in connection with the hearing on the adequacy of the debtor's disclosure statement. **No later than July 3, 2019**, the debtor must file an updated case status report supported by evidence in the form of declarations and supporting documents.

Appearances on June 20, 2019 are excused.

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, June 20, 2019

Hearing Room 301

1:00 PM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#10.00 Status conference re chapter 11 case
fr. 12/6/18

Docket 1

Tentative Ruling:

The Court will set the hearing on the adequacy of the debtor's disclosure statement [doc. 73] at **1:00 p.m. on August 22, 2019**. The debtor must timely file and serve notice to all parties in interest. The debtor also must submit chambers copies of the disclosure statement and proposed chapter 11 plan [doc. 74].

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, June 20, 2019

Hearing Room 301

1:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#11.00 Disclosure statement hearing on adequacy of disclosure statement describing d Debtor's chapter 11 plan dated April 16, 2019

Docket 48

Tentative Ruling:

Proposed dates and deadlines regarding "Debtor's Chapter 11 Original Plan Dated April 16, 2019" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "Disclosure Statement Describing Debtor's Chapter 11 Plan Dated April 16, 2019:"

Hearing on confirmation of the Plan: **August 22, 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: **July 5, 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: **August 2, 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: **August 12, 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
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Thursday, June 20, 2019

Hearing Room 301

1:00 PM

CONT... Coast to Coast Holdings, LLC

Chapter 11

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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

Thursday, June 20, 2019

Hearing Room 301

1:00 PM

1:19-10335 Mia Danielle Boykin

Chapter 7

#12.00 Motion of U.S. Trustee to extend time for filing complaint objecting to discharge under 11 U.S.C. § 727 and/or motion to dismiss under 11 U.S.C. § 707(b)

Docket 39

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):

Mia Danielle Boykin

Represented By
Faith A Ford

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 20, 2019

Hearing Room 301

1:00 PM

1:19-11090 7632 Wiscasset Drive LLC

Chapter 11

#13.00 U.S. Trustee motion to dismiss or convert case

Stip to dismiss filed 6/7/19

Docket 7

*** VACATED *** REASON: Order approving stipulation to dismiss the case entered on 6/11/19 [doc. 14].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

7632 Wiscasset Drive LLC

Represented By
Thomas B Ure

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

Thursday, June 20, 2019

Hearing Room 301

2:00 PM

1:14-11679 Aleta Francis

Chapter 7

#14.00 Debtor's Motion for issuance of second amended order abstaining from ruling on debtor's motion for order disallowing claim of Marcellus Francis

Docket 74

Tentative Ruling:

Deny.

The Court will prepare the order.

Party Information

Debtor(s):

Aleta Francis

Represented By
David M Reeder

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 20, 2019

Hearing Room 301

2:00 PM

1:18-12325 12 Cumpston Partnership

Chapter 11

#15.00 Debtor's Motion for voluntary dismissal of case

Docket 73

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):

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, June 20, 2019

Hearing Room 301

2:00 PM

1:19-10675 Michael Herbert Mueller

Chapter 11

#16.00 Order to Show Cause Why this Case Should not be Dismissed
for Having Been Filed in Bad Faith

Docket 27

Tentative Ruling:

The Court will dismiss this chapter 11 case pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (4)(E). As discussed further below, the debtor and debtor in possession did not file his chapter 11 petition in good faith, and he has not complied with an order of the Court.

I. BACKGROUND

A. Debtor's Schedules

On March 22, 2019, Michael Herbert Mueller ("Debtor") filed a voluntary chapter 11 petition. In his petition, Debtor indicated that he resides at 6642 Greenbush Avenue, Van Nuys, California 91401 (the "Van Nuys Residence").

In his schedule A/B, Debtor indicated that he owns real property located in San Bernardino, California (the "Property"). Debtor did not list an interest in any other real property. Debtor also listed an interest in personal property with an aggregate value of \$32,633.15. Of that personal property, in his schedule C, Debtor claimed exemptions in the aggregate amount of \$25,987.15.

In his schedule D, Debtor indicated that the Property is encumbered with a lien in the amount of \$281,773.48. According to Debtor, the Property has a value of \$85,000.00 [doc. 22]. In his schedule E/F, Debtor listed nonpriority unsecured claims totaling \$570.00. However, as of June 17, 2019, the claims register indicates that proofs of claims have been filed in Debtor's case for nonpriority unsecured claims in the aggregate amount of \$72,176.16.

Although Debtor represents that he rents a room at the Van Nuys Residence and that his brother is renting the Property, Debtor's schedule G does not list any unexpired

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CONT... Michael Herbert Mueller

Chapter 11

leases or executory contracts.

In his schedule I, Debtor represents that he earns \$2,356.78 per month in income, which includes \$900.00 per month in rental income from the Property. In his schedule J, Debtor represents that his monthly expenses are \$2,339.39, leaving net monthly income of \$17.39. Debtor's monthly expenses include a \$500.00 rental expense for the Van Nuys Residence. However, in his schedule J, Debtor did not include ANY expenses related to the Property, e.g., deed of trust payments, insurance or real property taxes.

B. Debtor's Motion to Value the Property

On May 7, 2019, Debtor filed a motion for order determining value of the Property under 11 U.S.C. § 506(a) (the "Motion to Value") [doc. 22]. In the Motion to Value, Debtor represents that the Property is encumbered by two liens; a first deed of trust in favor of Fay Servicing in the amount of \$206,773.48 and a second deed of trust in favor of Chase Bank, N.A. in the amount of \$52,564.63.

On May 28, 2019, U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust ("U.S. Bank"), the holder of the first deed of trust on the Property, filed an opposition to the Motion to Value (the "Opposition to Motion to Value") [doc. 38]. In the Opposition to Motion to Value, U.S. Bank requested that the Court continue the hearing in order for U.S. Bank to take discovery on issues pertinent to the Motion to Value, including whether the Property is Debtor's primary residence.

U.S. Bank alleges that Debtor still is living at the Property, not the Van Nuys Residence. In order to support this position, U.S. Bank points to Debtor's monthly operating reports ("MORs"). The majority of purchases Debtor has made have been in locations that are much closer to the Property, rather than the Van Nuys Residence. Also, U.S. Bank points out that the address listed on Debtor's bank statement and money market account statement is the Property, not the Van Nuys Residence. Debtor did not file a reply to the Opposition to Motion to Value.

C. Debtor's First Case Status Report

On April 9, 2019, the Court entered an *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* (the "Order") [doc. 11]. In

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CONT... Michael Herbert Mueller

Chapter 11

that order, the Court set a status conference in Debtor's case for May 9, 2019 and ordered Debtor to file a status report supported by evidence in the form of declaration and supporting documents at least fourteen days before the status conference.

On April 27, 2019, Debtor filed an untimely *First Case Status Conference Report* (the "Status Report") [doc. 20]. Contrary to the Order, the Status Report was not supported by evidence in the form of declarations and supporting documents. The Status Report represents that Debtor filed his chapter 11 petition in order to stop a foreclosure sale on the Property that was scheduled to take place on March 25, 2019.

In the Status Report, Debtor represents that he has filed all required tax returns with federal and state taxing authorities. On April 3, 2019, the Internal Revenue Service filed claim 3-1 (the "IRS Claim"). Although the Status Report represents that Debtor has filed all required tax returns, the IRS Claim indicates that Debtor has not filed his income tax returns for 2014, 2017 and 2018. Further, Debtor has not filed his 2018 federal income tax return with the Court (contrary to the Order [doc. 11]).

D. The Order to Show Cause

On May 9, 2019, the Court held a status conference in the above-captioned case, the Honorable Victoria S. Kaufman, United States Bankruptcy Judge, presiding. Appearances were as noted on the record. After the status conference, the Court issued an *Order to Show Cause Why this Case Should Not Be Dismissed for Having Been Filed in Bad Faith* (the "OSC") [doc. 27].

On May 14, 2019, the Court mailed a copy of the OSC to Debtor at the Van Nuys Residence. On May 21, 2019, the OSC was returned to the Court as undeliverable. The United States Postal Service endorsed the OSC with the reason for non-delivery as "attempted – not known, unable to forward." According to the United States Postal Service, "attempted-not known" means that delivery was attempted, but the addressee is not known at the place of address. [FN1]. "Unable to forward" means that there is no change of address order on file or the forwarding order expired.

On June 6, 2019, Debtor filed a response to the OSC (the "Response") [doc. 42]. In the Response, Debtor states, among other things, that he filed the pending case to reorganize the debt secured by the Property. On June 13, 2019, U.S. Bank filed a reply

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CONT... **Michael Herbert Mueller** **Chapter 11**

to the Response (the "Reply") [doc. 45]. In the Reply, among other things, U.S. Bank reiterates its allegations that Debtor's primary residence is the Property.

E. Debtor's Withdrawn Chapter 11 Plan of Reorganization and Related Disclosure Statement

On June 6, 2019, Debtor filed a proposed chapter 11 plan of reorganization (the "Plan") [doc. 41] and a related disclosure statement (the "DS") [doc. 40]. Debtor attached the Plan and the DS to the Response in support of his assertion that he filed the pending case in good faith.

Included in the DS is a declaration by Debtor signed under penalty of perjury. In that declaration, Debtor states that the projected monthly expenses included in the DS do not include a rental expense for the Van Nuys Residence because Debtor's brother has agreed to allow Debtor to live with him for free while Debtor attempts to reorganize. Debtor did not state whether he was referring to the same brother that rents the Property. On June 10, 2019, Debtor filed a voluntary dismissal of the Plan and DS [doc. 44].

II. DISCUSSION

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...

(E) Failure to comply with an order of the court;

...

"While § 1112(b)(4) provides a list of what circumstances may constitute 'cause' for dismissal, the list is non-exhaustive. . . ." *In re Prometheus Health Imaging, Inc.*, 705

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CONT... **Michael Herbert Mueller**

Chapter 11

F. App'x 626, 627 (9th Cir. 2017). "Although section 1112(b) does not explicitly require that cases be filed in 'good faith,' courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal." *In re Marshall*, 721 F.3d 1032, 1047 (9th Cir. 2013) (citing *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir.1994)). "The good faith requirement does not depend on a debtor's subjective intent, but rather 'encompasses several, distinct equitable limitations that courts have placed on Chapter 11 filings.'" *Id.* "Generally, a plan is not filed in good faith if it represents an attempt 'to unreasonably deter and harass creditors' and to 'achieve objectives outside the legitimate scope of the bankruptcy laws.'" *Id.* The "[d]ebtor bears the burden of proving that the petition was filed in good faith." *Prometheus Health Imaging, Inc.*, 705 F. App'x at 627 (citation and internal quotation marks omitted).

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 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 convert or dismiss this case pursuant to 11 U.S.C. § 1112(b)(1), as having been filed in bad faith, and (4)(E). Contrary to the Order [doc. 11], the Status Report was not supported by evidence in the form of declarations and supporting documents. As such, there is cause to convert or dismiss Debtor's case.

Further, Debtor states that he filed the pending case to reorganize the debt secured by the Property. Pursuant 11 U.S.C. § 1123(b)(3)(5), a chapter 11 plan may not modify the rights of holders of claims secured only by a security interest in real property that is the debtor's principal residence. Based on Debtor's purchases listed in his MORs, the address listed on Debtor's bank statements attached to the MORS, the OSC being undeliverable to the Van Nuys Residence and Debtor's declaration included in the DS, it appears that Debtor is attempting to modify the rights of U.S. Bank in violation of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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CONT... Michael Herbert Mueller
11 U.S.C. § 1123(b)((3)(5).

Chapter 11

In light of the foregoing, it appears that dismissal of this chapter 11 case is in the best interest of creditors and the estate. From a review of the record, if Debtor's case were converted, it does not appear that there would be sufficient assets in Debtor's estate that could be administered for the benefit of creditors. Further, it does not appear that Debtor has sufficient income to make adequate protection payments or deed of trust payments regarding the debt secured by the Property (which is **highly** overencumbered).

III. CONCLUSION

The Court will dismiss the case.

U.S. Bank must submit an order within seven (7) days.

FOOTNOTES

1. <https://pe.usps.com/text/DMM300/507.htm>.

Party Information

Debtor(s):

Michael Herbert Mueller

Represented By
Lionel E Giron
Crystle Jane Lindsey

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

2:00 PM

1:19-10675 Michael Herbert Mueller

Chapter 11

#17.00 Status conference re: chapter 11 case
fr. 5/9/19;

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Herbert Mueller

Represented By
Lionel E Giron

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

Thursday, June 27, 2019

Hearing Room 301

10:30 AM

1:16-13009 Ronald Asher Halper and June Halper

Chapter 7

#1.00 Trustee's final report and applications for compensation

David Seror, Chapter 7 Trustee

Robert A. Hessling, APC, General Counsel for Chapter 7 Trustee

Grobstein Teeple, LLP, Accountants for Chapter 7 Trustee

Docket 80

Tentative Ruling:

David Seror, chapter 7 trustee – approve fees of \$39,500.00 and reimbursement of expenses of \$47.69, pursuant to 11 U.S.C. § 330, on a final basis. The trustee is authorized to receive pro rata reduced amounts of \$17,363.94 in fees and \$47.69 for reimbursement of expenses.

Robert A. Hessling, APC, counsel to chapter 7 trustee – approve fees of \$37,320.08 and reimbursement of expenses of \$1,771.42, pursuant to 11 U.S.C. § 330, on a final basis. Robert A. Hessling, APC is authorized to receive pro rata reduced amounts of \$17,363.95 in fees and \$1,771.42 for reimbursement of expenses. The Court will not approve \$908.50 in fees for the reasons below.

Grobstein Teeple, LLP, accountant to chapter 7 trustee – approve fees of \$2,064.00 and reimbursement of expenses of \$138.84, pursuant to 11 U.S.C. § 330, on a final basis. Grobstein Teeple, LLP is authorized to receive 100% of the approved fees and reimbursement of expenses.

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

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CONT... **Ronald Asher Halper and June Halper**

Chapter 7

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. § 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."

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CONT... **Ronald Asher Halper and June Halper**

Chapter 7

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	Rate	Time	Fee
Case Administration	RAH	4/3/17	TELEPHONE CONFERENCE WITH KRISTIN AT PRO HEALTH RE STATUS OF CASE	\$395.00	0.20	\$79.00
Fee / Employment Application	RAH	1/15/17	PREPARE APPLICATION TO EMPLOY RAH, APC AS GENERAL COUNSEL FOR TRUSTEE; AND DECLARATIONS OF TRUSTEE AND ROBERT A. HESSLING	\$395.00	1.2	\$474.00
Fee / Employment Application	RAH	1/15/17	PREPARE NOTICE OF APPLICATION TO EMPLOY RAH, APC AS GENERAL COUNSEL FOR TRUSTEE	\$395.00	0.40	\$158.00
Fee / Employment Application	RAH	1/30/17	REVISE NOTICE OF APPLICATION TO EMPLOY RAH, APC AS GENERAL COUNSEL FOR TRUSTEE	\$395.00	0.20	\$79.00
Fee / Employment Application	RAH	2/16/17	PREPARE ORDER AUTHORIZING TRUSTEE TO EMPLOY RAH, APC AS GENERAL COUNSEL FOR TRUSTEE	\$395.00	0.30	\$118.50

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CONT... Ronald Asher Halper and June Halper

Chapter 7

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):

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, June 27, 2019

Hearing Room 301

10:30 AM

1:18-11138 Hector Alejandro

Chapter 7

#2.00 Trustee's final report and applications for compensation

Nancy Zamora, Chapter 7 Trustee

Law Offices of Wesley H. Avery, APC, Attorneys for Chapter 7 Trustee

SLBiggs, A division of SingerLewak, Accountants for Chapter 7 Trustee

Docket 54

Tentative Ruling:

Nancy J. Zamora, chapter 7 trustee – approve fees of \$5,750.00 and reimbursement of expenses of \$375.56, pursuant to 11 U.S.C. § 330, on a final basis. The trustee is authorized to collect 100% of the approved fees and reimbursement of expenses.

Law Offices of Wesley H. Avery, counsel to chapter 7 trustee – approve fees of \$13,185.00 and reimbursement of expenses of \$766.84, pursuant to 11 U.S.C. § 330, on a final basis. Law Offices of Wesley H. Avery is authorized to collect 100% of the approved fees and reimbursement of expenses. The Court will not approve \$1,345.50 in fees for the reasons below.

SLBiggs, a Division of SingerLewak, accountant to chapter 7 trustee – approve fees of \$2,950.00 and reimbursement of expenses of \$147.15, pursuant to 11 U.S.C. § 330, on a final basis. SLBiggs, a Division of SingerLewak is authorized to collect 100% of the approved fees and reimbursement of expenses.

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

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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. § 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

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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.

Timekeeper	Date	Description	Rate	Time	Fee
FEA2014 WHA	6/7/18	PREPARATION OF EMPLOYMENT APPLICATION; PREPARATION OF NOTICE THEREOF; PREPARATION OF DECLARATION OF DISINTERESTEDNESS IN SUPPORT THEREOF	\$585.00	0.4	\$234.00
FEA2014 WHA	7/23/18	PREPARATION OF DECLARATION RE NO OPPOSITION TO EMPLOYMENT APPLICATION; PREPARATION OF ORDER THEREON	\$585.00	0.50	\$292.50
CA2014 WHA	8/7/18	REVIEW AND ANALYSIS OF POC # 1-2	\$585.00	0.10	\$58.50
CA2014 WHA	8/8/18	REVIEW AND ANALYSIS OF POC #'S 3-4	\$585.00	0.20	\$117.00
CA2014 WHA	9/7/18	REVIEW AND ANALYSIS OF POC # 10	\$585.00	0.10	\$58.50
CA2014 WHA	9/11/18	REVIEW AND ANALYSIS OF POC #'S 1-7	\$585.00	0.40	\$234.00
CA2014 WHA	9/11/18	REVIEW AND ANALYSIS OF POC # 8	\$585.00	0.10	\$58.50
CA2014 WHA	9/11/18	REVIEW AND ANALYSIS OF POC # 9	\$585.00	0.10	\$58.50
CA2014 WHA	9/13/18	REVIEW AND ANALYSIS OF CLAIMS REGISTER AFTER CLAIMS BAR DATE; EXCHANGE OF EMAILS WITH THE TRUSTEE RE SAME	\$585.00	0.30	\$175.50
AA2014 WHA	12/5/18	FILE REVIEW RE CASE STATUS	\$585.00	0.10	\$58.50

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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):

Hector Alejandro

Represented By
Jasmine Firooz

Trustee(s):

Nancy J Zamora (TR)

Represented By
Wesley H Avery

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1:19-11149 Orlando Rivas Huete, Sr.

Chapter 13

#11.00 Hearing on confirmation of plan

Docket 2

Tentative Ruling:

For the reasons discussed below, the Court will dismiss this case with a 180-day bar against refiling pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1307(c).

I. BACKGROUND

On October 30, 2006, Orlando Rivas Huete, Sr. ("Debtor") executed a promissory note in the principal sum of \$376,000, which was made payable to Resmae Mortgage Corporation. [doc. 18, Exh. A]. That note is secured by a deed of trust, executed by Debtor, encumbering the real property located at 12235 Clover Road, #169, Pacoima, California 91331 (the "Property"). *Id.* at Exh. B. Subsequently, that deed of trust was assigned to U.S. Bank National Association, as Indenture Trustee on Behalf of and with Respect to Ajax Mortgage Loan Trust 2017-A, Mortgage-Backed Notes, Series 2017-A ("U.S. Bank"). *Id.* at Exh. C.

On May 8, 2019, Debtor filed a voluntary chapter 13 petition, commencing the pending case. The Debtor has a history of bankruptcy filings.

A. The First Case

On June 22, 2009, Debtor filed a voluntary chapter 13 petition, commencing case no. 1:09-bk-17660-GM (the "First Case"). On the same day, Debtor filed a chapter 13 plan which proposed to pay \$60,000 in arrears to the holder of the first deed of trust on the Property [First Case, doc. 4]. On August 20, 2009, the Court entered an order dismissing the First Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 13.

B. The Second Case

On August 23, 2013, Debtor filed a voluntary chapter 13 petition, commencing case

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no. 1:13-bk-15561-AA (the "Second Case"). On September 6, 2013, Debtor filed a chapter 13 plan, which proposed to pay \$10,408.47 in arrears to the holder of the first deed of trust on the Property [Second Case, doc. 7]. On December 9, 2019, the Court entered an order dismissing the Second Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 13.

C. The Third Case

On January 27, 2014, Debtor filed another voluntary chapter 13 petition, commencing case no. 1:14-bk-10400-MT (the "Third Case"). On February 10, 2014, Debtor filed a chapter 13 plan, which proposed to pay \$11,012.20 in arrears to the holder of the first deed of trust on the Property and \$22,187.55 in arrears to the homeowner's association (the "HOA") on the Property [Third Case, doc. 10]. On March 31, 2014, the Court entered an order dismissing the Third Case because Debtor failed to make the required chapter 13 payments. *Id.* at doc. 19.

D. The Fourth Case

On June 6, 2018, Debtor filed another voluntary chapter 13 petition, commencing case no. 1:18-bk-11444-VK (the "Fourth Case"). On June 20, 2018, Debtor filed a chapter 13 plan, which proposed to pay \$20,000.00 in arrears to U.S. Bank and \$45,517.00 in claims to the HOA [Fourth Case, doc. 12].

On August 24, 2018, U.S. Bank filed a motion for relief from the automatic stay (the "RFS Motion"). *Id.* at doc. 20. The hearing on the RFS Motion was continued to October 17, 2018. *Id.* at doc. 26.

On October 9, 2018, the Court entered an order dismissing the Fourth Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 30. Subsequently, the Court dismissed the RFS Motion as moot. *Id.* at doc. 40.

E. The Fifth Case

On November 9, 2018, Debtor filed another voluntary chapter 13 petition, commencing case no. 1:18-bk-12738-MT (the "Fifth Case"). On November 21, 2018, Debtor filed a chapter 13 plan, which proposed to pay \$29,100.00 in arrears to U.S. Bank and \$48,316.56 in claims to the HOA [Fifth Case, doc. 22]. Debtor's proposed plan payment was \$1,609.00 per month for sixty months. The proposed plan was a 0%

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On November 14, 2018, Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 as to all creditors (the "Motion to Continue"). *Id.* at doc. 9. In the Motion to Continue, Debtor stated the Fourth Case was dismissed because he was delinquent on his chapter 13 plan payments. Debtor stated that he had to travel out of the country consistently for his employment, and that he was not organized to ensure that his payments were being made timely. Debtor also stated that his income was inconsistent. Debtor represented that since the dismissal of the Fourth Case, he had organized the times that he would be traveling out of the country to ensure that his plan payments were made timely and that his income was more consistent.

On December 10, 2018, the Court entered an order granting the Motion to Continue on an interim basis and continuing the hearing. *Id.* at doc. 26. On February 19, 2019, the Court entered an order granting the Motion to Continue. *Id.* at doc. 35.

On March 12, 2019, the Court entered an order dismissing the Fifth Case arising from the chapter 13 confirmation hearing. *Id.* at doc. 38.

F. The Pending Case

On March 21, 2019, U.S. Bank recorded a notice of default against the Property, reflecting a default in the amount of \$35,811.61 [doc. 18, Exh. D].

1. Debtor's Schedules and Statement of Financial Affairs

On May 8, 2019, Debtor filed another voluntary chapter 13 petition, commencing the pending case. In his pending case, in his schedule A/B [doc. 1], Debtor listed an interest in two real properties, the Property and a burial plot. Debtor valued the Property at \$445,000 and the burial plot at \$8,000, for an aggregate value of \$453,000. Debtor listed an interest in personal property with an aggregate value of \$35,420. In his schedule C [doc. 1], Debtor claimed exemptions in \$14,420 of that personal property.

In his schedule D [doc. 1], Debtor listed five secured claims with an aggregate value of \$548,487.07. Of these secured claims, two were secured by the Property—one in favor of U.S. Bank in the amount of \$455,445.77 and the other in favor of the HOA in

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the amount of \$46,945. In his schedule E/F [doc. 1], Debtor listed a priority unsecured claim in favor of the Internal Revenue Service in the amount of \$17,483.21 and nonpriority unsecured claims totaling \$47,898.35.

In his schedules I and J [doc. 1], Debtor represented that his monthly income is \$7,305.00 and his monthly expenses are \$5,471.02, leaving net monthly income of \$1,833.98 [doc. 1]. Debtor's putative income is comprised of: (a) \$3,500 from interest and dividends; (b) \$1,900 from family contributions; (c) \$750 from his son-in-law for a BMW vehicle; and (d) \$1,155.00 from his spouse's income from social security. In his schedule I, Debtor represented that he was self-employed as a "parcel delivery svc." He also indicated that he did not expect an increase in income within the year after filing.

Contrary to his representations regarding his income in his schedule I, in his statement of financial affairs [doc. 1] Debtor listed that he had received \$12,800 in income from operating a business from January 1, 2019 to his petition date, and \$23,3000 in income for all of 2018.

2. Debtor's Chapter 13 Plan

On April 8, 2019, Debtor filed a chapter 13 plan, which proposes to pay \$40,582.29 in arrears to U.S. Bank and \$46,945.00 in arrears to the HOA [doc. 2]. Debtor's proposed plan payment is \$1,000.00 per month for months 1 thru 12, then \$2,043.98 per month for months 13 thru 60. The proposed plan is a 0% plan.

On May 22, 2019, U.S. Bank filed an opposition to confirmation of Debtor's chapter 13 plan, arguing among other things, that Debtor is attempting to impose a plan injunction to counteract that there is no automatic stay, that Debtor's plan is not feasible, and that Debtor filed the pending case in bad faith [doc. 17].

On June 26, 2019, the chapter 13 trustee filed an objection to confirmation of Debtor's proposed chapter 13 plan [doc. 34]. In that objection, the chapter 13 trustee opposes confirmation because, among other things, Debtor failed to provide the chapter 13 trustee with documentation of all income, including a contribution declaration with evidence, failed to provide his federal and state income tax returns for 2017 and 2018 and failed to meet the business reporting requirements.

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3. Debtor's Motion to Impose the Automatic Stay

On May 17, 2019, Debtor filed a motion to impose the automatic stay under 11 U.S.C. § 362 (the "Motion to Impose Stay") [doc. 14]. In the Motion to Impose Stay, Debtor represented that the Fifth Case was dismissed because his prior bankruptcy attorney did not inform him of where to tender his post-petition mortgage payments and did not tell him the amount of his chapter 13 plan payment until 30 minutes prior to the § 341(a) meeting of creditors. Debtor represented that he retained new counsel, who explained the bankruptcy procedures and amount of his chapter 13 plan payment.

On June 12, 2019, the Court held a hearing on the Motion to Impose Stay. During that hearing, the Court explained to Debtor's attorney that Debtor did not meet the applicable standard for the Court to impose the automatic stay, as set forth in the Court's ruling [doc. 25]. Accordingly, on June 14, 2019, the Court entered an order denying the Motion to Impose Stay [doc. 26].

In the ruling [doc. 25], the Court noted, in relevant part:

Debtor has not provided at this time clear and convincing evidence that his financial affairs have improved since the Fifth Case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. This is the Debtor's sixth chapter 13 case. Despite five prior chapter 13 filings, the Debtor has yet to complete the chapter 13 process successfully and to obtain a discharge. Further, the Debtor has continued to be delinquent on his deed of trust payments for loans secured by the Debtor's residence and on his monthly payments to the HOA.

Moreover, the Debtor's proposed chapter 13 plan does not appear feasible. The Debtor has provided no evidence that he has sufficient net monthly income to fund the step-up in his proposed chapter 13 plan. Additionally, the Debtor has not provided evidence of his family's ability to contribute \$1,900.00 per month to the Debtor. Without that contribution, Debtor will not be able to afford his proposed plan payment.

4. U.S. Bank's Motion for Relief from the Automatic Stay

On May 23, 2019, U.S. Bank filed a motion for relief from the automatic stay as to Debtor's residence (the "RFS Motion") [doc. 18]. U.S. Bank requested that the Court

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grant 11 U.S.C. § 362(d)(4) relief. Debtor did not oppose the RFS Motion.

On June 19, 2019, the Court held a hearing on the RFS Motion. At the hearing, the Court granted the RFS Motion pursuant to 11 U.S.C. § 362(d)(4), as set forth in the Court's ruling [doc. 28]. Accordingly, on June 24, 2019, the Court entered an order granting the RFS Motion [doc. 33].

In the Court's ruling [doc. 28], the Court concluded that Debtor's filing of the petition in this chapter 13 case was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property. Accordingly, relief from the automatic stay and the provision of *in rem* relief pursuant to 11 U.S.C. § 362(d)(4) was justified.

II. ANALYSIS

Pursuant to 11 U.S.C. § 1307(c):

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause. . . .

11 U.S.C. § 1307(c). In deciding whether a chapter 13 case should be dismissed or converted, courts apply 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.'" *Nelson v Meyer (In re Nelson)*, 343 B.R. 671, 675 (9th Cir. B.A.P. 2006).

In addition to the enumerated causes listed in § 1307(c), a chapter 13 case filed in bad faith may be dismissed for cause under 11 U.S.C. § 1307(c). *In re Leavitt*, 171 F.3d 1219, 1224–25 (9th Cir. 1999); *In re Eisen*, 14 F3d 469, 470 (9th Cir. 1994). Bad faith is determined by evaluating the totality of circumstances, including the following factors: (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his chapter 13 petition or plan in

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an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor only intended to defeat state court litigation; (4) whether egregious behavior is present. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Here, Debtor has unfairly manipulated the Bankruptcy Code. Debtor has filed multiple bankruptcy cases and enjoyed the protection of the automatic stay while continuing to be delinquent on his deed of trust payments and on his monthly payments to the HOA.

"Post BAPCPA, a majority of courts have. . . [found] that even where the stay has been terminated preconfirmation by operation of law under section 362(c)(3) of the Bankruptcy Code, the debtor still retains the right to bind the creditors under a confirmed plan." *In re Lemma*, 394 B.R. 315, 323–24 (Bankr. E.D.N.Y. 2008); *see also Kurtzahn v. The Sheriff of Benton County, Minn. (In re Kurtzahn)*, 342 B.R. 581 (Bankr. D.Minn. 2006) (where the stay was terminated under section 362(c)(3) but debtor later obtained confirmation of plan, the creditor was bound by the plan terms under section 1327(a)); *In re Fleming*, 349 B.R. 444 (Bankr. D.S.C. 2006) (automatic stay would not be extended but debtor could still confirm a plan which would bind all of the creditors). "Once a plan is confirmed, the plan binds the debtor and its creditors regardless of whether the stay has been vacated prior to confirmation, so long as the debtor remains current under the plan." *Id.*

If the Court confirmed Debtor's proposed chapter 13 plan, U.S. Bank and the HOA may be precluded from foreclosing on the Property, or otherwise exercising available remedies to collect on their claims, during the pendency of the chapter 13 case—despite the termination of the automatic stay. This would be inequitable to U.S. Bank and the HOA. The Court concludes that Debtor's filing of the petition in this chapter 13 case was in bad faith. Accordingly, there is cause to dismiss or convert this chapter 13 case to one under chapter 7.

After a review of Debtor's schedules and statement of financial affairs, if Debtor's case were converted, it does not appear that there would be sufficient assets in Debtor's estate that could be administered for the benefit of creditors. In light of the foregoing, it appears that dismissal of this chapter 13 case is in the best interest of creditors and the estate.

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III. CONCLUSION

The Court will dismiss this case with a 180-day bar against refiling pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1307(c).

U.S. Bank must submit the order within seven (7) days.

Party Information

Debtor(s):

Orlando Rivas Huete Sr.

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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#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 -

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1:14-11542 Andrea Nicole Williams-Hart

Chapter 13

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

fr. 5/14/19;

Docket 149

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrea Nicole Williams-Hart

Represented By
Todd J Roberts

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:14-11699 Larry John Phillips and Clara Josephine Phillips

Chapter 13

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

Docket 140

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

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1:16-10023 Angelina Rodriguez

Chapter 13

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

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angelina Rodriguez

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:16-13190 JeanPaul Reneaux

Chapter 13

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

fr. 3/12/19; 4/9/19; 6/11/19

Docket 78

*** VACATED *** REASON: Voluntary dismissal of motion filed on
6/17/19 [doc. 106].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JeanPaul Reneaux

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

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

Docket 88

Tentative Ruling:

- NONE LISTED -

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

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1:17-11488 Dana Anthony Bambo and Carla Lombardo Bambo

Chapter 13

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

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dana Anthony Bambo

Represented By
William G Cort

Joint Debtor(s):

Carla Lombardo Bambo

Represented By
William G Cort

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:17-13103 Steven Joseph Dombrovsky

Chapter 13

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

Docket 74

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

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1:18-10798 Narkell Hobbs-James

Chapter 13

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

Docket 58

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narkell Hobbs-James

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-12208 Andre Lamont Brown

Chapter 13

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

fr. 5/14/19;

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andre Lamont Brown

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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11:00 AM

1:14-11489 Raymundo I Ramos

Chapter 13

#44.00 Motion re: objection of U.S. Trustee to notice of mortgage payment change filed in connection with proof of claim 3

fr. 3/12/19; 5/14/19; 6/11/19

Docket 51

***** VACATED *** REASON: Order ent continuing hrg to 8/13/19 at 11:00 a.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raymundo I Ramos

Represented By
Richard A Loa

Trustee(s):

Elizabeth (SV) 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 2, 2019

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#45.00 Creditor H. Samuel Hopper's objection to debtor's claim of exemptions to property

fr. 6/11/19

Docket 61

Tentative Ruling:

Overrule.

I. BACKGROUND

On December 18, 2018, Kenneth C. Scott ("Debtor") filed a chapter 13 petition. In his schedule A/B, Debtor scheduled a 100% interest in My Private Practice, Inc. ("MPPI") and valued his interest at \$0.00. Debtor also scheduled an interest in "monies in business account," valued at \$17,274.00 (the "Funds"). In Debtor's latest-amended schedule C [doc. 35], Debtor claimed an exemption in the Funds pursuant to California Code of Civil Procedure ("CCP") § 703.140(b)(5).

On February 20, 2019, Debtor attended his initial § 341(a) meeting of creditors (the "Meeting of Creditors"). Declaration of Daniel Parker Jett ("Jett Declaration") [doc. 42], ¶ 5. Daniel Parker Jett, an attorney appearing on behalf of H. Samuel Hopper, who filed a claim against Debtor's estate, also appeared at the Meeting of Creditors. Jett Declaration, ¶ 6. According to Mr. Jett, Debtor testified at the Meeting of Creditors that: (A) MPPI was no longer operating and Debtor had organized a new corporate entity; (B) the Funds counted among Debtor's personal assets; and (C) Debtor had paid the Funds, which amounted to the full balance of MPPI's corporate account, to himself after the petition date. *Id.*

On March 18, 2019, Mr. Hopper filed an objection to Debtor's claim of an exemption in the Funds (the "Objection") [doc. 42]. In the Objection, Mr. Hopper contends that: (A) Debtor does not qualify for a homestead exemption under CCP § 703.140(b)(1); (B) the Funds were property of MPPI and do not qualify as property of the estate that Debtor may exempt; and (C) Debtor has provided no evidence that

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he was entitled to a distribution of \$17,274 from MPPI.

On April 3, 2019, Debtor filed an opposition to the Objection (the "Opposition") [doc. 61]. In the Opposition, Debtor contends that, because MPPI is a subchapter S corporation, a distribution to a shareholder from MPPI is treated as a dividend and considered the property of the shareholder. Debtor also asserts that it is immaterial that the transfer of the Funds occurred postpetition; according to Debtor, Debtor's inclusion of the Funds in his schedules filed on the petition date signaled an intent to declare the Funds as profits to be distributed to Debtor.

On April 11, 2019, Mr. Hopper filed a reply to the Opposition (the "Reply") [doc. 63]. In the Reply, Mr. Hopper reiterates that Debtor has not demonstrated that the Funds are property of the estate because Debtor has not provided evidence that the account holding the Funds is in Debtor's name (as opposed to MPPI's name) or that MPPI is a subchapter S corporation. Mr. Hopper further contends that Debtor cannot simply label the Funds a "dividend;" rather, Debtor must show that he was entitled to a dividend after accounting for MPPI's losses and deductions, including Mr. Hopper's claim against MPPI for unpaid wages, which Mr. Hopper believes would have rendered MPPI insolvent and, as a result, unable to distribute profits to shareholders. Finally, Mr. Hopper suggests Debtor claimed the exemption in the Funds in bad faith.

On May 17, 2019, Debtor filed a declaration regarding MPPI (the "Scott Declaration") [doc. 100]. In relevant part, Debtor testifies in the Scott Declaration that: (A) MPPI is a subchapter S corporation; (B) Debtor takes a monthly draw from MPPI as compensation for work Debtor performs for MPPI; (C) Debtor also receives dividends at the end of each year based on the amount of profits made by MPPI, which amount is calculated by Debtor's accountant; and (D) in 2018, Debtor received \$47,000, a portion of which was deemed payroll and a portion of which was deemed profits, plus an additional \$16,832 in corporate distributions at the end of the year. Scott Declaration, ¶¶ 5, 8-9, 11. Debtor also testifies that, postpetition, Debtor shuttered MPPI and is now doing business as Kenneth Scott, Psy.D, A Psychological Corporation. Scott Declaration, ¶ 16.

II. ANALYSIS

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CONT... **Kenneth C. Scott**
A. Burden of Proof

Chapter 13

Under 11 U.S.C. § 522(l), "[u]nless a party in interest objects, the property claimed as exempt [on debtor's schedules] is exempt." Pursuant CCP § 703.580(b), "[a]t a hearing under this section, the exemption claimant has the burden of proof." "[W]here a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016); *see also Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000) (holding that the burden of proof is a substantive element of state law applicable when federal courts apply state law).

B. CCP § 703.140(b)(5) and California's "Wildcard" Exemption

Mr. Hopper first contends that Debtor is not entitled to an exemption under CCP § 703.140(b)(1) because that statute refers to a homestead exemption. Pursuant to CCP § 703.140(b)(5), a debtor may claim an exemption in "[t]he debtor's aggregate interest, not to exceed in value one thousand two hundred eighty dollars (\$1,280) plus any unused amount of the exemption provided under paragraph (1), in any property." (emphasis added). CCP § 703.140(b)(1), in turn, allows debtors to claim an exemption in "[t]he debtor's aggregate interest, not to exceed twenty-four thousand sixty dollars (\$24,060) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence...."

Contrary to Mr. Hopper's assertion, CCP § 703.140(b)(5) does not require that a debtor be a homeowner in order to claim any real or personal property as exempt under that section. *In re Reaves*, 256 B.R. 306, 313 (B.A.P. 9th Cir. 2000). If the debtor does not claim any exemptions under CCP § 703.140(b)(1), then the "unused amount" of that exemption is equal to the entire exemption amount. *Id.*; *see also In re Garcia*, 709 F.3d 861, 864 (9th Cir. 2013) (holding that CCP § 703.140(b)(1) and (b)(5) combine to allow a debtor to exempt the total set forth in both subsections in "any property" and emphasizing the broad reach of the word "any").

Here, Debtor is not using CCP § 703.140(b)(1) for a homestead exemption. Instead, pursuant to CCP § 703.140(b)(5), Debtor is employing the unused portions of CCP § 703.140(b)(1) to exempt any property of his choosing, namely, the Funds. Under the authorities above, this is an appropriate use of the exemption scheme set forth in

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CCP § 703.140(b). Consequently, Debtor may rely on CCP § 703.140(b)(1) and (b) (5) to exempt \$17,274 in Funds.

C. Bad Faith

Mr. Hopper also contends that Debtor claimed an exemption in the Funds in bad faith. "[Section] 522 does not give courts discretion to grant or withhold exemptions based on whatever considerations they deem appropriate. Rather, the statute exhaustively specifies the criteria that will render property exempt." *Law v. Siegel*, 134 S. Ct. 1188, 1196, 188 L. Ed. 2d 146 (2014). "[Section] 522 sets forth a number of carefully calibrated exceptions and limitations.... The [Bankruptcy] Code's meticulous—not to say mind-numbingly detailed—enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions." *Id.*

Based on the foregoing, the Supreme Court held that the Bankruptcy Code does not provide courts with the power to deny a debtor's exemption based on bad faith conduct:

Siegel points out that a handful of courts have claimed authority to disallow an exemption (or to bar a debtor from amending his schedules to claim an exemption, which is much the same thing) based on the debtor's fraudulent concealment of the asset alleged to be exempt. He suggests that those decisions reflect a general, equitable power in bankruptcy courts to deny exemptions based on a debtor's bad-faith conduct. For the reasons we have given, the Bankruptcy Code admits no such power. It is of course true that when a debtor claims a *state-created* exemption, the exemption's scope is determined by state law, which may provide that certain types of debtor misconduct warrant denial of the exemption. Some of the early decisions on which Siegel relies...are instances in which federal courts applied state law to disallow state-created exemptions. But *federal law* provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Code.

Id., at 1196-97 (internal citations omitted); *see also In re Elliott*, 523 B.R. 188, 189 (B.A.P. 9th Cir. 2014) ("We conclude that *Law v. Siegel*...has abrogated Ninth Circuit

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law such that unless statutory power exists to do so, a bankruptcy court may not deny a debtor's exemption claim or bar a debtor's exemption claim amendment on the basis of bad faith or of prejudice to creditors."). In light of this authority, the Court cannot deny Debtor's claim of an exemption on the basis of bad faith.

D. Whether the Funds are Property of the Estate

The parties next dispute whether the Funds are property of the estate. "Exemption rights are fixed as of the date of the petition." *In re Dore*, 124 B.R. 94, 98 (Bankr. S.D. Cal. 1991). 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 an estate is comprised of all the following property, wherever located and by whomever held:

...

- (6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

- (7) Any interest in property that the estate acquires after the commencement of the case.

Here, the Scott Declaration establishes that, as of the petition date, Debtor was the 100% shareholder of a subchapter S corporation, MPPI. As such, all the shares of MPPI became property of the estate as of the petition date. Under § 541(a)(6) and (a)(7), any proceeds or profits arising from those shares also constitute property of the estate.

In the Scott Declaration, Debtor states that, postpetition, Debtor received a distribution based on his interest in the shares. Rather than claim an exemption in the shares, Debtor claimed an exemption in this distribution, *i.e.*, the Funds. Mr. Hopper contends that claiming such an exemption was inappropriate. However, for two reasons, Debtor properly claimed an exemption in the Funds. First, MPPI is a subchapter S corporation. [FN1] "The legal result of creating a subchapter 'S' corporation is to treat it for tax and ownership purposes as though it were a partnership, so that the net profits (with some exceptions not applicable here) flow

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through the corporation, free of tax at the corporate level, to each stockholder in proportion to their ownership interest." *In re Weaver*, 219 B.R. 890, 903 (Bankr. D. Mont. 1998). "[A]ll profits are passed through to the individual owner according to the percentage of their ownership interests." *Id.*, at 903 n.12. In the Scott Declaration, Debtor testified that he receives a yearly dividend based on profits generated by MPPI. Because MPPI is a subchapter S corporation, all of MPPI's profits flow through to Debtor as the sole shareholder.

Second, even if Debtor could not claim an exemption in the Funds directly, Debtor could have claimed a \$17,274 exemption in the shares of MPPI under CCP § 703.140(b)(5). Such an exemption would have excluded \$17,274 of the value of the shares from the estate. Consequently, whether Debtor claimed an exemption in the Funds or the shares is a distinction without a difference; either way, Debtor would have been entitled to exempt value in the amount of \$17,274.

Mr. Hopper also asserts that Debtor has not provided evidence that Debtor was entitled to a distribution based on MPPI's profits at all; according to Mr. Hopper, because MPPI was a defendant in a lawsuit filed by Mr. Hopper, MPPI's liabilities exceeded its assets, and MPPI did not generate any profits to which Debtor would be entitled. However, there is not yet any court determination that the distribution to Debtor was improper, nor is there a judgment in Mr. Hopper's favor on his claims against MPPI. Allowing Debtor his claim of an exemption does not prevent Mr. Hopper from obtaining a court determination that the distribution of the Funds to Debtor was improper or from otherwise holding Debtor and/or MPPI liable to Mr. Hopper. At this time, the Court is considering only whether Debtor may exempt the Funds.

Because Debtor has established, through the Scott Declaration, that he receives a yearly distribution based on MPPI's profits, and there being no contradictory evidence, Debtor has met his burden of proving that he is entitled to an exemption in the Funds.

III. CONCLUSION

The Court will overrule the Objection.

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

FOOTNOTES

1. Although Mr. Hopper asserts that Debtor has not provided evidence that MPPI is a subchapter S corporation, the Scott Declaration includes uncontested testimony that MPPI is a subchapter S corporation.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-13024 Kenneth C. Scott

Chapter 13

#46.00 Appellant/Contemnor Daniel Parker Jett's motion to stay order to show cause proceedings pending appeal and to continue hearing

Docket 140

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion.

I. BACKGROUND

On November 7, 2018, H. Samuel Hopper filed a complaint in the Los Angeles Superior Court of California against My Private Practice, Inc. ("MMPI") and Kenneth C. Scott ("Debtor"), alleging employment law violations [doc. 36]. Debtor has a 100% interest in MMPI [doc. 1].

On December 18, 2018, Debtor filed a voluntary chapter 13 petition. On the same day, Debtor served Mr. Hopper via Mr. Hopper's counsel, Daniel Parker Jett, with notice of the bankruptcy petition [doc. 36]. On January 4, 2019, Mr. Jett confirmed with Debtor's counsel, Arash Shirdel, that Mr. Jett received the notice of bankruptcy [doc. 36]. In that email, Mr. Jett stated that Mr. Hopper intended to pursue MPPI in state court without securing relief from the automatic stay. *Id.*

On February 21, 2019, Mr. Hopper filed an amended complaint in the state court action [doc. 36, Exh. 5]. Mr. Jett served Debtor with notice of the amended complaint by United States mail on February 20, 2019. On March 7, 2019, Mr. Jett stated in an email that he personally served the amended complaint on Debtor "as an individual" [doc. 36, Exh. 6].

On March 11, Debtor filed a *Motion for an OSC re Contempt Against Mr. Hopper and Contemnor, Jointly and Severally and Sanctions in the Amount of \$4,025.00* (the "Contempt Motion") [doc. 36]. On April 12, 2019, the Court entered an order to show cause why Mr. Hopper and Mr. Jett should not be held in civil contempt for violation of automatic Stay (the "OSC") [doc. 64]. On April 30, 2019, Mr. Jett and Mr. Hopper filed a response [doc. 76]. In the response, Mr. Jett stated that the personal service on

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Debtor was solely his decision and that Mr. Hopper was not involved.

On May 15, 2019, the Court held a hearing on the OSC. On May 29, 2019, the Court entered an order (the "Order") [doc. 124] granting in part and denying in part the Contempt Motion on the grounds set forth in the Court's ruling [doc. 119]. In the Order, the Court held Mr. Jett in contempt of Court for his willful violation of the automatic stay. In order to assess the amount of damages, the Court continued the hearing on the OSC to July 17, 2019. The Court ordered Mr. Shirdel to serve on Mr. Jett a declaration with a breakdown of the attorney's fees and costs associated with remedying the violation of stay by May 29, 2019 and ordered Mr. Jett to file any response to that declaration by July 3, 2019.

On June 10, 2019, Mr. Jett appealed the Order to the United States District Court for the Central District of California (the "Appeal") [doc. 129]. On June 24, 2019, Mr. Jett filed a motion to stay the continued hearing on the OSC pending the Appeal (the "Motion") [doc. 140]. In the Motion, Mr. Jett requests that the Court stay the continued hearing on the OSC pending the Appeal under Federal Rules of Bankruptcy Procedure ("FRBP") 8007(a)(1)(A) and (e)(1). On June 28, 2019, Debtor filed an opposition to the Motion (the "Opposition") [doc. 149].

II. DISCUSSION

A. Federal Rule of Bankruptcy Procedure 8007(a)(1)(A)

Pursuant to FRBP 8007(a)(1)(A), "[o]rdinarily, a party must move first in the bankruptcy court for...a stay of judgment, 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 bears the burden of "showing that the circumstances justify an

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exercise of that discretion." *Nken*, at 433-34.

The court considers four factors when determining whether to issue a stay pending appeal:

1. Whether the stay applicant has made a strong showing that he is likely to succeed on the merits
2. Whether the applicant will be irreparably 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. Jett 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*, at 1204 (9th Cir. 2012) (quoting *Nken*, 556 U.S. at 434).

Mr. Jett has not shown that he will be likely to succeed on the merits. The Court's ruling on the OSC set forth the basis of the Court's decision. Pursuant to 11 U.S.C. § 362(a), the Court found cause to hold Mr. Jett in contempt for willfully violating the automatic stay. Mr. Jett does not discuss his likelihood of success on appeal at all. This factor weighs in favor of denying the Motion.

2. Whether Mr. Jett Will Be Irreparably Harmed

Following the Supreme Court's ruling in *Nken*, the Ninth Circuit Court of Appeals

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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 Court of Appeals 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. Jett has not demonstrated irreparable harm. Mr. Jett states that he would be prejudiced if damages are awarded before the Appeal is decided. However, if damages are awarded and the decision is later reversed, the Debtor would have to return any sanctions paid to him. Thus, the potential harm is not irreparable. As such, this factor also weighs in favor of denying the Motion.

3. Whether the Stay Will Substantially Injure Other Parties

A stay of the OSC proceedings would not substantially injure other parties. The parties in this matter are Mr. Jett and Debtor. In the Opposition, Debtor argues that he will be injured if the Motion is granted because he will be deprived of interest on any judgment. Any interest that could accrue between the entry of a potential judgment and the resolution of the Appeal is likely to be minimal. This factor weighs in favor of granting the Motion.

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

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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).

Here, public interest weighs in favor of granting the Motion. Although the public interest favors promptly resolving disputes, judicial economy will be served by granting the Motion. Judicial resources may be wasted if the Motion is not granted, damages are determined, and the Court's decision is reversed.

Based on the above, the factors which weigh in favor of the stay do not overcome the factors which weigh against the stay.

B. Federal Rule of Bankruptcy Procedure 8007(e)(1)

Pursuant to FRBP 8007(e):

Despite Rule 7062 and subject to the authority of the district court, BAP, or court of appeals, the bankruptcy court may:

- (1) suspend or order the continuation of other proceedings in the case;
- or
- (2) issue any other appropriate orders during the pendency of an appeal to protect the rights of all parties in interest.

As stated in 8007(e)(1), the Court has discretion to continue other proceedings while an appeal is pending. Because judicial economy will be served by granting the Motion, the Court will exercise its discretion to stay the continued hearing on the OSC while the Appeal is pending.

Further, in the Opposition, Mr. Shirdel requests leave to seek additional attorney’s fees incurred in connection with the Motion and the Appeal. As the amount of damages to be sought is in flux, before awarding damages, the Court will await until the Appeal is concluded.

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III. CONCLUSION

For the reasons discussed above, the Court will grant the Motion pursuant to FRBP 8007(e)(1).

Mr. Jett must submit the order within seven (7) days.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Wednesday, July 3, 2019

Hearing Room 301

9:30 AM

1:18-11620 Antoine R Chamoun

Chapter 7

#0.01 Chapter 7 Trustee's Motion for Order Continuing
Hearing on Motion for Relief from the Automatic
Stay Under 11 U.S.C. Section 362

Docket 47

*** VACATED *** REASON: Stipulation entered resolving motion 7/2/19 -
jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Movant(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan

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1:18-11620 Antoine R Chamoun

Chapter 7

#1.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 3/20/19(stip); 5/22/19 (stip)

Docket 28

*** VACATED *** REASON: Order entered continuing hearing to 8/7/19
at 9:30 a.m. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Movant(s):

The Bank of New York Mellon fka

Represented By
Darren J Devlin

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:19-10790 Nelson Sargsyan

Chapter 7

#2.00 Motion for relief from stay [RP]

MAXIM COMMERCIAL CAPITAL, LLC
VS
DEBTOR

fr. 6/5/19

Docket 18

Tentative Ruling:

Deny as moot.

"[T]he automatic stay does not stay actions against property that is not property of the estate. *In re Brittain*, 435 B.R. 318, 321 (Bankr. D. S.C. 2010). "While federal law creates the bankruptcy estate, the determination of property rights is controlled by state law." *Id.* at 321-22.

In the motion [doc. 18], movant contends that debtor conveyed his interest in the real property to Nazaret Chakrian on September 30, 2016. At the prior hearing, the Court ordered the debtor to file and serve additional briefing regarding his alleged interest in the real property supported by evidence in the form of declarations and other supporting documents no later than June 19, 2019. On June 19, 2019, the debtor filed a *Supplemental Response to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Response") [doc. 33].

Contrary to the Court's order, the Response is not supported by evidence. In the Response, the debtor alleges that he personally guaranteed the loan to movant and that his limited liability company, HDA Trucking LLC, has a security interest in the real property.

A personal guarantee on a loan is a debt, not property of the debtor's bankruptcy estate. Further, under California law, "a member in a limited liability company does not hold any interest in the real property owned by the limited liability company." *Fashion Valley Mall, LLC v. County of San Diego*, 176 Cal.App.4th 871, 886 (2009).

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Chapter 7

"Instead, a member possesses a personal property interest in its limited liability company interest." *Id.*; see also Cal. Corp. Code § 17300.

Here, it does not appear that the debtor holds any interest in the real property. Rather, the debtor allegedly holds a personal property interest in HDA Trucking LLC. Accordingly, it does not appear that the real property at issue is property of the debtor's bankruptcy estate, and the automatic stay does not apply to the real property.

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

Ruling from June 5, 2019

The Court will continue this hearing to **9:30 a.m. on July 3, 2019**.

The movant did not serve notice of the hearing on all parties entitled to notice under Local Bankruptcy Rule ("LBR") 4001-1(c)(1)(B) and (C) and Fed. R. Bankr. P. 4001(a)(1) in accordance with Fed. R. Bankr. P. 9014 and 7004(b)(3) and (h). Further, the movant did not serve the State of California Franchise Tax Board at the address listed in Appendix D: Register of Federal & State Government Unit Addresses [FRBP 5003(e)] in the Court Manual available at https://www.cacb.uscourts.gov/sites/cacb/files/documents/court-manual/CtManual_Sec7_Append_D.pdf. **No later than June 12, 2019**, the movant must file and serve notice of the continued hearing, and the deadline to file a response thereto, on all parties entitled to notice in accordance with Fed. R. Bankr. P. 5003(e) and 7004(b)(3) and (h).

In the motion, the movant contends that debtor conveyed his interest in the real property to Nazaret Chakrian on September 30, 2016. In his opposition to the motion [doc. 25], the debtor did not refute this assertion. **No later than June 19, 2019**, the debtor must file and serve on the movant and all other parties entitled to notice under LBR 4001-1, additional briefing regarding his alleged interest in the real property at issue, supported by evidence in the form of declarations and other supporting documents. Any written response to that briefing must be filed and served **no later than June 26, 2019**.

Appearances on June 5, 2019 are excused.

Party Information

Debtor(s):

Nelson Sargsyan

Represented By

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

Wednesday, July 3, 2019

Hearing Room 301

9:30 AM

CONT... Nelson Sargsyan

Thomas B Ure

Chapter 7

Movant(s):

Maxim Commercial Capital, LLC

Represented By
Andrew K Alper

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 3, 2019

Hearing Room 301

9:30 AM

1:19-10981 Mehdi Zemrani

Chapter 7

#3.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA
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 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):

Mehdi Zemrani

Represented By
Donald E Iwuchuku

Movant(s):

BMW Bank of North America

Represented By
Cheryl A Skigin

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

Wednesday, July 3, 2019

Hearing Room 301

9:30 AM

CONT... Mehdi Zemrani

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, July 3, 2019

Hearing Room 301

9:30 AM

1:19-11269 Onik Mesropyan

Chapter 7

#4.00 Motion for relief from stay [PP]

TD AUTO FINANCE 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.

Party Information

Debtor(s):

Onik Mesropyan

Represented By
Allen A Sarkisian

Movant(s):

TD Auto Finance LLC

Represented By
Jennifer H Wang

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

Wednesday, July 3, 2019

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9:30 AM

CONT... Onik Mesropyan

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, July 3, 2019

Hearing Room 301

9:30 AM

1:19-11064 Andy Anthony Benitez and Rosa Nelis Benitez

Chapter 7

#5.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC.
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.

Grant movant's request to annul the automatic stay.

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):

Andy Anthony Benitez

Represented By
Denise Ballesteros

Joint Debtor(s):

Rosa Nelis Benitez

Represented By
Denise Ballesteros

**United States Bankruptcy Court
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San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, July 3, 2019

Hearing Room 301

9:30 AM

CONT... Andy Anthony Benitez and Rosa Nelis Benitez

Chapter 7

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Jennifer H Wang

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 3, 2019

Hearing Room 301

9:30 AM

1:19-10560 Amanda Marie Medrano

Chapter 7

#6.00 Motion for relief from stay [PP]

HONDA LEASE 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):

Amanda Marie Medrano

Represented By
Allan S Williams

Movant(s):

HONDA LEASE TRUST

Represented By
Vincent V Frounjian

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 3, 2019

Hearing Room 301

9:30 AM

1:19-10814 Matteo Stephen Lasorsa

Chapter 7

#7.00 Motion for relief from stay [PP]

HONDA LEASE 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):

Matteo Stephen Lasorsa

Represented By
Jeffrey J Hagen

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, July 3, 2019

Hearing Room 301

9:30 AM

CONT... Matteo Stephen Lasorsa

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, July 3, 2019

Hearing Room 301

9:30 AM

1:19-11262 James Davis

Chapter 13

#8.00 Motion for relief from stay [UD]

TE LONG BEACH INVESTORS, LLC
VS
DEBTOR

Docket 7

*** VACATED *** REASON: Debtor dismissed on 6/10/19 [doc. 9]. The motion is moot.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Davis

Pro Se

Movant(s):

TE Long Beach Investors LLC

Represented By
Agop G Arakelian

Trustee(s):

Elizabeth (SV) 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 3, 2019

Hearing Room 301

9:30 AM

1:17-10323 **Ralph Pagan**

Chapter 13

#9.00 Motion for relief from stay [PP]

CAB WEST LLC
VS
DEBTOR

Docket 36

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):

Ralph Pagan

Represented By
Jeffrey J Hagen

Movant(s):

Cab West LLC

Represented By
Jennifer H Wang

**United States Bankruptcy Court
Central District of California
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Courtroom 301 Calendar**

Wednesday, July 3, 2019

Hearing Room 301

9:30 AM

CONT... Ralph Pagan

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Wednesday, July 3, 2019

Hearing Room 301

9:30 AM

1:17-10710 Nick A Avedissian and Hripsime Avedissian

Chapter 13

#10.00 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
VS
DEBTOR

Docket 52

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):

Nick A Avedissian

Represented By
Michael Jay Berger

Joint Debtor(s):

Hripsime Avedissian

Represented By
Michael Jay Berger

**United States Bankruptcy Court
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9:30 AM

CONT... Nick A Avedissian and Hripsime Avedissian

Chapter 13

Movant(s):

Toyota Lease Trust

Represented By
Erica T Loftis Pacheco

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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Wednesday, July 3, 2019

Hearing Room 301

9:30 AM

1:19-11408 Luis Magdaleno

Chapter 13

#11.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 13

Tentative Ruling:

Grant motion on an interim basis and continue hearing to **August 28, 2019 at 9:30 a.m.**

In his proposed chapter 13 plan [doc. 2], the debtor proposes to pay \$920 per month for months 1 through 20, then \$1,100 per month for months 21 through 40, then \$1,300 per month for months 41 through 60. That plan also proposes to cure arrearages on the principal residence in the amount of \$55,000. That plan is a 100% plan.

The debtor must timely pay: (1) his July 2019 and August 2019 deed of trust payments in the amount of \$2,490 (as stated in his current Schedule J) as to the debtor's principal residence; and (2) his July 2019 and August 2019 plan payments in the amount of \$920 to the chapter 13 trustee. **No later than August 21, 2019**, debtor must file a declaration to demonstrate that he timely made his required post-petition deed of trust and chapter 13 plan payments.

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Luis Magdaleno

Represented By
Anil Bhartia

Movant(s):

Luis Magdaleno

Represented By
Anil Bhartia

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9:30 AM

CONT... Luis 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, July 3, 2019

Hearing Room 301

9:30 AM

1:19-10224 Alpha Real Estate Investment & Development Propert

Chapter 7

#12.00 Motion for relief from stay [RP]

VICTORIA CAPITAL TRUST
VS
DEBTOR

Docket 47

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(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 Court will not waive the 14-day stay prescribed by FRBP 4001(a)(3).

Any other request for relief is denied.

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

Party Information

Debtor(s):

Alpha Real Estate Investment &

Represented By
R Grace Rodriguez
Kelly M Raftery

Movant(s):

Victoria Capital Trust

Represented By
Kelly M Raftery

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Judge Victoria Kaufman, Presiding
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9:30 AM

CONT... Alpha Real Estate Investment & Development Propert

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

9:30 AM

1:19-11386 FinCabiz, Inc.

Chapter 11

#13.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 10

Tentative Ruling:

For the reasons discussed below, the Court will deny the motion.

Debtor's Real Property

On October 24, 2007, Brigitte Von Dem Hagen ("Borrower") executed a deed of trust (the "First Deed of Trust") in the principal sum of \$2,480,000.00, which was made payable to Washington Mutual Bank a Federal Association ("Washington Mutual") [doc. 22, Exh. 1]. The First Deed of Trust encumbers the real property located at 5105 Pacific Avenue, Los Angeles, California 90292 (the "Property"). Subsequently, JP Morgan Chase Bank, National Association ("JPMorgan") acquired an interest in the First Deed of Trust.

On July 13, 2007, Borrower executed a second deed of trust in the principal sum of \$250,000.00, which was made payable to Washington Mutual Bank, FA (the "Second Deed of Trust") [doc. 22, Exh. 4]. The Second Deed of Trust also encumbers the Property. Subsequently, Borrower and Washington Mutual executed a subordination agreement. *Id.* Thereafter, JP Morgan acquired an interest in the Second Deed of Trust.

The First Bankruptcy Case

On August 4, 2011, Borrower filed a voluntary chapter 11 petition, initiating case 2:11-bk-43202-BB (the "First Case"). In her petition, Borrower listed the Property as her residence. In her schedule A, Borrower listed an interest in the Property.

On December 16, 2011, JPMorgan filed claim 3-1, asserting a claim secured by the Second Deed of Trust in the amount of \$499,952.30. First Case, claim 3-1. On December 20, 2011, JPMorgan filed claim 4-1, asserting a claim secured by the First

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CONT... **FinCabiz, Inc.**

Chapter 11

Deed of Trust in the amount of \$3,035,628.51, with prepetition arrears in the amount of \$329,367.45. First Case, claim 4-1.

On October 18, 2011, First Street GmbH ("First Street"), holder of a third priority deed of trust against the Property, filed a motion to relief from the automatic stay under 11 U.S.C. §362. First Case, doc. 27. On November 15, 2011, the Court entered an order granting that motion for relief. First Case, doc. 30.

On July 13, 2012, the Court entered an *Order (i) to Show Cause re Dismissal or Conversion and (ii) Continuing Status Conference* (the "OSC"). First Case, doc. 58. On August 23, 2012, the United States trustee filed a response to the OSC, stating, among other things, that Borrower had failed to file any monthly operating reports, failed to provide proof of insurance on the Property and failed to provide a declaration regarding the closure of Borrower's prepetition bank accounts, final bank statements for Borrower's prepetition bank accounts, copies of Borrower's debtor-in-possession checks and a projected cash flow statement. On September 19, 2012, the Court entered an order dismissing the First Case. First Case, doc. 69.

The Second Bankruptcy Case

On December 31, 2012, Borrower filed another voluntary chapter 11 petition, initiating case 2:12-bk-52291-BB (the "Second Case"). In her petition, Borrower listed the Property as her residence, and in her schedule A, she listed an interest in the Property. Second Case, doc. 1.

On January 18, 2013, Borrower filed a motion to continue the automatic stay under 11 U.S.C. § 362 (the "First Motion to Continue"). Second Case, doc. 12. In the First Motion to Continue, Borrower states that she moved out of the Property and turned the Property into a vacation rental. On February 5, 2013, the Court entered an order granting the First Motion to Continue. Second Case, doc. 50.

On February 22, 2013, JPMorgan filed claim 3-1, asserting a claim secured by the First Deed of Trust in the amount of \$3,374,559.50, with prepetition arrears in the amount of \$461,440.43. Second Case, claim 3-1. On February 28, 2013, JPMorgan filed claim 4-1, asserting a claim secured by the Second Deed of Trust in the amount of \$499,952.30, with prepetition arrears in the amount of \$37,851.36. Second Case,

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CONT... FinCabiz, Inc.
claim 4-1

Chapter 11

On August 26, 2014, the Court entered an *Order (i) to Show Cause Why Case Should Not Be Dismissed or Converted, (ii) Continuing Scheduling and Case Management Conference and (iii) Setting Hearing Date on Disclosure Statement* (the "Second OSC"). Second Case, doc. 151. In the Second OSC, Borrower was ordered to show cause why the Second Case should not be dismissed with a bar to refiling if a disclosure statement and plan with a reasonable prospect of being confirmed were not filed by October 1, 2014.

On October 10, 2014, Borrower filed a second amended chapter 11 plan of reorganization and related disclosure statement. Second Case, docs. 155 and 156. On November 25, 2014, JPMorgan filed an objection to that second amended disclosure statement. Second Case, doc. 167. On December 15, 2014, the Court entered an order dismissing the Second Case with a 120-day bar to refiling. Second Case, doc. 171. On the same day, the Court also entered an order denying approval of Borrower's second amended disclosure statement. Second Case, doc. 173.

The Third Bankruptcy Case

On April 20, 2015, Borrower filed another voluntary chapter 11 petition, initiating case 9:15-bk-10812-PC (the "Third Case"). In her schedule A, Borrower listed an interest in the Property. Third Case, doc. 1.

On April 28, 2015, Borrower filed a motion to continue the automatic stay under 11 U.S.C. § 362 (the "Second Motion to Continue"). Third Case, doc. 10. In the Second Motion to Continue, Borrower stated that First Street was scheduled to foreclose on the Property on April 21, 2019 (one day after she filed the Third Case). On May 19, 2015, the Court entered an order granting the Second Motion to Continue. Third Case, doc. 32.

On May 11, 2015, JPMorgan filed claim 2-1, asserting a claim secured by the Second Deed of Trust in the amount of \$499,952.30, with prepetition arrears in the amount of \$81,753.36. Third Case, claim 2-1. On September 17, 2015, JPMorgan filed claim 5-1, asserting a claim secured by the First Deed of Trust in the amount of \$3,552,987.10, with prepetition arrears in the amount of \$700,455.10. Third Case,

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CONT... FinCabiz, Inc.
claim 5-1.

Chapter 11

On October 9, 2015, First Street filed a motion to dismiss the Third Case (the "Motion to Dismiss"). Third Case, doc. 87. In the Motion to Dismiss, First Street argued, among other things, that the Third Case was filed in bad faith, that Borrower was improperly forum shopping, that Borrower's income was insufficient to fund a chapter 11 plan of reorganization and that Borrower had suspiciously transferred the Property at least eight times. On May 4, 2015, the Court entered an order granting the Motion to dismiss and dismissing the Third Case with a 180-day bar to refile. Third Case, doc. 144.

The Fourth Bankruptcy Case

On January 31, 2017, Tours Incorporated, Inc. ("Tours") filed a voluntary chapter 11 petition, initiating case 1:17-bk-10256-MT (the "Fourth Case"). In its schedule A/B, Tours listed the Property as its only asset. Fourth Case, doc. 3.

On December 1, 2017, JPMorgan filed claim 2-1, asserting a secured claim in the amount of \$3,694,276.59, with prepetition arrears in the amount of \$960,567.29. Fourth Case, claim 2-1.

On September 5, 2017, Tours filed a chapter 11 plan of reorganization and related disclosure statement. Fourth Case, docs. 27 and 28. In that disclosure statement, Tours stated that it acquired an interest in the Property after a foreclosure sale. Fourth Case, doc. 28, pp. 7-8. Tours stated that on October 5, 2016, First Street conducted a foreclosure sale of the Property, at which First Street was the successful bidder. First Street subsequently sold the Property to Tours. *Id.* On September 15, 2017, the Court entered an order denying approval of that disclosure statement. Fourth Case, doc. 42.

On December 14, 2018, the United States trustee filed a motion to dismiss or convert the Fourth Case for failure to timely file monthly operating reports (the "Second Motion to Dismiss"). Fourth Case, doc. 82. On January 8, 2019, Tours filed a nonopposition to the Second Motion to Dismiss. Fourth Case, doc. 84. On January 23, 2019, the Court entered an order dismissing the Fourth Case. Fourth Case, doc. 85.

The Fifth Bankruptcy Case

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CONT... FinCabiz, Inc.

Chapter 11

On January 15, 2019, Tours executed a grant deed transferring the Property to FinCabiz, Inc. ("Debtor") as a gift [doc. 22, Exh. 5]. On March 12, 2019, JPMorgan recorded a notice of trustee's sale against the Property, scheduling a sale for April 11, 2019 [doc. 22, Exh. 6].

On April 10, 2019, one day before the scheduled foreclosure sale, Debtor filed a voluntary chapter 7 petition, initiating case 2:19-bk-14060-BR (the "Fifth Case"). In its petition, Debtor listed the Property as its principal place of business. Fifth Case, doc. 1. On April 29, 2019, because Debtor failed to file its schedules and statements, the Court entered an order dismissing the Fifth Case. Fifth Case, doc. 7.

The Pending Bankruptcy Case

On June 3, 2019, Debtor filed a voluntary chapter 11 petition, initiating the pending bankruptcy case. In its schedule A/B [doc. 16], Debtor listed the Property as its only asset. Debtor represents that the Property has a value of \$2,500,000.00.

In its schedule D [doc. 16], Debtor listed three secured claims against the Property: (1) one in favor of JPMorgan, secured by the First Deed of Trust, in the amount of \$2,727,679.58; (2) another in favor of Washington Mutual, secured by the Second Deed of Trust, in the amount of \$250,000.00; and (3) a third in favor of Paula Donofrio, secured by a third deed of trust against the Property, in the amount of \$275,000.00. In its schedule E/F, Debtor did not list any unsecured creditors.

In its schedule G [doc. 16], Debtor did not list any executory contracts and unexpired leases. However, in its statement of financial affairs [doc. 16], Debtor represents that it received \$49,500.00 in rents from January 1, 2019 to the petition date.

On June 17, 2019, the United States trustee filed a motion to dismiss or convert the pending bankruptcy case for Debtor's failure to comply with the United States Trustee Guidelines and/or Local Bankruptcy Rules, including, among other things, failing to provide proof of insurance on the Property and failing to provide its two most recent federal tax returns (the "Third Motion to Dismiss") [doc. 14]. The Third Motion to Dismiss is set for hearing on July 18, 2019.

On June 10, 2019, Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 (the "Motion") [doc. 10]. In the Motion, Debtor represents that, after

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CONT... FinCabiz, Inc.

Chapter 11

filing the Fifth Case, Debtor contacted bankruptcy counsel, who informed Debtor that it had filed under the wrong chapter. Debtor allegedly intended to file under chapter 11, not chapter 7. Debtor also represents that it filed the pending case to reorganize the debt against the Property. On June 27, 2019, JPMorgan filed an opposition the Motion [doc. 22].

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 discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

Notwithstanding the assertions in the Motion, Debtor has not provided at this time clear and convincing evidence that this case was filed in good faith. Debtor has provided no evidence that its financial affairs have improved since the Fifth Case, such that the pending chapter 11 case will result in a confirmed plan that will be fully performed.

This is the sixth bankruptcy case involving the Property. Despite five prior filings (several under chapter 11), none of the prior debtors have been able to complete the bankruptcy process successfully and to reorganize the debt secured by the Property (which is overencumbered). According to JPMorgan, as of June 20, 2019, Borrower is \$1,431,426.16 in default on loans secured by the Property.

Debtor has provided no evidence that it has sufficient net monthly income to fund any proposed chapter 11 plan. Moreover, it is unclear how Debtor will reorganize the debt secured by the Property; Debtor is not the borrower with respect to the loans secured by the First and Second Deeds of Trust, and there is no equity in the Property. Finally, in light of the pending Third Motion to Dismiss, Debtor has not timely (if at all) complied with the United States Trustee Guidelines and/or Local Bankruptcy Rules. Accordingly, Debtor has not presented clear and convincing evidence that

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CONT... FinCabiz, Inc.

Chapter 11

overcomes the presumption of bad faith.

Conclusion

For the reasons discussed above, the Court will deny the Motion.

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

Party Information

Debtor(s):

FinCabiz, Inc.

Represented By
Javier H Castillo

Movant(s):

FinCabiz, Inc.

Represented By
Javier H Castillo

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

Wednesday, July 3, 2019

Hearing Room 301

9:30 AM

1:19-11421 Papanicolaou Enterprises

Chapter 11

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

Docket 4

Tentative Ruling:

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **August 7, 2019 at 9:30 a.m.**

Movant has not served the motion and provided notice of the hearing thereon and the deadline to file a response in accordance with Judge Kaufman's self-calendaring procedure for motions that are set for hearing on shortened time. The notice of the motion [doc. 10] fails to indicate that a written response must be filed and served at least two courts day before the hearing. **No later than July 10, 2019**, 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 notice must indicate that a written response must be filed and served at least 14 days before the continued hearing.

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

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

Movant(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan
Eric Bensamochan
Eric Bensamochan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:19-01045 Coast to Coast Holdings, LLC v. Leonardi

#15.00 Motion for injunctive relief ordering defendant Joseph Leonardi to turnover property of the estate

STIPULATION RESOLVING MOTION FILED 6/27/19

Docket 12

*** VACATED *** REASON: Stipulation resolving motion approved 7/1/19 [doc. 29].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik
Jeffrey S Kwong

Defendant(s):

Joseph Leonardi

Represented By
Emanuel D Zola

Movant(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
Jeffrey S Kwong

Plaintiff(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
Jeffrey S Kwong

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:19-01045 Coast to Coast Holdings, LLC v. Leonardi

#15.10 Status conference re: complaint for:
(1) Breach of contract; (2) Breach of implied covenant of good faith and fair dealing; (3) Fraud in forming a contract; (4) Tortious fraud; (5) Negligent misrepresentation; (6) Statue of frauds - declaratory relief; (7) Avoidance of fraudulent transfer; (8) Preservation of avoided transfers and avoided liens; (9) Slander of title; (10) Waste; (11) Right to setoff of recoupment (12) Turnover of property of the estate (rents); (13) Turnover of property of the estate (real property); (14) Violation of the automatic stay; (15) Disallowance of claim; (16) Avoidance of lien

fr. 6/19/19

Counter-claim filed 5/17/19:

Joseph Leonardi, counter-claimant
vs
Coast to Coast Holdings, LLC; Oscar Torres;
Elizabeth Ramos; and Jeff Turner, counter-defendants

Docket 1

***** VACATED *** REASON: Order entered continuing to 7/17/19 at 1:30 p.m. [doc. 29].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

Defendant(s):

Joseph Leonardi

Pro Se

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CONT... Coast to Coast Holdings, LLC

Chapter 11

Plaintiff(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:19-01047 Leonardi v. Coast to Coast Holdings, LLC a Wyoming Limited Lia

#15.20 Order to show cause why this adversary case should not be dismissed

Docket 9

Tentative Ruling:

The Court will continue this hearing to **1:30 p.m. on July 17, 2019.**

Appearances on July 3, 2019 are excused.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik
Jeffrey S Kwong

Defendant(s):

Coast to Coast Holdings, LLC a

Pro Se

Oscar Torres

Pro Se

Jeff Turner

Pro Se

Elizabeth Ramos

Pro Se

DOES 1 to 25

Pro Se

Plaintiff(s):

Joseph Leonardi

Represented By
Emanuel D Zola

**United States Bankruptcy Court
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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:19-01047 Leonard v. Coast to Coast Holdings, LLC a Wyoming Limited Lia

- #15.30** Status conference re: complaint to determine nondischargeability of debt
- 1) Fraudulent misrepresentation
 - 2) Injunctive relief
 - 3) Conversion
 - 4) Alter ego

fr. 6/19/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on July 17, 2019.**

Appearances on July 3, 2019 are excused.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

Defendant(s):

Coast to Coast Holdings, LLC a

Pro Se

Oscar Torres

Pro Se

Jeff Turner

Pro Se

Elizabeth Ramos

Pro Se

DOES 1 to 25

Pro Se

Plaintiff(s):

Joseph Leonardi

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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CONT...

Coast to Coast Holdings, LLC

Emanuel D Zola

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, July 3, 2019

Hearing Room 301

2:30 PM

1:18-12354 **MidiCi Group, LLC**

Chapter 11

#16.00 Confirmation Hearing re: first amended chapter 11 plan

fr. 6/13/19

Docket 139

Tentative Ruling:

At the prior confirmation hearing held on June 13, 2019, the Court expressed concern regarding confirmation of the *Debtor's First Amended Chapter 11 Plan* (the "Plan") [doc. 139]. The Court continued the confirmation hearing in order: (1) for the debtor to propose an increased new value contribution to satisfy the new value exception to the absolute priority rule; (2) for the Committee of Unsecured Creditors (the "Committee") to file a response to the increased new value proposal; and (3) to evaluate the feasibility of the Plan, in connection with the debtor's increased new value proposal.

On June 17, 2019, the debtor filed a *Supplemental Brief in Further Support of Confirmation of Debtor's First Amended Chapter 11 Plan* (the "Supplemental Brief") [doc. 163]. In the Supplemental Brief, the debtor states that its member, Yotam Regev, delivered a cashier's check to the debtor's counsel on June 17, 2019 in the amount of \$875,000 to be used as new value [doc. 163, Declaration of Yotam Regev, ¶ 3; doc. 163, Exhs. A and B]. Of that \$875,000, \$500,000 will be reserved and earmarked for payments towards any disputed claims that are allowed in class 9. Exhibit C to the Supplement Brief is a breakdown of all amounts owed on the effective date of the Plan and the amounts to be paid.

At the prior hearing on June 13, 2019, the Court ordered the Committee to file any response to the Supplemental Brief by July 1, 2019. The Committee did not file a response.

Here, based on the debtor's schedule E/F and the claims register, the total allowed nonpriority unsecured claims (as of this date) are \$8,393,942. Accordingly, the increased new value represents 10.4% in allowed nonpriority unsecured debt. The debtor's appraisal states that the fair market value of a 100% interest in the debtor is

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CONT... **MidiCi Group, LLC**
\$10.

Chapter 11

Pursuant to the terms of the Plan, upon consummation of the Plan, the debtor will receive a discharge of pre-confirmation debts, except the discharge will not discharge the debtor from any debts that are found to be nondischargeable under 11 U.S.C. § 523 or are obligations created by the Plan. As the debtor has no secured debt and none of the unsecured claims have been found to be nondischargeable under 11 U.S.C. § 523, the debtor apparently will receive a discharge of all nonpriority unsecured claims. The increased new value represents 10.4% of the nonpriority unsecured claims being discharged.

The debtor will use \$68,350.42 of the new value to pay creditors in class 1 approximately 40% of the allowed nonpriority unsecured claims, with each holder (except for Menchie's Group, Inc.) receiving its pro rata share [Plan, Exh. A]. Of the \$875,000 new value contribution, the debtor will set aside \$500,000 earmarked for payment towards any disputed claims that are allowed in class 9 [doc. 163, Exh. C]. The total amount of claims in class 9 is \$2,440,680 [Plan, Exh. A]. At the conclusion or termination of all claims objections proceedings, each claimant in class 9 will be paid its pro rata share of the \$500,000 reserve, up to, and not exceeding, 40% of the amount of its allowed nonpriority unsecured claim.

Based on *currently* allowed nonpriority unsecured claims, the new value being used to pay the claimants in class 9 represents 20.4% of these allowed claims. The Court finds that this is substantial. *See In re Waterville Valley Town Square Assocs.*, 208 B.R. 90, 100 (Bankr. D.N.H. 1997) ("Based on the fact that there is no apparent value to the equity retained, the Court finds that a contribution of fifteen percent of the property's value, as determined by the Court, is both substantial and reasonably equivalent to the partners' equity interest. Therefore, a contribution of fifteen percent of \$1,923,658, or \$288,548.70, would meet the new value exception to the absolute priority rule.").

Based on exhibit C to the Supplemental Brief, the Plan appears feasible. With the increased new value contribution, the debtor will be able to make all required payments on the effective date and create a reserve for the allowed claims in class 9.

Generally, chapter 11 plans that attempt to give existing equity holders the exclusive right to contribute new value in exchange for retaining their ownership interest violate the absolute priority rule. *Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St.*

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CONT...

MidiCi Group, LLC

Chapter 11

P'ship, 526 U.S. 434, 119 S. Ct. 1411, 143 L. Ed. 2d 607 (1999). However, here, the debtor's members also are providing other services and contributions, including contributions valued at \$180,000 on an annual basis, for personal services to be provided at no charge, by each member who is engaged in the debtor's daily operations, subordination of \$1,267,012.20 in prepetition claims against the estate arising from prepetition loans made by the members to the debtor and subordination of \$260,000 in postpetition claims against the estate in connection with postpetition financing extended by the members to the debtor.

The debtor's current members would not provide these personal services, at no charge, to an outside investor (should such an investor have the desire and ability to overbid the proposed new value contribution). Nor would the current members subordinate \$1,527,012.20 in prepetition and postpetition claims against the estate, for the benefit of an outside investor. Consequently, an overbidder for the new value contribution would not be able to maintain the feasibility of the Plan.

Based on the facts in this case, the Court finds that that the increased new value satisfies the new value exception to the absolute priority rule, and the Plan (with the increased new value contribution and the \$500,000 set aside for the payment of allowed class 9 claims) meets all applicable standards for confirmation.

In light of the foregoing, the Court will confirm the Plan. No later than **December 5, 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 **December 19, 2019 at 1:00 p.m.**

The debtor must submit the confirmation order within seven (7) days.

Tentative Ruling from June 13, 2019

The Court will deny confirmation of the *Debtor's First Amended Chapter 11 Plan* (the "Plan") [doc. 139].

As an initial matter, contrary to the *Order Approving Debtor's First Amended Disclosure Statement Describing First Amended Plan* [doc. 135], the debtor has not

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CONT... **MidiCi Group, LLC**

Chapter 11

filed with the Court the actual ballots it received. Before the Court will confirm a related chapter 11 plan of reorganization, the debtor must file these ballots.

A. Impaired Classes Under the Plan

The Plan contains nine impaired classes. Classes 1, 2, 3, 4, 5, 6, and 7 voted to accept the Plan. Class 8, consists of the Master Kingdom of Saudi Arabia Franchisee. Under the Plan, the member in class 8 will have its franchise agreement assumed and will receive additional benefits to assist the member with its development of a foreign market. The member in class 8 did not return a ballot. Because the member of class 8 did not vote, class 8 is deemed to have rejected the plan. *In re M. Long Arabians*, 103 B.R. 211, 215–16 (B.A.P. 9th Cir. 1989) ("[T]he failure or inability of a creditor to vote on confirmation of a plan is not equivalent to acceptance of the plan.").

The final impaired class, class 9, consists of the disputed claims of general unsecured creditors. Under the Plan, the debtor proposes to pay members of class 9 a pro rata share of \$150,000 up to, and not exceeding, 40% of their allowed claims. Class 9 voted to reject the Plan [doc. 157].

B. Absolute Priority Rule

Because not all impaired classes voted to accept the Plan, the Court may not confirm the Plan under § 1129(a) alone. However, the Court may confirm the Plan if it complies with all applicable requirements under § 1129(a) (except for § 1129(a)(8)) and if the debtor shows that the Plan does not discriminate unfairly and is fair and equitable with respect to each impaired class of claims or interests that has rejected the Plan.

Upon review of the debtor's Plan, it appears that the Plan complies with the provisions of § 1129(a), except for § 1129(a)(8). 11 U.S.C. § 1129(b)(1) provides:

Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of

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such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(2) provides:

For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

. . .

(B) With respect to a class of unsecured claims--

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

(C) With respect to a class of interests--

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property. . . .

The Plan satisfies § 1129(b)(1) to the extent that the Plan does not discriminate unfairly among members of an impaired, non-accepting class. Under the Plan, the member in class 8 will have its franchise agreement assumed and receive additional benefits and all members of class 9 will receive a pro rate share of \$150,000, up to 40% of their allowed claims.

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Chapter 11

Under § 1129(b)(1), a plan may be confirmed despite non-accepting classes if the plan is fair and equitable as to impaired, non-accepting classes. Under § 1129(b)(2), a plan is fair and equitable as to unsecured creditors if such creditors (i) receive an amount equivalent to the full value of their claim on the effective date of the plan; or (ii) no junior claim or interest receives or retains any property under plan, except for post-petition income in individual chapter 11 cases.

The Plan violates the absolute priority rule. "With one exception, that general rule prohibits the bankruptcy court from confirming the Plan if any of the debtor's former equity holders retain any equity interest in the estate without also providing to senior objecting creditors cash or other property equal to the present value of their claim." *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 654 (9th Cir. 1997). Here, under the Plan, the debtor's members retain their equity interests, so class 9—unsecured creditors classified senior to the debtor's members—must be paid the full present value of their claim.

The unsecured class 9 claims will not be paid in full under the Plan as of the effective date. In addition, the debtor proposes that its members will retain their equity interests while paying unsecured creditors less than the full value of their claims. Accordingly, the Plan is not fair and equitable as to class 9 under § 1129(b)(2). The Court cannot confirm the Plan at this time.

C. New Value to the Estate

"Because the Plan plainly violates the general absolute priority rule, we must consider whether it satisfies the exception or 'corollary.'" *Ambanc La Mesa Ltd. P'ship*, 115 F.3d at 654 (citing *In re Bonner Mall Partnership*, 2 F.3d 899 (9th Cir.1993), *mot. to vacate denied and cert. dismissed*, 513 U.S. 18, 115 S.Ct. 386, 130 L.Ed.2d 233 (1994)). "Allowing old equity to retain an interest does not violate the absolute priority rule if the former equity holders provide new value to the reorganized debtor, under the 'new value corollary' to the absolute priority rule." *Id.*

"The new value corollary requires that former equity holders offer value under the Plan that is (1) new, (2) substantial, (3) in money or money's worth, (4) necessary for successful reorganization, and (5) reasonably equivalent to the value or interest received." *Ambanc La Mesa Ltd. P'ship*, 115 F.3d at 654

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Generally, chapter 11 plans that attempt to give existing equity holders the exclusive right to contribute new value in exchange for retaining their ownership interest violate the absolute priority rule. *Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 119 S. Ct. 1411, 143 L. Ed. 2d 607 (1999). Here, the Plan attempts to give existing equity holders the exclusive right to contribute new value. Accordingly, it violates the absolute priority rule.

D. Money or Money's Worth

"Under the 'money or money's worth' requirement, the new capital contribution of the former equity holders (1) must consist of money or property which is freely traded in the economy, and (2) must be a present contribution, taking place on the effective date of the Plan rather than a future contribution." *Ambanc La Mesa Ltd. P'ship*, 115 F.3d at 655. "Only those contributions from . . . partners that will actually be paid on the effective date of the Plan may be considered as money or money's worth under the new value corollary." *Id.*

A promise to contribute future services, *i.e.* labor, management or expertise, is insufficient because it "cannot be exchange for something of value to creditors *today*." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 204, 108 S. Ct. 963, 967, 99 L. Ed. 2d 169 (1988) (emphasis in original). Further, the release of claims by insiders is not an up-front infusion of money or money's worth. *In re Sun Valley Newspapers, Inc.*, 171 B.R. 71, 78 (B.A.P. 9th Cir. 1994).

Here, the debtor states that under the Plan, the debtor's members will provide upwards of \$7,000,000 in new value to the estate, which consists of the following: (a) \$425,000 in cash that will be available on the effective date of the Plan; (b) salary contributions valued at \$180,000 on an annual basis for each member who is engaged in the daily operations of the debtor; (c) subordination of \$1,267,012.20 in pre-petition claims against the estate in connection with loans extended by the member to the debtor; and (d) subordination of \$260,000 in post-petition claims against the estate in connection with the two sets of post-petition financing extended by the members to the debtor. Pursuant to the above cited authorities, only the \$425,000 cash contribution that will be available on the effective date of the Plan constitutes new value to the estate.

E. Substantial

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"[T]he new value contribution [must] be 'substantial' in comparison to such things as" (1) the total unsecured claims against the debtor, (2) the claims being discharged, or (3) the dividend being paid on unsecured claims by virtue of the contribution." *Ambanc La Mesa Ltd. P'ship*, 115 F.3d at 655; *see also Matter of Woodbrook Assocs.*, 19 F.3d 312 (7th Cir. 1994) (finding that a \$100,000 contribution was not substantial because it represented 3.8% of \$2,600,000 in unsecured debt) *and In re Olson*, 80 B.R. 935, 937 (Bankr. C.D. Ill. 1987), *aff'd*, No. 88-4052, 1989 WL 330439 (C.D. Ill. Feb. 8, 1989) (finding that a \$5,000 contribution was not substantial because it represented 1.56% of \$320,000 in unsecured debt).

Here, the total unsecured claims, looking at the debtor's schedule E/F and the claims register, are \$8,393,942. Accordingly, the new value represents 5% in allowed unsecured debt, as of this time.

Pursuant to the terms of the Plan, upon consummation of the Plan, the debtor will receive a discharge of pre-confirmation debts, except the discharge will not discharge the debtor from any debts that are found to be nondischargeable under 11 U.S.C. § 523 or are obligations created by the Plan. As the debtor has no secured debt and none of the unsecured claims have been found to be nondischargeable under 11 U.S.C. § 523, the debtor will apparently receive a discharge of all its unsecured claims. Accordingly, the new value represents 5% of the claims being discharged.

The debtor will use \$68,350.42 of the new value to pay creditors in class 1 approximately 40% of the allowed nonpriority unsecured claims, with each holder (except for Menchie's Group, Inc.) receiving its pro rata share [Plan, Exh. A]. Of the \$425,000 new value contribution, the debtor will set aside \$150,000 earmarked for payment towards any disputed claims that are allowed in class 9 [Plan, Exh. B]. The total amount of claims in class 9 is \$2,440,680 [Plan, Exh. A]. At the conclusion or termination of all claims objections proceedings, each claimant in class 9 will be paid its pro rata share of the \$150,000 reserve, up to, and not exceeding, 40% of the amount of its allowed claim. Based on *currently* allowed claims, the new value being used to pay the claimants in class 9 represents 6% of the allowed claims. Accordingly, the new value is not substantial.

F. Reasonably Equivalent to the Value or Interest Received

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The "new value" contributed must be reasonably equivalent to the value of the interest received or retained. *Ambanc La Mesa Ltd. P'ship*, 115 F.3d at 654-656. "[The] equivalency requirement ensures that equity holders will not eviscerate the absolute priority rule by means of gratuitous, token cash infusions proposed primarily to 'buy' cheap financing." *In re Crosscreek Apts., Ltd.*, 213 BR 521, 548 (Bankr. E.D. Tenn. 1997) (internal quotes omitted). Determining whether the new value is reasonably equivalent to the interest received ordinarily requires the value of the debtor in possession's business to be determined on a 'going concern' basis. *Consol. Rock Prod. Co. v. Du Bois*, 312 U.S. 510, 525-26, 61 S. Ct. 675, 685, 85 L. Ed. 982 (1941). The going concern value is generally determined by estimating the debtor in possession's future earnings and discounting those earnings to present value using an appropriate discount rate. *Crosscreek Apts., Ltd.*, 213 BR at 548.

Here, the debtor has provided an appraisal of the fair market value of a 100% interest in the debtor as of February 28, 2019 [doc. 138, Exh. M]. That appraisal states that the fair market value of a 100% interest in the debtor is \$10. The Committee of Unsecured Creditors (the "Committee") filed an objection to the Plan (the "Objection") [doc. 153]. In the Objection, the Committee argues that the value of the debtor as a going concern is much higher than \$10. However, the Committee has not yet provided dispositive evidence in support of this position.

The Committee requests an evidentiary hearing on the going concern value, in order to present expert testimony that the debtor's going concern value is more than \$10. The parties should address the timing for setting such an evidentiary hearing.

In the Objection, the Committee also requests that the Court provide a process whereby interested persons may come in and offer to contribute more new value than the debtor's members are proposing. The debtor should be prepared to discuss the creation and implementation of such a process.

G. Bad Faith

In the Objection, the Committee argues, among other things, that the Plan was filed in bad faith. Specifically, the Committee contends that the debtor filed the pending chapter 11 case in order to avoid pre-petition litigation. The debtor effectively refutes

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CONT... MidiCi Group, LLC

Chapter 11

this assertion in its *Brief in Support of Confirmation of First Amended Chapter 11 Plan* [doc. 154], and the Court concludes that the Plan was not filed in bad faith.

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim

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1:18-12354 MidiCi Group, LLC

Chapter 11

#17.00 Status conference re chapter 11 case

fr. 11/8/18, 1/24/19;2/21/19; 4/4/19; 6/13/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim

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Tuesday, July 16, 2019

Hearing Room 301

8:30 AM

1:19-11107 Dan Horosny

Chapter 7

#1.00 Reaffirmation agreement between debtor and Toyota Motor Credit Corp.

Docket 8

Party Information

Debtor(s):

Dan Horosny

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Tuesday, July 16, 2019

Hearing Room 301

8:30 AM

1:19-10912 Roberto Carlos Ayala Lopez

Chapter 7

#2.00 Reaffirmation Agreement between Debtor and Santander
Consumer USA Inc., dba Chrysler Capital

Docket 10

Party Information

Debtor(s):

Roberto Carlos Ayala Lopez

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, July 16, 2019

Hearing Room 301

8:30 AM

1:19-11193 Kelly Maguire

Chapter 7

#3.00 Reaffirmation Agreement Between Debtor
and Santander Consumer USA Inc. dba Chrysler
Capital as servicer for CCAP Auto Lease Ltd.

Docket 8

Party Information

Debtor(s):

Kelly Maguire

Represented By
Glenn Ward Calsada

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 17, 2019

Hearing Room 301

9:30 AM

1:16-13377 Nahed Talei

Chapter 13

#1.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 6/5/19

Docket 60

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nahed Talei

Represented By
Michael F Frank

Movant(s):

U.S. Bank National Association, as

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, July 17, 2019

Hearing Room 301

9:30 AM

1:18-11408 Medina Ilagan Garcia

Chapter 13

#2.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

fr. 6/5/19

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Medina Ilagan Garcia

Represented By
Kevin T Simon

Movant(s):

Deutsche Bank National Trust

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, July 17, 2019

Hearing Room 301

9:30 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

#3.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 6/12/19

Docket 97

Tentative Ruling:

- NONE LISTED -

Party Information

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, July 17, 2019

Hearing Room 301

9:30 AM

1:17-11373 Luis Valdez

Chapter 13

#4.00 Motion for relief from stay [RP]

SPECIALIZED LOAN SERVICING, LLC
VS
DEBTOR

fr. 6/5/19

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.

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):

Luis Valdez

Represented By
Rebecca Tomilowitz

Movant(s):

Specialized Loan Servicing LLC

Represented By
Dane W Exnowski

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

Wednesday, July 17, 2019

Hearing Room 301

9:30 AM

CONT... Luis Valdez

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 17, 2019

Hearing Room 301

9:30 AM

1:19-11347 Joseph Mercado Gonzalez

Chapter 7

#5.00 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.

Party Information

Debtor(s):

Joseph Mercado Gonzalez

Represented By
Henry Glowa

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, July 17, 2019

Hearing Room 301

9:30 AM

CONT... Joseph Mercado Gonzalez

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, July 17, 2019

Hearing Room 301

9:30 AM

1:18-10071 LOST COAST RANCH INC.

Chapter 7

#6.00 Motion for relief from stay [RP]

AMERICAN AGCREDIT, FLCA
VS
DEBTOR

Docket 117

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):

LOST COAST RANCH INC.

Represented By
Ronald A Norman - BK SUSPENDED -

Movant(s):

American AgCredit FLCA

Represented By
Thomas G Mouzes

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

Wednesday, July 17, 2019

Hearing Room 301

9:30 AM

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, July 17, 2019

Hearing Room 301

9:30 AM

1:18-10071 LOST COAST RANCH INC.

Chapter 7

#7.00 Motion for relief from stay [RP]

AMERICAN AGCREDIT PCA
VS
DEBTOR

Docket 118

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):

LOST COAST RANCH INC.

Represented By
Ronald A Norman - BK SUSPENDED -

Movant(s):

American AgCredit, PCA

Represented By
Thomas G Mouzes

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

Wednesday, July 17, 2019

Hearing Room 301

9:30 AM

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, July 17, 2019

Hearing Room 301

9:30 AM

1:19-11453 Maria Velado

Chapter 13

#8.00 Motion for relief from stay [UD]

MAGNUM PROPERTY INVESTMENTS LLC
VS
DEBTOR

Docket 7

Tentative Ruling:

On July 10, 2019, 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.

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 prior to the state court entering the unlawful detainer judgment and the writ of possession [Supplemental Declaration of Lane Nussbaum, doc. 9].

On June 5, 2019, movant filed a motion for summary judgment in the state court unlawful detainer proceeding against the debtor. *Id.* That motion was set for hearing on June 12, 2019. *Id.* On June 11, 2019, the debtor filed a voluntary chapter 13 petition, initiating this case. On June 12, 2019, the state court held the hearing on the motion for summary judgment and entered the judgment the same day. *Id.* On June 13, 2019, movant applied for a writ of possession on the property, and the state court granted the application and entered the writ. *Id.* On June 19, 2019, movant received

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

Wednesday, July 17, 2019

Hearing Room 301

9:30 AM

CONT... Maria Velado

Chapter 13

notice of the debtor's petition via regular mail. *Id.*

With respect to the debtor's conduct, the debtor listed only three creditors in her creditor mailing list. Although the debtor commenced this case on June 11, 2019, she never filed schedules, a statement of financial affairs or other related documents. Consequently, this case was dismissed on July 10, 2019. Based on the foregoing, it appears that debtor never intended to prosecute her chapter 13 case and filed her bankruptcy petition merely to delay the unlawful detainer proceedings. For these reasons, the Court finds that annulment of the automatic stay is appropriate.

Deny any other request for relief.

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):

Maria Velado

Pro Se

Movant(s):

Magnum Property Investments, LLC

Represented By
Lane M Nussbaum

Trustee(s):

Elizabeth (SV) 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 17, 2019

Hearing Room 301

9:30 AM

1:19-11424 Eric Cruz

Chapter 13

#9.00 Motion for relief from stay [UD]

TRIANA AT WARNER CENTER LLC
VS
DEBTOR

Docket 7

*** VACATED *** REASON: Case dismissed on 6/25/19 [doc. 9]. The motion is moot.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eric Cruz

Pro Se

Movant(s):

Triana at Warner Center, LLC

Represented By
Agop G Arakelian

Trustee(s):

Elizabeth (SV) 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 17, 2019

Hearing Room 301

9:30 AM

1:19-10681 Jan Bidasha

Chapter 13

#10.00 Motion for relief from stay [AN]

NOVASTAR LLC
VS
DEBTOR

Docket 46

Tentative Ruling:

Grant relief from the automatic 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 and property of the debtor's bankruptcy estate.

Movant may proceed against the non-debtor defendants in the nonbankruptcy action.

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):

Jan Bidasha

Represented By
Neil C Evans

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

Wednesday, July 17, 2019

Hearing Room 301

9:30 AM

CONT... Jan Bidasha

Chapter 13

Movant(s):

Novastar, LLC

Represented By
Glenn C Kelble

Trustee(s):

Elizabeth (SV) 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 17, 2019

Hearing Room 301

9:30 AM

1:19-11421 Papanicolaou Enterprises

Chapter 11

#11.00 Motion for relief from stay [UD]

YASAM LEGACY LLC A CA. LTD. LIAB. CO.
VS
DEBTOR

RE: 11329 Magnolia Blvd., North Hollywood, CA 91601 .

Docket 26

Tentative Ruling:

On July 12, 2019, the debtor filed an *Emergency Motion to Strike Landlord Yasam Legacy LLC's Reply to Debtor's Opposition to Landlord's Motion to Relief from the Automatic Stay* (the "Motion to Strike") [doc. 56]. In the Motion to Strike, the debtor argues that the Court should strike the movant's reply to the debtor's opposition because it introduces a new legal theory. The Court will not strike a timely filed pleading.

To the extent that the reply [doc. 55] introduces a new legal theory, the Court will continue this hearing to allow for supplemental briefing. The parties should be prepared to discuss the deadline for supplemental briefing and the date for a continued hearing.

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

Movant(s):

Yasam Legacy LLC, A Ca Ltd. Liab.

Represented By
Paul E Gold

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 301 Calendar**

Wednesday, July 17, 2019

Hearing Room 301

9:30 AM

1:19-11421 Papanicolaou Enterprises

Chapter 11

#12.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC

RE: 2016 Ford F30 XLT; VIN# 1FT8W3DT8GEC03450 .

Docket 19

*** VACATED *** REASON: Order approving stipulation entered on
6/28/19 [doc. 35].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

Movant(s):

Ford Motor Credit Company LLC

Represented By
Randall P Mroczynski

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

Wednesday, July 17, 2019

Hearing Room 301

9:30 AM

1:19-11421 Papanicolaou Enterprises

Chapter 11

#13.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC

RE: 2016 Ford T250; VIN# 1FTYR1ZM1GKB31246

Docket 20

*** VACATED *** REASON: Order approving stipulation entered on
6/28/19 [doc. 36].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

Movant(s):

Ford Motor Credit Company LLC

Represented By
Randall P Mroczynski

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

Wednesday, July 17, 2019

Hearing Room 301

9:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#14.00 Order to show cause why Samuel Hopper and Daniel Jett should not be held in civil contempt for violation of the automatic stay

fr. 5/15/19

Docket 64

*** VACATED *** REASON: Order ent. continuing hrg to 11/6/19 at 9:30 a.m. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) 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 17, 2019

Hearing Room 301

1:30 PM

1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01034 Post Confirmation Committee of Unsecured Creditors v. United Parcel

#15.00 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

fr. 5/22/19;

Docket 1

*** VACATED *** REASON: Notice of voluntary dismissal filed 7/2/19.
[Dkt.9]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

United Parcel Service Inc

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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

Wednesday, July 17, 2019

Hearing Room 301

1:30 PM

1:17-11358 Thomas Jang Young Yoon

Chapter 7

Adv#: 1:17-01093 Zamora v. Yoon

#16.00 Pretrial 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); 10/3/18; 5/15/19(stip)

Docket 1

*** VACATED *** REASON: Continued to 9/18/19 at 1:30 per order

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 17, 2019

Hearing Room 301

1:30 PM

1:18-10329 Ali P Dargah

Chapter 13

Adv#: 1:18-01045 Dargah v. Dargah et al

#17.00 Pre-trial 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; 12/12/18; 5/8/19

CROSS COMPLAINT

Jeff Daragah, an individual
Cross-Complainant

v

Ali P. Dargah, an individual
Cross-Defendant

Docket 10

Tentative Ruling:

On July 3, 2019, plaintiff and cross-defendant Ali P. Dargah ("Plaintiff") timely filed and served a unilateral pretrial statement [doc. 59]. Plaintiff also filed and served a declaration by attorney David M. Kritzer (the "Kritzer Declaration") [doc. 60]. In the Kritzer Declaration, Mr. Kritzer states that he timely contacted Jeff Javad Dargah ("Defendant") regarding preparation of a joint pretrial stipulation. Kritzer Declaration, ¶ 5. According to Mr. Kritzer, to date, Defendant has not responded. Kritzer Declaration, ¶ 6.

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

Wednesday, July 17, 2019

Hearing Room 301

1:30 PM

CONT... Ali P Dargah

Chapter 13

Defendant also has not timely filed a unilateral pretrial statement with the Court or requested an extension of the deadline to file a pretrial statement. In light of Defendant's failure to prosecute this action, the Court will dismiss the cross-complaint and strike Defendant's answer [doc. 18].

If Plaintiff will be pursuing a default judgment pursuant to Local Bankruptcy Rule 7055-1(b), Plaintiff must file and 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 and serve that motion by **September 16, 2019**.

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 must submit an order within seven (7) days.

Party Information

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, July 17, 2019

Hearing Room 301

1:30 PM

CONT... Ali P Dargah

Chapter 13

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, July 17, 2019

Hearing Room 301

1:30 PM

1:18-10982 Gabriel Medina

Chapter 13

Adv#: 1:18-01126 Medina v. Strunzo Development Corp., a California Corporatio

#18.00 Pretrial conference re complaint for equitable relief:

1. Cancellation of instrument/deed of trust;
2. Declaratory relief

fr. 2/6/19

Order appr stip to cont hrg ent 5/9/19

Docket 1

*** VACATED *** REASON: Continued to 9/18/19 at 1:30 PM per order entered 5/9/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Medina

Represented By
Anthony Obehi Egbase
Sedoo Manu

Defendant(s):

Strunzo Development Corp., a

Pro Se

Does 1-50 Inclusive

Pro Se

Plaintiff(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, July 17, 2019

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#19.00 Status conference re: creditor H. Samuel Hopper's motion to dismiss debtor Kenneth C. Scott's chapter 13 petition

Docket 70

Tentative Ruling:

The Court will continue this matter to **1:30 p.m. on September 4, 2019**, to be heard with the status conference in the adversary proceeding between the parties. No later than **August 21, 2019**, the parties must file a joint status report regarding this matter.

Appearances on July 17, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) 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 17, 2019

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#20.00 Status conference re complaint for:
1) Declaratory relief re nondischargeability of civil penalties
[11 U.S.C. sec 523(a)(7)]
2)

fr. 5/14/19;

Docket 1

***** VACATED *** REASON: Another summons issued, hearing set for
09/04/2019 at 1:30 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Defendant(s):

Kenneth C. Scott

Pro Se

My Private Practice, Inc. a

Pro Se

Plaintiff(s):

H. Samuel Hopper

Represented By
Daniel Parker Jett

Trustee(s):

Elizabeth (SV) 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 17, 2019

Hearing Room 301

1:30 PM

1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

Adv#: 1:19-01032 Gottlieb, Chapter 7 Trustee v. Rojas et al

#21.00 Status conference re: First Amended Complaint for:
 (1) Avoidance Recovery, and Preservation of Constructive
 Fraudulent Transfer;
 (2) Avoidance, Recovery, and Preservation of Actual Fraudulent Transfer;
 (3) Avoidance, Recovery, and Preservation of Unperfected Liens; and
 (4) Declaratory Relief re: Validity Priority, and Extent of Alleged Liens
 [11 U.S.C. Sections 544, 548, 550, and 551; Cal. Civ.Code Sections 3439.04,
 3439.05]

fr. 5/8/19

Docket 7

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on August 21, 2019**. If the Court enters default judgment prior to that date, the Court will vacate the status conference.

Appearances on July 17, 2019 are excused.

Party Information

Debtor(s):

Aurora Frias Lee-Nelson

Represented By
Ronald D Tym

Defendant(s):

Kenny Rojas

Pro Se

Christina Ceniza

Pro Se

Nicole Ceniza

Pro Se

Danai Junpram

Pro Se

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

Wednesday, July 17, 2019

Hearing Room 301

1:30 PM

CONT... Aurora Frias Lee-Nelson

Chapter 7

Leoncio Juadalso Jr.

Pro Se

Plaintiff(s):

David K Gottlieb, Chapter 7 Trustee

Represented By
D Edward Hays
Laila Masud

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, July 17, 2019

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1:30 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:19-01045 Coast to Coast Holdings, LLC v. Leonardi

#22.00 Status conference re: complaint for:
(1) Breach of contract; (2) Breach of implied covenant of good faith and fair dealing; (3) Fraud in forming a contract; (4) Tortious fraud; (5) Negligent misrepresentation; (6) Statue of frauds - declaratory relief; (7) Avoidance of fraudulent transfer; (8) Preservation of avoided transfers and avoided liens; (9) Slander of title; (10) Waste; (11) Right to setoff of recoupment (12) Turnover of property of the estate (rents); (13) Turnover of property of the estate (real property); (14) Violation of the automatic stay; (15) Disallowance of claim; (16) Avoidance of lien

fr. 6/19/19; 7/3/19

Counter-claim filed 5/17/19:

Joseph Leonardi, counter-claimant
vs
Coast to Coast Holdings, LLC; Oscar Torres;
Elizabeth Ramos; and Jeff Turner, counter-defendants

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on August 21, 2019**, to allow the individual cross-defendants to file and serve a response and participate in the filing of a joint status report. No later than **August 7, 2019**, the parties must file an updated joint status report.

Another judicial mediator who may be available for this matter is the Honorable Gregg W. Zive, a recalled United States Bankruptcy Judge. Judge Zive is authorized to act as a mediator for bankruptcy cases and adversary proceedings in the Central District of California. Judge Zive holds mediation sessions in the Court's LA Division. His contact information is provided on the Court's website.

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CONT... Coast to Coast Holdings, LLC

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Appearances on July 17, 2019 are excused.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

Defendant(s):

Joseph Leonardi

Pro Se

Plaintiff(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz

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Adv#: 1:19-01047 Leonardi v. Coast to Coast Holdings, LLC a Wyoming Limited Lia

#23.00 Order to show cause why this adversary case should not be dismissed

fr. 7/3/19

Docket 9

Tentative Ruling:

The Court will dismiss this adversary proceeding.

I. BACKGROUND

On January 16, 2019, Coast to Coast Holdings, LLC ("Debtor") filed a voluntary chapter 11 petition. In its schedule A/B, Debtor listed a fee simple interest in real property located at 1140 Henry Ridge Motorway, Topanga, California 90290 (the "Property").

On April 19, 2019, Debtor filed a complaint against Joseph Leonardi, initiating adversary proceeding no. 1:19-ap-01045-VK (the "First Adversary"). In its complaint, Debtor alleges that Mr. Leonardi, a lessee of the Property, defaulted under the lease agreement between the parties and has refused to vacate the Property. Debtor asserts claims for: (A) Breach of Contract; (B) Breach of Implied Covenant of Good Faith and Fair Dealing; (C) Fraud in Forming a Contract; (D) Tortious Fraud; (E) Negligent Misrepresentation; (F) Statute of Frauds – Declaratory Relief; (G) Avoidance of Fraudulent Transfer; (H) Preservation of Avoided Transfers and Avoided Liens; (I) Slander of Title; (J) Waste; (K) Right to Setoff or Recoupment; (L) Turnover of Property of the Estate (Rents); (M) Turnover of Property of the Estate (Real Property); (N) Violation of the Automatic Stay; (O) Disallowance of Claim; and (P) Avoidance of Lien.

On May 17, 2019, Mr. Leonardi filed an answer to the complaint as well as counterclaims (the "Counterclaims") [1:19-ap-01045-VK, doc. 6] against Debtor and Jeff Turner, Elizabeth Ramos and Oscar Torres (the "Individual Defendants"). In the Counterclaims, Mr. Leonardi asserts claims for: (A) Alter Ego; (B) Fraud; (C) Breach

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of Contract; (D) Breach of Oral Contract; (E) Conversion; (F) Injunctive Relief; (G) Quiet Title; and (H) Unjust Enrichment.

On May 29, 2019, Debtor removed a state court action, filed prepetition by Mr. Leonardi, to this Court (the "Removed Action") [1:19-ap-01063-VK]. In the operative complaint in the Removed Action, Mr. Leonardi alleges similar facts and asserts similar causes of action as in the Counterclaims.

On April 22, 2019, Mr. Leonardi filed a complaint against Debtor (the "Leonardi Complaint"), initiating this adversary proceeding. In the Leonardi Complaint, Mr. Leonardi repeats the allegations from the Counterclaims against Debtor and the Individual Defendants. However, Mr. Leonardi includes requests for nondischargeability of the alleged debt owed to him under 11 U.S.C. § 523 and denial of Debtor's discharge under 11 U.S.C. § 727. Mr. Leonardi also requests avoidance of transfers pursuant to 11 U.S.C. § 548.

On June 20, 2019, the Court issued the *Order to Show Cause Why this Adversary Proceeding Should Not be Dismissed* (the "OSC") [doc. 8]. In the OSC, the Court instructed Mr. Leonardi to file a response explaining why claims under 11 U.S.C. §§ 523 and 727 apply to a corporate debtor in a chapter 11 case. The Court also instructed Mr. Leonardi to explain why he has standing under 11 U.S.C. § 548. On June 28, 2019, Mr. Leonardi filed a response to the OSC (the "Response") [doc. 11]. In the Response, Mr. Leonardi asserts that: (A) this Court has subject matter jurisdiction over this action; (B) Mr. Leonardi's alter ego allegations, which implicate the Individual Defendants, allow Mr. Leonardi to assert a § 523 claim against Debtor; (C) Mr. Leonardi may proceed with his § 727 claim because he timely filed this adversary proceeding; and (D) Mr. Leonardi does not hold a claim under § 548 and is instead seeking recovery of funds from Mr. Torres.

II. ANALYSIS

"[A] trial court may dismiss a claim sua sponte under Fed. R. Civ. P. 12(b)(6)." *Seismic Reservoir 2020, Inc. v. Paulsson*, 785 F.3d 330, 335 (9th Cir. 2015) (internal quotation omitted). "Of course, the district court must give notice of its sua sponte intention to dismiss and provide the plaintiff with 'an opportunity to at least submit a written memorandum in opposition to such motion.'" *Id.* (quoting *Wong v. Bell*, 642

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F.2d 359, 362 (9th Cir. 1981)).

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A. 11 U.S.C. § 523

Pursuant to 11 U.S.C. § 523(a), "[a] discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge *an individual debtor* from any debt" arising from certain circumstances set forth in the subsections of § 523. 11 U.S.C. § 523(a) (emphases added). Section "523 only applies to individual and not corporate debtors." *In re Pac.-Atl. Trading Co.*, 64 F.3d 1292, 1302 (9th Cir. 1995); *see also In re Gordon's Music & Sound, Inc.*, 2012 WL 8250009, at *1 (Bankr. E.D. Cal. Oct. 12, 2012) ("The exceptions to discharge provisions of 11 U.S.C. § 523(a) apply only to individual debtors and not corporate debtors...."); *and Yamaha Motor Corp. U.S.A. v. Shadco, Inc.*, 762 F.2d 668, 670 (8th Cir. 1985) ("Congress clearly did not intend the term 'corporate debtor' to be used interchangeably with the term 'individual debtor....'").

Debtor is a corporation. As such, under the plain language of the statute, the exceptions to discharge under § 523(a) do not apply to Debtor. Mr. Leonardi's sole argument as to this issue is that Mr. Leonardi has included alter ego allegations against the Individual Defendants in the Leonardi Complaint. Mr. Leonardi appears to be suggesting that, in light of these allegations, the Court may adjudicate a nondischargeability action against the nondebtor Individual Defendants.

However, the Individual Defendants are not debtors. By the plain language of § 523(a) and because only debtors are entitled to a discharge, nondischargeability actions are inapplicable to nondebtor third parties. As such, even if the Individual Defendants are alter egos of Debtor, which has not been proven at this time, such a finding would only make the Individual Defendants liable for Debtor's debts. The finding would *not* make the Individual Defendants debtors before this Court. Consequently, § 523(a) does not apply to Debtor.

B. 11 U.S.C. § 727

"Section 727 applies only to chapter 7 debtors." *In re Neff*, 505 B.R. 255, 265 (B.A.P.

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9th Cir. 2014). Here, Debtor's case is not a case under chapter 7. Mr. Leonardi has cited no authority why 11 U.S.C. § 727 should apply to this chapter 11 debtor. In his Response, Mr. Leonardi only states that he timely filed the Leonardi Complaint. This response is irrelevant to the issues framed by the Court in the OSC. Timely filed or not, the claim is inapplicable to Debtor.

C. 11 U.S.C. § 548

Avoidance claims under the Bankruptcy Code empower a trustee in bankruptcy to avoid and recover, for the benefit of the estate, transfers of property by a debtor. A chapter 11 debtor in possession is vested with certain rights, powers and duties of a trustee, including the power to bring avoidance actions. 11 U.S.C. § 1107(a). Creditors in a bankruptcy case typically are not vested with these powers.

In re Know Weigh, L.L.C., 576 B.R. 189, 206 (Bankr. C.D. Cal. 2017) (citing *In re Curry & Sorensen, Inc.*, 57 B.R. 824, 827 (B.A.P. 9th Cir. 1986)). Nevertheless, "[i]t is well settled that in appropriate situations *the bankruptcy court may allow* a party other than the trustee or debtor-in-possession to pursue the estate's litigation." *In re Spaulding Composites Co.*, 207 B.R. 899, 903 (B.A.P. 9th Cir. 1997) (emphasis added).

"The requirement of court approval serves an important gatekeeping function with respect to the use of estate powers by anyone other than the trustee or debtor in possession." *Know Weigh, L.L.C.*, 576 B.R. at 209. "Although the standard and better practice is to obtain court approval before filing bankruptcy avoidance actions that are based on derivative standing, a bankruptcy court may exercise its discretion to grant such approval retroactively—after the complaint has been filed but before recovery." *Id.*, at 210 (citing *In re Hashim*, 379 B.R. 912, 922 (B.A.P. 9th Cir. 2007)).

Here, Mr. Leonardi is not a chapter 11 trustee or debtor-in-possession with standing to pursue an avoidance action. Nor has Mr. Leonardi sought leave of this Court to file a claim under 11 U.S.C. § 548. In the Response, Mr. Leonardi seems to suggest he does not hold a claim under § 548. To the extent Mr. Leonardi is still asserting a claim under § 548 at all, it appears from the Response that Mr. Leonardi seeks recovery of funds from Mr. Torres. It is unclear if Mr. Leonardi is requesting recovery of these

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funds for himself or for the estate. If Mr. Leonardi requests the former, an avoidance action under § 548 only applies to recovery into the *estate*; if Mr. Leonardi is pursuing the latter, he does not have standing.

Mr. Leonardi has asserted all of the remaining allegations and claims in the Counterclaims. Because Mr. Leonardi is not properly asserting claims under 11 U.S.C. §§ 523, 548 and 727, and because Mr. Leonardi's remaining claims are already before the Court in *two* different adversary proceedings, the Court will dismiss this adversary proceeding. To the extent Mr. Leonardi has not included all of the remaining allegations or claims from the Leonardi Complaint in the Counterclaims, Mr. Leonardi may seek leave to amend the Counterclaims. The parties should pursue all of their claims against each other in one adversary proceeding. The Court notes that it will *not* provide Mr. Leonardi leave to amend the Counterclaims to add claims under 11 U.S.C. §§ 523 or 727 because those statutes are plainly inapplicable to Debtor.

III. CONCLUSION

The Court will dismiss this adversary proceeding.

The Court will prepare the order.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik
Jeffrey S Kwong

Defendant(s):

Coast to Coast Holdings, LLC a

Pro Se

Oscar Torres

Pro Se

Jeff Turner

Pro Se

Elizabeth Ramos

Pro Se

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DOES 1 to 25

Pro Se

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Plaintiff(s):

Joseph Leonardi

Represented By
Emanuel D Zola

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1:19-10112 Coast to Coast Holdings, LLC

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Adv#: 1:19-01047 Leonardi v. Coast to Coast Holdings, LLC a Wyoming Limited Lia

- #24.00** Status conference re: complaint to determine nondischargeability of debt
- 1) Fraudulent misrepresentation
 - 2) Injunctive relief
 - 3) Conversion
 - 4) Alter ego

fr. 6/19/19; 7/3/19

Docket 1

Tentative Ruling:

See calendar no. 23.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

Defendant(s):

Coast to Coast Holdings, LLC a

Pro Se

Oscar Torres

Pro Se

Jeff Turner

Pro Se

Elizabeth Ramos

Pro Se

DOES 1 to 25

Pro Se

Plaintiff(s):

Joseph Leonardi

Represented By
Emanuel D Zola

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Adv#: 1:19-01063 Leonardi v. Turner et al

#25.00 Status conference re: notice of removal of civil action under 28 U.S.C. § 1452(a)

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on September 18, 2019**, to be held with the hearing on the plaintiff's motion to remand [doc. 8].

Appearances on July 17, 2019 are excused.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik
Jeffrey S Kwong

Defendant(s):

Jeff Turner

Pro Se

Oscar Torres

Pro Se

Coast To Coast Holdings, LLC

Represented By
Jeffrey S Kwong
John-Patrick M Fritz

DOES 1 through 25, inclusive

Pro Se

Plaintiff(s):

Joseph Leonardi

Represented By
Emanuel D Zola

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1:19-10319 James Lamont Dubose

Chapter 7

Adv#: 1:19-01060 Jackson v. Dubose

#26.00 Status conference re: complaint

Docket 1

Tentative Ruling:

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on October 16, 2019**.

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 **September 13, 2019**.

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 July 17, 2019 is excused.

Party Information

Debtor(s):

James Lamont Dubose

Represented By
Stephen L Burton

Defendant(s):

James Lamont Dubose

Pro Se

Plaintiff(s):

Steven Jackson

Represented By
Brian Hockett

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:19-10335 Mia Danielle Boykin

Chapter 7

Adv#: 1:19-01056 Thomas et al v. Boykin, an individual

#27.00 Status conference re: complaint for determination of dischargeability; for constructive trust and determination that certain monies are not property of the estate; and objecting to debtor's discharge pursuant to 11 U.S.C. sec 523 and 727

Docket 1

*** VACATED *** REASON: Order dismissing adversary entered 7/12/19 [doc. 11].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mia Danielle Boykin

Represented By
Faith A Ford

Defendant(s):

Mia D. Boykin, an individual

Pro Se

Plaintiff(s):

Jeffrey Thomas

Represented By
Alexandre I Cornelius

Fortis Development, LLC a Nevada

Represented By
Alexandre I Cornelius

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:19-10448 Linda Moraga

Chapter 7

Adv#: 1:19-01061 The Roberts Container Corporation v. Moraga

#28.00 Status conference re: complaint

Docket 1

Tentative Ruling:

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on October 16, 2019.**

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 **September 13, 2019.**

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 July 17, 2019 is excused.

Party Information

Debtor(s):

Linda Moraga

Represented By
Daniel King

Defendant(s):

Linda Moraga

Pro Se

Plaintiff(s):

The Roberts Container Corporation

Represented By

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CONT... Linda Moraga

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Michael A Wallin

Trustee(s):

Nancy J Zamora (TR)

Represented By
Anthony A Friedman

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1:19-10494 Gerald Martin Nussbaum

Chapter 7

Adv#: 1:19-01052 Morehead v. Nussbaum et al

- #29.00** Status conference re: complaint for nondischargeability for:
- 1) Debts incurred through false pretense, 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) Objection to discharge - loss of assets/deficiency of assets under 11 U.S.C. sec 727

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 12/20/19.

Deadline to file pretrial motions: 1/15/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 1/29/20.

Pretrial: 1:30 p.m. on 2/12/20.

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):

Gerald Martin Nussbaum

Represented By
Neil R Hedtke

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Defendant(s):

Gerald Martin Nussbaum Pro Se

DOES 1-10, Inclusive Pro Se

Plaintiff(s):

Ellen Morehead Represented By
Daren M Schlecter

Trustee(s):

David Seror (TR) Pro Se

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1:18-11150 Robert Edward Zuckerman

Chapter 7

Adv#: 1:18-01081 Albini et al v. Zuckerman

#30.00 Plaintiff's motion for summary judgment against debtor
 Robert Edward Zuckerman

fr. 6/5/19

Docket 50

Tentative Ruling:

At the last hearing, the Court instructed Robert E. Zuckerman ("Defendant") to supplement the record with evidence that 14 of the plaintiffs were dismissed prior to entry of a judgment in state court. To date, Defendant has not filed any such evidence.

On June 17, 2019, the plaintiffs filed a supplemental brief [doc. 86], a request for judicial notice (the "RJN") [doc. 87] and a supplemental declaration by Edward McCutchan (the "McCutchan Declaration") [doc. 88]. To the RJN, the plaintiffs attach an order dated November 18, 2014 in which the state court overruled a demurrer by Defendant (the "Demurrer Order"). RJN, Exhibit 1. In the Demurrer Order, the state court notes that certain plaintiffs transferred their claims to Richard Abel, but the state court did not specify the names of such plaintiffs. The state court also held that the dismissal of these assignors did not have an effect on the viability of their claims as held by the assignee.

In the McCutchan Declaration, Mr. McCutchan attaches a September 10, 2012 request for dismissal filed by the plaintiffs in state court (the "Request for Dismissal"). McCutchan Declaration, ¶ 5, Exhibit A. Defendant's prior request to dismiss 14 of the plaintiffs was based on this Request for Dismissal. According to the plaintiffs, this Request for Dismissal was subsequently nullified by the state court in the Demurrer Order.

On July 3, 2019, Mr. Abel filed a response to the plaintiffs' filing (the "Abel Response") [doc. 89]. In the Abel Response, Mr. Abel contends that certain plaintiffs assigned their claims to him, and that others were dismissed in state court. Mr. Abel

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also takes issue with a lien held by Mr. McCutchan against the state court judgment and argues that there is a conflict of interest between Mr. McCutchan and certain clients.

Concurrently, Mr. Abel filed a declaration (the "Abel Declaration") [doc. 90]. In the Abel Declaration, Mr. Abel states that the plaintiffs filed an amendment to their third amended complaint in state court dismissing 20 plaintiffs based on those plaintiffs' assignments of their claims to Mr. Abel (the "Amendment"). Abel Declaration, ¶ 6, Exhibit A. Mr. Abel also contends that Mr. McCutchan failed to account for these assignments when he drafted the state court judgment eventually entered by the state court. *Id.*, ¶¶ 10-11.

In addition, Mr. Abel states that, in June 2018, he contacted other judgment creditors to ask them to execute and notarize assignments of their judgments to Mr. Abel. *Id.*, ¶ 13. It is unclear if Mr. Abel received any assignments after this request. However, Mr. Abel attaches several assignments executed *prior to* entry of the state court judgment. *Id.*, ¶ 14, Exhibits C-W. These pre-judgment assignments are not notarized. *Id.*

On July 10, 2019, the plaintiffs filed a reply to the Abel Response [doc. 91], asserting that the assignments must be notarized to be valid. Mr. McCutchan also filed a declaration [doc. 93] in which Mr. McCutchan states he was never advised about the assignments from certain plaintiffs to Mr. Abel.

First, the plaintiffs' contention that the Demurrer Order nullified the Request for Dismissal is not evident from the face of the Demurrer Order. In the Demurrer Order, the state court merely held that Mr. Abel, as the assignee, did not lose the right to enforce the claims he received from the assignors simply because the assignors were dismissed from the case. However, the state court did not specify in the Demurrer Order any names of plaintiffs that were dismissed.

The only evidence regarding potential dismissals are from Mr. Abel. However, with the exception of certain undated documents [Abel Declaration, Exhibits F, O and Y], Mr. Abel's documents regarding assignments or dismissals predate the state court's judgment. [FN1]. All of the named plaintiffs in the operative complaint in this adversary proceeding are named in the state court's amended judgment, discussed in

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the Court's prior ruling on this motion. Because the state court entered judgment in favor of those plaintiffs, this Court does not have the power to undo the state court's judgment. To the extent Mr. Abel believes the state court mistakenly included names of dismissed plaintiffs in its judgment, Mr. Abel must file a motion before the state court.

Mr. Abel's remaining testimony regarding plaintiffs that may have passed away is irrelevant. That a party has passed away does not preclude the party's probate estate from maintaining a claim against Defendant.

Nothing in this ruling precludes Mr. Abel from obtaining relief from the state court or otherwise receiving assignments of judgments held by other plaintiffs. Given that the only admissible evidence before this Court at this time concerns assignments and dismissals that appear to have occurred prior to the state court's entry of judgment, and because the state court's judgment names all of the plaintiffs named in this action, this Court will not dismiss any of the plaintiffs.

Finally, Mr. Abel's arguments regarding any conflict of interest between Mr. McCutchan and his clients are not properly before this Court; the supplemental briefing was meant to complete the record related to a motion for summary judgment, and there is no motion to disqualify the plaintiffs' counsel pending before the Court.

Consequently, the Court will adopt its prior ruling and enter judgment in favor of the plaintiffs. The plaintiffs must submit a proposed order and judgment within seven (7) days.

FOOTNOTES

1. The plaintiffs argue that the assignments are not valid because they are not notarized. However, California law does not require assignments to be notarized to be valid—

A judgment creditor may assign to a third person the right represented by a judgment. An assignment of the rights represented by a judgment is perfected and becomes enforceable against third persons upon execution and delivery to the transferee of an

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assignment of the judgment in writing. (Civ. Code, § 954.5(a).)

An assignment of judgment rights need not be filed with the court in order to accomplish the transfer of the interest in the judgment. (Civ.Code § 954.5, Law Rev.Comm. Comment, 1982 addition.) Filing or recording an assignment of judgment, however, *does* serve two purposes. First, it allows an assignee to obtain a *writ of execution, or to use other enforcement remedies provided for in the Code of Civil Procedure*. (Code of Civ.Proc. § 673, Law Rev.Comm. Comment; Code of Civ.Proc., § 681.020.) Second, it establishes the assignee's priority in relation to other assignees of the *same* judgment rights in the event that the original judgment creditor assigns his or her rights in the judgment to more than one assignee. (Civ.Code, § 954.5(b).) *But, to reiterate, the assignment is enforceable against third parties regardless of whether the assignment has been recorded or filed.*

...

[In addition,] Code of Civil Procedure section 681.020... merely precludes a judgment creditor's assignee, who has not filed or recorded the assignment, from "enforc[ing] the judgment *under this title*," i.e., under the specific enforcement provisions of title 9 of the Code of Civil Procedure.

Fjaeran v. Bd. of Supervisors, 210 Cal. App. 3d 434, 440 (Ct. App. 1989) (emphases in original).

Tentative ruling regarding the plaintiffs' evidentiary objections to the identified paragraphs in the Declaration of Richard Abel set forth below:

paras. 3- 5, 10, 14, 16-17: overrule

paras. 11-12, 15: sustain

para. 13: sustain as to "caused by McCutchan's malfeasance;" overrule as to the rest

exs. A-B: overrule

exs. X-Y: sustain

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I. BACKGROUND

A. The State Court Trial

Dozens of individuals and entities ("Plaintiffs") filed a complaint against Robert E. Zuckerman ("Defendant"), initiating state court case no. SCV-245738 (the "State Court Action"). Request for Judicial Notice ("RJN") [doc. 57], Exhibit 1. On September 10, 2012, Plaintiffs may have voluntarily dismissed multiple plaintiffs from the State Court Action (the "Request for Dismissal"). Declaration of Sandford L. Frey (the "Frey Declaration") [doc. 76], ¶¶ 3-4, Exhibit A. On October 5, 2016, the state court held a trial on the issues presented in the State Court Action. RJN, Exhibit 1.

As relevant to this action, Raul Garcia, Defendant's attorney at the time, appeared on behalf of Defendant. *Id.* Prior to trial, the state court heard Defendant's motion in limine pursuant to California Code of Civil Procedure ("CCP") §§ 583.310 and 583.360(a) (the "Motion in Limine"). *Id.* Through the Motion in Limine, Defendant argued that the State Court Action must be dismissed because Plaintiffs did not bring the matter to trial within five years, as prescribed by CCP §§ 583.310 and 583.360(a). The court denied the Motion in Limine on the basis that Defendant had previously stipulated that CCP §§ 583.310 and 583.360(a) would not apply to the State Court Action. *Id.*

At that time, Mr. Garcia, on behalf of Defendant, requested a stay of the State Court Action for Defendant to file a Writ of Prohibition with an appellate court. Trial Transcript [doc. 78], pp. 13-14. [FN1]. After the state court denied the stay and instructed the parties to proceed with trial, Mr. Garcia moved to withdraw as Defendant's attorney, stating that he was not ready to proceed. *Id.*, pp. 14-15. The state court denied Mr. Garcia's motion to withdraw as Defendant's counsel. *Id.* In relevant part, the trial transcript reflects the following exchange between the court and Mr. Garcia:

MR. GARCIA: Strategically our plan was not to proceed with the trial, Your Honor. I mean, is the Court asking me to stay here?

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THE COURT: Yeah, I think you need to. You're the attorney.

MR. GARCIA: But I'm not going to ask any questions.

THE COURT: I can't tell you what to do. All I can do is tell you I'm denying your Motion to Withdraw.

...

THE COURT: I'm interested, is your client planning to be here or not?

MR. GARCIA: No, Your Honor. Because as I indicated, tactically, we were going to ask for a stay. If the Court granted the stay, the no need for my –

THE COURT: Where is your client?

MR. GARCIA: Woodland Hills, Your Honor. He just came out of surgery on Friday. That's what I was told, Your Honor.

THE COURT: Okay. There's some disagreement about that.

MR. GARCIA: Thank you, Your Honor.

THE COURT: You're going to leave us? Okay.

MR. GARCIA: I don't know what to do. I just can't sit here, doing nothing, Your Honor.

Id., pp. 15-16. Mr. Garcia left the courtroom, and the state court proceeded to take evidence during trial.

B. The State Court Judgment and Amended Judgment

On October 6, 2016, the state court entered judgment against Defendant. RJN, Exhibit 2. On April 4, 2017, the state court entered an amended judgment against Defendant (the "Amended Judgment"). RJN, Exhibit 1. In relevant part, the state court first noted that, pursuant to an order entered March 7, 2014 (the "Admission Order"), certain material facts were deemed admitted against Defendant. *Id.* These material facts included:

1. Defendant... engaged in fraud intentional misrepresentation as alleged in the second amended complaint's first cause of action.
2. Defendant... engaged in fraud – concealment as alleged in the second amended complaint's second cause of action.

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3. Defendant... engaged in fraud – promise without intent to perform as alleged in the second amended complaint's third cause of action.
...
4. Defendant... engaged in a conspiracy to defraud as alleged in the second amended complaint's eleventh cause of action.

Id. Based on the Admission Order and the evidence presented at trial, including expert testimony, the state court entered judgment against Defendant "who engaged in a joint venture to intentionally, purposefully and maliciously defraud each of the plaintiffs in this matter finding damages under the plaintiffs' third amended complaint's causes of action for intentional misrepresentation, concealment, promise without intent to perform and elder abuse...." *Id.* The court also made the following specific findings:

The court finds that [Defendant] fraudulently obtained \$6,435,000.00 in loans from [P]laintiffs, many who were elders, at 13.5% per annum, brokered by real estate broker Charlene Goodrich, with no intent whatsoever to use the money in the Malibu land development project as Robert Zuckerman represented in writing.

The court finds that no part of [P]laintiffs' collective \$6,435,000.00 loan was ever used in any manner for this Malibu land development project. The security for this \$6,435,000.00 collective loan had grossly inflated values and the security was only four legal and developable parcels as opposed to the 13 legal and developable parcels that each were fraudulently represented to have approximately a two (2) acre building pads by the named defendant herein as to [P]laintiffs' \$6,435,000.00 collective loan where there were no building pads constructed ever. The six (6) months interest at 13.5% on the loan paid to [P]laintiffs was from an impound account of [P]laintiffs' very own monies. Defendant, Robert Zuckerman made no payments to [P]laintiffs whatsoever on the \$6,435,000 collective loan.

The court further finds that Robert E. Zuckerman, who has been a real

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estate broker in the State of California since March 28, 1982 (license number 0083365) and based upon the evidence presented, was the central figure in charge of this fraudulent land development scheme of the thirteen (13) represented legal and developable properties (which they were not) in Malibu, California that severely damaged the [P]laintiffs herein where many of them were elders as defined within California's Welfare & Institutions Code.

Id. Based on these findings, the court "adjudged and decreed that the remaining named [P]laintiffs... shall have judgment against defendant Robert E. Zuckerman based upon the plead causes of action for intentional misrepresentation, concealment (fraud), promises without intent to perform, breach of contract, conspiracy to defraud and elder abuse...." *Id.*

On top of other damages, the court also awarded Plaintiffs punitive damages. *Id.* As to punitive damages, the court stated:

The court finds by clear and convincing evidence that defendant Robert E. Zuckerman willfully, purposely, maliciously, intentionally, oppressively, maliciously and wrongfully engaged in fraudulent conduct including elder abuse under California Civil Code § 3294 as alleged in the Third Amended Complaint herein as to the intentional misrepresentation, concealment, promise without intent to perform and elder abuse... causes of action as to all [P]laintiffs in that the security for the [P]laintiffs' initial loans was purposefully way overvalued by Robert E. Zuckerman as part of a fraudulent joint venture. Defendant Robert E. Zuckerman never provided [P]laintiffs with any information as to where their loan monies went and the security for the loans on the Malibu land to be developed never had any improvements made by the defendant.

The court finds that Robert E. Zuckerman never had any intention to repay [P]laintiffs any part of their \$6,435,000.00 collective loan that the secured Malibu property for this loan never had any developments and could not be developed as represented by the defendant and that the conduct of the defendant named herein was reprehensible and

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severely damaged all the [P]laintiffs.

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Id. The court concluded: "It is hereby adjudged and decreed that all named [P]laintiffs... shall have judgment against defendant Robert E. Zuckerman per their percentages of investment based upon the plead causes of action for intentional misrepresentation, concealment (fraud), promises without intent to perform, conspiracy to defraud and elder abuse... finding a fraudulent and deceitful joint venture involving Robert E. Zuckerman...."

C. The Adversary Proceeding

On May 4, 2018, Defendant filed a voluntary chapter 11 petition (now converted to a chapter 7 case). On July 20, 2018, Plaintiffs filed a complaint against Defendant, requesting nondischargeability of the debt owed to them pursuant to the Amended Judgment under 11 U.S.C. § 523(a)(2)(A).

On March 25, 2019, Plaintiffs filed a motion for summary judgment (the "MSJ") [doc. 50], asserting that the Amended Judgment precludes litigation of the issues in this adversary proceeding. On May 15, 2019, Defendant filed an opposition to the MSJ (the "Opposition") [doc. 74]. In the Opposition, Defendant argues that: (A) it is unclear from the Amended Judgment that the issue of fraud was "actually litigated" and that Defendant was denied a full and fair opportunity to litigate because Mr. Garcia "abandoned" him at trial; (B) Defendant was not present at trial because of his medical issues and because the matter had not been litigated within five years in accordance with §§ 583.310 and 583.360(a), and did not know that Mr. Garcia would withdraw as counsel; (C) the state court did not make express findings as to whether Defendant engaged in fraud and reached its decision based on the Admission Order and a cursory investigation of witnesses; (D) application of issue preclusion would violate public policy; and (E) summary judgment is inappropriate as to certain plaintiffs who dismissed their claims prior to entry of the Amended Judgment.

On May 22, 2019, Plaintiffs filed a reply to the Opposition [doc. 79]. Plaintiffs do not address Defendant's assertion that certain plaintiffs were dismissed prior to entry of the Amended Judgment. Instead, Plaintiffs object to the Request for Dismissal on the basis that the Request for Dismissal is not certified and Defendant has not provided evidence that the named plaintiffs were actually dismissed in response to the Request

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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. . . .

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

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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. 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)).

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"The party asserting preclusion bears the burden of establishing the threshold requirements." *Id.*, 250 F.3d at 1245. "This means providing 'a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action.'" *Plyam*, 530 B.R. at 462 (quoting *In re Kelly*, 182 B.R. 255, 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*, 182 B.R. at 258.

a. Whether Issue Preclusion Applies

Defendant does not dispute that the fourth and fifth elements of issue preclusion are met; the Amended Judgment is final and on the merits, and the parties here are the same or in privity with the parties in the State Court Action. As to the first element, to the extent Defendant disputes that the issues are not identical, the elements of fraud under § 523(a)(2)(A) mirror the elements of fraud under California law. *In re Younie*, 211 B.R. 367, 373-74 (B.A.P. 9th Cir. 1997), *aff'd*, 163 F.3d 609 (9th Cir. 1998). Given that the state court explicitly stated in the Amended Judgment that Defendant is liable for fraud, this element is satisfied.

Defendant's main arguments relate to the second and third elements, i.e., whether the issues in this adversary proceeding were actually litigated and necessarily decided by the state court. Defendant contends that, because the state court did not make specific or express findings as to each element of § 523(a)(2)(A), these elements of issue preclusion are not met.

The "express finding" requirement is generally considered when a court is deciding the preclusive effect of a default judgment. *See, e.g. Harmon*, 250 F.3d at 1248-49. The Amended Judgment is not a default judgment, and the Amended Judgment and the trial transcript demonstrate that the state court actually litigated Plaintiffs' fraud claims and necessarily decided the fraud issues by expressly holding that Defendant defrauded Plaintiffs.

Nevertheless, to the extent the facts in this case are analogous to a judgment obtained by default, the "express finding" requirement is met. In *Harmon*, the Ninth Circuit Court of Appeals held that even default judgments have preclusive effect unless: (A)

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the defendant is unaware of the litigation; and (B) it is not clear that the issues were necessarily decided. *Harmon*, 250 F.3d at 1247-48. For instance, "a court's silence concerning a pleaded allegation does not constitute adjudication of the issue." *Id.*, at 1247.

Here, there is no dispute that Defendant was aware of the State Court Action. As to whether the fraud issues were actually litigated, the court must either include "express findings" as to the issues, or "the express finding requirement can be waived if the court in the prior proceeding necessarily decided the issue...." *Id.* "As a conceptual matter, if an issue was necessarily decided in a prior proceeding, it was actually litigated." *Id.*

The Amended Judgment makes clear that the state court necessarily decided the fraud issues. In addition, although Defendant argues that the state court's findings are not clear enough on the issue, the state court repeatedly held that Defendant is liable for fraud. Amended Judgment, pp. 5-12 ("each were fraudulently represented... by the named defendant herein"); (Defendant "engaged in a joint venture to intentionally, purposefully and maliciously defraud each of the plaintiffs in this matter"); ("Robert E. Zuckerman... was the central figure in charge of this fraudulent land development scheme"); ("[P]laintiffs... shall have judgment against Robert E. Zuckerman based upon the plead causes of action for intentional misrepresentation, concealment (fraud), promises without intent to perform... conspiracy to defraud and elder abuse"); and ("Robert E. Zuckerman willfully, purposely, maliciously, intentionally, oppressively... and wrongfully engaged in fraudulent conduct... as alleged in the Third Amended Complaint herein as to the intentional misrepresentation, concealment, promise without intent to perform and elder abuse... causes of action").

Because the state court necessarily decided each element of § 523(a)(2)(A) before entering a judgment of fraud against Defendant, under *Harmon*, the state court also actually litigated the fraud issues. Defendant's reference to *In re Tobin*, 258 B.R. 199 (B.A.P. 9th Cir. 2001), is inapposite; there, the prior judgment was against a different entity, and it was unclear if the state court found alter ego for purposes of imputing fraud onto the defendant. Here, the Amended Judgment is against Defendant and makes clear that Defendant was the only remaining defendant at the time of trial. Amended Judgment, p. 4.

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Defendant further asserts that the state court used the Admission Order and a cursory examination of witnesses; in essence, Defendant argues that the state court did not do enough to reach its decision. However, the authorities do not require this Court to question *how* the state court reached its decision. That type of inquiry would amount to a collateral attack on the Amended Judgment. Similarly, Defendant's contention that the testimony from trial should not have led the state court to enter judgment against Defendant is irrelevant to whether the Amended Judgment precludes this Court's litigation of the issues. Once again, this Court may not question how or why the state court entered the Amended Judgment. 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments). Consequently, for the reasons noted above, the issues before this Court were necessarily decided and actually litigated in the State Court Action.

b. Whether Public Policy Prevents Application of Issue Preclusion

Defendant also asserts that applying issue preclusion in this case is against public policy because Defendant's attorney "abandoned" Defendant on the day of trial. "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*, at 1245). "[T]he California Supreme Court has identified three fundamental policies that support the application of issue preclusion in appropriate cases: 'preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation.'" *In re Bouzaglou*, 2018 WL 4062299, at *8 (B.A.P. 9th Cir. Aug. 13, 2018) (quoting *Lucido v. Superior Court*, 51 Cal.3d 335, 343 (1990)). "[U]nder *Lucido*, the trial court's decision to apply issue preclusion ultimately is a matter of discretion, which turns on whether its application is consistent with these policies." *Id.* (citing *Lucido*, 51 Cal.3d at 343-44).

Defendant has not provided a compelling policy reason to prevent application of issue preclusion. In fact, preserving the integrity of the judicial system requires the opposite conclusion. Both Defendant's declaration and the trial transcript reflect that Defendant was aware of Mr. Garcia's strategy at trial, i.e., to attempt to dismiss or postpone trial based on CCP §§ 583.310 and 583.360(a) and Defendant's health issues. The state court denied the request for dismissal and proceeded with the trial. Even if Defendant was unaware that Mr. Garcia would move to withdraw at the time,

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there was a risk that trial would proceed, yet Defendant decided not to appear. Disregarding a judgment on this basis would improperly encourage defendants not to appear at trial and subsequently to attack the judgment on the basis that they did not have an opportunity to litigate their defense.

Moreover, the integrity of the judicial system depends on federal courts giving full faith and credit to state court judgments. Here, the state court considered and rejected Defendant's argument regarding CCP §§ 583.310 and 583.360(a). The state court also was aware of Defendant's health issues and decided against postponing trial. Given that these facts were before the state court, Defendant cannot use these facts as a basis for preventing application of issue preclusion. The state court considered these arguments before electing to proceed with trial. Defendant could have requested relief from the Amended Judgment from the state court; Defendant did not. To the extent Defendant believes Mr. Garcia should have requested such relief or otherwise prosecuted the appeal of the Amended Judgment, Defendant may have a malpractice claim against Mr. Garcia.

Defendant's citation to *Daley v. Butte County*, 227 Cal.App.2d 380 (Ct. App. 1964), does not compel a different result. First, *Daley* involved a request to vacate an order dismissing a case for lack of prosecution presented to the same court that entered the dismissal order. *Daley*, 227 Cal.App.2d at 383-84. Unlike this proceeding, *Daley* did not involve the question of whether issue preclusion applies to a judgment entered by a different court. Because this Court did not enter the Amended Judgment, this Court does not have the power to vacate the Amended Judgment.

In addition, the California Supreme Court has held that the attorney abandonment theory set forth by *Daley* should be narrowly applied only where the record shows a "de facto severance of the attorney-client relationship." *Carroll v. Abbott Laboratories, Inc.*, 32 Cal.3d 892, 900-01 (1982). In *Daley*, the court found abandonment where the plaintiff's attorney delayed serving a necessary party, failed to appear at pretrial conferences, did not communicate with the plaintiff, opposing counsel or the court and did not file a substitution of counsel form after agreeing to withdraw. *Daley*, 227 Cal.App.2d at 387-88, 391-92. In addition, the plaintiff had attempted to contact the attorney between 12 and 15 times and could not reach him before the court dismissed the action for failure to prosecute. *Id.*, at 386. In contrast, Defendant acknowledges in his declaration that he knew about Mr. Garcia's strategy

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prior to trial.

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Defendant's citation to *In Matter of Doran*, 1998 WL 283048 (Cal. Bar Ct. May 22, 1998), also is unavailing. *Doran* involved the State Bar Court of California disciplining an attorney for violating the Rules of Professional Conduct. The case is silent as to the preclusive effect of a judgment.

Judicial economy also mandates application of issue preclusion. Plaintiffs prosecuted the State Court Action to completion. It would be prejudicial to Plaintiffs to require them to retry the State Court Action before this Court. Further, because the issues presented in this adversary proceeding were already adjudicated by another court, it would be a waste of judicial resources to conduct a second trial. Finally, there is no indication in the record that litigants involved in this proceeding are harassing each other by vexatious litigation. As a result, the policy considerations set forth by the California Supreme Court mandate application of issue preclusion, and the Court will give the Amended Judgment preclusive effect.

C. The Allegedly Dismissed Plaintiffs

The Request for Dismissal reflects that Plaintiffs requested the dismissal of multiple plaintiffs prior to entry of the Judgment or the Amended Judgment. In their evidentiary objections to the Frey Declaration, Plaintiffs object to the inclusion of the Request for Dismissal on the basis that the Request for Dismissal is not a certified copy and that Defendant has not provided evidence that the court entered the dismissal. If Defendant supplements the record with evidence that these plaintiffs were dismissed from the State Court Action, or if Plaintiffs stipulate to the dismissal of these plaintiffs, the Court will not enter summary judgment as to the plaintiffs named in the Request for Dismissal.

III. CONCLUSION

The Court will enter summary judgment in favor of Plaintiffs in accordance with 11 U.S.C. § 523(a)(2)(A). However, the Court will continue the hearing to **2:30 p.m. on July 17, 2019**, to allow Defendant to supplement the record as to the dismissal of certain Plaintiffs.

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Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations is set forth below:

Plaintiffs' Evidentiary Objections to the Declaration of Robert Edward Zuckerman

paras. 3-4, 10: overrule

paras. 5-9: sustain

exs. A-B: overrule

Plaintiffs' Evidentiary Objections to the Declaration of Sandford L. Frey

paras. 3-5: overrule

ex. A: overrule

Plaintiffs' Evidentiary Objections to the Declaration of Dr. John Chaves

paras. 3-4: sustain

FOOTNOTES

1. Mr. Garcia's testimony during the state court trial may be admitted as non-hearsay under Federal Rule of Evidence ("FRE") 801(d)(2)(C) and (d)(2)(D) (statements "made by a person whom the party authorized to make a statement on the subject" and "made by a party's agent or employee on a matter within the scope of that relationship and while it existed"); *see also In re Bay Area Material Handling, Inc.*, 76 F.3d 384 (9th Cir. 1996) ("Courts have interpreted both [FRE 801(d)(2)(C) and FRE 801(d)(2)(D)] to include statements by attorneys."); *and In re Younie*, 211 B.R. 367, 376 (B.A.P. 9th Cir. 1997) (holding attorneys may be the agent of a client for purposes of FRE 801(d)(2)(D)).

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey

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Plaintiff(s):

Katherine Mann	Represented By Edward McCutchan
Jim Nord (Mein Trust)	Represented By Edward McCutchan
Evelina Dale Peritore	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 Edward McCutchan

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Nansi Weil	Represented By Edward McCutchan
Matthew Zdanek	Represented By Edward McCutchan
Frederick Mann	Represented By Edward McCutchan
Vito Lovero	Represented By Edward McCutchan
Lillian Lapham	Represented By Edward McCutchan
Edward Keane	Represented By Edward McCutchan
Edward P Albini	Represented By Edward McCutchan
Patricia Barnes	Represented By Edward McCutchan
Ken Bowerman	Represented By Edward McCutchan
Chris Bowerman	Represented By Edward McCutchan
Henry P Crigler	Represented By Edward McCutchan
Henry Crigler	Pro Se
K Owyong Crigler	Represented By Edward McCutchan
Dale Davis	Represented By Edward McCutchan
Gary DeZorzi	Represented By Edward McCutchan

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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

Bill Hing

Represented By
Edward McCutchan

Vern Fung

Represented By
Edward McCutchan

Gary Holbrook

Represented By
Edward McCutchan

Jim Nord (Patrick Family Trust)

Represented By
Edward McCutchan

Trustee(s):

Diane C Weil (TR)

Pro Se

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Wednesday, July 17, 2019

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#31.00 Motion to dismiss adversary proceeding

Docket 5

Tentative Ruling:

On July 3, 2019, the plaintiff filed and served an amended complaint [doc. 8]. In light of the filing of the amended complaint, the defendants' motion to dismiss the original complaint is moot.

A status conference on the amended complaint has been set for **1:30 p.m. on September 4, 2019**. The parties must file and serve a joint status report no later than **August 21, 2019**.

Appearances on July 17, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Defendant(s):

Kenneth C. Scott

Represented By
Arash Shirdel

My Private Practice, Inc. a

Represented By
Arash Shirdel

Plaintiff(s):

H. Samuel Hopper

Represented By
Daniel Parker Jett

Trustee(s):

Elizabeth (SV) 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 17, 2019

Hearing Room 301

2:30 PM

1:19-10288 Masoud A. Harandi

Chapter 13

Adv#: 1:19-01030 Harandi v. California 544 Properties, LLC et al

#32.00 Motion to Dismiss Adversary Proceeding

Docket 5

***** VACATED *** REASON: Order dismissing adversary entered 6/17/19
[doc. 13].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Masoud A. Harandi

Represented By
Glenn Ward Calsada

Defendant(s):

California 544 Properties, LLC

Represented By
Sanaz S Bereliani

Joe Cohen

Represented By
Sanaz S Bereliani

Fresno Option, LLC

Pro Se

Armen Mard

Pro Se

Plaintiff(s):

Masoud A. Harandi

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**

Thursday, July 18, 2019

Hearing Room 301

1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#1.00 U.S. Trustee Motion under 11 U.S.C. sec. 1112(b) to dismiss
or convert case

Docket 169

***** VACATED *** REASON: Dismissal of motion filed 7/17/19**

Tentative Ruling:

- NONE LISTED -

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, July 18, 2019

Hearing Room 301

1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#2.00 Disclosure statement hearing on debtor's disclosure statement dated April 29, 2019

fr. 6/20/19(stip)

Docket 151

Tentative Ruling:

Taking into account the objections to the proposed disclosure statements and the debtors' replies, it appears that the disclosure statements do not currently contain adequate information. Moreover, there is a significant problem with respect to the proposed treatment of nonpriority unsecured claims, in which all such claims, *irrespective of the liable debtor*, are lumped together, in one class.

Any amended chapter 11 plan(s) of reorganization and related disclosure statement(s) should address the objections raised by VitaVet Labs, Inc. ("VitaVet"), except those related to confirmation issues, such as the absolute priority rule, whether treatment of a claim is fair and equitable and feasibility. Those issues will be evaluated in connection with a hearing regarding confirmation. The amended disclosure statement(s) and plan(s) should address, among other things, the following:

Stipulation with the IRS. The debtors must amend the disclosure statements to include the plan treatment of the Internal Revenue Service's claim pursuant to the terms of the approved stipulation [18-10715, doc. 173].

Financial Projections. The disclosure statements do not include a sufficient explanation for the basis of the debtors' financial projections, including the projections for business gross receipts.

Claims. The schedule of claims [Exh. P], does not account for all nondisputed claims that debtors scheduled on their respective schedules E/F. Further, the debtors must clarify, if VitaVet does not make an election under § 1111(b), the calculation of the secured portion of VitaVet's claim, as concerns the liability of Integrated Dynamic Solutions, Inc. ("IDS").

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1:00 PM

CONT... Nasrollah Gashtili

Chapter 11

Class 3. Absent substantive consolidation, it is not appropriate for the debtors to lump all holders of nonpriority unsecured claims, whether the nonpriority unsecured claims are against IDS or Nasrollah Gashtili, in one class. The debtors' estates do not have identical nonpriority unsecured claims, the assets of the debtors are not the same, the income and tax obligations of those debtors are not the same, the liquidation analysis is not identical, and the debtors' rights to a discharge are not the same.

State Court Litigation. The debtors are currently involved in state court litigation with Automated Systems America, Inc. (“ASAI”). The disclosure statements do not discuss the status of this litigation. The debtors’ chapter 11 plan of reorganizations do not account for any award received from this litigation. The debtors must disclose how the proceeds, if any, from the litigation will be used, and how this litigation might impact the monthly account receivable payments from ASAI.

The debtors must file their amended plans and disclosure statements by **August 15, 2019. No later than August 15, 2019**, the debtors must serve notice of the continued hearing and the deadline for any written objection on the United States trustee, all secured creditors and any appointed creditor’s committee or the 20 largest unsecured creditors. Any written objection must be filed and served **no later than September 5, 2019**. The debtors must file and serve any reply to any such objection by **September 12, 2019**. The Court will continue the hearing to **September 19, 2019**.

Party Information

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

**United States Bankruptcy Court
Central District of California
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Courtroom 301 Calendar**

Thursday, July 18, 2019

Hearing Room 301

1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 5/17/18; 6/7/18; 10/11/18; 10/18/18; 3/14/19; 5/16/19; 6/20/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

**United States Bankruptcy Court
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Thursday, July 18, 2019

Hearing Room 301

1:00 PM

1:18-11580 Kaliston Jose Nader

Chapter 11

#4.00 U.S. Trustee Motion under 11 U.S.C. sec. 1112(b) to dismiss or convert case

Docket 91

Tentative Ruling:

Deny.

On June 27, 2019, the U.S. Trustee (the "UST") filed a motion to dismiss this case on the following bases: (A) the debtor has not provided evidence of an insurance declaration for the real property located at 8601 La Tuna Canyon Road, Sun Valley, CA 91352 (the "La Tuna Property"); and (B) the debtor has not filed a monthly operating report ("MOR") for May 2019.

However, the debtor has not scheduled an interest in the La Tuna Property, and the debtor asserts in his response [doc. 95] that he does not have any interest in the La Tuna Property. In addition, the debtor timely filed a monthly operating report for May 2019 [doc. 85]. Given that neither of the UST's bases for dismissal apply to the debtor, the Court will deny the UST's motion.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Kaliston Jose Nader

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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Thursday, July 18, 2019

Hearing Room 301

1:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#5.00 Status conference re chapter 11 case

fr. 8/16/18; 1/10/19; 3/14/19; 5/23/19

Docket 1

Tentative Ruling:

Contrary to the Court's ruling at the prior status conference on May 23, 2019, the debtor did not timely file a status report by July 5, 2019.

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

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

Thursday, July 18, 2019

Hearing Room 301

1:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#6.00 Disclosure statement hearing re debtor's disclosure statement
dated April 29, 2019

fr. 6/20/19

Docket 165

Tentative Ruling:

See calendar no. 2.

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

**United States Bankruptcy Court
Central District of California
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Thursday, July 18, 2019

Hearing Room 301

1:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#7.00 Status conference re: chapter 11 case

fr. 10/11/18; 10/18/18; 3/14/19; 5/16/19; 6/20/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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Thursday, July 18, 2019

Hearing Room 301

1:00 PM

1:18-12325 12 Cumpston Partnership

Chapter 11

#8.00 Status conference re chapter 11 case

fr. 11/15/18; 1/10/19; 2/7/19; 2/21/19; 3/14/19; 4/4/19;
6/13/19

Docket 1

***** VACATED *** REASON: Case dismissed on 6/25/19 [doc. 83].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

12 Cumpston Partnership

Represented By
Mark E Goodfriend

**United States Bankruptcy Court
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1:19-11318 Mohammed Hanif

Chapter 7

#9.00 U.S. Trustee's Motion to dismiss case pursuant to 11 U.S.C. §§ 707(a) or 707(b)(3)(A) with an one-year bar to refiling pursuant to 11 U.S.C. §§ 105(a) and 349(a)

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):

Mohammed Hanif

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

1:00 PM

1:19-11386 FinCabiz, Inc.

Chapter 11

#10.00 U.S. Trustee Motion under 11 U.S.C. sec. 1112(b) to dismiss or convert case

Docket 14

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 1112(b)(1) and (4)(F) and (4)(H), this case will be dismissed. Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, filed on June 18, 2019, the Court concludes that it is in the best interest of creditors and the estate to dismiss this case.

The U.S. 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):

FinCabiz, Inc.

Represented By
Javier H Castillo

**United States Bankruptcy Court
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1:00 PM

1:19-11417 Clean FX, LLC

Chapter 11

#11.00 U.S. Trustee Motion under 11 U.S.C. sec. 1112(b) to dismiss or convert case

Docket 13

***** VACATED *** REASON: Order entered approving stipulation on 7/12/19 [doc. 38].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Clean FX, LLC

Represented By
Andrew K Yun

**United States Bankruptcy Court
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1:00 PM

1:19-11421 Papanicolaou Enterprises

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"): **September 30, 2019.**

Deadline to mail notice of Bar Date: **July 31, 2019.**

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 31, 2019.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on November 21, 2020.**

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):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

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2:00 PM

1:17-11523 Shamel Sanani and Farideh Sanani

Chapter 7

#13.00 Debtors' Motion for order nunc pro tunc compelling abandonment pursuant to 11 U.S.C. sec.554(b) and (FRBP) Rule 6007(a)

Docket 135

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.

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
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2:00 PM

1:18-10417 Deborah Lois Adri

Chapter 7

#14.00 Creditor Moshe Adri's motion for allowance of administrative expense claim

Docket 335

Tentative Ruling:

For the reasons discussed below, the Court will deny the motion without prejudice.

I. BACKGROUND

A. Debtor's Schedules

On February 16, 2018, Deborah Lois Adri ("Debtor") filed a voluntary chapter 11 petition. On the same day, Debtor filed her schedules and statements [doc. 1]. In her schedule A/B, Debtor indicated that she has an interest in real property located at 4023 Woodman Canyon, Sherman Oaks, California 91423 (the "Property"). Debtor also listed a 50% interest in Ride on Autos, LLC ("ROA") valued at \$5,000.00. In her amended schedule E/F [doc. 243], Debtor listed a disputed claim in the amount of \$1,353,853.48 in favor of Moshe Adri ("Creditor").

B. Chapter 11 Status Conferences

On December 6, 2018, the Court held a continued status conference in Debtor's chapter 11 case. In reviewing Debtor's monthly operating reports ("MORs") prior to the status conference, the Court noticed that Debtor was 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 IV – regarding United States Trustee quarterly fees. Further, in her October 2018 monthly operating report, Debtor did not properly complete Section XI.

On December 7, 2018, the Court entered an order requiring Debtor to file amended MORs, properly completing the sections discussed above and with attached bank statements, by no later than December 31, 2018 (the "Order to Amend") [doc. 212]. Contrary to the Order to Amend, Debtor did not timely file amended MORs.

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CONT... Deborah Lois Adri

Chapter 7

On January 10, 2019, Creditor filed a *Response to Declaration of Robert M. Yaspan re Status of Debtor's Amended Monthly Operating Reports* (the "Response") [doc. 237]. In the Response, Creditor argued that Debtor's chapter 11 case should be dismissed at the continued status conference to be held on January 17, 2019.

On January 17, 2019, the Court held a continued status conference in Debtor's chapter 11 case. Prior to that status conference, the Court posted a tentative ruling (the "January 2019 Tentative Ruling") indicating that there was cause to dismiss or convert Debtor's case to one under chapter 7 because Debtor failed to comply with the Order to Amend and failed to timely file monthly operating reports for November 2018 and December 2018. In relevant part, the January 2019 Tentative Ruling stated,

In accordance with 11 U.S.C. § 1112(b)(1) and (4)(E) and (F), this constitutes cause for conversion of this case to chapter 7, or dismissal of this case, whichever is in the best interests of creditors and the estate, unless the Court determines that the appointment under 11 U.S.C. § 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

In light of the debtor's significant post-petition expenditures, the Court is inclined to convert the case, in order for a chapter 7 trustee to be appointed. A chapter 7 trustee could assess, among other things, whether the debtor's post-petition expenditures resulted in assets that can be recovered or liquidated for the benefit of creditors.

C. Creditor's Involvement in Debtor's Bankruptcy Case

On June 18, 2018, Moshe Adri filed claim 6-1, a nonpriority unsecured claim in the amount of \$1,375,125.94 based on a judgment from the Superior Court of the State of California, County of Los Angeles.

On November 19, 2018, Creditor filed an application for a Fed. R. Bankr. P. ("Rule") 2004 examination of Debtor (the "2004 Application") [doc. 201]. Creditor's stated basis for the 2004 Application was to determine whether there were sufficient facts to support a denial of discharge under §§ 1141(d)(2), (d)(3) and 727(a). Specifically, Creditor requested the Rule 2004 examination to investigate: (1) what Debtor received from her family trust; (2) what happened to the trust payment; (3) whether Debtor is

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entitled to more money from the trust; (4) whether Debtor had money in undisclosed bank accounts; and (5) Debtor's postpetition transfers. In the 2004 Application, Creditor also sought to serve subpoenas upon nine different third parties to produce documents regarding the above topics.

On December 6, 2018, the Court held a hearing on the 2004 Application. On December 20, 2018, the Court entered an order denying in part and granting in part the 2004 Application (the "2004 Order") [doc. 226] based on the reasons set forth in the Court's ruling [doc. 225]. The Rule 2004 examination was scheduled for January 9, 2019.

On December 7, 2018, Creditor filed a motion to appoint a chapter 11 trustee or to dismiss the chapter 11 case (the "Creditor's Motion") [doc. 216]. On December 28, 2018, Creditor filed a supplement to the Creditor's Motion based on documentation received from Debtor after Creditor filed the Creditor's Motion (the "Supplement") [doc. 230]. In the Creditor's Motion and the Supplement, Creditor argued that there was cause for the appointment of a chapter 11 trustee or to dismiss the case based on Debtor's prepetition and postpetition conduct and mismanagement of estate assets. On February 8, 2019, the Court entered an order granting the Creditor's Motion and directing the Office of the United States Trustee to appoint a chapter 11 trustee in Debtor's case (the "Order to Appoint Trustee") [doc. 278].

On June 21, 2019, Creditor filed a complaint against Debtor for denial of discharge under 11 U.S.C. § 727(c), (d) and (e), initiating adversary proceeding 1:19-ap-01072-VK (the "Adversary Proceeding").

D. Events Subsequent to the Appointment of a Chapter 11 Trustee

On February 11, 2019, the United States Trustee filed a notice of appointment of chapter 11 trustee, appointing Elissa D. Miller (the "Trustee") as chapter 11 trustee in Debtor's case [doc. 282]. On the same day, the Court entered an order approving of the Trustee's appointment as chapter 11 trustee [doc. 285].

On March 4, 2019, the Trustee filed a status report in Debtor's chapter 11 case (the "Status Report") [doc. 291]. In the Status Report, the Trustee stated that she had determined that there was some equity in the Property and that she was discussing an

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Deborah Lois Adri

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equity settlement with Debtor. The Trustee also indicated that at the time of her appointment, ROA owned eight or nine vehicles that were purchased with estate funds. Since her appointment and prior to filing the Status Report, ROA had apparently sold two or three of those cars, and the estate had yet to receive the funds from those sales. At the time of filing the Status Report, the Trustee held \$11,670.86 from closing the DIP accounts and was working to recover the value of the remaining vehicles at ROA and for repayment of loans made by Debtor.

On March 6, 2019, the Trustee filed a motion to convert Debtor's chapter 11 case to one under chapter 7 (the "Motion to Convert") [doc. 296]. On April 8, 2019, the Court entered an order granting the Motion to Convert [doc. 305]. On April 10, 2019, the Trustee was appointed chapter 7 trustee. On April 30, 2019, the Trustee filed a notice of assets [doc. 314].

E. The Motion

On June 26, 2019, Creditor filed a *Motion for Allowance of Administrative Expense Claim* (the "Claim Motion") [doc. 335]. In the Claim Motion, Creditor requests the allowance of a chapter 11 administrative expense claim for \$57,368.64 pursuant to 11 U.S.C. §§ 503(b)(3)(D) and (b)(4) based on Creditor's substantial contribution to creditors of the estate for causing a chapter 11 trustee to be appointed. This amount includes: (1) \$47,145.16 in fees incurred allegedly to cause the appointment of a chapter 11 trustee; (2) \$3,093.98 in costs incurred allegedly to cause the appointment of a chapter 11 trustee; (3) \$4,704.50 in fees incurred to prepare the Claim Motion; and (4) an estimated \$2,425.00 in fees for responding to any opposition to the Claim Motion.

On July 3, 2019, the Trustee filed a conditional non-opposition to the Claim Motion (the "Conditional Non-Opposition") [doc. 340]. In the Conditional Non-Opposition, the Trustee states that she is not opposed to Creditor's request for an administrative expense in connection with the Creditor's Motion. However, the Trustee's non-opposition is conditioned on the following: (1) all fees and costs incurred by Creditor after the appointment of a chapter 11 trustee be disallowed; (2) the chapter 11 claim should be allowed in an amount that takes into account that the investment of fees and costs did not solely benefit the estate, but rather also benefitted Creditor; and (3) the allowed amount of the chapter 11 claim shall be paid if and when all other allowed chapter 11 administrative expense claims may be paid.

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On July 3, 2019, Debtor filed an opposition to the Claim Motion (the "Opposition") [doc. 341]. In the Opposition, Debtor argues, among other things, that Creditor is not automatically entitled to an allowed administrative claim because of the appointment of a chapter 11 trustee. Creditor must show that his contribution was substantial. Creditor cannot do this because the case would have been converted even without Creditor filing the Creditor's Motion. Three weeks prior to the hearing on the Creditor's Motion, the Court posted the January 2019 Tentative Ruling stating that it intended to convert Debtor's chapter 11 case to one under chapter 7. Further, it is premature to determine whether Creditor has made a substantial contribution to the estate. A final decision on the Claim Motion should be delayed until the chapter 7 case has further progressed to see if any assets were recovered and liquidated as a result of the appointment of a chapter 11 trustee.

On July 22, 2019, Creditor filed an omnibus reply to the Conditional Non-Opposition and the Opposition (the "Reply") [doc. 342]. In the Reply, Creditor argues, among other things, that it is unclear whether the Court would have converted Debtor's chapter 11 case to one under chapter 7 without the Creditor's Motion and that Creditor made a substantial contribution because in the Status Report the Trustee states that she had been able to locate assets.

II. DISCUSSION

Pursuant to 11 U.S.C. § 503(b)(3)(D), "[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 expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by-- . . . a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title."

Pursuant to 11 U.S.C. § 503(b)(4), "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including . . . reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E) of paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services

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other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant."

"Under section 503(b)(3)(D), a creditor who makes a substantial contribution to a chapter 11 case may recover an administrative expense." *In re Mortgages Ltd.*, No. BAP.AZ-09-1412-JIJUM, 2010 WL 6259981, at *7–8 (B.A.P. 9th Cir. Aug. 4, 2010). "Section 503(b)(4) authorizes compensation for legal services allowable under section 503(b)(3)." *Id.*

"A creditor seeking administrative priority for its legal fees and costs bears the burden of proof to demonstrate that the creditor has made a substantial contribution to the estate." *Id.* (citing *Andrew v. Coopersmith (In re Downtown Inv. Club III)*, 89 B.R. 59, 64 (B.A.P. 9th Cir. 1988) ("The burden of proof under Bankruptcy Code § 503(b)(4) to show that a substantial contribution was made is on the party seeking compensation[.]"). "The inquiry concerning the existence of a substantial contribution is one of fact, and it is the bankruptcy court that is in the best position to perform the necessary fact finding task." *In re Sedona Inst.*, 21 F. App'x 723, 724 (9th Cir. 2001) (citing *Lebron v. Mechem Fin. Inc.*, 27 F.3d 937, 946 (3d Cir. 1994)).

"[T]he principal test of substantial contribution is 'the extent of benefit to the estate.'" *In re Cellular 101, Inc.*, 377 F.3d 1092, 1096–97 (9th Cir. 2004) (quoting *In re Christian Life Ctr. Litig. Defense Comm. v. Silva (In re Christian Life Ctr.)*, 821 F.2d 1370, 1373 (9th Cir. 1987)). "A creditor's application under § 503(b) should be allowed only if the creditor demonstrates by a preponderance of the evidence that the expenses were incurred in an endeavor that 'provide[d] tangible benefits to the bankruptcy estate and the other unsecured creditors.'" *Sedona Inst.*, 21 F. App'x at 724 (quoting *In re Catalina Spa & R.V. Resort, Ltd.*, 97 B.R. 13, 17 (Bankr. S.D. Cal. 1989)).

"The benefits conferred by the claimant must be direct and not 'incidental' or 'minimal,' and must outweigh the benefit received by the claimant." *Mortgages Ltd.*, 2010 WL 6259981, at *7–8 (quoting *Cellular 101*, 377 F.3d at 1098). "Services provided solely for the creditor, such as prosecuting a creditor's claim, are not compensable." *In re Woodhall*, 141 B.R. 700, 701 (Bankr. D. Ariz. 1992). "Generally, creditors are presumed to act primarily in their own interest and not for the benefit of the estate as a whole." *In re Lister*, 846 F.2d 55, 57 (10th Cir. 1988).

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Although the court has broad discretion to grant administrative expense requests, it must construe section 503(b) narrowly to keep fees and administrative costs to a minimum and preserve the limited estate assets for the benefit of creditors. *NLRB v. Walsh (In re Palau Corp.)*, 139 B.R. 942, 944 (B.A.P. 9th Cir. 1992) (citing *Burlington N. R.R. Co. v. Dant & Russell, Inc. (In re Dant & Russell, Inc.)*, 853 F.2d 700, 706 (9th Cir. 1988)). "Extensive participation alone does not warrant an award of fees as an administrative claim." *Woodhall*, 141 B.R. at 701–02; *see also In re D.W.G.K. Rests., Inc.*, 84 B.R. 684, 689 (Bankr. S.D. Cal. 1988). As the court in *Catalina Spa* notes,

Compensation cannot be freely given to all creditors who take an active role in bankruptcy proceedings, rather, it must be preserved for those rare occasions when the creditor's involvement truly fosters and enhances the administration of the estate. The integrity of § 503(b) can only be maintained by strictly limiting compensation to extra ordinary creditor actions which lead directly to significant and tangible benefits to the creditors, debtor, or the estate. While § 503 was enacted to encourage meaningful creditor participation, it should not become a vehicle for reimbursing every creditor who elects to hire an attorney.

Catalina Spa, 97 B.R. at 21.

"In addition to proving that it made a 'substantial contribution' to the estate, a creditor seeking to recover compensation as an administrative expense under section 503(b) must also demonstrate that its request represents 'actual, necessary expenses' and 'reasonable compensation' for professional services." *In re White Mountain Communities Hosp., Inc.*, No. BAP.AZ-05-1272-MOSB, 2006 WL 6811025, at *8 (B.A.P. 9th Cir. Mar. 21, 2006) (citing *Catalina Spa*, 97 B.R. at 17 and *D.W.G.K.*, 84 B.R. at 689). "Section 503(b)(3)(D) 'requires the bankruptcy judge to scrutinize claimed expenses for waste and duplication to ensure that expenses were indeed actual and necessary. It further requires the judge to distinguish between expenses incurred in making a substantial contribution to the case and *expenses lacking that causal connection, the latter being noncompensable.*'" *Id.* (quoting *Hall Fin'l Group, Inc. v. DP Partners Ltd. P'ship (In re DP Partners Ltd. P'ship)*, 106 F.3d 667, 673 (5th Cir.1997)) (emphasis in original).

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Here, Creditor requests an administrative expense claim for fees and expenses incurred for the following categories of activities: (1) initial investigation; (2) the 2004 Application and Rule 2004 examination; (3) the Creditor's Motion; (4) Creditor's participation in Debtor's chapter 11 status conferences; and (5) the Claim Motion.

Regarding the first category, Creditor's counsel states that it investigated and analyzed Debtor's schedules and statement of financial affairs, her MORS, her chapter 11 plan of reorganization and related disclosure statement, communicated with Creditor and opposing counsel, analyzed documents from creditors, listened to tapes of Debtor's § 341(a) meeting of creditors and corresponded with the Office of the United States Trustee to request Debtor's 7-day package. While these activities may have made a contribution, they are both self-interested and duplicative. And, as noted above, extensive participation alone is not sufficient to award compensation under § 503(b). *See Catalina Spa*, 97 B.R. at 18 (denying the applicant's request for compensation for general participation in the reorganization process, including an initial review and legal analysis of the debtor's schedules, statement of business affairs, loan documentation and other transactional documents; the rendering of legal advice and consultation concerning various matters related to the operation of the debtor's business; preparing for and attending a meeting with the debtor's attorneys to discuss the direction of the Chapter 11 proceeding; reviewing the debtor's applications to employ professional persons; preparing for and attending the first meeting of creditors; and conducting numerous telephone conversations with attorneys for parties in interest regarding the status of the Chapter 11 case). Accordingly, the Court will not allow an administrative expense claim for these services.

Regarding the second category, Creditor's stated basis for the 2004 Application was to determine whether there were sufficient facts to support a denial of discharge under §§ 1141(d)(2), (d)(3) and 727(a). On June 21, 2019, Creditor filed a complaint against Debtor initiating the Adversary Proceeding for denial of discharge under 11 U.S.C. § 727(c), (d) and (e). In addition, Creditor filed the Creditor's Motion almost a month before Debtor's Rule 2004 examination. Although Creditor may have used some of the facts learned from the Rule 2004 examination in the Supplement or his reply to the opposition to the Creditor's Motion, it appears that Creditor's primary goal in filing the 2004 Application and conducting the Rule 2004 examination was self-interested. As stated above, creditors are presumed to act primarily in their own interest and

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services provided solely for the creditor, such as prosecuting a creditor's claim, are not compensable. As such, the Court will not allow an administrative expense for these services.

Regarding the third category, Creditor may have an allowed administrative expense claim under §§ 503(b)(3)(D) and (b)(4) for fees and costs incurred for filing the Creditor's Motion. *See Catalina Spa*, 97 B.R. at 13 (allowing an administrative expense for a creditor filing a motion to appoint a chapter 11 trustee in a voluntary chapter 11 case); *see also Lebron v. Mechem Fin. Inc.*, 27 F.3d 937 (3d Cir. 1994) (remanding to the bankruptcy court to determine if the creditor's contribution of filing a motion to appoint a chapter 11 trustee in a voluntary chapter 11 case was a substantial contribution within the meaning of § 503(b)(3)(D)). However, as stated above, Creditor must demonstrate "by a preponderance of the evidence that the expenses were incurred in an endeavor that 'provide[d] tangible benefits to the bankruptcy estate and the other unsecured creditors.'" *Sedona Inst.*, 21 F. App'x at 724 (quoting *In re Catalina Spa & R.V. Resort, Ltd.*, 97 B.R. 13, 17 (Bankr. S.D. Cal. 1989)). Further, "[t]he benefits conferred by the claimant must be direct and not 'incidental' or 'minimal,' and must outweigh the benefit received by the claimant." *Mortgages Ltd.*, 2010 WL 6259981, at *7-8 (quoting *Cellular 101*, 377 F.3d at 1098).

At this point, the Court cannot conclude that the Creditor's Motion provided tangible benefits to the estate and other unsecured creditors. Although the Trustee stated in the Status Report and the Motion to Convert that she has located estate assets, on the record before the Court now, it is unclear exactly what assets have been located and if those assets will be liquidated for the benefit of creditors of the estate. As such, at this time, the Court cannot make a determination that any benefit conferred to the estate as a result of the Creditor's Motion is direct and not incidental or minimal and that it outweighs any benefit Creditor may receive. Although Creditor may have contributed to Debtor's chapter 11 case by filing the Creditor's Motion, at this time, the Court cannot conclude that any such contribution was a substantial contribution under § 503(b)(3)(D).

Regarding the fourth category, as stated above, extensive participation alone is insufficient to justify an award of an administrative expense under § 503(b)(3)(D). Creditor was appearing at Debtor's chapter 11 status conferences well before he filed the Creditor's Motion. It appears that his appearance at status conferences did not

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benefit the estate. As such, the Court will not allow an administrative expense for these services.

Regarding the fifth category, because the Court is denying the Claim Motion, the Court will not allow attorneys' fees for bringing the Claim Motion, at this time.

III. CONCLUSION

For the reasons discussed above, the Court will deny the Claim Motion without prejudice as to fees and costs incurred for filing the Creditor's Motion and the Claim Motion.

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

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta

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1:18-10762 Jaime R Lara

Chapter 7

#15.00 Chapter 7 Trustee's objection to proof of claim No. 4-1
filed by Benjamin C. Lara

Docket 52

Tentative Ruling:

Unless an appearance is made at the hearing on July 18, 2019, the hearing is continued to August 29, 2019 at 2:00 p.m., and the chapter 7 trustee must cure the deficiencies noted below on or before July 25, 2019.

The chapter 7 trustee has not properly served notice of the objection and the objection on claimant Benjamin C. Lara ("Claimant"). Local Bankruptcy Rule 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." The address listed on Claimant's proof of claim is "1812 W. Burbank Blvd., No 572." However, the chapter 7 trustee served Claimant at "1812 W. Burbank Blvd., No 5721."

Appearances on July 18, 2019 are excused.

Party Information

Debtor(s):

Jaime R Lara

Pro Se

Trustee(s):

Diane C Weil (TR)

Represented By
Elissa Miller
Claire K Wu

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1:18-10762 Jaime R Lara

Chapter 7

#16.00 Chapter 7 Trustee's objection to claims filed by
1) Yolanda Lara - POC #5-1;
2) Jose Mendoza - POC #6-1; and
3) Almaligia Lara - POC #7-1

Docket 54

Tentative Ruling:

Sustain as to claim 5-1 and 6-1.

As to claim 7-1, the Court will continue the hearing to **August 29, 2019 at 2:00 p.m.**, and the chapter 7 trustee must cure the deficiencies noted below on or before **July 25, 2019**.

The chapter 7 trustee has not properly served notice of the objection and the objection on claimant Almaligia Lara ("Claimant"). Local Bankruptcy Rule 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." The address listed on Claimant's proof of claim is "5431 Firestar Trial." However, the chapter 7 trustee served Claimant at "5435 Firestar Trial."

The chapter 7 trustee's appearance on July 18, 2019 is excused.

Party Information

Debtor(s):

Jaime R Lara

Pro Se

Trustee(s):

Diane C Weil (TR)

Represented By
Elissa Miller
Claire K Wu

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1:18-11580 Kaliston Jose Nader

Chapter 11

#17.00 Emergency motion to extend time or deadline for filing plan of reorganization and Disclosure Statement

Docket 84

Tentative Ruling:

The Court will extend the deadline for the debtor to file a chapter 11 plan and related disclosure statement to **August 15, 2019**. The Court **will not** grant the debtor's request for any further extensions beyond August 15, 2019.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Kaliston Jose Nader

Represented By
Onyinye N Anyama

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1:18-11580 Kaliston Jose Nader

Chapter 11

#18.00 Status conference re: chapter 11 case

fr. 8/2/18; 1/17/19; 2/21/19; 4/25/19; 6/20/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on September 5, 2019**.
No later than **August 29, 2019**, the debtor must file and serve a status report regarding
his progress toward confirming a chapter 11 plan, supported by evidence.

Party Information

Debtor(s):

Kaliston Jose Nader

Represented By
Onyinye N Anyama

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1:18-11900 Maryam Hadizadeh

Chapter 7

#19.00 Motion objection to claim number 1 by
Claimant Internal Revenue Service

Docket 90

***** VACATED *** REASON: Voluntary dismissal of motion filed 6/20/19.
[Doc.92]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Hadizadeh

Represented By
Stella A Havkin

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Anthony A Friedman

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1:19-10531 CFC California Fabrication, Inc.

Chapter 7

#20.00 Chapter 7 Trustee's motion for order: (1) Authorizing sale of estate's right, title, and interest in personal property free and clear of liens of the Department of the Treasury-Internal Revenue Service; (2) Approving overbid procedure; and (3) Waiving Rule 6004(H) stay

Docket 29

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

CFC California Fabrication, Inc.

Represented By
David R Hagen

Trustee(s):

Diane C Weil (TR)

Represented By
Carmela Pagay

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1:19-11421 Papanicolaou Enterprises

Chapter 11

#21.00 Debtor's Motion for sanctions against Yasam Legacy LLC for violating the automatic stay

Docket 16

Tentative Ruling:

For the reasons discussed below, the Court will deny the motion.

I. BACKGROUND

Papanicolaou Enterprises (the "Debtor") is the lessee of real property located at 11329 Magnolia Blvd., North Hollywood, California 91601 (the "Property"). On March 28, 2019, Yasam Legacy, LLC (the "Landlord") commenced an unlawful detainer action against the Debtor in state court to regain possession of the Property based on the Debtor's failure to make payments due under the lease agreement (the "UD Action") [doc. 42, Exh. A].

On April 9, 2019, the Debtor filed a voluntary chapter 11 petition, initiating case 1:19-bk-10850-VK (the "First Case"). On April 12, 2019, the Landlord placed a for-lease sign on the Property [doc. 42, Declaration of Sam Yadegar ("Yadegar Decl."), ¶ 5]. Landlord states that prior to placing the for-lease sign on the Property, the Landlord was unaware of the First Case. *Id.* Shortly after the Landlord placed the for-lease sign on the Property, the Debtor's counsel contacted the Landlord and requested that the Landlord remove the sign. *Id.* Within 24 hours, the Landlord removed the sign [doc. 16, Declaration of Constantine Papanicolaou ("Papanicolaou Decl.," ¶ 9)]. On May 29, 2019, the First Case was dismissed.

On June 3, 2019, the Landlord placed another for-lease sign on the Property. Yadegar Decl., ¶ 6. On the same day, the Landlord also listed the Property on "Loopnet," a commercial real estate listing website. *Id.*

On June 6, 2019, the Debtor filed another voluntary chapter 11 petition, initiating the pending case. The Debtor included the Landlord in its list of creditors who have the 20 largest unsecured claims [doc. 50, Exh. A] and the Debtor included the Landlord and the Landlord's counsel in its master mailing list [doc. 50, Exh. B].

The Debtor's counsel states that Landlord's counsel was notified of this filing by

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phone and fax on June 6, 2019 [doc. 16, Declaration of Eric Bensamochan, Esq. ("Bensamochan Decl."), ¶ 3 and Exh. A]. Debtor's counsel also states that Landlord's counsel was contacted regarding removing the for-lease sign and commercial listing on June 7, 2019. *Id.* at ¶ 4. However, the Landlord disputes that it had notice of the pending chapter 11 case, or any communication with the Debtor's counsel during the pendency of this case, prior to June 13, 2019 [doc. 42, Declaration of Maxwell Meyering ("Meyering Decl."), ¶ 8]. After the Landlord became aware of the pending chapter 11 case, the Landlord removed the sign and cancelled the commercial listing. Yadegar Decl., ¶ 7.

On June 11, 2019, the Landlord mailed the Debtor via overnight mail a notice of ex-parte hearing to enter default judgment in the UD Action (the "Notice") [doc. 16, Exh. C]. The Notice indicated that the Landlord was going to move the state court ex-parte to enter default against the Debtor in the UD Action and that the ex-parte hearing would be held on June 14, 2019. On June 12, 2019, the Debtor received the Notice and contacted his counsel. Papanicolaou Decl., ¶ 12.

On June 12, 2019, the Debtor's counsel filed a notice of stay of proceedings in the UD Action ("Notice of Stay") [doc. 42, Exh. B]. On the same day, the Debtor's counsel contacted the Landlord's counsel and spoke with "Bob." Bensamochan Decl., ¶ 8. However, the Landlord's counsel states that there are no employees named Bob, Rob or Robert employed at the firm. Meyering Decl., ¶ 6.

On June 13, 2019, the Debtor's counsel sent an email to the Landlord's counsel with a copy of the Notice of Stay and the Debtor's schedules filed in this case [doc. 16, Bensamochan Decl., ¶ 8 and Exh. D]. On the same day, the Debtor's counsel apparently called the Landlord's counsel and during that call, informed him of the pending chapter 11 case. Meyering Decl., ¶ 8. During that call, the Landlord's counsel informed the Debtor's counsel that the Notice was withdrawn and that the Landlord would not be proceeding with the ex-parte motion in the UD Action. *Id.*

On June 24, 2019, the Landlord filed a motion for relief from stay to proceed with the UD Action (the "RFS Motion") [doc. 26]. The hearing on that motion is set for July 17, 2019.

On June 17, 2019, the Debtor filed a *Motion for Sanctions Against Yasam Legacy LLC for Violating the Automatic Stay* (the "Motion") [doc. 16]. In the Motion, the Debtor requests sanctions under 11 U.S.C. § 362(k) in the amount of \$10,000 for the

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Landlord's alleged violations of the automatic stay. Specifically, the Debtor is requesting \$7,500 for the Landlord violating the automatic stay by placing the for-lease sign on the Property, listing the Property for lease on Loopnet and by mailing the Notice to the Debtor, and \$2,500 for filing the Motion.

On July 2, 2019, the Landlord filed an opposition to the Motion (the "Opposition") [doc. 42] and evidentiary objections [doc. 43]. In the Opposition, the Landlord argues, among other things, that the lease terminated prepetition, and as such, cannot be assumed by the Debtor. On July 10, 2019, the Debtor filed a reply to the Opposition [doc. 50].

II. DISCUSSION

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;

...

(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. . . .

"[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 (9th Cir. 2003).

11 U.S.C. § 362(k)(1) provides the following:

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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.

"A creditor who attempts collection of prepetition debt after it knows of the debtor's bankruptcy is subject to sanctions for willful violation of the automatic stay." *In re Bourke*, 543 B.R. 657, 664 (Bankr. D. Mont. 2015). "[T]he willfulness test for automatic stay violations merely requires that: (1) the creditor know of the automatic stay; and (2) the actions that violate the stay be intentional." *Morris v. Peralta*, 317 B.R. 381, 389 (B.A.P. 9th Cir. 2004) (citing *Eskanos v. Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002)). "Once a creditor has knowledge of the bankruptcy, it is deemed to have knowledge of the automatic stay." *In re Breul*, 533 B.R. 782, 787-88 (Bankr. C.D. Cal. 2015) (citing *In re Ramirez*, 183 B.R. 583, 589 (B.A.P. 9th Cir. 1995)).

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 (B.A.P. 9th Cir. 1998). However, "'individual' means individual, and not a corporation or other artificial entity." *In re Goodman*, 991 F.2d 613, 619 (9th Cir. 2003). Thus, corporations and artificial entities cannot recover damages under § 362(k). *Id. Accord In re Pacer*, 67 F.3d 187, 193 (9th Cir. 1995); *In re Dyer*, 322 F.3d 1178, 1189 (9th Cir. 2003).

Here, assuming that the Landlord willfully violated the automatic stay, and that the Debtor was injured by any such violation, the Court cannot give the Debtor the relief it seeks. [FN1]. First, the Landlord already has remedied any potential violation. The Landlord removed the for-lease sign from the Property and cancelled the listing on Loopnet. Further, the Landlord withdrew the Notice and filed the RFS Motion to proceed in the UD Action.

Moreover, because the Debtor is not an individual, the Debtor cannot recover damages under 11 U.S.C. § 362(k). In the Motion, the Debtor asserts that "[c]ourts have held that even corporate debtors can recover for willful violations of the stay." Motion, p. 6. However, the Debtor cited no authority for this position. Nor has the Court found authority that a corporate debtor is considered an individual within the

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meaning of 11 U.S.C. § 362(k). Accordingly, the Debtor is not entitled to damages under 11 U.S.C. § 362(k). [FN2].

III. CONCLUSION

For the reasons discussed above, the Court will deny the Motion.

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

FOOTNOTES

1. At this time, the Court is NOT deciding whether: (a) the Debtor's lease terminated prepetition; and (b) any of the actions taken by the Landlord constitute a violation of the automatic stay under 11 U.S.C. § 362(a).
2. Here, the Debtor specifically requested sanctions under 11 U.S.C. § 362(k). The Court is not deciding whether a corporate debtor may recover damages for a violation of the automatic stay under an alternative theory.

The Landlord's Evidentiary Objections

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declaration of Constantine Papanicolaou set forth below:

para. 10: sustain as to "*That several of my employees assumed that the restaurant was going out of business and one even attempted to quit his job as a result of the for lease sign.*"

para. 10: overrule as to "*That same employee also showed me the listing on Loopnet dated June 7, 2019, one day after the case was filed and after the Landlord was given notice of this case.*"

para. 13: overrule

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Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declaration of Eric Bensamochan set forth below:

para. 4 and 6: overrule

para. 3 and 7: sustain

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

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1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01069 Seror v. Muennichow et al

#0.10 Movant's motion to quash or modify non party subpoena,
or in the alternative motion for protective order

Docket 93

Tentative Ruling:

In light of the pending adversary proceeding [1:18-ap-01077-VK] concerning the economic interest of witness Duane Van Dyke as to life insurance proceeds, and his advanced age and health concerns, the Court will allow Mr. Van Dyke to have counsel present at all times he is testifying pursuant to the subpoena and to raise objections to the examination and cross-examination of Mr. Van Dyke.

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
Richard Burstein
Jorge A Gaitan

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Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

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1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01069 Seror v. Muennichow et al

#1.00 Trial 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; 11/21/18; 4/3/19

Docket 1

Tentative Ruling:

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

The Defendant's Evidentiary Objections to the Trustee's Materials

The Court will overrule the objection to the report of Howard B. Grobstein on the basis of timely service. The Court also overrules the defendant's objections to the exhibits used by Mr. Grobstein; the Court will assess objections to exhibits as they arise at trial.

The Court will overrule the objection based on Federal Rule of Evidence ("FRE")

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702(c) because the Court is not using Mr. Grobstein's testimony to interpret the legal definition of "transfer" under California law.

The Court will withhold deciding the objections based on FRE 702(b) until the end of trial.

The Trustee's Objection to the Declaration of Helayne Muennichow

The Court will overrule the objection to the defendant's declaration. Although the Court stated in the pretrial order that the parties did not have to file declarations in lieu of direct testimony for the defendant and two other individuals, the Court did not prohibit these witnesses from filing declarations.

The Trustee's Objection to the Declaration of Lindsey Green

With the exception of Mr. Green's testimony regarding whether transferring title of a residential property to a separated spouse, for the purpose of refinancing, is common practice (which will be admitted), the Court will sustain the objection to Mr. Green's declaration as consisting of legal conclusions.

The Trustee's Objection to the Declaration of Leonard Lyons

The Court will sustain the objection to paragraph 10.2-10.2.11 of Mr. Lyon's declaration; the Court will overrule the remaining objections to that declaration.

The Trustee's Objection to the Declaration of Solomon Goldner

The Court will sustain the objection to paragraph 10 of Mr. Goldner's declaration, i.e., that "*Helayne had no involvement in the negotiation of the 'Acknowledgment and Designation Agreement'*"; the Court will overrule the remaining objections to that declaration.

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, July 31, 2019

Hearing Room 301

9:30 AM

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**

Thursday, August 1, 2019

Hearing Room 301

9:30 AM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01069 Seror v. Muennichow et al

#1.00 Trial 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; 11/21/18; 4/3/19

Docket 1

Tentative Ruling:

Tentative ruling regarding the evidentiary objections to the identified paragraphs of the Declaration of Helayne Muennichow set forth below:

paras. 4-6, 13, 20, 23-27, 30, 37 (not admitted for truth of the statements), 40 (not admitted for truth of the statements), 44-46, 53, 55, 57-63, 65-71, 72-74: overrule

para. 6: sustain as to foundation of how the declarant "learned this information"

paras. 8, 10, 11-12, 31, 40: sustain

para. 7: sustain as to "*Based on records I have seen*" and "*at the time of the filing of*"

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

Thursday, August 1, 2019

Hearing Room 301

9:30 AM

CONT...

Hermann Muennichow

Chapter 7

the bankruptcy proceeding, he had several million dollars in bank accounts in Germany, either in his name or in joint accounts with his relatives" and overrule as to the rest

para. 9: sustain as to "*A state of California official website listed that interest at 8.5% in subsequent years" and "as Hermann later confessed, he wanted to hide the asset from me;"* overrule as to the rest

para. 14: sustain as to "*Hermann confessed his 8.5% interest, the fact that he hid it from me, and that he had received tens of thousands, and perhaps hundreds of thousands of dollars, if not more, from Ms. Robinson's payments" and "That money had to be part of the money Hermann sent to Germany to be held in bank accounts with relatives and hidden from me;"* overrule as to the rest

para. 18: sustain as to "*other than my claim for all of the money based on his breach of fiduciary duties, the \$750,000 in settlement proceeds were community property;"* overrule as to the rest

para. 19: sustain as to "*so they were always community property no matter whose name was on the account;"* overrule as to the rest

para. 50: sustain as to "*Thus, the interest in Centinela Park would have been part of our marital community for which I had a 50% community property interest;"* overrule as to the rest

para. 56: sustain as to "*community property debts;"* overrule as to the rest

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Defendant(s):

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

Thursday, August 1, 2019

Hearing Room 301

9:30 AM

CONT... Hermann Muennichow

Chapter 7

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**

Friday, August 2, 2019

Hearing Room 301

9:30 AM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01069 Seror v. Muennichow et al

#1.00 Trial 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; 11/21/18; 4/3/19

Docket 1

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

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

Friday, August 2, 2019

Hearing Room 301

9:30 AM

CONT... Hermann Muennichow

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, August 7, 2019

Hearing Room 301

9:30 AM

1:18-11620 Antoine R Chamoun

Chapter 7

#1.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 3/20/19(stip); 5/22/19 (stip); 7/3/19

Docket 28

***** VACATED *** REASON: Motion withdrawn 8/2/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Movant(s):

The Bank of New York Mellon fka

Represented By
Darren J Devlin

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan

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

Wednesday, August 7, 2019

Hearing Room 301

9:30 AM

1:16-13377 Nahed Talei

Chapter 13

#2.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 6/5/19; 7/17/19

Stip for adequate protection filed 7/26/19

Docket 60

*** VACATED *** REASON: Order approving stipulation entered 7/29/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nahed Talei

Represented By
Michael F Frank

Movant(s):

U.S. Bank National Association, as

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, August 7, 2019

Hearing Room 301

9:30 AM

1:17-11373 Luis Valdez

Chapter 13

#3.00 Motion for relief from stay [RP]

SPECIALIZED LOAN SERVICING, LLC
VS
DEBTOR

fr. 6/5/19; 7/17/19

Stip for adequate protection filed 7/19/19

Docket 37

*** VACATED *** REASON: Order approving stipulation entered on
7/19/19 [doc. 41].

Tentative Ruling:

Party Information

Debtor(s):

Luis Valdez

Represented By
Rebecca Tomilowitz

Movant(s):

Specialized Loan Servicing 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, August 7, 2019

Hearing Room 301

9:30 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

#4.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 6/12/19; 7/17/19

Docket 97

Tentative Ruling:

- NONE LISTED -

Party Information

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, August 7, 2019

Hearing Room 301

9:30 AM

1:19-11421 Papanicolaou Enterprises

Chapter 11

#5.00 Motion for relief from stay [UD]

YASAM LEGACY LLC A CA. LTD. LIAB. CO.
VS
DEBTOR

RE: 11329 Magnolia Blvd., North Hollywood, CA 91601 .

fr. 7/17/19

Docket 26

*** VACATED *** REASON: Order ent. continuing hrg to 8/22/19 at 2:00
p.m. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

Movant(s):

Yasam Legacy LLC, A Ca Ltd. Liab.

Represented By
Paul E Gold

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

Wednesday, August 7, 2019

Hearing Room 301

9:30 AM

1:19-11421 Papanicolaou Enterprises

Chapter 11

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

fr. 7/3/19

Docket 4

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):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

Movant(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan
Eric Bensamochan
Eric Bensamochan

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

Wednesday, August 7, 2019

Hearing Room 301

9:30 AM

1:19-11388 Schonte Patrice Hamilton

Chapter 13

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

fr. 6/19/19

Docket 7

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):

Schonte Patrice Hamilton

Represented By
Michael E Clark

Movant(s):

Schonte Patrice Hamilton

Represented By
Michael E Clark

Trustee(s):

Elizabeth (SV) 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 7, 2019

Hearing Room 301

9:30 AM

1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

#8.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 77

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):

Aurora Frias Lee-Nelson

Represented By
Ronald D Tym

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 7, 2019

Hearing Room 301

9:30 AM

1:19-11189 Luis F Lopez and Mirna D Quijano De Lopez

Chapter 7

#9.00 Motion for relief from stay [PP]

ACAR LEASING LTD
VS
DEBTOR

Docket 10

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):

Luis F Lopez

Represented By
Hector Vega

Joint Debtor(s):

Mirna D Quijano De Lopez

Represented By
Hector Vega

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

Wednesday, August 7, 2019

Hearing Room 301

9:30 AM

CONT... Luis F Lopez and Mirna D Quijano De Lopez

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, August 7, 2019

Hearing Room 301

9:30 AM

1:19-11625 Tasjah Nevill

Chapter 13

#10.00 Motion for relief from [UD]

BRE SILVER MF NORTH HOLLYWOOD CA LLC
VS
DEBTOR

Docket 10

***** VACATED *** REASON: Motion withdrawn 7/30/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tasjah Nevill

Pro Se

Movant(s):

BRE Silver MF North Hollywood

Represented By
Richard Sontag

Trustee(s):

Elizabeth (SV) 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 7, 2019

Hearing Room 301

9:30 AM

1:19-11419 Benjamin Valencia

Chapter 13

#11.00 Motion for relief from stay [RP]

DAVID T. GOLDEN & MONICA J. GOLDEN, TRUSTEES
VS
DEBTOR

Docket 18

***** VACATED *** REASON: withdrawal filed on 7/24/19 doc [24]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Benjamin Valencia

Represented By
Sydell B Connor

Movant(s):

David T. Golden & Monica J.

Represented By
Martin W. Phillips

Trustee(s):

Elizabeth (SV) 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 7, 2019

Hearing Room 301

9:30 AM

1:15-11825 Donald M. Baarns and Lisa A. Baarns

Chapter 13

#12.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 41

Tentative Ruling:

On July 31, 2019, the debtors filed an untimely response to the motion for relief from the automatic stay [doc. 43]. The debtors did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

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 debtors are borrowers as defined in Cal. Civ. Code § 2920.5(c)(2)(C).

The 14-day stay prescribed by FRBP 4001(a)(3) is NOT waived.

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

Party Information

Debtor(s):

Donald M. Baarns

Represented By
Ali R Nader

Joint Debtor(s):

Lisa A. Baarns

Represented By

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

Wednesday, August 7, 2019

Hearing Room 301

9:30 AM

CONT... Donald M. Baarns and Lisa A. Baarns

Chapter 13

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, August 7, 2019

Hearing Room 301

9:30 AM

1:16-10630 Gerald E Klein and Norma L Klein

Chapter 13

#13.00 Motion for relief from stay [RP]

MUFG UNION BANK, N.A.
VS
DEBTOR

Docket 58

*** 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):

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, August 7, 2019

Hearing Room 301

9:30 AM

1:16-11663 Robert Lazar Levitan and Catherine Palmerino Levitan

Chapter 13

#14.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Lazar Levitan

Represented By
Raj T Wadhvani
Gregory M Shanfeld

Joint Debtor(s):

Catherine Palmerino Levitan

Represented By
Raj T Wadhvani
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, August 7, 2019

Hearing Room 301

9:30 AM

1:19-10147 Marilyn Ann Ficco

Chapter 13

#15.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Stip for adequate protection filed 8/2/19

Docket 62

*** VACATED *** REASON: Order approving stipulation entered
08/05/2019

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marilyn Ann Ficco

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 7, 2019

Hearing Room 301

9:30 AM

1:19-10777 Dennis Shelby

Chapter 13

#16.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 37

***** 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):

Dennis Shelby

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 7, 2019

Hearing Room 301

9:30 AM

1:19-11073 Farzad Khalili

Chapter 13

#17.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

Docket 19

***** 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):

Farzad Khalili	Pro Se
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Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 7, 2019

Hearing Room 301

9:30 AM

1:19-11148 Anthony Ross

Chapter 13

#18.00 Motion for relief from stay [RP]

NATIONS DIRECT MORTGAGE, LLC
VS
DEBTOR

Docket 18

Tentative Ruling:

For the reasons discussed below, the Court will grant relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(4).

On April 28, 2015, Anthony Ross (“Debtor”), Lorene Ross, La Jeanna James Ross and Julianna Amoroso executed a promissory note (the “Note”) in the principal sum of \$540,038, which was made payable to Nations Direct Mortgage, LLC dba Motive Lending (“Nations”). [doc. 18, Exh. 1]. That note is secured by a deed of trust (“Deed of Trust”), executed by Debtor, Lorene Ross, La Jeanna James Ross and Julianna Amoroso encumbering the real property located at 20733 Londelius Street, Winnetka, California 91306 (the “Property”). *Id.* at Exh. 2.

The First Case

After execution of the Note and Deed of Trust, there was a default under the terms of the Note and Deed of Trust. Accordingly, on June 16, 2016, Nations recorded a notice of default and election to sell the Property. On January 23, 2017, Nations recorded a notice of sale, which set a foreclosure sale of the Property for March 22, 2017.

On March 21, 2017, one day before the scheduled foreclosure sale, Debtor filed a voluntary chapter 13 petition, commencing case no. 1:17-bk-10718-VK (the “First Case”). Debtor did not timely file the required schedules and statements and chapter 13 plan. Accordingly, on April 10, 2017, the Court entered an order dismissing the First Case for failure to file information. First Case, doc. 11.

The Second Case

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

Wednesday, August 7, 2019

Hearing Room 301

9:30 AM

CONT... Anthony Ross

Chapter 13

On May 23, 2017, Debtor filed another voluntary chapter 13 petition, commencing case no. 1:17-bk-11362-VK (the “Second Case”). On July 8, 2017, Debtor filed a motion to convert the Second Case to one under chapter 7. Second Case, doc. 15. On July 10, 2017, the Court entered an order converting the Second Case to one under chapter 7. Second Case, doc. 19.

On August 10, 2017, Nations filed a motion for relief from the automatic stay as to the Property (the “First RFS Motion”). Second Case, doc. 27. In the First RFS Motion, Nations stated that 19 payments had come due and were not made and that the total amount of arrears on the Property was \$68,513.49. Debtor did not oppose the First RFS Motion. On September 13, 2017, the Court entered an order granting the First RFS Motion pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2). Second Case, doc. 35.

On October 17, 2017, the Court entered an order granting Debtor a discharge under 11 U.S.C. § 727. Second Case, doc. 37. On October 18, 2017, the Court closed the case. Second Case, doc. 38.

The Third Case

On October 24, 2017, Lorene Ross filed voluntary chapter 13 petition, commencing case no. 1:17-bk-12850-MT (the “Third Case”). On her schedule A/B, Ms. Ross claimed an interest in the Property and stated that she was the only person who had an interest in the Property. Third Case, doc. 8.

On November 17, 2019, Nations objected to Ms. Ross’ proposed chapter 13 plan because, among other things, the proposed chapter 13 plan did not account for the full amount of arrears on the Property. Third Case, doc. 16. Nations claimed that the arrears on the Property totaled approximately \$86,943.26.

On April 3, 2018, Ms. Ross filed a motion to commence the loan modification management program with respect to the Property. Third Case, doc. 30. On April 27, 2018, the Court entered an order granting that motion (the “LMM Order”). Third Case, doc. 34. In the LMM Order, the Court ordered Ms. Ross to make adequate protection payments to Nations in the amount of \$1,540.82 per month during the loan modification management period.

On October 25, 2018, Nations filed a motion for relief from the automatic stay as to

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

Wednesday, August 7, 2019

Hearing Room 301

9:30 AM

CONT...

Anthony Ross

Chapter 13

the Property (the “Second RFS Motion”). Third Case, doc. 48. In the Second RFS Motion, Nations stated that 12 postpetition preconfirmation payments on the Property had come due but were not paid, for total postpetition arrears of \$39,815.03. Nations also stated that the last three postpetition payments were made in May 2018 and July 2018. Ms. Ross did not oppose the Second RFS Motion. On December 26, 2018, the Court granted the Second RFS Motion pursuant to 11 U.S.C. § 362(d)(1).

On December 19, 2018, the Court entered an order dismissing the Third Case arising from the chapter 13 confirmation hearing. Third Case, doc. 52.

The Pending Case

On April 15, 2019, Nations recorded a notice of sale on the Property, which set a foreclosure sale of the Property for May 9, 2019.

On May 8, 2019, one day before the scheduled foreclosure sale, Debtor filed another voluntary chapter 13 petition, commencing the pending case. In his schedule A/B, Debtor listed an interest in the Property [doc. 1]. Debtor valued that interest at \$175,000 and valued the Property at \$700,000. In his schedule D, Debtor listed Nations as his only creditor with a secured claim [doc. 1]. In his schedule E/F, Debtor did not list any unsecured claims [doc. 1].

On May 24, 2019, Debtor filed a chapter 13 plan, which proposes to pay \$450 per month for months 1 through 12, and then \$132,795.89 in month 13 (the “Plan”) [doc. 11]. However, the only claims that Debtor listed to be paid through the Plan are his attorneys’ fees and chapter 13 trustee fees, in the aggregate amount of \$18,195.03. In class 6, Debtor indicated that he will surrender the Property subject to approval of a short sale.

On June 26, 2019, the chapter 13 trustee (the “Trustee”) filed an objection to the Plan (the “Objection”) [doc. 17]. In the Objection, the Trustee objects to confirmation of the Plan because, among other things, the Plan appears to be solely to delay mortgage payments to Nations.

On July 17, 2019, Nations filed claim 1-1, asserting a secured claim in the amount of \$662,044.53, with prepetition arrears in the amount of \$161,783.61.

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On June 28, 2019, Nations filed a motion for relief from the automatic stay as to the Property (the “Motion”) [doc. 18]. In the Motion, Nations requests, among other things, 11 U.S.C. § 362(d)(4) relief based on the multiple bankruptcy filings affecting the Property. Debtor did not timely oppose the Motion.

Discussion

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 notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and

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recording.

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The Court concludes that Debtor's filing of the petition in this chapter 13 case was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property. This is Debtor's third bankruptcy case affecting the Property, and the fourth bankruptcy case overall affecting the Property. Two of those bankruptcy cases, both filed by Debtor, were filed one day before a scheduled foreclosure sale. Further, Debtor has continued to be delinquent on his deed of trust payments for loans secured by the Property. The foregoing facts justify relief from the automatic stay and the provision of *in rem* relief pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4).

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.

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

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

Party Information

Debtor(s):

Anthony Ross

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-11580 Kaliston Jose Nader

Chapter 11

#19.00 Motion for relief from stay [RP]

DEUTSCHE BANK TRUST COMPANY AMERICAS
VS
DEBTOR

Docket 97

*** 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):

Kaliston Jose Nader

Represented By
Onyinye N Anyama

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1:19-11386 FinCabiz, Inc.

Chapter 11

#20.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NA
VS
DEBTOR

Docket 37

Tentative Ruling:

On July 16, 2019, the Court entered an order denying the debtor's motion to continue the automatic stay (the "Order") [doc. 36]. To the extent that the automatic stay has not already fully terminated as to the real property at issue, the Court will grant relief under 11 U.S.C. § 362(d)(1).

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 in this case was part of a scheme to delay, hinder, or defraud creditors.

Movant must submit 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):

FinCabiz, Inc.

Represented By
Javier H Castillo

Movant(s):

JPMorgan Chase Bank, National

Represented By
Merdaud Jafarnia

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CONT...

FinCabiz, Inc.

Nancy L Lee
Gregory K Jones

Chapter 11

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9:30 AM

1:11-21106 Noriel Estrellado Alibutod and Edna Tan Alibutod

Chapter 7

#21.00 Order to show cause why a representative of L & F Development, LLC should not be held in contempt for knowingly violating the discharge injunction

Docket 0

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion.

I. BACKGROUND

In 2006, L & F Development, LLC ("L&F") apparently entered into a contract with Noriel Estrellado Alibutod and Edna Tan Alibutod (together, the "Debtors") and agreed to construct a residence on real property owned by the Debtors in Marion County, Florida (the "2006 Contract") [doc. 48, Exh. 5]. During construction of the residence, the Debtors decided not to go forward with the project. Subsequently, there was a foreclosure sale of the property [Declaration of Noriel Alibutod "Alibutod Decl.," ¶ 2].

On June 2, 2008, L&F filed a complaint in the Circuit Court for Marion County, Florida against the Debtors and Fifth Third Bank (the "Bank") alleging that the Bank had not disbursed certain construction funds to them in connection with the Debtors' project, and as a result, the Debtors were responsible for the payment pursuant to the terms of the 2006 Contract (the "State Court Action") [doc. 48, Exh. 5]. On July 17, 2015, L&F obtained an amended final judgment in the State Court Action in the amount of \$105,787.43 against the Debtors *nunc pro tunc* as of August 9, 2010 (the "Judgment") [doc. 48, Exh. 1]. [FN1].

On September 19, 2011, the Debtors filed a voluntary chapter 7 petition [doc. 1]. In their schedule F, the Debtors listed two unsecured claims in the aggregate amount of \$237,522 for a future deficiency claim from the foreclosure [doc. 1, p. 24]. However, the Debtors did not list L&F as holding an unsecured claim. Further, the Debtors did not list any foreclosures within one year before the petition date, and they did not list the State Court Action as a suit or administrative proceeding to which they were a

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party within one year before the petition date. Accordingly, L&F may have had no knowledge of the Debtors' bankruptcy filing.

On October 25, 2011, the chapter 7 trustee filed a report of no distribution. Accordingly, the chapter 7 trustee did not administer any assets of the bankruptcy estate for the benefit of creditors. Also, because no assets were administered, the Court did not set a deadline for filing proofs of claim. On December 27, 2011, the Debtors were granted a discharge [doc. 14]. On January 26, 2012, the Debtors' bankruptcy case was closed [doc. 16].

On October 26, 2016, through its local counsel, Ronald A. Norman, L&F filed an application in in the Superior Court of California, County of Los Angeles, for entry of judgment based on the Judgment [doc. 48, Exh. 1]. On November 1, 2016, the superior court entered judgment against the Debtors in the amount of \$105,787.43 plus \$6,712.13 in interest and \$435.00 in fees (the "Sister-State Judgment") [doc. 48, Exh. 1].

Subsequently, the Debtors were advised of the Sister-State Judgment. On December 20, 2016, the Debtors sent a letter to Mr. Norman advising him that their personal liability for the Judgment and Sister-State Judgment was discharged in their bankruptcy case. Alibutod Decl., ¶ 2. With the letter, the Debtors enclosed a copy of the discharge order and their Schedule F [doc. 48, Exh. 2]. According to the Debtors, Mr. Norman did not respond to the letter. Alibutod Decl., ¶ 2.

In March 2017, the Debtors attempted to access their checking and savings accounts at Bank of America; they discovered that a levy in the amount of \$5,693.77, in favor of L&F, had been placed on their monies. Alibutod Decl., ¶ 3.

On March 23, 2017, Debtors retained David Hagen as counsel to assist them in recovering the monies levied from their accounts [Declaration of David S. Hagen, "Hagen Decl.," ¶ 4]. That same day, Mr. Hagen contacted L&F's principal via email [doc. 48, Exh. 4]. In the emails, Mr. Hagen notified L&F of the Debtors' bankruptcy filing and subsequent discharge. *Id.* Mr. Hagen explained that the Sister-State Judgment and levy of the Debtors' bank accounts were violations of the permanent injunction created by the discharge. *Id.* L&F's principal responded that because Debtors did not identify L&F as a creditor in their bankruptcy filings, L&F's claim

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was not discharged. *Id.* Mr. Hagen replied, citing *In re Beezley*, 994 F.2d 1433 (9th Cir. 1993). Mr. Hagen explained that even a nonscheduled creditor was discharged in a no-asset case, and that L&F's claim was not one which is excepted from discharge under 11 U.S.C. § 523. *Id.*

On March 27, 2017, the Debtors filed a *Motion to Reopen Bankruptcy Case to File OSC re Contempt* (the "Motion to Reopen") [doc. 17]. On April 17, 2017, L&F filed an opposition to the Motion to Reopen [doc. 19]. On May 18, 2017, the Court entered an order reopening the case for the limited purpose of filing a motion for contempt for violation of the discharge injunction under 11 U.S.C. § 524 [doc. 26].

On May 22, 2017, the Debtors filed a *Motion for an Order to Show Cause Why L & F Development, LLC Should Not Be Held in Contempt for Knowingly Violating the Discharge Injunction* [doc. 28]. The Debtors did not properly serve that motion.

On May 30, 2019, Debtors filed a *Motion for an Order to Show Cause Why L & F Development, LLC Should Not Be Held in Contempt for Knowingly Violating the Discharge Injunction* (the "Motion") [doc. 48]. In the Motion, the Debtors request that the Court hold L&F in civil contempt under § 105(a) for knowingly violating the discharge injunction. The Debtors request sanctions against L&F for, among other things: (a) attorneys' fees and costs in addressing the discharge violation, which totaled \$2,625 as of May 12, 2017; (b) recovery of monies levied from the Debtors' bank accounts totaling \$5,693.77; and (c) incidental damages. The Debtors also request that the Court impose a coercive fine of at least \$10,000, payable to the Debtors for each month that L&F fail to comply with 11 U.S.C. §§ 524 and 105. The Debtors properly served the Motion on L&F and Mr. Norman. L&F did not timely oppose the Motion.

Accordingly, on June 12, 2019, the Court issued an *Order to Appear and Show Cause Why a Representative of L & F Development, LLC Should Not Be Held in Contempt for Knowingly Violating the Discharge Injunction* (the "OSC") [doc. 52]. In the OSC, the Court ordered L&F to file and serve a written explanation, if any, by July 17, 2019, why it should not be held in contempt for obtaining the Judgment, Sister-State Judgment and levying the Debtors' bank accounts. L&F did not timely respond to the OSC.

II. DISCUSSION

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Chapter 7

A. *Discharge Injunction Violation*

Pursuant to 11 U.S.C. § 524(a)—

A discharge in a case under this title—

- (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
- (2) 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; and
- (3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

Section 727(b) of the Bankruptcy Code states in part: 'Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter [i.e., the date of the bankruptcy filing]....' 'The operative word is 'all'. There is nothing in Section 727 about whether the debt is or is not scheduled. So far as that section is concerned, a pre-bankruptcy debt is discharged, whether or not it is scheduled.'" *In re Beezley*, 994 F.2d 1433, 1436 (9th Cir. 1993) (quoting *In re Mendiola*, 99 B.R. 864, 865 (Bankr. N.D. Ill. 1989)). "Thus, unless section 523 dictates otherwise, every prepetition debt becomes discharged under section 727." *Id.*

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The Ninth Circuit Court of Appeals explained the reasoning behind its holding in *Beezley* as follows:

The critical point here is that in most cases filed under Chapter 7 (i.e., no asset, no bar date cases), "the date to file claims is never set and thus § 523(a)(3)(A) is not triggered." *In re Walendy*, 118 B.R. 774, 775 (Bankr.C.D.Cal.1990). That is, in a no asset, no bar date case, section 523(a)(3)(A) is not implicated "because there can never be a time when it is too late 'to permit timely filing of a proof of claim.'" *Mendiola*, 99 B.R. at 867. See *In re Tyler*, 139 B.R. 733, 735 (D.Colo.1992); *In re Peacock*, 139 B.R. 421, 424 (Bankr.E.D.Mich.1992); *Walendy*, 118 B.R. at 776.

"Thus, in the typical no asset Chapter 7 case, where the no dividend statement of [rule] 2002(e) is utilized by the clerk and no claims bar date set, the prepetition dischargeable claim of an omitted creditor, being otherwise unaffected by § 523, remains discharged. In other words, in the typical Chapter 7 case, the debtor's failure to list a creditor does not, in and of itself, make the creditor's claim nondischargeable." *Corgiat*, 123 B.R. at 391. Stated differently, where section 523 does not except a prepetition debt from discharge, the debt remains within the scope of the discharge afforded by section 727. Scheduling, per se, is irrelevant. See *Mendiola*, 99 B.R. at 867 ("since Section 523(a)(3)(A) does not apply, the debts the Debtor seeks to add to the schedules are already discharged, even though they were not listed or scheduled"); accord *American Standard Ins. Co. v. Bakehorn*, 147 B.R. 480, 487 (N.D.Ind.1992); *Tyler*, 139 B.R. at 735; *Stecklow*, 144 B.R. at 315; *Tucker*, 143 B.R. at 334; *Peacock*, 139 B.R. at 424; * 1437 *Thibodeau*, 136 B.R. at 8. Since dischargeability is unaffected by scheduling in a no asset, no bar date case, "reopening the case merely to schedule the debt is for all practical purposes a useless gesture." *In re Hunter*, 116 B.R. 3, 5 (Bankr.D.D.C.1990); accord *American Standard*, 147 B.R. at 483 (of "no legal effect"); *Stecklow*, 144 B.R. at 317 ("futile"); *Tucker*, 143 B.R. at 334 ("unnecessary" and "unwarranted"); *Peacock*, 139 B.R. at 422 ("pointless"); *Thibodeau*,

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136 B.R. at 10 ("meaningless").

Chapter 7

Id., at 1436-37.

Pursuant to the above cited authorities, even though the Debtors did not list L&F's claim in their schedules and statements, the Debtors' personal liability for the Judgement and the Sister-State Judgment was discharged in the Debtors' bankruptcy case. The Judgement and the Sister-State Judgment are based on L&F's pre-petition claim against the Debtors. The Debtors' bankruptcy case was a no asset case, and L&F's claim does not appear to be excepted from discharge under 11 U.S.C. 523. Accordingly, L&F's claim is a discharged debt subject to the permanent discharge injunction under 11 U.S.C. § 524.

By continuing to pursue its pre-petition discharged claim, even after it was put on notice of the Debtors' bankruptcy filing and discharge, L&F violated this injunction. On December 20, 2016, after receiving notice of the Sister-State Judgment, the Debtors wrote a letter to L&F's local counsel advising it that they filed bankruptcy and obtained a discharge in 2011. The Debtors enclosed a copy of their Schedule F (which showed the Florida property's potential deficiency claim), as well as a copy of the discharge order. L&F did not respond to that letter and continued its collection efforts in March 2017.

At this point, L&F should have been aware of the Debtors' discharge. However, even if L&F was not aware of the Debtors' filing until the email conversation with Mr. Hagen, once it became aware of the discharge, L&F violated the discharge injunction by then not releasing the levy. Further, once L&F was aware of the discharge, it appears that it did not take any steps to reverse the entry of the Judgment and Sister-State Judgment.

B. Contempt Sanctions

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."

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When imposing a sanction under its inherent power, the Court must make a finding of bad faith. *In re Count Liberty, LLC*, 370 B.R. 259, 271-72 (Bankr. C.D. Cal. 2007) (citing *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 26 (B.A.P. 9th Cir. 2003)). Bad faith or willful misconduct requires something more egregious than mere negligence or recklessness. *In re Dyer*, 322 F.3d at 1196. Ignorance or inadvertence is not enough to support a sanction award under the Court's inherent authority. *Id.* at 1196-97.

"[T]he contempt authority conferred on bankruptcy courts under § 105(a) is a civil contempt authority. As such, it authorizes only civil sanctions as available remedies." *Id.* at 1192. "Civil penalties must either be compensatory or designed to coerce compliance." *Id.*; see *In re C.W. Mining Co.*, 477 B.R. 176, 194-95 (B.A.P. 10th Cir. 2012) ("Sanctions for civil contempt must meet one or both of the following purposes: (1) to compel or ensure compliance with a court order; and (2) to compensate parties for losses caused by the contemnor's refusal to abide by a court order."); *In re Free*, 466 B.R. 48, 58 (Bankr. W.D. Penn. 2012) (stating that "remedial sanctions are backward looking and are imposed to compensate the aggrieved party for damages caused by non-compliance" while coercive sanctions "are forward looking and are intended to coerce the defiant party to comply by setting forth penalties in advance which will be imposed for non-compliance"). Bankruptcy courts may not impose criminal or punitive sanctions under § 105(a). *In re Dyer*, 322 F.3d 1178, 1192 (9th Cir. 2003).

"[C]riminal contempt sanctions are not available under § 105(a). Section 105(a) contains no explicit grant of authority to award punitive damages. Rather, the language of § 105(a) authorizes only those remedies 'necessary' to enforce the bankruptcy code. The sanctions associated with civil contempt—that is, compensatory damages, attorney fees, and the offending creditor's compliance—adequately meet that goal...rendering serious punitive sanctions unnecessary." *Dyer*, F.3d at 1193.

"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." *Dyer*, 322 F.3d at 1190-91.

"Substantial compliance with the terms of a court's order is a defense to civil contempt." *In re Count Liberty, LLC*, 370 B.R. 259, 275 (Bankr. C.D. Cal. 2007). The party being held in contempt must show that he or she took every reasonable step to

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comply with the Court's order. *Stone v. City & Cnty. of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992) (citing to *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 404 (9th Cir. 1976)); *see also Count Liberty*, at 275 ("To establish substantial compliance, the contemnor must show that he took all reasonable steps within his power to comply.").

Here, there is sufficient evidence of bad faith to support a finding of civil contempt sanctions. On two separate occasions, L&F's local counsel and L&F's principal were notified of the violation the discharge injunction. Despite this notice, L&F did nothing to reverse its violations. Thus, there is clear and convincing evidence of L&F's awareness of the Debtors' discharge, and L&F's failure to comply with the discharge injunction. Further, L&F failed to respond to the Motion.

As such, the Court will hold L&F in civil contempt for its discharge injunction violation and order L&F to pay \$8,318.77 in sanctions to the Debtors. The \$8,318.77 consists of \$2,625 in attorneys' fees incurred as of May 12, 2017, for prosecuting the discharge violation, and \$5,693.77 as recovery of the monies levied from the Debtors' bank accounts.

If the Debtors wish to seek additional sanctions for attorneys' fees incurred after May 12, 2017, the Debtors' counsel must provide billing records supported by a declaration demonstrating any additional fees and costs incurred in prosecuting the violation. The Court will not award any incidental damages.

At this time, the Court will not impose a coercive fine. If L&F fails to comply with the order within 30 days after it is entered and served on L&F, the Debtors may seek an additional coercive fine.

III. CONCLUSION

For the reasons discussed above, the Court will grant the Motion.

The Debtors must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the Debtors

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is 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 Debtors will be so notified.

FOOTNOTES

1. The parties did not provide evidence of the date of the original judgment. However, presumably, the original judgment was entered on August 9, 2010, the date of the *nunc pro tunc* effectiveness.

Party Information

Debtor(s):

Noriel Estrellado Alibutod

Represented By
David S Hagen

Joint Debtor(s):

Edna Tan Alibutod

Represented By
David S Hagen

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:30 PM

1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01023 Post Confirmation Committee of Unsecured Creditors v. J J Foil Company,

#22.00 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

fr. 5/15/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on August 21, 2019**, to be held with the hearing on the plaintiff's motion for default judgment [doc. 11].

The plaintiff's appearance on August 7, 2019 is excused.

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

J J Foil Company, Inc.

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01028 Post Confirmation Committee of Unsecured Creditors v. Printing Industries

#23.00 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

fr. 5/22/2019;

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on August 21, 2019**, to be held with the hearing on the plaintiff's motion for default judgment [doc. 11].

The plaintiff's appearance on August 7, 2019 is excused.

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

Printing Industries Benefit Trust

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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1:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#24.00 Status conference re: first amended complaint to avoid lien; to avoid and recover raudulent transfer; to preserve avoided lien for estate; to recover damages for usury; to avoid and recover preference payments; to determine extent and validity of lien

fr. 6/12/19

Docket 7

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 12/31/19.

Deadline to file pretrial motions: 1/31/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 2/19/20.

Pretrial: 1:30 p.m. on 3/4/20.

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):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Susan Biddle

Pro Se

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CONT... Christopher Anderson

Chapter 7

Susan Biddle, Trustee of the Biddle

Pro Se

Plaintiff(s):

David K. Gottlieb

Represented By
Peter A Davidson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:18-01131 Goldman v. Pavehzadeh et al

#25.00 Pre-trial conference re complaint:
(1) for declaratory relief;
(2) sale of interest of co-owner in property of the estate;
(3) turnover of property of the estate
[11U.S.C. §§ 363(h) and 542]

fr. 6/12/19

Docket 1

***** VACATED *** REASON: Order ent. continuing hrg to 9/18/19 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Hadizadeh

Represented By
Stella A Havkin

Defendant(s):

Houshang Pavehzadeh

Represented By
Joel S Seidel

Mona Soleimani

Pro Se

Plaintiff(s):

Amy L. Goldman

Represented By
Todd A Frealy
Anthony A Friedman

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Anthony A Friedman

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1:18-12785 Elizabeth Y. Zaharian

Chapter 11

Adv#: 1:19-01010 Strategic Funding Source, Inc. v. Armand Zaharian et al

#26.00 Status conference re: complaint to determine nondischargeability of debt

fr. 4/24/19 (stip); 6/12/19(stip)

Stip to continue filed 7/25/19

Docket 1

***** VACATED *** REASON: Order approving stip entered 7/29/19.
Hearing continued to 9/18/19 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

Defendant(s):

Armand Zaharian

Pro Se

Elizabeth Y. Zaharian

Pro Se

Plaintiff(s):

Strategic Funding Source, Inc.

Represented By
Brian T Harvey

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1:19-10062 Andrew Marc Pitsicalis

Chapter 11

Adv#: 1:19-01040 Experience Hendrix, LLC et al v. Pitsicalis

#27.00 Status conference re: complaint to determine the non-dischargeability of a debt

fr. 6/12/19

Stip to continue filed 8/5/19

Docket 1

***** VACATED *** REASON: Order approving stip entered entered 8/5/19. Hearing is continued to 8/21/19 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrew Marc Pitsicalis	Pro Se
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Defendant(s):

Andrew Marc Pitsicalis	Pro Se
------------------------	--------

Plaintiff(s):

Experience Hendrix, LLC	Represented By Jason D Strabo
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Authentic Hendrix, LLC	Represented By Jason D Strabo
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Trustee(s):

Heide Kurtz (TR)	Represented By Lei Lei Wang Ekvall
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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:19-01045 Coast to Coast Holdings, LLC v. Leonardi

- #28.00** Status Conference re: Defendant Joseph Leonardi's Counterclaim to complaint of Coast to Coast Holdings LLC
1. Alter ego allegations
 2. Fraud
 3. Breach of contract
 4. Breach of oral contract
 5. Conversion
 6. Injunctive relief
 7. Quiet title
 8. Unjust enrichment
 9. Jury trial demanded

Docket 6

***** VACATED *** REASON: Previously continued to 1:30 p.m. on 8/21/19.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

Defendant(s):

Joseph Leonardi

Pro Se

Plaintiff(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz

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1:19-10509 Sergik Avakian

Chapter 7

Adv#: 1:19-01066 XMI FINANCIAL SERVICES, LLC, a Limited Liability C v. Avakian

#29.00 Status conference re complaint

Docket 1

*** VACATED *** REASON: Order transferring case to Los Angeles
Division entered 6/17/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sergik Avakian

Represented By
Matthew D Resnik

Defendant(s):

Sergik Avakian

Pro Se

Plaintiff(s):

XMI FINANCIAL SERVICES,

Represented By
Stephen E Jenkins

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:19-10537 Lynn Patricia Wolcott

Chapter 7

Adv#: 1:19-01067 Charles Hanne, an individual et al v. Wolcott

#30.00 Status conference re: complaint for non-discharge of debt

Docket 1

Tentative Ruling:

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on October 23, 2019.**

It appears that the plaintiffs have not requested an entry of default under Local Bankruptcy Rule 7055-1(a) after their original request was denied. 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 **October 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).

The plaintiffs' appearance on August 7, 2019 is excused.

Party Information

Defendant(s):

Lynn Patricia Wolcott

Pro Se

Plaintiff(s):

Charles Hanne, an individual

Represented By
Reilly D Wilkinson

Lou Rosenberg, an individual

Represented By

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Lynn Patricia Wolcott

Reilly D Wilkinson
Reilly D Wilkinson

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1:18-10385 Jorge Alberto Romero II

Chapter 7

Adv#: 1:18-01057 Acevedo v. Romero II

#31.00 Motion for summary judgment

fr. 6/19/19

Docket 43

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion.

I. BACKGROUND

A. State Court Proceedings

On July 21, 2009, Carlos Acevedo ("Plaintiff") filed an amended complaint against, Jorge Romero Investments, Inc. ("JRI"), Global Capital Investments, Inc. ("GCI"), Jorge Romero ("Romero") and Jorge Romero II ("Debtor") and Alejandro Soto ("Soto") (JRI, GCI, Romero, Debtor and Soto collectively, "Defendants") in the Superior Court for the State of California, County of Los Angeles (the "State Court Complaint") [Request for Judicial Notice ("RJN"), doc. 43, Exh. 1]. In the State Court Complaint, Plaintiff alleged two causes of action against Defendants: breach of contract and fraud. The two claims in the State Court Complaint arose from two agreements entered into between Plaintiff and Defendants in 2007 and 2008 (the "Agreements"), under which Plaintiff invested money in JRI and GCI [Statement of Uncontroverted Facts ("SUF"), doc. 57, ¶ 4].

As concerns the breach of contract claim, Plaintiff alleged that Defendants refused to perform their duties under the Agreements, despite Plaintiff's demands for payment. As concerns the fraud allegations, the State Court Complaint includes the following allegations:

29. On or about July 22nd, 2007, [*sic*] ROMERO and SOTO, on their own behalf and on behalf of JRI induced ACEVEDO into investing with them

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based on the representation that they had specific knowledge of outstanding opportunities for a guaranteed high rate of return on ACEVEDOs [*sic*] money. This misrepresentation was of a material fact and was essential to the analysis by ACEVEDO of whether to enter into the AGREEMENT. If ACEVEDO had known the truth, as opposed to the misrepresentations by ROMERO and SOTO, he would not have entered into the AGREEMENT.

30. On February 23, 2088 ROMERO II, on his own behalf and on behalf of GCI induced ACEVEDO into investing with him based on the representation that he had specific knowledge of outstanding opportunities for a guaranteed high rate of return on ACEVEDOs [*sic*] money. This misrepresentation was of a material fact and was essential to the analysis by ACEVEDO of whether to enter into the AGREEMENT. If ACEVEDO had known the truth, as opposed to the misrepresentations by ROMERO II, he would not have entered into the AGREEMENT.

31. Defendants gave the false information to ACEVEDO in efforts to induce ACEVEDO into entering into the AGREEMENT and investing his money with them. At the time Defendants gave these guarantees they knew that they were false and never intended to pay ACEVEDO the promised returns. The knowingly false statements were solely intended to induce ACEVEDO to enter into the AGREEMENTS[.]

32. ACEVEDO justifiably relied on the representations of Defendants in entering into the AGREEMENT in that Defendants were in a position of knowledge as investment advisors.

33. As a direct result of ACEVEDO's reliance on the false statements made by Defendants, ACEVEDO signed the AGREEMENTS and gave the money to defendants.

34. Defendants refused, and continue to refuse, to pay the returns promised to ACEVEDO under the AREEMENTS, or any money at all to which ACEVEDO is entitled. As a result of that refusal ACEVEDO has been damaged in an amount according to proof but in excess of two hundred and fifty thousand dollars (\$250,000.00.)

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35. The knowingly false statements of ROMERO, ROMERO II and SOTO were intended to cause injury to ACEVEDO and were, therefore made with malice entitling ACEVEDO to punitive damages.

36. The knowingly false statements made by ROMERO, ROMERO II and SOTO were concealments of material facts known to Defendants with the intention of depriving ACEVEDO or property rights and legal rights, thereby entitling ACEVEDO to punitive damages.

1. Trial Judgment

On August 23, 2010, the state court conducted a trial on the merits for all claims alleged in the State Court Complaint, including the claim for fraud. SUF, ¶ 5, RJN, Exh., 2. Romero was the only defendant who answered and appeared at trial. RJN, Exh. 3. At the trial, Plaintiff introduced as evidence, among other things, a letter dated September 30, 2008 from Debtor. SUF, ¶ 6, RJN, Exh. 2, p. 2. According to the trial minutes [RJN, Exh. 2], Plaintiff marked for identification two letters dated September 30, 2008: a letter from GCI to investors, which is signed by Debtor on behalf of GCI (the "GCI Letter") and a letter from Debtor to Plaintiff. However, it appears that only the GCI Letter was introduced as evidence at trial. RJN, Exh. 2, p. 3.

On October 08, 2010, the state court entered judgement for \$110,000 against Romero for breach of contract and fraud (the "Trial Judgement"). RJN, Exh. 3. In the Trial Judgment, the state court made findings on each allegation in the State Court Complaint. Although the Trial Judgment was only against Romero on the breach of contract claim, the state court found that paragraphs 22-25 in the State Court Complaint, which alleged, among other things, that Debtor refused to pay Plaintiff in direct breach of the Agreements, were true. RJN, Exh. 3, p. 2. The state court also found that Plaintiff's damages were \$110,000.00. Regarding the fraud claim, the state court determined that paragraphs 29 through 36 of the State Court Complaint were true, except that Romero was the only person who made the misrepresentations. RJN, Exh. 3, p. 2.

2. Default Judgment

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On May 12, 2011, the state court entered a default judgment in the amount of \$110,000.00 against Debtor, Soto and GCI for failure to appear (the "Default Judgment"). RJN, Exh. 4. Specifically, the state court stated, "Plaintiff has demonstrated an adequate basis for his claim against the defaulting Defendants."

B. Adversary Proceeding

1. The First Amended Complaint

On February 13, 2018, Debtor 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). On July 20, 2018, Plaintiff filed a first amended complaint (the "FAC") [doc. 14], which is the operative complaint. In relevant part, the FAC includes the following allegations:

In July 2007, Debtor and Romero advertised two investment companies: JRI and GCI. Debtor 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 Debtor, the lucrative monthly interest was possible because of recently discovered gold in Africa.

On March 1, 2008, Plaintiff signed a contract with Debtor for the sum of \$110,000. Debtor deposited part of the \$110,000 into an account bearing Debtor's signature. In September 2008, Debtor sent Plaintiff the GCI Letter 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, Debtor 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 GCI and did not know of any individual with Debtor's name. After Plaintiff contacted Debtor and Romero about the SEC's

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response, Debtor and Romero cut off all contact with Plaintiff.

Plaintiff then filed the State Court Complaint. During the state court action, Plaintiff discovered that the California Corporation Commissioner uncovered that Romero had engaged in a Ponzi Scheme. The state court found Debtor and Romero liable for breach of contract and fraud and awarded Plaintiff \$110,000.

Debtor wrote the GCI Letter knowing that the information therein was false and with the sole purpose to mislead Plaintiff. At the state court trial, Romero was unable to show what happened to Plaintiff's funds. Now Debtor 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 GCI, which appears to be signed by Debtor, a number of checks issued by Plaintiff to GCI, the GCI Letter and the State Court Complaint. FAC, Exhs. A-D. Plaintiff also attached a statement by the California Corporations Commissioner filed in an action against JRI, Romero and a third entity (the "Commissioner Action"). FAC, Exhibit E. Debtor was not a party to the Commissioner Action. Finally, Plaintiff 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 recorded against Debtor based on the Default Judgment. FAC, Exhibits F-G.

2. The Motion to Dismiss

On August 22, 2018, Debtor filed a motion to strike and, in the alternative, a motion to dismiss (the "August 2018 Motion") [doc. 19], asserting that the Plaintiff's amended complaint was improperly filed and therefore should be stricken under F.R.C.P. 12(f) and, in the alternative, that the amended complaint fails on its face to state a claim under 11 U.S.C. 523(a)(2), and therefore should be dismissed under F.R.C. P. 12(b)(6) and F.R.B.P. 7012. On November 02, 2018, the Court denied the August 2018 Motion, but struck from Plaintiff's amended complaint: (1) the assertions that Romero and Debtor were properly served and summoned to trial and that Romero and Debtor were found liable for breach of contract and fraud; and (2) the attached copy of the Tentative Decision (the "MTD Order") [doc. 32].

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3. *The Motion for Summary Judgment*

On March 28, 2019, Debtor filed a Motion for Summary Judgment (the "MSJ") [doc. 43], in which he agrees with Plaintiff that the Trial Judgment is entitled to preclusive effect in this case, but argues that the state court's finding that Romero is the only person who made misrepresentations precludes Plaintiff from now arguing that Debtor also committed fraud. Debtor also argues that to the extent that Plaintiff has alleged new allegations against him that were not included in the State Court Complaint, any such allegations for fraud are barred by the statute of limitations.

On May 20, 2019, Plaintiff filed an opposition to the MSJ (the "Opposition") [doc. 50]. In the Opposition, Plaintiff argues: (1) that the Tentative Decision, on which the MSJ relies, was barred from use because the MTD Order struck the Tentative Decision from the FAC; (2) that Debtor is misreading the language of the Trial Judgment; and (3) that both the State Court Complaint and the FAC are timely. Specifically, Plaintiff argues that Debtor did not answer the State Court Complaint. As a result, the state court trial only focused on Romero and Soto. According to Plaintiff, the language in the Trial Judgment, "Romero is the only person who made misrepresentations," should be understood to mean only that Soto, who is referenced by name elsewhere in the Trial Judgment, made no misrepresentations.

On May 31, Debtor filed a reply to the Opposition (the "Reply") [doc. 51]. In the Reply, Debtor asserts that: (1) Plaintiff's belief that the Tentative Decision may not be used in future motions is incorrect; (2) the language used in the Trial Judgment unambiguously states that only non-debtor Romero made misrepresentations; (3) the Default Judgment is dischargeable because it was based on a breach of contract claim; and (4) Plaintiff is raising new allegations of fraud against Debtor that are barred by the statute of limitations.

On July 17, 2019, Plaintiff filed the SUF [doc. 57], and on July 31, 2019, Debtor filed another reply in support of the Motion [doc. 59].

II. DISCUSSION

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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 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.").

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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. Statute of Limitations

"[A] plaintiff in a bankruptcy adversary proceeding to except a debt from discharge [pursuant to § 523] need only have "established the debt" under state law prior to the bankruptcy; only the dischargeability of the debt need be determined by the bankruptcy court." *In re DiBenedetto*, 560 B.R. 531, 536 (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*, 87 Cal. App. 4th 1369, 1373 (2001).

Here, to the extent that Plaintiff makes any new allegations against Debtor for fraud in the FAC that were not in the State Court Complaint, such allegations are barred by the statute of limitations. As such, in this proceeding, the Court need only determine the preclusive effect of the Default Judgment and Trial Judgment.

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:

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- (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)).

"The party asserting preclusion bears the burden of establishing the threshold requirements." *Harmon*, 250 F.3d at 1245. "This means providing 'a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action.'" *Plyam*, 530 B.R. at 462 (quoting *In re Kelly*, 182 B.R. 255, 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*, 182 B.R. at 258.

"The bar is asserted against a party who had a full and fair opportunity to litigate the issue in the first case but lost. *DKN Holdings LLC v. Faerber*, 61 Cal. 4th 813, 826–27 (2015). "The point is that, once an issue has been finally decided *against* such a party, that party should not be allowed to relitigate the same issue in a new lawsuit." *Id.* "Issue preclusion operates 'as a shield against one who was a party to the prior action to prevent' that party from relitigating an issue already settled in the previous case." *Id.* (quoting *Rice v. Crow*, 81 Cal.App.4th 725, 735 (2000)).

1. Default Judgment

The "express finding" requirement is generally considered when a court is deciding the preclusive effect of a default judgment. *See, e.g. Harmon*, 250 F.3d at 1248-49. In *Harmon*, the Ninth Circuit Court of Appeals held that even default judgments have preclusive effect unless: (A) the defendant is unaware of the litigation; and (B) it is not clear that the issues were actually litigated. *Harmon*, 250 F.3d at 1247. For instance, "a court's silence concerning a pleaded allegation does not constitute adjudication of the issue." *Id.*

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Here, the Default Judgment is silent on the basis of the judgment. The state court merely stated, "Plaintiff has demonstrated an adequate basis for his claim against the defaulting Defendants." The Default Judgment does not state whether Plaintiff's substantiated claim is the breach of contract claim or the fraud claim. Presumably, the Default Judgment is based on the breach of contract claim, because: (1) the amount of damages is the same; and (2) the state court made a finding that Debtor breached the contract. However, it is unclear. As such, the Default Judgment does not have any preclusive effect on this Court.

2. Trial Judgment

As an initial matter, Plaintiff argues that Debtor is barred from introducing the Tentative Decision because the MTD Order struck the Tentative Decision from the FAC. Because the Tentative Decision contradicted the allegations in the FAC, for Plaintiff's benefit - to eliminate Plaintiff's having to file another amended complaint, the Court decided to strike the conflicting Tentative Decision from the FAC. This does not prevent Debtor from introducing the Tentative Decision or the Trial Judgment to support his position.

Regarding the first element, the fraud issue is identical to the fraud issue decided in the state court action. Both actions arose from the same nexus of facts and relate to the alleged fraud by Debtor and non-debtors that supposedly induced Plaintiff to enter into the Agreements. Further, the elements of fraud under § 523(a)(2)(A) mirror the elements of fraud under California law. *In re Younie*, 211 B.R. 367, 373-74 (B.A.P. 9th Cir. 1997), *aff'd*, 163 F.3d 609 (9th Cir. 1998). Accordingly, this element is satisfied.

Regarding the second and third elements, as to whether the fraud issues were actually litigated, the court must either include "express findings" as to the issues, or "the express finding requirement can be waived if the court in the prior proceeding necessarily decided the issue...." *Id.* "As a conceptual matter, if an issue was necessarily decided in a prior proceeding, it was actually litigated." *Id.*

Here, the fraud issue was actually litigated and necessarily decided in the state court action. Both Plaintiff and Debtor agree that the state court conducted a trial on the merits for all claims in the State Court Complaint, including the claim for fraud. SUF, ¶ 5. Moreover, the Trial Judgment is not a default judgment, and the trial minutes

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2:30 PM

CONT... **Jorge Alberto Romero II**

Chapter 7

[RJN, Exh. 2] demonstrate that the state court actually litigated Plaintiff's fraud claim, and necessarily decided the fraud issue, by expressly holding that Romero was the only person that made misrepresentations to Plaintiff. This ruling exonerates Debtor. Under *Harmon*, because the state court necessarily decided each element of § 523(a) (2)(A) before entering a judgment of fraud against Romero, the state court also actually litigated the fraud issues.

Although Plaintiff argues that the state court's findings are not clear on whether the state court was referring to Romero or Debtor, the Trial Judgment specifically named Romero and Debtor on page one of the decision and then holds only Romero (not Debtor) liable as to fraud.

Because this Court did not enter the Trial Judgment, this Court does not have the power to amend the Trial Judgment. Further, this Court is not in a position to question how or why the state court entered the Trial Judgment. 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments). Plaintiff could have requested the state court amend or clarify the Trial Judgment; he did not. Consequently, for the reasons noted above, the issues before this Court were necessarily decided and actually litigated in the state court action.

Regarding the fourth and fifth elements, the Trial Judgment is final and on the merits, and Plaintiff is the same plaintiff as in the state court action. In the state court action, Plaintiff had a full and fair opportunity to litigate the fraud issue as to Debtor. Plaintiff introduced evidence regarding Debtor's alleged fraud at the trial on the State Court Complaint, and the state court found that only Romero made misrepresentations. Plaintiff cannot relitigate the fraud issue in this Court. As such, these elements are satisfied.

Judicial economy also mandates application of issue preclusion. Plaintiff prosecuted the State Court Complaint to completion. Because the issues presented in this adversary proceeding were already adjudicated by another court, it would be a waste of judicial resources to conduct a second trial. As a result, the policy considerations set forth by the California Supreme Court mandate application of issue preclusion, and the Court will give the Trial Judgment preclusive effect.

III. CONCLUSION

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CONT... Jorge Alberto Romero II

Chapter 7

For the reasons discussed above, the Court will grant the MSJ.

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

Party Information

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

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 7, 2019

Hearing Room 301

2:30 PM

1:18-10385 Jorge Alberto Romero II

Chapter 7

Adv#: 1:18-01057 Acevedo v. Romero II

#32.00 Pretrial 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; 12/12/18; 5/8/19; 6/19/19

Docket 14

Tentative Ruling:

See calendar no. 31.

Party Information

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
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Wednesday, August 7, 2019

Hearing Room 301

2:30 PM

1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01116 Bars v. Sheikh

#33.00 Pretrial conference re complaint to determine dischargeability and in objection to discharge [11 U.S.C. §§727(a)(4)(A)' 523(a) (2)

fr. 1/9/2019; 6/12/19

Docket 1

Tentative Ruling:

At the prior pretrial conference, the Court noted several issues with the pretrial stipulation filed by the plaintiff [doc. 12], such as: (A) the lack of a signature by the defendant; (B) the inclusion of new issues of law not asserted in the complaint; (C) the fact that the plaintiff indicated a desire to file a motion for leave to amend the complaint; and (D) the failure of the parties to identify their exhibits adequately or to provide summaries of the testimony to be provided by each party.

At that time, the Court continued the pretrial conference to offer the plaintiff an opportunity to file a timely motion for leave to amend the complaint, i.e., three weeks before the continued pretrial conference, or to file a properly amended joint pretrial stipulation.

To date, the plaintiff has neither filed a timely motion for leave to amend the complaint, nor cured the deficiencies in the existing pretrial stipulation. Consequently, the Court will continue this pretrial conference to **1:30 p.m. on September 11, 2019.**

If, no later than **August 21, 2019**, the plaintiff does NOT file and serve either a motion for leave to amend the complaint or a pretrial stipulation conforming to Local Bankruptcy Rule 7016-1, the Court will dismiss this adversary proceeding for failure to prosecute.

The Court will prepare an order to show cause why this adversary proceeding should not be dismissed for failure to prosecute.

Party Information

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CONT... Atif Sheikh

Chapter 7

Debtor(s):

Atif Sheikh

Represented By
Steven M Gluck

Defendant(s):

Atif Sheikh

Pro Se

Joint Debtor(s):

Naureen Sheikh

Represented By
Steven M Gluck

Plaintiff(s):

Candace Marie Bars

Represented By
David C Bernstein

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Thursday, August 8, 2019

Hearing Room 301

10:30 AM

1:13-11900 Whitney Green Lynn

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David K. Gottlieb, Chapter 7 Trustee

Levene, Neale, Bender, Yoo & Brill LLP, Attorneys for Chapter 7 Trustee

BPE&H, Accountants for Chapter 7 Trustee

Docket 318

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$104,343.33 and reimbursement of expenses of \$123.70, 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. The chapter 7 trustee is authorized to collect the remaining balance of \$31,101.61 in fees and \$9.50 in expenses.

Levene, Neale, Bender, Yoo & Brill L.L.P. ("Levene Neale"), counsel to chapter 7 trustee – approve fees of \$112,237.40 and reimbursement of expenses of \$8,489.29, 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. Levene Neale is authorized to collect the remaining balance of \$12,715.00 in fees and \$503.12 in expenses. The Court will not approve \$550.00 in fees for the reasons below.

BPE&H, an accountancy ("BPE&H"), accountant to chapter 7 trustee – approve fees of \$8,235.75, 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. BPE&H is authorized to collect the remaining balance of \$3,167.75 in fees. The Court will not approve \$6,364.00 in fees and \$300.00 expenses 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"

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CONT... Whitney Green Lynn

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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 accordance with the foregoing, the Court will not approve the fees billed by BPE&H for the services identified below because the time entries fail to include a description of the services provided.

Category	Timekeeper	Date	Description	Rate	Time	Fee Billed
Tax—Fid	BPrice	12/19/18	[NONE]	\$360	0.60	\$216.00
Tax—Fid	Calles	12/19/18	[NONE]	\$240	3.00	\$660.00
Tax—Fid	Calles	12/20/18	[NONE]	\$240	4.50	\$990.00
Tax—Fid	Belak	12/20/18	[NONE]	\$445	1.00	\$425.00
Tax—Fid	Belak	12/21/18	[NONE]	\$445	1.00	\$425.00
Tax—Fid	Calles	1/22/19	[NONE]	\$240	1.00	\$240.00
Tax—Fid	BPrice	2/1/19	[NONE]	\$360	0.25	\$93.75
Tax—Fid	Calles	2/15/19	[NONE]	\$240	0.75	\$180.00
Tax—Fid	Belak	2/15/19	[NONE]	\$445	2.50	\$1,112.50
Tax—Indiv	Belak	2/1/19	[NONE]	\$445	0.50	\$222.50
Tax—Fid	Partovich	2/22/19	[NONE]	\$55	0.35	\$19.25
Tax—Part	Belak	2/18/19	[NONE]	\$445	3.00	\$1,335.00
Tax—Fid	Belak	2/21/19	[NONE]	\$445	0.25	\$111.25
Tax—Fid	Belak	2/28/19	[NONE]	\$445	0.25	\$111.25
Tax—Fid	Belak	3/1/19	[NONE]	\$445	0.50	\$222.50

Further, BPE&H states that it incurred \$300 in expenses related to "computer charges." The Court will not approve these expenses because BPE&H failed to provide a sufficient explanation of these charges.

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

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CONT... Whitney Green Lynn

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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 Levene Neale for the services identified below:

Category	Timekeeper	Date	Description	Rate	Time	Fee
Fee / Employment Application	JAB	8/28/18	REVIEW AND FINALIZE FEE APPLICATION OF BPE&H AND EXHIBITS THERETO; EFILE	\$250	0.5	\$125.00
Fee / Employment Application	LC	8/30/18	PREPARATION OF LNBYB INTERIM FEE APPLICATION AND NOTICE OF HEARING; SERVE AND E-FILE; PPO EXHIBITS AND SERVICE LISTS	\$250	1.5	\$375.00
Fee / Employment Application	LC	9/20/18	PREPARATION OF FEE APP ORDER AND UPLOAD	\$250	0.2	\$50.00

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 oppositions 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

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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

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Thursday, August 8, 2019

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10:30 AM

1:13-14437 Jairo Gamba

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Brutzkus Gubner, Attorneys for Chapter 7 Trustee

Menchaca & Company LLP, Accountants for Chapter 7 Trustee

Docket 114

Tentative Ruling:

David Seror, chapter 7 trustee – approve fees of \$5,750.00 and reimbursement of expenses of \$21.50, pursuant to 11 U.S.C. § 330, on a final basis. The trustee is authorized to receive 100% of the approved fees and reimbursement of expenses.

Brutzkus Gubner Rozansky Seror Weber LLP (“Brutzkus Gubner”), counsel to chapter 7 trustee – approve fees of \$18,917.00 and reimbursement of expenses of \$924.67, pursuant to 11 U.S.C. § 330, on a final basis. Brutzkus Gubner is authorized to receive 100% of the approved fees and reimbursement of expenses.

Menchaca & Company, LLP (“Menchaca”), accountant to chapter 7 trustee – approve fees of \$2,989.00 and reimbursement of expenses of \$216.15, pursuant to 11 U.S.C. § 330, on a final basis. Menchaca is authorized to receive 100% of the approved fees and reimbursement of 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.

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10:30 AM

CONT... Jairo Gamba

Chapter 7

Debtor(s):

Jairo Gamba

Represented By
Robert L Wilkes

Trustee(s):

David Seror (TR)

Represented By
Jessica L Bagdanov
Richard Burstein
Steven T Gubner

**United States Bankruptcy Court
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Thursday, August 8, 2019

Hearing Room 301

10:30 AM

1:17-13142 Amir Elosseini

Chapter 11

#3.00 Revised first interim application of Libertybell Law Group for allowance of fees and reimbursement of expenses

Docket 115

Tentative Ruling:

The Court will continue this hearing to **September 5, 2019 at 10:30 a.m. By August 15, 2019**, the applicant must cure the deficiencies noted below.

Contrary to LBR 2016-1(a)(2)(B), applicant did not serve all 20 largest unsecured creditors with notice of the hearing and the application. For example, applicant did not serve American Express, Chase/Bank One Card Serv, MB Financial Services and Wells Fargo Bank PCM.

Contrary to LBR 2016-1(a)(1)(A)(iii), the application does not discuss the amount of cash on hand in the estate or the estimated amount of other accrued expenses of administration.

If the requested fees and expenses are allowed, it is unclear how the debtor would pay the allowed fees and expenses. Applicant requests allowance and payment of \$45,568.75 in attorneys' fees and \$1,187.16 in costs. Based on the debtor's most recent monthly operating report, as of June 2019, the debtor had an ending balance of \$2,269.68 in his DIP account.

Appearances on August 8, 2019 are excused.

Party Information

Debtor(s):

Amir Elosseini

Represented By
Kevin Tang
David Miller

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Thursday, August 8, 2019

Hearing Room 301

10:30 AM

1:17-13142 Amir Elosseini

Chapter 11

#4.00 Application for interim compensation for Kevin Tang, Debtor's Attorney

Docket 145

Tentative Ruling:

The Court will continue this hearing to **September 5, 2019 at 10:30 a.m. By August 15, 2019**, the applicant must cure the deficiencies noted below.

Contrary to LBR 2016-1(a)(2)(B), applicant did not serve all 20 largest unsecured creditors with notice of the hearing and the application. For example, applicant did not serve American Express, Chase/Bank One Card Serv, MB Financial Services and Wells Fargo Bank PCM.

Contrary to LBR 2016-1(a)(1)(A)(iii), the application does not discuss the amount of cash on hand in the estate or the estimated amount of other accrued expenses of administration.

Although the application includes a curriculum vitae for Kevin Tang and Clarissa D. Cu (Exh. D), it does not contain the information required by LBR 2016-1(a)(1)(H) with respect to the other billing individuals.

If the requested fees and expenses are allowed, it is unclear how the debtor would pay the allowed fees and expenses. Applicant requests allowance and payment of \$20,096.04 in attorneys' fees and costs. Based on the debtor's most recent monthly operating report, as of June 2019, the debtor had an ending balance of \$2,269.68 in his DIP account.

Assuming other deficiencies are cured, the Court will not allow the following 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

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CONT... Amir Elosseini

Chapter 11

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).

In accordance with the foregoing, the Court will reduce the following fee because it is excessive:

Category	Date	Timekeeper	Description	Time	Rate	Fee	Reduced Time	Reduced Fee
Fee/Employment Application	12/17/17	KT	Review and Revise Application to Employ Counsel	1.2	\$350.00	\$420.00	0.7	\$245.00

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

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CONT... Amir Elosseini

Chapter 11

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 as secretarial:

Category	Date	Timekeeper	Description	Time	Rate	Fee
Case Administration	1/25/18	KT	Complied, prepared and filed Debtor's 2015 and 2016 tax returns with the Bankruptcy Court	0.4	\$350.00	\$140.00
Case Administration	2/25/18	KT	Drafted and filed Proof of Service Re Notice of Bar Date for Filing POC	0.2	\$350.00	\$70.00
Case Administration	4/16/18	KT	Complied and filed Debtor's 2017 tax return with the bankruptcy court	0.1	\$350.00	\$35.00
Fee/Employment Application	7/10/19	JV	Reviewed and selected date for setting Liberty Bell Law's Fee app for hearing	0.6	\$200.00	\$120.00

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CONT... Amir Elosseini

Chapter 11

Appearances on August 8, 2019 are excused.

Party Information

Debtor(s):

Amir Elosseini

Represented By
Kevin Tang
David Miller

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Thursday, August 8, 2019

Hearing Room 301

10:30 AM

1:15-13561 Akop Terpogosyan and E. Eyov Avtalyon Group, LTD.

Chapter 7

#5.00 Application for final fees and/or expenses (11 U.S.C. § 330)
for Regis F Boyle, paraprofessional

Docket 229

Tentative Ruling:

The Court will continue this hearing to **September 19, 2019 at 10:30 a.m. By August 22, 2019**, the applicant must cure the deficiencies noted below.

On July 1, 2019, the applicant filed a notice of hearing [doc. 231]. In that notice, the caption does not indicate that this is a jointly administered case, and it states that the hearing will be held at "31041 Burbank Boulevard." Further, the text of the notice states that the hearing will be held on July 18, 2019 and that any opposition was due by July 4, 2019 (three days after it was served).

Contrary to LBR 2016-(a)(1)(A)(i), applicant did not include a brief narrative history and report concerning the status of the case.

Contrary to LBR 2016-1(a)(1)(A)(iii), the application does not discuss the amount of cash on hand in the estate or the estimated amount of other accrued expenses of administration.

By **August 15, 2019**, the applicant must file a notice of continued hearing that indicates that this is a jointly administered case and that the hearing will be held on September 19, 2019 at 10:30 a.m. at "Courtroom 301 at 21041 Burbank Boulevard, Woodland Hills, California 91367." That notice must indicate that any written opposition must be filed and served within 14 days of the continued hearing. That notice must be served on the 20 largest unsecured creditors. The applicant also must file an amended application curing the deficiencies noted above.

Appearances on August 8, 2019 are excused.

Party Information

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10:30 AM

CONT... Akop Terpogosyan and E. Eyov Avtalyon Group, LTD.

Chapter 7

Debtor(s):

Akop Terpogosyan

Pro Se

Joint Debtor(s):

Lilit Chaghayan

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By
Leonard Pena

**United States Bankruptcy Court
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Hearing Room 301

1:00 PM

1:13-17502 Glenroy E Day, Jr.

Chapter 11

#6.00 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; 11/15/18; 2/21/19; 4/4/19

Docket 1

***** VACATED *** REASON: Order entered granting joint motion to close
case [doc. 291].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Glenroy E Day Jr.

Represented By
Thomas B Ure

**United States Bankruptcy Court
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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); 6/7/18(stip), 7/19/18(stip) ; 8/16/18; 10/4/18(stip);
11/8/18; 2/7/19(stip); 5/16/19(stip)

Stip to continue filed 7/25/19

Docket 114

***** VACATED *** REASON: Order approving stip to continue entered
7/30/19. Hearing continued to 12/12/19 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes
Roksana D. Moradi

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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); 6/7/18(stip); 7/19/18(stip);
8/16/18; 10/4/18(stip); 11/8/18; 2/7/19(stip); 5/16/19(stip)

Docket 1

***** VACATED *** REASON: Order approving stip to continue entered
7/30/19. Hearing continued to 12/12/19 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes

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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; 11/15/18, 1/24/19; 3/14/19; 4/25/19;
5/16/19

Docket 1

Tentative Ruling:

In light of the continued trial date for the debtor's state court litigation, and in order to assess the allegedly imminent and significant increase in the debtor's post-petition employment income, the Court will continue this hearing to **November 14, 2019 at 2:00 p.m.**

No later than October 31, 2019, the debtor must file an updated case status report regarding the pending state court litigation, and his progress toward confirming a chapter 11 plan, supported by evidence in the form of declarations and supporting documents.

Appearances on August 8, 2019 are excused.

Party Information

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 8, 2019

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#10.00 Status conference re chapter 11 case

fr. 10/11/18; 12/6/18; 2/21/19; 4/11/2019; 6/20/19

Docket 1

***** VACATED *** REASON: Order ent continuing hrg to 8/29/19 at 1:00
p.m. - jc**

Tentative Ruling:

- NONE LISTED -

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 8, 2019

Hearing Room 301

1:00 PM

1:19-10051 Rockin Artwork, LLC

Chapter 11

#11.00 Status conference re chapter 11 case

fr. 3/7/19

Docket 1

***** VACATED *** REASON: Case converted to one under chapter 7 on
4/24/19 [doc. 112].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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

Thursday, August 8, 2019

Hearing Room 301

1:00 PM

1:19-10052 Purple Haze Properties, LLC

Chapter 11

#12.00 Status conference re chapter 11 case

fr. 3/7/19

Docket 0

*** VACATED *** REASON: Case converted to one under chapter 7 on
4/24/19 [doc. 32].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Purple Haze Properties, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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

Thursday, August 8, 2019

Hearing Room 301

1:00 PM

1:19-10062 Andrew Marc Pitsicalis

Chapter 11

#13.00 Status conference re: chapter 11 case

fr. 3/7/19

Docket 1

***** VACATED *** REASON: Case converted to one under chapter 7 on
4/24/19 [doc. 64].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrew Marc Pitsicalis

Pro Se

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

Thursday, August 8, 2019

Hearing Room 301

1:00 PM

1:19-11386 FinCabiz, Inc.

Chapter 11

#14.00 Status conference re chapter 11 case

Docket 0

Tentative Ruling:

On June 21, 2019, the Court entered an *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* (the "Order") [doc. 19]. Contrary to the Order, the debtor did not timely file a case status report. The debtor also has not filed a monthly operating report for June 2019.

On August 2, 2019, the debtor filed a non-opposition to the United States Trustee's motion to dismiss or convert the case [docs. 51 and 52]. In that non-opposition, the debtor requests dismissal of the case.

Pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1112(b)(1), (4)(E) and (F), this case will be dismissed with 180-day bar to the debtor's filing of another petition under any chapter of the Bankruptcy Code. Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, filed on June 18, 2019, and the claims docket, the Court concludes that it is in the best interest of creditors and the estate to dismiss this case.

The Court will prepare the order.

Party Information

Debtor(s):

FinCabiz, Inc.

Represented By
Javier H Castillo

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

Thursday, August 8, 2019

Hearing Room 301

1:00 PM

1:19-11417 Clean FX, LLC

Chapter 11

#15.00 Status conference re chapter 11 case

Docket 0

*** VACATED *** REASON: Order entered approving stipulation to
dismiss case [doc. 43].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Clean FX, LLC

Represented By
Andrew K Yun

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

Thursday, August 8, 2019

Hearing Room 301

2:00 PM

1:17-10378 Kandy Kiss of California, Inc.

Chapter 7

#16.00 Chapter 7 trustee's motion for order authorizing sale of certain remnant assets free and clear of liens, claims, interests, and encumbrances pursuant to 11 U.S.C. §§ 105 and 363, subject to overbids, and related relief

Docket 176

Tentative Ruling:

Grant.

Movant 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**

Thursday, August 8, 2019

Hearing Room 301

2:00 PM

1:18-10385 Jorge Alberto Romero II

Chapter 7

#17.00 Motion to object debtor's homestead exemption claim

Docket 36

Tentative Ruling:

Based on the Court's posted tentative ruling, set forth below, the parties have informed the Court that the debtor has agreed to reduce his disputed claim of exemption voluntarily. Consequently, the objecting creditor need not demonstrate that he failed to receive actual notice of the amended exemption claims and that he timely filed his objection to the debtor's claim of exemption (as discussed in further detail below).

The debtor has agreed to submit the order.

As a result, appearances on August 8, 2019 are excused.

I. BACKGROUND

On February 13, 2018, Jorge Alberto Romero II ("Debtor") filed a voluntary chapter 7 petition. On May 29, 2018, Debtor received a discharge [doc. 19], and the following day, Debtor's case was closed.

On May 3, 2019, Debtor filed a motion to reopen his bankruptcy case [doc. 22]. On May 6, 2019, the Court entered an order reopening Debtor's case [doc. 23]. On May 9, 2019, Debtor filed an amended schedule A/B, listing the real property located at 13755 Wingo Street, Arleta, CA 91331 (the "Property"). Debtor also filed an amended schedule C, in which Debtor claimed a \$28,000 exemption in the Property pursuant to California Code of Civil Procedure ("CCP") § 703.140(b)(5), otherwise known as the wild card exemption statute. In addition to this claim of exemption, Debtor used CCP § 703.140(b)(5) to claim additional exemptions in two turtles, in the amount of \$120, and in certain savings, in the amount of \$75. Debtor had not listed the Property or claimed these exemptions in his original schedules.

On July 10, 2019, Carlos Acevedo filed the Motion [doc. 36]. In the Motion, Mr. Acevedo asserts that Debtor cannot claim an exemption in the Property because the

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2:00 PM

CONT... **Jorge Alberto Romero II**

Chapter 7

Property was not Debtor's primary residence at the time Debtor filed his petition. On July 15, 2019, Debtor filed an opposition to the Motion (the "Opposition") [doc. 41], noting that Debtor used the wild card statute to claim an exemption in the Property, which does not require that Debtor live in the Property. Debtor also asserts that the Motion is untimely because it was filed more than 30 days after Debtor filed his amended schedules. On July 30, 2019, Mr. Acevedo filed a reply to the Opposition [doc. 42], contending he did not receive notice of the reopened bankruptcy case or the amended schedules and, as a result, could not have filed the Motion within the deadline.

II. ANALYSIS

Pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 4003(b)(1), "a party in interest may file an objection to the list of property claimed as exempt... within 30 days after any amendment to the list or supplemental schedules is filed...." Here, Debtor filed his amended schedules on May 9, 2019. Mr. Acevedo did not file the Motion until July 10, 2019, approximately one month after the deadline.

Nevertheless, Debtor did not provide notice of the reopening of the bankruptcy case or the filing of the amended schedules to Mr. Acevedo. Pursuant to Rule 1009(a), upon filing any amendment to schedules or statements, a "debtor *shall* give notice of the amendment to the trustee and to any entity affected thereby." (emphasis added). "If the schedule of exemption is insufficient to put the trustee and/or creditors on notice as to the property that the debtor is claiming as exempt, the thirty-day objection period begins to run only upon the debtor's amendment to the schedule of exemptions, *or upon receipt of actual notice by the trustee or the creditor objecting to the claim of exemption.*" *Preblich v. Battley*, 181 F.3d 1048, 1052 (9th Cir. 1999) (citing *In re Woodson*, 839 F.2d 610, 614-15 (9th Cir. 1988)) (emphasis added). Several courts have held that, where a creditor does not receive notice of an amendment to schedules, the deadline under Rule 4003(b) is tolled. *See, e.g. In re Moore*, 269 B.R. 864, 868 (Bankr. D. Idaho 2001); *In re Banke*, 267 B.R. 852, 855-56 (Bankr. N.D. Iowa 2001).

As such, whether the Motion is timely depends on when Mr. Acevedo received actual notice of the filing of the amended schedules. There is no declaration attached to the Reply, but Mr. Acevedo alleges therein that he learned about the reopened bankruptcy case when he received documents from Debtor's ex-wife's attorney. Mr. Acevedo

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2:00 PM

CONT... Jorge Alberto Romero II

Chapter 7

does not specify when he received these documents.

Assuming Mr. Acevedo timely filed the Motion, the Motion may be granted in part and denied in part. Under 11 U.S.C. § 522(l), "[u]nless a party in interest objects, the property claimed as exempt [on debtor's schedules] is exempt." Pursuant to CCP § 703.580(b), "[a]t a hearing under this section, the exemption claimant has the burden of proof." "[W]here a state law exemption statute specifically allocates the burden of proof to the debtor, [Rule] 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016); *see also Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000) (holding that the burden of proof is a substantive element of state law applicable when federal courts apply state law).

Pursuant to CCP § 703.140(b)(5), a debtor may claim an exemption in "[t]he debtor's aggregate interest, not to exceed in value one thousand two hundred eighty dollars (\$1,280) plus any unused amount of the exemption provided under paragraph (1), in any property." CCP § 703.140(b)(1), in turn, allows debtors to claim an exemption in "[t]he debtor's aggregate interest, not to exceed twenty-four thousand sixty dollars (\$24,060) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence...."

CCP § 703.140(b)(5) does not require that a debtor be a homeowner in order to claim any real or personal property as exempt under that section. *In re Reaves*, 256 B.R. 306, 313 (B.A.P. 9th Cir. 2000). If the debtor does not claim any exemptions under CCP § 703.140(b)(1), then the "unused amount" of that exemption is equal to the entire exemption amount. *Id.*; *see also In re Garcia*, 709 F.3d 861, 864 (9th Cir. 2013) (holding that CCP § 703.140(b)(1) and (b)(5) combine to allow a debtor to exempt the total set forth in both subsections in "any property" and emphasizing the broad reach of the word "any").

Under these authorities, Debtor is not required to live in the Property to claim an exemption in the Property under CCP § 703.140(b)(5). However, Debtor has exceeded the allowed amount of the wild card statute. The aggregate amount allowed between CCP § 703.140(b)(1) and (b)(5) is \$25,340. Here, Debtor claimed a \$28,000 exemption in the Property as well as additional exemptions in his turtles and savings, totaling \$28,195.

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CONT... Jorge Alberto Romero II

Chapter 7

In light of the above, unless Debtor agrees to reduce his claims of exemption under CCP § 703.140(b)(1) and (b)(5) by \$2,855 to the statutory allowed amount of \$25,340, the Court intends to continue this hearing for Mr. Acevedo to provide evidence regarding when he received actual notice of the filing of Debtor's amended schedules.

III. CONCLUSION

If Debtor agrees to reduce his claimed exemptions under CCP § 703.140(b)(1) and (b)(5) voluntarily by \$2,855, the Court will grant the Motion in part and deny the Motion in part.

If Debtor does not agree, the Court will continue this hearing to **2:00 p.m. on September 12, 2019**. In the event of a continued hearing, no later than **August 29, 2019**, Mr. Acevedo must file and serve a declaration, signed under penalty of perjury, regarding when he received actual notice of Debtor's amended schedules and must include any relevant evidence as to that issue. No later than **September 5, 2019**, Debtor may file and serve a response to any such declaration.

Party Information

Debtor(s):

Jorge Alberto Romero II

Represented By
Stella A Havkin

Movant(s):

Carlos Acevedo

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
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Courtroom 301 Calendar**

Thursday, August 8, 2019

Hearing Room 301

2:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#18.00 Debtor's motion to extend time or deadline for filing
plan of reorganization and disclosure statement

Docket 84

Tentative Ruling:

In light of the debtor's pending motion to value [doc. 94], the Court will continue this hearing to September 12, 2019 at 2:00 p.m.

Appearances on August 8, 2019 are excused.

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

Movant(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
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Hearing Room 301

2:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#19.00 Status conference re chapter 11 case

fr. 8/16/18; 1/10/19; 3/14/19; 5/23/19;7/18/19

Docket 1

Tentative Ruling:

In light of the debtor's pending motion to value [doc. 94], the Court will continue this status conference to September 12, 2019 at 2:00 p.m.

Appearances on August 8, 2019 are excused.

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**

Thursday, August 8, 2019

Hearing Room 301

2:00 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 11

#20.00 Motion for order (1) Authorizing sale of real property outside of the ordinary course of business under 11 U.S.C. §363(b), and free and clear of any interest under 11 U.S.C. §363(f), subject to overbid; (2) Authorizing payment of undisputed liens, costs of sale, and property taxes; (3) Finding that purchaser is a good faith purchaser under 11 U.S.C. §363(m); and (4) Waiving 14-day stay period under FRBP 6004(h)

Docket 67

Tentative Ruling:

Grant.

I. BACKGROUND

On November 16, 2018, Elizabeth Y. Zaharian ("Debtor") filed a voluntary chapter 11 petition. In her schedule A/B, Debtor listed an interest in real property located at 4146 Murietta Avenue, Sherman Oaks, CA 91423 (the "Property"). Debtor valued the Property at \$2,020,000.

In her schedule D, Debtor listed a disputed judgment lien in favor of Strategic Funding Source, Inc. ("Strategic") in the amount of \$63,109.20. On July 18, 2019, Debtor filed a motion to avoid the judgment lien held by Strategic under 11 U.S.C. § 522(f) (the "Motion to Avoid Lien") [doc. 59]. Strategic opposes the Motion to Avoid Lien [doc. 71].

On the same day, Debtor filed a motion to sell the Property (the "Motion") [docs. 60, amended at doc. 67]. Debtor also filed three declarations in support of the Motion [docs. 61, 62, 63]. On July 25, 2019, Strategic filed an opposition to the Motion (the "Opposition") [doc. 72]. In the Opposition, Strategic asserts that Debtor cannot sell the Property free and clear of the lien held by Strategic because Strategic does not consent to the sale. Strategic also contends that Debtor did not provide enough information and evidence about the Purchasers or about the liens against the Property. On August 1, 2019, Debtor filed a reply to the Opposition (the "Reply") [doc. 77] as

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CONT... Elizabeth Y. Zaharian

Chapter 11

well as a supplemental declaration by Steve Shrager, the real estate broker involved with this transaction (the "Shrager Declaration") [doc. 78].

II. ANALYSIS

Here, as to Strategic's argument that Debtor has not provided enough information or evidence to support the Motion, the supplemental Shrager Declaration coupled with the evidence attached to the Motion provides sufficient support regarding the sale and the liens against the Property.

Strategic also contends that the Motion may not be granted because Strategic does not agree that its lien should be avoided. Pursuant to 11 U.S.C. § 363(f)—

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

In the Opposition, Strategic asserts that it does not consent to the sale and states in a conclusory fashion that none of the other subsections of § 363(f) are satisfied. However, given that the Motion to Avoid Lien is contested and the parties actively dispute whether Strategic's lien may be avoided, the sale falls squarely within § 363(f) (4). As such, the Court will approve the sale.

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2:00 PM

CONT... Elizabeth Y. Zaharian

Chapter 11

III. CONCLUSION

The Court will grant the Motion.

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

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

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

Thursday, August 8, 2019

Hearing Room 301

2:00 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 11

#21.00 Motion to avoid judicial lien of Strategic Funding Source, Inc.
DBA Kapitus, Inc. under 11 U.S.C. §522(f) (Real Property)

Docket 59

Tentative Ruling:

Grant.

The Court will not continue this matter for Strategic Funding Source, Inc. ("Strategic") to obtain its own appraisal. "[T]he price paid at a commercially reasonable sale is the best evidence of value." *In re Two S Corp.*, 875 F.2d 240, 243 (9th Cir. 1989); *see also In re 2712 Mission Partners, L.P.*, 2010 WL 431738, at *5 (Bankr. N.D. Cal. Jan. 22, 2010) ("The value of the Property can reliably be determined only in a sale. A market transaction is always a more accurate indication of value than a court determination made on the basis of appraisals."). Here, the Court will conduct a sale of the subject property on the same date as the hearing on this motion. The final sale price of the subject property is the best evidence of value. Consequently, unless Strategic can demonstrate a decline in the market since the petition date, Strategic has not provided a good reason to continue this matter for Strategic to obtain an appraisal.

In addition, the operative date to value all liens against the property is the petition date. *In re Salanoa*, 263 B.R. 120, 122-23 (Bankr. S.D. Cal. 2001). Here, as of the petition date, Pacific M. International ("PMI") held a recorded lien against the property, which has not been invalidated to date. Strategic has not provided any legal authority that the debtor's pending dispute with PMI alters this analysis. As such, the Court will avoid Strategic's lien under 11 U.S.C. § 522(f).

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

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

Thursday, August 8, 2019

Hearing Room 301

2:00 PM

1:18-13023 Hekmatjah Family Limited Partnership

Chapter 11

#22.00 Debtor's motion to dismiss chapter 11 case

Docket 65

Tentative Ruling:

On July 11, 2019, the U.S. Trustee filed a motion to dismiss this case (the "UST Motion") [doc. 60] on the basis that the debtor has not timely filed monthly operating reports for February, March, April and May 2019. The debtor also must pay the U.S. Trustee its quarterly fees in the amount of \$325 for the second quarter of 2019.

In addition, the debtor and creditors Mouris Ahdout and Simon P. Etehad ("Creditors") now dispute whether the debtor has provided for payment of Creditors' claim in full. On June 20, 2019, the Court granted Creditors' request for relief from the automatic stay for the parties to proceed with arbitration in state court [doc. 58].

The debtor now requests dismissal of this case without a bar to refiling. However, given: (A) the debtor's failure to comply with its reporting requirements; (B) the debtor's failure to pay the U.S. Trustee its fees; (C) the apparent dispute with Creditors over whether Creditors' claim has been resolved; and (D) the prior grant of relief from the automatic stay to adjudicate that issue in a nonbankruptcy forum, the Court will approve dismissal of this case, only subject to a 180-day bar to refiling.

Otherwise, the Court intends to continue this matter to **1:00 p.m. on August 22, 2019**, to be heard with the hearing on the UST Motion. At that time, the Court will assess if the debtor has filed all monthly operating reports due by that date.

Whether or not the Court dismisses this case, the parties should address their issues regarding Creditors' claim with the arbitrator. The Court previously granted relief from the automatic stay for the parties to resolve these issues in a nonbankruptcy forum.

Party Information

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CONT... Hekmatjah Family Limited Partnership

Chapter 11

Debtor(s):

Hekmatjah Family Limited

Represented By
Stella A Havkin

**United States Bankruptcy Court
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San Fernando Valley
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Thursday, August 8, 2019

Hearing Room 301

2:00 PM

1:19-10051 Rockin Artwork, LLC

Chapter 7

#23.00 Chapter 7 Trustee's Motion for order authorizing compromise of controversy pursuant to Federal Rule of Bankruptcy Procedure 9019; and transfer of personal property pursuant to 11 U.S.C. Section 363

Docket 140

Tentative Ruling:

For the reasons discussed below, the Court will grant the motions.

I. BACKGROUND

On January 9, 2019, Rockin Artwork, LLC ("Rockin") filed a voluntary chapter 11 petition, initiating case 1:19-bk-10051-VK. On the same day, Purple Haze Properties, LLC ("PHP") filed a voluntary chapter 11 petition, initiating case 1:19-bk-10052-VK. On January 18, 2019, the Court entered an order approving Rockin and PHP's motion for joint administration of the cases [Rockin, doc. 18].

The managing member of Rockin and PHP is Andrew Marc Pitsicalis (collectively with Rockin and PHP, "Debtors"). On January 11, 2019, Mr. Pitsicalis filed a voluntary chapter 11 petition, initiating case 1:19-bk-10062-VK.

On January 18, 2019, Debtors' creditors, Experience Hendrix, LLC and Authentic Hendrix, LLC (together, "Hendrix Creditors") filed motions to appoint a chapter 11 trustee or to convert the cases to ones under chapter 7 in Debtors' cases (the "Creditors' Motions") [Rockin, doc. 21; Pitsicalis, doc. 17]. On February 13, 2019, the Court entered orders granting the Creditors' Motions and directing the appointment of a chapter 11 trustee in Debtors' cases [Rockin, doc.63; Pitsicalis, doc. 41]. Subsequently, Heide Kurtz (the "Trustee") was appointed chapter 11 trustee in Debtors' cases [Rockin, doc. 75; Pitsicalis, doc. 50].

On April 23, 2019, the Trustee filed motions to convert Debtors' cases to ones under chapter 7 (the "Motions to Convert") [Rockin, doc.111; Pitsicalis, doc. 63]. On April 24, 2019, the Court entered orders granting the Motions to Convert and converting the cases to ones under chapter 7 [Rockin, doc.112; Pitsicalis, doc. 64]. Subsequently, the

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CONT... Rockin Artwork, LLC

Chapter 7

Trustee was appointed chapter 7 trustee in Debtors' cases [Rockin, doc. 117; Pitsicalis, doc. 68].

Prepetition, Debtors and Hendrix Creditors were involved in litigation against each other in multiple states in four separate actions (the "Litigation"). One of those actions is in the United States District Court for the Southern District of New York (the "New York Action"). Hendrix Creditors' position in the Litigation is that they own various intellectual property assets relating to the late rock n' roll musician, Jimi Hendrix and that Debtors have taken actions that infringes on the Hendrix Creditors' rights, title and interests. Debtors' dispute that their actions have infringed on any intellectual property rights Hendrix Creditors may own relating to Jimi Hendrix. Debtors' claims against Hendrix Creditors in the Litigation involve, among other things, abuse of process, tortious interference and defamation.

In Debtors' cases, Hendrix Creditors have filed proofs of claim alleging nonpriority unsecured claims in the approximate amount of \$2,575,000 [Rockin, claim 4-1; Pitsicalis, claim 7-1]. Apparently, Hendrix Creditors have asserted that their claim against Debtors for alleged infringement and exploitations of their intellectual property gives rise to a postpetition administrative claim against Debtors [Declaration of Heide Kurtz, Pitsicalis doc. 78, ¶ 5].

On April 15, 2019, Hendrix Creditors filed a complaint against Mr. Pitsicalis objecting to his discharge under 11 U.S.C. §§ 523(a)(2), (a)(4) and (a)(6), initiating adversary proceeding 1:19-ap-01040-VK (the "Adversary Proceeding").

On July 18, 2019, the Trustee filed motions for orders authorizing compromise of controversy pursuant to Fed. R. Bankr. P. ("FRBP") 9019 and transfer of personal property pursuant to 11 U.S.C. § 363 (the "Motions") [Rockin, doc. 140, Pitsicalis, doc. 78]. The Trustee and Hendrix Creditors have executed a settlement agreement (the "Agreement"). Pursuant to the Agreement, among other things, Hendrix Creditors will pay the aggregate amount of \$75,000 (the "Settlement Payments") to the estates within three days of the effective date and release any alleged administrative expense claim in the cases. In return, the Trustee will, among other things: (1) stipulate to relief from the automatic stay to allow Hendrix Creditors to prosecute the New York Action to final judgment [FN1]; (2) stipulate to injunctive relief enjoining any future acts of infringement by Debtors; (3) release all claims and causes of action asserted by

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CONT... Rockin Artwork, LLC

Chapter 7

Debtors in the Litigation, including all counterclaims and affirmative defenses asserted by Debtors in the New York Action; (4) transfer any fraudulent transfer actions to Hendrix Creditors with respect to Mr. Pitsicalis' residence, Debtors' prepetition transfer to Mr. Pitsicalis' fiancé and her alleged company and any transfer by Debtors of any interest in Purple Haze Radio, Purple Haze Dash or Purple Haze Multimedia; (5) file a motion rejecting any executory license agreements with third parties; and (6) transfer and assign the tangible and intangible personal property assets, including intellectual property rights owned by Debtors relating to Jimi Hendrix and Leon Hendrix. The transfer will be free and clear of all liens, on an as-is, where-is basis. The proceeds from the Settlement Payments will be allocated 40% to Rockin and 60% to PHP.

On July 25, 2019, Mr. Pitsicalis filed an opposition to the Motions (the "Opposition") [Pitsicalis, doc. 86]. In the Opposition, Mr. Pitsicalis argues that the Agreement is fundamentally unfair. Mr. Pitsicalis argues that he does not have the means to defend himself in the New York Action, while also defending against the Adversary Proceeding and any potential fraudulent transfer claims that Hendrix Creditors may bring based on the assignment from the Trustee. Mr. Pitsicalis further argues, among other things, that the Agreement will eliminate his way of making a living for the last ten years.

On August 1, 2019, Hendrix Creditors filed replies to the Opposition (the "Hendrix Replies") [Rockin, doc. 146, Pitsicalis, doc. 87]. In the Hendrix Replies, Hendrix Creditors argues, among other things, that the Opposition fails to rebut any of the law or facts governing the Motions, and that the arguments in the Opposition are not legally relevant.

On August 1, 2019, the Trustee filed replies to the Opposition (the "Trustee Replies") [Rockin, doc. 147, Pitsicalis, doc. 88]. In the Trustee Replies, the Trustee argues that the Agreement, is fair and reasonable and within the Trustee's proper exercise of her business judgment, and that Mr. Pitsicalis lacks standing to object to the Motions in Rockin and PHP's cases.

II. DISCUSSION

A. Mr. Pitsicalis' Standing to Object to the Agreement

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2:00 PM

CONT... Rockin Artwork, LLC

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Bankruptcy appellate standing is limited to those persons who can demonstrate that they are directly and adversely affected pecuniarily by an order of the bankruptcy court. *Robinson v. Fondiller (In re Fondiller)*, 707 F.2d 441, 442–43 (9th Cir.1983). A party asserting standing must demonstrate that the bankruptcy court's order either diminishes his property, increases his burdens, or detrimentally affects his rights. *Id.* at 442. It is well-established that a chapter 7 debtor ordinarily lacks standing to challenge orders affecting the assets of the estate unless there is likely to be a surplus after bankruptcy. *Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.)*, 177 F.3d 774, 778 (9th Cir.1999).

Here, the Trustee asserts that Mr. Pitsicalis lacks standing in Rockin and PHP's cases to oppose the Motions. The Trustee appears correct. Mr. Pitsicalis is an equity holder in both Rockin and PHP. Mr. Pitsicalis has not filed claims in either case, and he was not identified in Rockin or PHP's schedules as a creditor. As such, Mr. Pitsicalis would have standing if there would be a potential distribution to equity holders.

At this point, that does not appear to be the case. Over \$2,600,000 in claims have been filed in Rockin's case. While the Trustee is only holding \$12,000 for the benefit of Rockin and PHP [Declaration of Heide Kurtz, Pitsicalis doc. 88, ¶ 3]. The Trustee has identified an additional asset held by Rockin worth approximately \$77,000. Even with the proceeds from the Agreement, the claims in Rockin and PHP's cases greatly exceed the amount of funds available to creditors. Accordingly, Mr. Pitsicalis will likely not receive a distribution as an equity holder. As such, Mr. Pitsicalis lacks standing to oppose the Motions in Rockin and PHP's cases.

B. Compromise of the Litigation

FRBP 9019(a) provides the following: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." In deciding whether to approve a compromise, courts must determine whether it is fair and equitable, and whether it is reasonable under the particular circumstances of the case. *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986).

Although "[t]he law favors compromise and not litigation for its own sake," the law requires "more than a mere good faith negotiation of a settlement by the trustee in order for the bankruptcy court to affirm a compromise agreement." *Id.* "[A]s long as

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CONT... **Rockin Artwork, LLC**

Chapter 7

the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed." *Id.* In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider:

- (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id. (citations omitted). It is the movant's burden to establish that the settlement is reasonable and should be approved. *Id.* Courts have recognized that the court should not substitute its own judgment for that of the trustee, but rather should ensure that the trustee has exercised proper business judgment and the settlement "falls above the lowest possible point in the range of reasonableness." *In re Rake*, 363 B.R. 146, 152 (Bankr. D. Idaho 2007) (internal quotation omitted).

1. *Probability of Success in Litigation*

At this time, it is difficult to assess the probability of success in the Litigation. The parties have been involved in the Litigation in multiple states for many years without a final resolution. The Trustee states that she has evaluated the potential strengths and weaknesses of both sides of the Litigation and considered the costs, risks and delay associated with prosecuting the Litigation, and has determined that the Agreement is in the best interests of the estates and their creditors. Further, Debtors have been ordered to pay sanctions in the Litigation and the various courts have entered many adverse rulings against Debtors. *See* Adversary Proceeding, doc. 1. As such, there is no guarantee that, if the Trustee pursued the Litigation instead of settling, the Trustee would prevail. This factor favors approval of the Agreement.

2. *The Difficulties, If Any, to be Encountered in the Matter of Collection*

If the Trustee prosecuted the Litigation on behalf of the estate and obtained a judgment, there is risk that there would be difficulty collecting on any such judgment.

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CONT... Rockin Artwork, LLC

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Hendrix Creditors may appeal any such judgment which would cause delay and expense in any such collection. Through the Agreement, upon entry of orders approving the Agreement, Hendrix Creditors will pay \$75,000 to the Trustee within three days. As such, this factor also weighs in favor of approving the Agreement.

3. *Complexity, Expense, and Inconvenience of Litigation*

Although the claims asserted in the Litigation are not particularly complex, the expense and inconvenience of pursuing the Litigation is significant. The Trustee would incur a large amount of fees and costs pursuing the Litigation, which would deplete the estates' resources. Notably, Debtors' estates lack sufficient funds to pursue the Litigation. The Trustee states that at the time of filing the Trustee Replies, she was holding \$5,000 for the benefit of Rockin, \$7,000 for the benefit of PHP and \$0 for the benefit of Mr. Pitsicalis [Declaration of Heide Kurtz, Pitsicalis doc. 88, ¶ 3]. This factor also warrants approval of the Agreement.

4. *Paramount Interest of Creditors*

For the reasons stated above, the estates stand to recover more funds through the Agreement than through prosecuting the Litigation. Thus, creditors stand to recover the most if the Agreement is approved. The Agreement will ensure that creditors receive a distribution without additional delay. Consequently, the Agreement is in the best interest of creditors and all the factors weigh in favor of approving the Agreement.

C. *The Sale of Personal Property*

11 U.S.C. § 363(b)(1) provides that 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).

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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 (B.A.P. 9th Cir. 2005); *see also Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988) ("[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business ... whether the proffered business justification is sufficient depends on the facts of the case. As the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike.").

In interpreting section 363(b)(1) of the Bankruptcy Code, courts have held that a transaction involving property of the estate generally should be approved where the debtor or trustee can demonstrate "some articulated business justification for using, selling, or leasing property outside of the ordinary course of business." *In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *accord In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Walter*, 83 B.R. at 19-20; *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981). Among other factors, courts should consider the consideration to be paid, the financial condition and needs of the debtor, the qualifications of the buyer, and whether a risk exists that the assets proposed to be sold would decline in value if left in the debtor's possession. *See Equity Funding Corp. of Am. v. Fin. Assocs. (In re Equity Funding Corp.)*, 492 F.2d 793, 794 (9th Cir. 1974) (affirming trial court's finding that the proposed sale of the debtor's assets would be in the best interest of the estate in light of impending deterioration of market value of debtor's assets). The *Lionel* court outlined six factors for determining whether a good business reason exists justifying a sale of substantially

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CONT... Rockin Artwork, LLC
all of the assets of the debtor.

Chapter 7

Here, the Trustee has asserted a valid business justification for the sale of personal property under 11 U.S.C. § 363. The Trustee has apparently attempted to sell the personal property for a higher price, but has been unsuccessful [Declaration of Heide Kurtz, Pitsicalis doc. 78, ¶¶ 6-7]. The estates continue to incur additional expenses related to storing the personal property, which further depletes the estates resources and funds available to unsecured creditors [Declaration of Heide Kurtz, Pitsicalis doc. 78, ¶ 9]. Accordingly, the Trustee has presented a valid business justification for the sale.

III. CONCLUSION

For the reasons discussed above, the Court will grant the Motions.

The Trustee must submit the orders within seven (7) days.

Footnotes

1. The Agreement states that any judgment entered in the New York Action will not have collateral estoppel effect in the Adversary Proceeding.

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall

**United States Bankruptcy Court
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2:00 PM

1:19-10062 Andrew Marc Pitsicalis

Chapter 7

#24.00 Chapter 7 Trustee's Motion for order authorizing compromise of controversy pursuant to Federal Rule of Bankruptcy Procedure 9019; and transfer of personal property pursuant to 11 U.S.C. Section 363

Docket 78

Tentative Ruling:

See calendar no. 23.

Party Information

Debtor(s):

Andrew Marc Pitsicalis

Pro Se

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall

**United States Bankruptcy Court
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2:00 PM

1:19-11482 Kimball West Small

Chapter 7

#25.00 Debtor's Motion for next friend for debtor

Docket 2

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):

Kimball West Small

Represented By
Varand Gourjian

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, August 13, 2019

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
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Tuesday, August 13, 2019

Hearing Room 301

10:30 AM

1:13-16852 Manuel Luque Araujo and Claudia Lorena Araujo

Chapter 13

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

fr. 6/11/19

Docket 73

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Luque Araujo	Pro Se
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Joint Debtor(s):

Claudia Lorena Araujo	Pro Se
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Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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United States Bankruptcy Court
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Tuesday, August 13, 2019

Hearing Room 301

10:30 AM

1:14-11327 Linda L Johnson

Chapter 13

#47.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 76

*** VACATED *** REASON: Motion of voluntary dismissal filed 8/9/2019.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Linda L Johnson

Represented By
Thomas B Ure

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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San Fernando Valley
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Tuesday, August 13, 2019

Hearing Room 301

10:30 AM

1:14-12897 Mati Timor

Chapter 13

#48.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 193

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
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10:30 AM

1:14-13176 Nick Steel

Chapter 13

#49.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nick Steel

Represented By
Ali R Nader

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

1:14-13450 Jacqueline A. Owuor

Chapter 13

#50.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 70

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jacqueline A. Owuor

Represented By
Mufthiha Sabaratnam

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 13, 2019

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10:30 AM

1:14-14532 Juan Jose Medrano

Chapter 13

#51.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 149

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
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Tuesday, August 13, 2019

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10:30 AM

1:14-14540 Bella Hovanesian

Chapter 13

#52.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bella Hovanesian

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 13, 2019

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10:30 AM

1:14-15266 Nabiollah Morovati

Chapter 13

#53.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 61

***** VACATED *** REASON: Motion withdrawn 8/7/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabiollah Morovati

Represented By
Keith F Rouse

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 13, 2019

Hearing Room 301

10:30 AM

1:14-15541 Carla Eshagh Lazar

Chapter 13

#54.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 55

***** VACATED *** REASON: Motion withdrawn 8/1/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carla Eshagh Lazar

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 13, 2019

Hearing Room 301

10:30 AM

1:15-11547 Rodolfo Trujillo and Annette Marie Trujillo

Chapter 13

#55.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rodolfo Trujillo

Represented By
Daniel F Jimenez

Joint Debtor(s):

Annette Marie Trujillo

Represented By
Daniel F Jimenez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 13, 2019

Hearing Room 301

10:30 AM

1:15-11716 Benjamin Esguerra Manalo and Madeleine Manalo

Chapter 13

#56.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 69

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Benjamin Esguerra Manalo

Represented By
Arsen Pogosov

Joint Debtor(s):

Madeleine Manalo

Represented By
Arsen Pogosov

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:15-12076 David Bruce McBride and Brenda Sherman McBride

Chapter 13

#57.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 50

***** VACATED *** REASON: Voluntary dismissal of motion fld 8/1/2019.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Bruce McBride

Represented By
Allan S Williams

Joint Debtor(s):

Brenda Sherman McBride

Represented By
Allan S Williams

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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1:15-13109 Artashes Yenokyan

Chapter 13

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

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Artashes Yenokyan

Represented By
Elena Steers

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:15-13479 Brian Jeffrey Bolokofsky and Sara Joanne Bolokofsky

Chapter 13

#59.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 61

***** VACATED *** REASON: Motion withdrawn 8/1/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Jeffrey Bolokofsky

Represented By
Allan S Williams

Joint Debtor(s):

Sara Joanne Bolokofsky

Represented By
Allan S Williams

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:16-12523 Brent Carpenter

Chapter 13

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

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brent Carpenter

Represented By
David S Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 13, 2019

Hearing Room 301

10:30 AM

1:16-12540 Francisco Perez and Gloria Yuridia Perez

Chapter 13

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

Docket 80

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Perez

Represented By
Steven A Alpert

Joint Debtor(s):

Gloria Yuridia Perez

Represented By
Steven A Alpert

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:16-13657 Mary Elizabeth Grant

Chapter 13

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

fr. 6/11/19

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Elizabeth Grant

Represented By
William G Cort

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

10:30 AM

1:17-10025 Amelia Quezada Velasquez

Chapter 13

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

Docket 27

***** VACATED *** REASON: Motion withdrawn 7/17/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amelia Quezada Velasquez

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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San Fernando Valley
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Tuesday, August 13, 2019

Hearing Room 301

10:30 AM

1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

#64.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 7/2/19

Docket 88

Tentative Ruling:

- NONE LISTED -

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
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Tuesday, August 13, 2019

Hearing Room 301

10:30 AM

1:17-12531 Jeffrey Edwards and Toni Thomson-Edwards

Chapter 13

#65.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 60

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Edwards

Represented By
Todd J Roberts

Joint Debtor(s):

Toni Thomson-Edwards

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
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Tuesday, August 13, 2019

Hearing Room 301

10:30 AM

1:17-13039 Benjawan Rachapaetayakom

Chapter 13

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

Docket 101

***** VACATED *** REASON: Voluntary dismissal of motion filed 07/22/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Benjawan Rachapaetayakom

Represented By
Joshua L Sternberg

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

1:18-10288 Adaure Chinyere Egu

Chapter 13

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

Docket 53

***** VACATED *** REASON: Motion withdrawn 7/17/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

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
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10:30 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

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

fr. 4/9/19; 6/11/19

Docket 90

Tentative Ruling:

- NONE LISTED -

Party Information

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, August 13, 2019

Hearing Room 301

10:30 AM

1:18-10660 Jose Olegario Contreras

Chapter 13

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

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Olegario Contreras

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, August 13, 2019

Hearing Room 301

10:30 AM

1:18-10968 Imelda Godoy

Chapter 13

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

Docket 52

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Imelda Godoy

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**

Tuesday, August 13, 2019

Hearing Room 301

10:30 AM

1:18-11157 Patrick Jay Poteat

Chapter 13

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

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patrick Jay Poteat

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, August 13, 2019

Hearing Room 301

10:30 AM

1:18-11251 James Lemond Robinson

Chapter 13

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

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Lemond Robinson

Represented By
David H Chung

Trustee(s):

Elizabeth (SV) 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 13, 2019

Hearing Room 301

10:30 AM

1:18-12467 Colin Basil MacLean

Chapter 13

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

Docket 54

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Colin Basil MacLean

Represented By
William E. Winfield

Trustee(s):

Elizabeth (SV) 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 13, 2019

Hearing Room 301

10:30 AM

1:19-10005 Manuel Borobia Bennet

Chapter 13

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

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Borobia Bennet

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 13, 2019

Hearing Room 301

11:00 AM

1:14-11489 Raymundo I Ramos

Chapter 13

#75.00 Motion re: objection of U.S. Trustee to notice of mortgage
payment change filed in connection with proof of claim 3

fr. 3/12/19; 5/14/19; 6/11/19; 7/2/19

Stipulation resolving motion re objection filed 7/25/19.

Docket 51

*** VACATED *** REASON: order resolving objection entered on 7/30/19
[doc# 79]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raymundo I Ramos

Represented By
Richard A Loa

Trustee(s):

Elizabeth (SV) 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 13, 2019

Hearing Room 301

11:00 AM

1:15-10039 Judy Rae Robbins

Chapter 13

#76.00 Motion for authority to sell or refinance real property
under LBR 3015-1

Docket 89

Tentative Ruling:

Grant, subject to the comments of the chapter 13 trustee.

On August 2, 2019, the chapter 13 trustee filed a comment on the motion (the "Comment") [doc. 97]. In the Comment, the chapter 13 trustee states that she approves of the Court granting the motion on the following conditions: (1) the chapter 13 trustee will take statutory fees on any claims paid through escrow; (2) the plan must remain at 100%; and (3) the chapter 13 trustee will make a demand of \$20,000.

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

Party Information

Debtor(s):

Judy Rae Robbins

Represented By
Ginger Marcos

Trustee(s):

Elizabeth (SV) 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 13, 2019

Hearing Room 301

11:00 AM

1:18-11857 Robert Winn, Jr

Chapter 13

#77.00 Motion for order disallowing claim of Real Time Resolutions,
claim no. 9

fr. 5/14/19 (stip)

Docket 83

Tentative Ruling:

Sustain.

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

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, August 13, 2019

Hearing Room 301

11:00 AM

1:19-10147 Marilyn Ann Ficco

Chapter 13

#78.00 Motion re: objection to claim number 1 by claimant Ocwen Loan Servicing, LLC.

Docket 58

Tentative Ruling:

Sustain.

On July 31, 2019, Ocwen Loan Servicing, LLC ("Claimant") filed a limited response to the objection [doc. 67]. In that response, Claimant states that as a result of the objection, it will amend claim 1-1. As of August 8, 2019, Claimant had not filed an amended claim.

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

Party Information

Debtor(s):

Marilyn Ann Ficco

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, August 13, 2019

Hearing Room 301

11:30 AM

1:19-11388 Schonte Patrice Hamilton

Chapter 13

#79.00 Debtor's motion for order determining value of collateral

Docket 21

Tentative Ruling:

The Court will continue this hearing to **September 10, 2019 at 11:30 a.m.** The debtor has not served the motion and notice thereof on Jefferson Capital Systems, LLC in accordance with Fed. R. Bankr. P. 9013(b) and 7004(b)(3) and Local Bankruptcy Rule 9013-1(a)(6), *i.e.*, by delivering a copy of the motion and notice thereof to a managing or general agent or any other agent authorized by appointment or by law to receive service of process for Jefferson Capital Systems, LLC.

By August 20, 2019, in accordance with Fed. R. Bankr. P. 7004(b)(3), the debtor must serve Jefferson Capital Systems, LLC with notice of the continued hearing and the deadline to file any response to the motion.

Appearances on August 13, 2019 are excused.

Party Information

Debtor(s):

Schonte Patrice Hamilton

Represented By
Michael E Clark

Trustee(s):

Elizabeth (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 15, 2019

Hearing Room 301

1:00 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 11

#1.00 Status conference re: chapter 11 case

fr. 1/10/19, 1/24/19

Docket 1

***** VACATED *** REASON: Rescheduled for 8/22/19 at 1:00 PM.
[Dkt.57]**

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

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

Thursday, August 15, 2019

Hearing Room 301

1:00 PM

1:18-13023 Hekmatjah Family Limited Partnership

Chapter 11

#2.00 Status conference re chapter 11 case

fr 2/21/19

Docket 8

***** VACATED *** REASON: Rescheduled for 8/22/19 at 1:00 PM.
[Dkt.63]**

Party Information

Debtor(s):

Hekmatjah Family Limited

Represented By
Stella A Havkin

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

Thursday, August 15, 2019

Hearing Room 301

1:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 4/4/19; 4/25/19

Docket 1

***** VACATED *** REASON: Rescheduled for 8/22/19 at 1:00 PM.
[Dkt.84]**

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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

Tuesday, August 20, 2019

Hearing Room 301

8:30 AM

1:19-10912 Roberto Carlos Ayala Lopez

Chapter 7

#1.00 Reaffirmation agreement between Debtor and Santander
Consumer USA Inc., dba Chrysler Capital

fr. 7/16/19

Docket 10

Party Information

Debtor(s):

Roberto Carlos Ayala Lopez

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, August 20, 2019

Hearing Room 301

8:30 AM

1:19-11130 Cynthia Heap Carrillo

Chapter 7

#2.00 Reaffirmation agreement between debtor and
Santander Consumer USA Inc., dba Chrysler Capital

Docket 9

Party Information

Debtor(s):

Cynthia Heap Carrillo

Represented By
Brent D George

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, August 20, 2019

Hearing Room 301

8:30 AM

1:19-11193 Kelly Maguire

Chapter 7

#3.00 Reaffirmation agreement between Debtor and Santander Consumer USA Inc. dba Chrysler Capital as servicer for CCAP Auto Lease Ltd.

fr. 7/16/19

Docket 8

Party Information

Debtor(s):

Kelly Maguire

Represented By
Glenn Ward Calsada

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 21, 2019

Hearing Room 301

9:30 AM

1:19-11403 Evelyn Roma

Chapter 7

#1.00 Motion for relief from stay [PP]

NISSAN MOTOR APPEPTANCE CORPORATION
VS
DEBTOR

Docket 8

Tentative Ruling:

The Court will continue this hearing to **September 18, 2019 at 9:30 a.m.**

The movant did not serve the debtor at the address listed on the debtor's petition. Pursuant to Local Bankruptcy Rule 4001-1(c)(1)(C)(i), movant is required to serve the debtor with the motion, notice of hearing, and all supporting documents. **No later than August 28, 2019**, the movant must serve the debtor at "6355 De Soto Ave, #A113, Woodland Hills, California 91367" with the motion, notice of the continued hearing and the deadline to file any response, and all supporting documents.

Appearances on August 21, 2019 are excused.

Party Information

Debtor(s):

Evelyn Roma

Represented By
Matthew D Resnik

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 21, 2019

Hearing Room 301

9:30 AM

1:19-11484 Tait Philip Buchen

Chapter 7

#2.00 Motion for relief from stay [PP]

FINANCIAL SERVICES VEHICLE 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.

Party Information

Debtor(s):

Tait Philip Buchen

Represented By
David H Chung

Movant(s):

Financial Services Vehicle Trust

Represented By
Cheryl A Skigin

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

Wednesday, August 21, 2019

Hearing Room 301

9:30 AM

CONT... Tait Philip Buchen

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, August 21, 2019

Hearing Room 301

9:30 AM

1:19-11612 Wilson Edgar Rojas

Chapter 7

#3.00 Motion for relief from stay [PP]
(Honda Civic)

AMERICAN HONDA FINANCE CORPORATION
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.

Party Information

Debtor(s):

Wilson Edgar Rojas

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 21, 2019

Hearing Room 301

9:30 AM

1:19-11612 Wilson Edgar Rojas

Chapter 7

#4.00 Motion for relief from stay [PP]
(Honda Pilot)

AMERICAN HONDA FINANCE CORPORATION
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):

Wilson Edgar Rojas

Represented By
Kevin T Simon

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 21, 2019

Hearing Room 301

9:30 AM

1:19-11643 Larry M Halpern

Chapter 7

#5.00 Motion for relief from stay [PP]

DAIMLER TRUST
VS
DEBTOR

Docket 12

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):

Larry M Halpern

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, August 21, 2019

Hearing Room 301

9:30 AM

1:19-10790 Nelson Sargsyan

Chapter 7

#6.00 Motion for relief from stay [RP]

ZB, NATIONAL ASSOCIATION
VS
DEBTOR

Docket 59

Tentative Ruling:

To the extent that the debtor has an interest in the subject real property (*See* doc. 51), 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):

Nelson Sargsyan

Represented By
Thomas B Ure

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 21, 2019

Hearing Room 301

9:30 AM

1:19-11841 Roger Eddie Williams

Chapter 13

#7.00 Motion for relief from stay [UD]

SHAPELL INDUSTRIES, INC.
VS
DEBTOR

Docket 8

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.

Party Information

Debtor(s):

Roger Eddie Williams	Pro Se
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Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 21, 2019

Hearing Room 301

9:30 AM

1:16-13657 Mary Elizabeth Grant

Chapter 13

#8.00 Motion for relief from stay [RP]

NEWREZ LLC
VS
DEBTOR

Docket 66

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Elizabeth Grant

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, August 21, 2019

Hearing Room 301

9:30 AM

1:17-11860 Juan Morales and Maria Morales

Chapter 13

#9.00 Motion for relief from stay [RP]

COLLINWOOD CONDOMINIUM ASSOCIATION
VS
DEBTOR

Docket 71

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.

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):

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, August 21, 2019

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, August 21, 2019

Hearing Room 301

9:30 AM

1:17-11965 Carmit Benbaruh

Chapter 13

#10.00 Motion for relief from stay [RP]

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

Docket 131

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 - SUSPENDED BK -

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

Wednesday, August 21, 2019

Hearing Room 301

9:30 AM

CONT... Carmit Benbaruh

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 21, 2019

Hearing Room 301

9:30 AM

1:18-11580 Kaliston Jose Nader

Chapter 11

#11.00 Motion for relief from stay [PP]

CAPITAL ONE AUTO FINANCE
VS
DEBTOR

Docket 102

Tentative Ruling:

On August 13, 2019, the debtor filed an untimely opposition to the motion for relief from stay [doc. 113].

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, August 21, 2019

Hearing Room 301

1:30 PM

1:19-10062 Andrew Marc Pitsicalis

Chapter 11

Adv#: 1:19-01040 Experience Hendrix, LLC et al v. Pitsicalis

#12.00 Status conference re: complaint to determine the non-dischargeability of a debt

fr. 6/12/19; 8/7/19(stip)

Docket 1

Tentative Ruling:

Given that this is a nondischargeability action under 11 U.S.C. § 523, the Court does not need consent from the parties to enter final judgment. *See In re Deitz*, 760 F.3d 1038, 1050 (9th Cir. 2014) ("We hold that, even after *Stern*, the bankruptcy court had the constitutional authority to enter a final judgment determining both the amount of [the plaintiffs'] damage claims against [the debtor], and determining that those claims were excepted from discharge.") (referencing *Stern v. Marshall*, 564 U.S. 462, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011)).

28 U.S.C. § 157(b)(2)(I) ("Core proceedings include, but are not limited to... determinations as to the dischargeability of particular debts"); *see also Stern v. Marshall*, 564 U.S. 462, 471, 131 S.Ct. 2594, 2601-02, 180 L.Ed.2d 475 (2011) ("[B]ankruptcy courts may hear and enter final judgments in 'core proceedings' in a bankruptcy case.").

In addition, in the settlement agreement between the plaintiffs and the chapter 7 trustee (the "Settlement Agreement") [Bankruptcy Docket, doc. 78, Exhibit A], the plaintiffs agreed that the stipulation to enjoin the debtor from future acts of infringement or unlawful exploitation "shall not have collateral estoppel effect" in this adversary proceeding. Settlement Agreement, ¶ 7(b). As such, despite the plaintiffs' contention in the status report, the plaintiffs may not be able to resolve certain claims by moving for issue preclusion using findings and conclusions from the Southern District of New York.

Parties should be prepared to discuss the following:

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

Wednesday, August 21, 2019

Hearing Room 301

1:30 PM

CONT... Andrew Marc Pitsicalis

Chapter 11

Deadline to complete discovery: 1/31/20.

Deadline to file pretrial motions: 2/28/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 3/18/20.

Pretrial: 1:30 p.m. on 4/1/20.

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):

Andrew Marc Pitsicalis	Pro Se
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Defendant(s):

Andrew Marc Pitsicalis	Pro Se
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Plaintiff(s):

Experience Hendrix, LLC	Represented By Jason D Strabo
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Authentic Hendrix, LLC	Represented By Jason D Strabo
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Trustee(s):

Heide Kurtz (TR)	Represented By Lei Lei Wang Ekvall
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 21, 2019

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** Pretrial 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;
3/14/18; 1/23/19; 2/20/19 (stip); 5/8/19 (stip)';

Docket 78

***** VACATED *** REASON: Continued to 11/6/19 at 1:30 per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean Albert Maury Cazares

Represented By
Ian Landsberg

Defendant(s):

Scott Koenig

Pro Se

Burton C. Bell

Pro Se

Dean Albert Maury Cazares

Pro Se

Stanley Vincent

Pro Se

Oxidizer, Inc.

Pro Se

Fear Campaign, Inc.

Pro Se

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

Wednesday, August 21, 2019

Hearing Room 301

1:30 PM

CONT... Dean Albert Maury Cazares

Chapter 7

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, August 21, 2019

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01072 Adri v. Adri

#14.00 Status conference re: complaint to deny debtor's discharge

Docket 1

***** VACATED *** REASON: Order entered 8/9/19 continuing hearing to
10/2/19 at 1:30 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub

Defendant(s):

Deborah Adri

Pro Se

Plaintiff(s):

Moshe Adri

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta

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

Wednesday, August 21, 2019

Hearing Room 301

1:30 PM

1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

Adv#: 1:19-01032 Gottlieb, Chapter 7 Trustee v. Rojas et al

#15.00 Status conference re: first amended complaint for:
(1) Avoidance recovery, and preservation of constructive fraudulent transfer;
(2) Avoidance, recovery, and preservation of actual fraudulent transfer;
(3) Avoidance, recovery, and preservation of unperfected liens; and
(4) Declaratory relief re: validity priority, and extent of alleged liens
[11 U.S.C. sections 544, 548, 550, and 551; Cal. Civ.Code sections 3439.04, 3439.05]

fr. 5/8/19; 7/17/19

Docket 7

***** VACATED *** REASON: Default judgment entered 8/19/19 [doc. 46].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aurora Frias Lee-Nelson

Represented By
Ronald D Tym

Defendant(s):

Leoncio Juadalso Jr.

Pro Se

Danai Junpram

Pro Se

Nicole Ceniza

Pro Se

Christina Ceniza

Pro Se

Kenny Rojas

Pro Se

Plaintiff(s):

David K Gottlieb, Chapter 7 Trustee

Represented By

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

Wednesday, August 21, 2019

Hearing Room 301

1:30 PM

CONT... Aurora Frias Lee-Nelson

Chapter 7

D Edward Hays
Laila Masud

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 21, 2019

Hearing Room 301

1:30 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:19-01045 Coast to Coast Holdings, LLC v. Leonardi

#16.00 Status conference re: complaint for:
(1) Breach of contract; (2) Breach of implied covenant of good faith and fair dealing; (3) Fraud in forming a contract; (4) Tortious fraud; (5) Negligent misrepresentation; (6) Statue of frauds - declaratory relief; (7) Avoidance of fraudulent transfer; (8) Preservation of avoided transfers and avoided liens; (9) Slander of title; (10) Waste; (11) Right to setoff of recoupment (12) Turnover of property of the estate (rents); (13) Turnover of property of the estate (real property); (14) Violation of the automatic stay; (15) Disallowance of claim; (16) Avoidance of lien

fr. 6/19/19; 7/3/19; 7/17/19

Counter-claim filed 5/17/19:

Joseph Leonardi, counter-claimant
vs
Coast to Coast Holdings, LLC; Oscar Torres;
Elizabeth Ramos; and Jeff Turner, counter-defendants

Docket 1

***** VACATED *** REASON: Order entered continuing to 1:30 p.m. on 9/18/19 [doc. 37].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

Defendant(s):

Joseph Leonardi

Pro Se

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

Wednesday, August 21, 2019

Hearing Room 301

1:30 PM

CONT... Coast to Coast Holdings, LLC

Chapter 11

Plaintiff(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz

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

Wednesday, August 21, 2019

Hearing Room 301

1:30 PM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#16.01 Trustee's Motion pursuant to Federal Rule of Bankruptcy 9019(a) for an order approving settlement between David Gottlieb, Chapter 7 Trustee, Roxel, LLC, Michael Martin and Duane Martin

Docket 219

Tentative Ruling:

The Court is concerned about the quality and the sufficiency of the *Notice of Chapter 7 Trustee's and City National Bank's Intent to Dismiss Complaint Seeking Revocation of Discharge of Duane Martin Pursuant to Settlement Agreement* (the "Notice") [doc. 222]. In addition to any other issues raised in the pleadings, the parties should be prepared to discuss the accuracy and sufficiency of the language in the Notice, and whether seven days constitutes adequate time for creditors to respond to the Notice.

The parties also should be prepared to discuss the potential interpleader of 26% of the sale proceeds, *i.e.*, the portion identified as "Michael's Distribution" in the settlement agreement, until the disputes involving Michael Martin, Epps & Coulson, L.L.P and Tisha Campbell Martin are resolved by a court with subject matter jurisdiction (which may be a family court).

To the extent Ms. Martin is concerned about language in the settlement agreement regarding releases granted to the estate on behalf of non-party entities, Ms. Martin is not bound by such releases; she is not a party to the settlement agreement, nor does Duane Daniel Martin indicate that he has the power to bind Ms. Martin to the settlement agreement. As to the latter point, Mr. Martin represented in the settlement agreement that he has authority to bind entities listed in Exhibit C of the settlement agreement; Ms. Martin is not listed in Exhibit C.

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Joint Debtor(s):

Tisha Michelle Martin

Represented By

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

Wednesday, August 21, 2019

Hearing Room 301

1:30 PM

CONT...

Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

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**

Wednesday, August 21, 2019

Hearing Room 301

1:30 PM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#16.02 Trustee's Motion for an order: (1) Approving sale of property of the estate (Real Property Located At 22401 Summitridge Circle, Chatsworth, Ca 91311); (2) Waiving the 14-day stay period set forth in Bankruptcy Rule 6004(H) and (3) Granting related relief

Docket 223

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

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**

Wednesday, August 21, 2019

Hearing Room 301

1:30 PM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#16.03 Trustees application to employ Coldwell Banker Residential Brokerage
as Real Estate Broker

Docket 230

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

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**

Wednesday, August 21, 2019

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

#16.04 Motion to be relieved from serving as counsel for Roxe, LLC
and Michael Martin (Defendants)

Docket 89

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Defendant(s):

Roxe, LLC, a California limited

Represented By
Dawn M Coulson

Michael Martin an individual

Represented By
Dawn M Coulson

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
Lindsey L Smith

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

Wednesday, August 21, 2019

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, August 21, 2019

Hearing Room 301

2:30 PM

1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01023 Post Confirmation Committee of Unsecured Creditors v. J J Foil Company,

#17.00 Plaintiff's motion for default judgment under LBR 7055-1

Docket 11

Tentative Ruling:

The Court will direct entry of default and grant the motion for default judgment pursuant to 11 U.S.C. §§ 502(d), 547 and 550.

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT, within seven (7) days.

No court appearance by movant required.

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

J J Foil Company, Inc.

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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

Wednesday, August 21, 2019

Hearing Room 301

2:30 PM

1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01023 Post Confirmation Committee of Unsecured Creditors v. J J Foil Company,

#17.10 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

fr. 5/15/19; 8/7/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

J J Foil Company, Inc.

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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

Wednesday, August 21, 2019

Hearing Room 301

2:30 PM

1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01028 Post Confirmation Committee of Unsecured Creditors v. Printing Industries

#18.00 Plaintiff's motion for default judgment under LBR 7055-1

Docket 11

Tentative Ruling:

The Court will direct entry of default and grant the motion for default judgment pursuant to 11 U.S.C. §§ 502(d), 547 and 550.

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT, within seven (7) days.

No court appearance by movant required.

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

Printing Industries Benefit Trust

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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

Wednesday, August 21, 2019

Hearing Room 301

2:30 PM

1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01028 Post Confirmation Committee of Unsecured Creditors v. Printing Industries

#19.00 Status conference re: complaint to avoid and recover preferential transfers and to disallow claims

fr. 5/22/2019; 8/7/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

Printing Industries Benefit Trust

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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

Thursday, August 22, 2019

Hearing Room 301

10:30 AM

1:14-15355 Ronit Waizgen

Chapter 7

#1.00 Trustee's final report and applications for compensation

Diane C. Weil, Chapter 7 Trustee

Docket 231

Tentative Ruling:

Diane C. Weil, chapter 7 trustee - approve fees of \$1,239.13 and reimbursement of expenses of \$269.59, pursuant to 11 U.S.C. § 330, on a final 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 relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Ronit Waizgen

Represented By
Leslie Richards - SUSPENDED BK -
William H Brownstein

Trustee(s):

Diane C Weil (TR)

Represented By
Timothy J Yoo

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

Thursday, August 22, 2019

Hearing Room 301

10:30 AM

1:17-10378 Kandy Kiss of California, Inc.

Chapter 7

#2.00 Application for payment of first and final fees and/or expenses for Resch Polster & Berger LLP, Special Counsel, Period: 11/27/2017 to 6/29/2019

Docket 182

Tentative Ruling:

Resch Polster & Berger LLP, special litigation counsel to chapter 7 trustee – approve fees of \$877,500.00 in fees and reimbursement of expenses of \$1,982.89, pursuant to 11 U.S.C. § 330, on a final basis.

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

Note: No response has been filed. Accordingly, no court appearance by the 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 the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Kandy Kiss of California, Inc.

Represented By
Beth Gaschen
Steven T Gubner
Jessica L Bagdanov

Movant(s):

Resch Polster & Berger LLP

Represented By
Sandra Khalili

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steven T Gubner

**United States Bankruptcy Court
Central District of California
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10:30 AM

CONT... Kandy Kiss of California, Inc.

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, August 22, 2019

Hearing Room 301

10:30 AM

1:17-11358 Thomas Jang Young Yoon

Chapter 7

#3.00 First interim fee application of Chapter 7 Trustee for approval of compensation and reimbursement of expenses
Period: 5/22/2017 to 7/25/2019

Docket 51

Tentative Ruling:

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$9,788.59 and reimbursement of expenses of \$1,204.40. Such fees have been reduced from the requested fees of \$10,118.49, based on the 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):

Thomas Jang Young Yoon

Represented By
Stella A Havkin

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**

Thursday, August 22, 2019

Hearing Room 301

10:30 AM

1:17-11358 Thomas Jang Young Yoon

Chapter 7

#4.00 Application for payment of interim fees and/or expenses (11 U.S.C. § 331) for Levene, Neale, Bender, Rankin & Brill, Trustee's Attorney, Period: 6/24/2017 to 6/30/2019

Docket 53

Tentative Ruling:

Levene, Neale, Bender, Yoo & Brill L.L.P. ("Levene Neale"), general counsel to chapter 7 trustee – approve fees of \$149,866.20 and reimbursement of expenses of \$2,241.75, pursuant to 11 U.S.C. § 331, on an interim basis. Levene Neale may collect 80% of the approved fees and 100% of the approved expenses at this time. The Court has not awarded \$20,439.80 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
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Thursday, August 22, 2019

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10:30 AM

CONT... Thomas Jang Young Yoon

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.

In accordance with the foregoing, 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 provided by another attorney at Levene Neale.

Category	Date	Timekeeper	Rate	Time	Fee	Description
Asset Analysis and Recovery	6/29/17	EMW	\$595.00	1.3	\$773.50	REVIEW DOCUMENTS FROM S. HAVKIN; EMAILS TO HAVKIN TRUSTEE AND S. BIGGS
Asset Analysis and Recovery	6/30/17	EMW	\$595.00	1.2	\$714.00	REVIEW DIVORCE JUDGMENT SEND EMAIL TO S. HAVKIN
Asset Analysis and Recovery	8/14/17	EMW	\$595.00	1.8	\$1,071.00	ANALYSIS OF FILES AND DOCUMENTS; CONFERENCE CALL WITH TRUSTEE, AAF AND S. BIGGS
Other Litigation	11/10/17	EMW	\$595.00	1.3	\$773.50	REVIEW STATUS OF COMPLAINT
Other Litigation	9/4/18	EMW	\$595.00	2.2	\$1,309.00	ANALYSIS OF ISSUES RELATING TO COUNTEROFFER; REVIEW FILES AND DOCUMENTS
Other Litigation	11/28/18	EMW	\$595.00	2.5	\$1,487.50	ANALYSIS OF COUNTEROFFER FROM MENTON; TELECON AAF; REVIEW FILES
Other Litigation	12/31/18	EMW	\$595.00	1.1	\$654.50	EMAIL EXCHANGE WITH MEDIATOR AND TRUSTEE RE SETTLEMENT ISSUES; ANALYSIS OF FILES RE SAME
Other Litigation	2/6/19	EMW	\$625.00	4.2	\$2,625.00	PREPARATION FOR MEETING RE MEDIATION
Other Litigation	2/7/19	EMW	\$625.00	8.3	\$5,187.50	APPEARANCE AT MEDIATION WITH TRUSTEE; TELECON TRUSTEE AND AAF RE SETTLEMENT ISSUES
Other Litigation	3/13/19	EMW	\$625.00	1.4	\$875.00	REVIEW OF M. YOON SETTLEMENT AGREEMENT

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

**United States Bankruptcy Court
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Thursday, August 22, 2019

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CONT... **Thomas Jang Young Yoon**

Chapter 7

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	5/7/18	AAF	\$565.00	0.1	\$56.50	REVIEW CORRESPONDENCE FROM CARROLTON BANK RE PROOF OF CLAIM

In addition to violating the Local Rules, lumped or blocked billing is generally frowned upon by courts because it prevents the court from “fairly evaluating whether individual tasks were expeditiously performed within a reasonable time frame.” *In re Thomas*, 2009 WL 7751299, *5 (9th Cir. BAP), quoting *In re Hudson*, 364 B.R. 875, 880 (Bankr. N.D.N.Y. 2007). When fee applications contain lumped billing, courts disallow or reduce the lumped entries. See *In re Breeden*, 180 B.R. 802, 810 (Bankr. N.D. W.Va. 1995) (court disallowed all lumped fee entries solely because their format); *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942 at 948 (9th Cir. 2007) (court may properly impose a reduction for block billing).

Many of Levene Neale’s time entries, approximately \$24,564.00 of the requested fees, contain entries with lumped services. Accordingly, this Court will reduce the fees based on lumped billing by 20%, which will reduce the fees sought by \$4,912.80. See e.g. *Thomas*, *7 (upheld 10% reduction of fees from lumped billing); *Darling Intern., v. Baywood Partners, Inc.*, 2007 WL 4532233, *9 (N.D. Cal. 2007) (“courts typically make an adjustment ranging from 5% to over 30%); *In re SAIF, Inc.*, 2009 WL 6690966 (Bankr. S.D.Cal. 2009) (due to substantial lumping, court reduced the fees sought by 10%); *In re Stewart*, 2008 WL 8462960, *6 (9th Cir. BAP 2008) (upheld 20% reduction for inappropriate lumping).

Category	Date	Timekeeper	Rate	Time	Fee	Description
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CONT...

Thomas Jang Young Yoon

Chapter 7

Asset Analysis and Recovery	1/2/18	EMW	\$595.00	0.9	\$535.00	ANALYSIS OF ISSUES RELATING TO CLAIMS AGAINST MO. ATTYS; CONFERENCE WITH AAF
Asset Analysis and Recovery	3/19/18	EMW	\$595.00	0.7	\$416.50	EMAIL EXCHANGE WITH AAF RE MENTON SETTLEMENT OFFER; REVIEW DOCUMENTS AND EMAILS FROM TRUSTEE
Asset Analysis and Recovery	4/19/18	EMW	\$595.00	0.4	\$238.00	EMAIL EXCHANGE WITH AAF RE SETTLEMENT OFFER; REVIEW BIGGS EMAIL
Asset Analysis and Recovery	9/20/18	EMW	\$595.00	0.7	\$416.50	ANALYSIS OF E. JONES PARTNERSHIP AGREEMENT; SEND EMAIL TO AAF RE TRANSFER ISSUES
Asset Analysis and Recovery	10/11/18	EMW	\$595.00	1.7	\$1,011.50	ANALYSIS OF ISSUES RELATED TO DEBTOR'S PTP INTEREST; REVIEW CASE LAW; SEND ANALYSIS TO TRUSTEE AND AAF
Asset Analysis and Recovery	10/12/18	EMW	\$595.00	3.4	\$2,023.00	ANALYSIS OF FILES AND DOCUMENTS; REVIEW EJ DISTRIBUTION REPORTS; SEND EMAILS TO TRUSTEE AND AAF RE PROPERTY OF THE ESTATE; EMAIL EXCHANGE WITH S. HAVKIN
Asset Analysis and Recovery	11/26/18	EMW	\$595.00	1.3	\$773.50	ANALYSIS OF DEBTOR'S SETTLEMENT PROPOSAL; SEND EMAIL TO AAF
Asset Analysis and Recovery	12/27/18	EMW	\$595.00	0.6	\$357.00	ANALYSIS OF CORRESPONDENCE RE COUNTER TO DEBTOR; SEND EMAIL TO AAF RE CHANGES
Asset Analysis and Recovery	12/27/18	EMW	\$595.00	1.1	\$654.50	REVIEW AND REVISE COUNTERPROPOSAL TO DEBTOR; REVIEW EMAIL EXCHANGE RE SETTLEMENT
Asset Analysis and Recovery	1/15/19	EMW	\$625.00	2.7	\$1,687.50	ANALYSIS OF SETTLEMENT AGREEMENT WITH DEBTOR; SEND EMAIL TO AAF
Asset Analysis and Recovery	2/14/19	EMW	\$625.00	1.5	\$937.50	ANALYSIS OF SETTLEMENT DOCUMENTS; RESPOND TO QUESTIONS FOR AAF
Asset Analysis and Recovery	2/18/19	EMW	\$625.00	1.3	\$812.50	ANALYSIS OF CORRESPONDENCE FROM S. HAVKIN RE SETTLEMENT WITH DEBTOR; REVIEW EMAILS RE SETTLEMENT; REVIEW CHANGES TO SETTLEMENT AGREEMENT
Asset Analysis and Recovery	4/23/19	EMW	\$625.00	0.5	\$312.50	ANALYSIS OF PLEADINGS; PREPARE SEC. 546 CALENDAR MEMOS

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10:30 AM

CONT...

Thomas Jang Young Yoon

Chapter 7

Asset Disposition	9/18/18	EMW	\$595.00	0.8	\$476.00	TELEPHONE CONFERENCE WITH AAF RE CAPITAL ACCOUNT; REVIEW AND RESPOND TO EMAILS
Other Litigation	5/3/18	EMW	\$595.00	0.7	\$416.50	CONFERENCE WITH TRUSTEE AND ATTORNEY FOR DEBTOR RE DOCUMENTS; SEND EMAIL TO AAF RE MEETING WITH MENTON
Other Litigation	5/10/18	EMW	\$595.00	0.4	\$238.00	EMAIL EXCHANGE WITH AAF RE MEETING WITH MENTON' REVIEW MENTON EMAILS
Other Litigation	5/11/18	EMW	\$595.00	0.3	\$178.50	ANALYSIS OF EMAIL FROM PETER ANDERSON; SEND EMAIL TO TRUSTEE
Other Litigation	9/26/18	EMW	\$595.00	1.7	\$1,011.50	ANALYSIS OF ISSUES RELATED TO PENDING ADVERSARY; DRAFT MEMO TO FILE
Other Litigation	11/1/18	EMW	\$595.00	2.2	\$1,309.00	PREPARATION OF CORRESPONDENCE TO TRUSTEE AND AAF RE MEDIATION; REVIEW FILES AND DOCUMENTS
Other Litigation	11/2/18	EMW	\$595.00	0.8	\$476.00	ANALYSIS OF TRUSTEE SETTLEMENT PROPOSAL FOR MEDIATION' PREPARE RESPONSE
Other Litigation	11/2/18	EMW	\$595.00	1.2	\$714.00	ANALYSIS OF DOCUMENTS REGARDING MARY YOON'S SETTLEMENT OFFER; PREPARE COUNTER ANALYSIS AND SEND TO TRUSTEE
Other Litigation	11/5/18	EMW	\$595.00	0.7	\$416.50	EMAIL EXCHANGE WITH MEDIATOR; RESPOND TO AAF EMAILS; REVIEW FILED DOCUMENTS
Other Litigation	11/6/18	EMW	\$595.00	2.8	\$1,666.00	ANALYSIS OF CORRESPONDENCE WITH AAF AND MEDIATOR; ANALYSIS OF LEGAL RESEARCH BRIEF; PREPARE CORRESPONDENCE TO MEDIATOR
Other Litigation	11/8/18	EMW	\$595.00	1.7	\$1,011.50	RESEARCH REGARDING FAMILY LAW/BANKRUPTCY ISSUES AND MISSOURI LAW; DRAFT CORRESPONDENCE TO MEDIATOR
Other Litigation	11/15/18	EMW	\$595.00	1.4	\$833.00	ANALYSIS OF DOCUMENTS FOR MEDIATION; REVIEW EMAILS FROM AAF
Other Litigation	11/26/18	EMW	\$595.00	2.3	\$1,368.50	RESEARCH REGARDING COLLATERAL ESTOPPEL AND FRAUDULENT TRANSFERS; DRAFT EMAIL TO MENTON

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CONT...

Thomas Jang Young Yoon

Chapter 7

Other	Litigation	11/29/18	EMW	\$595.00	1.3	\$773.50	RESEARCH REGARDING COLLATERAL ESTOPPEL; EXCHANGE LEGAL MEMOS WITH MEDIATOR
Other	Litigation	1/2/19	EMW	\$625.00	0.7	\$437.50	ANALYSIS OF MEDIATOR'S SETTLEMENT PROPOSAL; REVIEW BACKUP DATA
Other	Litigation	1/4/19	EMW	\$625.00	0.8	\$500.00	REVIEW AND RESPOND TO MEDIATOR'S EMAILS RE SETTLEMENT; REVIEW PRIOR MENTON EMAILS; REVIEW EMAILS FROM AAF TO TRUSTEE
Other	Litigation	1/25/19	EMW	\$625.00	1.1	\$687.50	ANALYSIS OF CORRESPONDENCE FROM MEDIATOR RE MARY YOON COUNTEROFFER; DRAFT RESPONSE
Other	Litigation	4/11/19	EMW	\$625.00	0.8	\$500.00	TELEPHONE CONFERENCE WITH AAF RE SETTLEMENT WITH DEBTOR; REVIEW TERM SHEET RE M. YOON SM; SEND EMAIL TO AAF
Other	Litigation	4/23/19	EMW	\$625.00	1.9	\$1,187.50	ANALYSIS OF DISPUTE RE MARY YOON SETTLEMENT AGREEMENT; TELECON AAF RE SAME; CONFERENCE CALL WITH MENTON AND H. WEG
Other	Litigation	6/26/19	EMW	\$625.00	0.3	\$187.50	REVIEW CALENDAR MEMO; SEND EMAIL TO TRUSTEE RE PMT FROM M. YOON

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):

Thomas Jang Young Yoon

Represented By
Stella A Havkin

Trustee(s):

Nancy J Zamora (TR)

Represented By

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Anthony A Friedman

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1:17-11358 Thomas Jang Young Yoon

Chapter 7

#5.00 SLBiggs', accountant for trustee first interim application for approval of compensation and reimbursement of costs for Period: 6/27/2017 to 7/15/2019

Docket 47

Tentative Ruling:

SLBiggs, A Division of SingerLewak (“SLBiggs”), accountant to chapter 7 trustee – approve fees of \$7,455.00 and reimbursement of expenses of \$67.63, pursuant to 11 U.S.C. § 331, on an interim basis. SLBiggs may collect 80% 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 SLBiggs is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and SLBiggs will be so notified.

Party Information

Debtor(s):

Thomas Jang Young Yoon

Represented By
Stella A Havkin

Trustee(s):

Nancy J Zamora (TR)

Represented By
Anthony A Friedman

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1:00 PM

1:14-15621 Edward D. Roane

Chapter 11

#6.00 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; 8/16/18; 2/21/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **February 20, 2020 at 1:00 p.m. On or before February 6, 2020**, 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 22, 2019 are excused.

Party Information

Debtor(s):

Edward D. Roane

Represented By
Michael Jay Berger

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1:00 PM

1:18-12494 Elas, LLC dba Calnopoly, LLC

Chapter 11

#7.00 Disclosure statement hearing in support of plan of reorganization

Docket 73

Tentative Ruling:

Deny.

Unclear income projections. In the projections attached to the disclosure statement [doc. 73], the debtor indicates it receives \$5,430 in rental income from the real property located on Vernon Avenue (the "Vernon Property") and \$4,150 in rental income from the real property located on Presidio Drive (the "Presidio Property"). However, in footnotes, the debtor contends that it anticipates receiving an "additional" \$3,500 in rental income from the Vernon Property and an "additional" \$1,200 in rental income from the Presidio Property.

On July 24, 2019, the debtor filed a declaration by Latrice Allen and Ernest Allen, Jr. (the "Declaration") [doc. 86]. In the Declaration, the Allens state that they will be receiving an additional \$1,200 from the Presidio Property beginning in August 2019, bringing the *total* to \$4,150. As such, it appears the amounts listed in the debtor's projections attached to the disclosure statement are inaccurate; the numbers the debtor used are *anticipated* rental amounts, not current figures as stated in the disclosure statement.

The debtor should file an amended disclosure statement attaching all relevant rental agreements and clarify whether the projections are based on current figures or anticipated rental income. Although it appears from the Declaration that the debtor is now receiving the full \$4,150 projected as to the Presidio Property, it is unclear if the debtor is already receiving the increased rental income from the Vernon Property. If the debtor does not receive the additional \$3,500 anticipated by the debtor, the debtor will have \$1,930 in rental income from the Presidio Property, resulting in potential feasibility issues for the debtor.

Inconsistent information in schedules. Moreover, in its schedule E/F, the debtor lists two unsecured creditors: (A) the Los Angeles Department of Water and Power,

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CONT... **Elas, LLC dba Calnopoly, LLC**

Chapter 11

with a claim in the amount of \$423.89; and (B) State Farm General Insurance Company, with a claim in the amount of \$25.65. The debtor does not list these claims as disputed, contingent or unliquidated. In its chapter 11 plan and the disclosure statement, the debtor asserts that it does not have any unsecured creditors. Why is there a discrepancy between the debtor's schedules, which have never been amended, and the debtor's chapter 11 plan and disclosure statement?

Missing information. As noted by objecting lender Ajax Mortgage Loan Trust 2019-A, Mortgage-Backed Securities, Series 2019-A, by U.S. Bank National Association, as Indenture Trustee (the "Lender"), the debtor has not provided a cash flow statement outlining current income and expenses related to the business.

Moreover, the debtor has not provided a declaration by its members in which the members: (A) state that all facts and representations from the disclosure statement are true and correct; (B) state that no material facts have been omitted; (C) provide the source of information used to draft the disclosure statement; (D) identify the party responsible for providing the financial information; and (E) noting the accounting method used. The disclosure statement also does not include information about nonbankruptcy litigation likely to arise, tax consequences of the plan or whether the debtor intends to recover any avoidable transfers.

Postpetition arrears. The Lender contends that the debtor has not provided for treatment of postpetition arrears. The debtor must address treatment of postpetition arrears in an amended chapter 11 plan and disclosure statement.

Incorrect use of form for individual debtors. The debtor used the forms for *individual* debtors' chapter 11 plan and disclosure statement. The debtor is a corporate debtor. As such, the debtor should not use these forms for the debtor's amended disclosure statement and amended chapter 11 plan.

The Court will prepare the order.

Party Information

Debtor(s):

Elas, LLC dba Calnopoly, LLC

Represented By
Anthony Obehi Egbase

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1:00 PM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#8.00 Status conference re chapter 11 case

fr. 12/6/18; 6/20/19

Docket 1

Tentative Ruling:

The debtor has not timely filed its monthly operating report for July 2019.

Party Information

Debtor(s):

Elas, LLC dba Calnopoly, LLC

Represented By
Anthony Obehi Egbase

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1:00 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 11

#9.00 Status conference re: chapter 11 case

fr. 1/10/19, 1/24/19; 8/15/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on October 17, 2019**. No later than **October 3, 2019**, the debtor must file and serve a status report regarding progress toward confirmation of a chapter 11 plan, supported by evidence.

If the debtor has not filed her 2018 tax return with the Court by that time, the debtor must explain in the status report why that has not taken place.

Appearances on August 22, 2019 are excused.

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

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1:18-13023 Hekmatjah Family Limited Partnership

Chapter 11

#10.00 U.S. Trustee Motion to dismiss or convert case

Docket 60

***** VACATED *** REASON: Case dismissed on 8/9/19 [doc. 76]. The motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hekmatjah Family Limited

Represented By
Stella A Havkin

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1:18-13023 Hekmatjah Family Limited Partnership

Chapter 11

#11.00 Status conference re chapter 11 case

fr 2/21/19; 8/15/19

Docket 8

***** VACATED *** REASON: Case dismissed on 8/9/19 [doc. 76].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hekmatjah Family Limited

Represented By
Stella A Havkin

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#12.00 Confirmation hearing re: debtor's first amended chapter 11 plan

Docket 78

***** VACATED *** REASON: Notice of withdrawal filed 8/12/19 [doc. 87].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik
Jeffrey S Kwong

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#13.00 Status conference re: chapter 11 case

fr. 4/4/19; 4/25/19; 8/15/19

Docket 1

Tentative Ruling:

The debtor has not filed its June and July 2019 monthly operating reports.

The Court will continue this status conference to **2:00 p.m. on August 29, 2019**, to be held in connection with the hearing on the debtor's motion to approve a compromise [doc. 88].

Appearances on August 22, 2019 are excused.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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1:00 PM

1:19-10299 Paula Parisi

Chapter 11

#14.00 Status conference re chapter 11 case

fr. 4/25/19; 5/23/19

Docket 1

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1112(b)(1), (4)(E) and (F), this case will be dismissed with 180-day bar to the debtor's filing of another petition under any chapter of the Bankruptcy Code. Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, and the record in this case, the Court concludes that it is in the best interest of creditors and the estate to dismiss this case.

On May 23, 2019, the Court entered an *Order Setting (1) Deadlines Concerning Chapter 11 Plan and Disclosure Statement and (2) Continued Status Conference* (the "Order") [doc. 96]. Pursuant to the Order, the debtor was required to: (1) file a proposed chapter 11 plan of reorganization and related disclosure statement; (2) file and serve an updated case status report by August 8, 2019; (3) file each monthly operating report due for the post-petition period through July 2019; and (4) pay the United States trustee quarterly fees due for the post-petition period through July 2019.

Contrary to the Order, the debtor did not timely file a proposed chapter 11 plan of reorganization and related disclosure statement and an updated case status report. On August 21, 2019, the debtor belatedly filed her monthly operating report for May 2019; the debtor has not yet filed monthly operating reports for June and July 2019. Because the debtor has not timely filed each monthly operating report due for the post-petition period through July 2019, it is unclear whether the debtor is current on payments for the United States trustee quarterly fees.

In her schedule A/B [doc. 27], the debtor listed an interest in real property valued at \$1,300,000 (the "Property"). The debtor also listed an interest in personal property in the aggregate amount of \$37,353.15. In her amended schedule C [doc. 76], the debtor claimed a \$175,000 exemption in the Property and exemptions in the aggregate

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CONT... Paula Parisi

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amount of \$24,103 in the personal property.

As of August 14, 2019, three creditors have filed claims secured by the Property in the aggregate amount of \$711,515.34 [Claims 1-1, 5-1 and 8-1]. In her amended schedule E/F [doc. 76], the debtor listed \$43,544.63 in priority unsecured claims and \$143,758.01 in nonpriority unsecured claims.

This is the debtor's fourth bankruptcy filing. The last prior case, a chapter 13 case, was dismissed on September 11, 2018. The debtor's preceding bankruptcy cases, also under chapter 13, were dismissed prior to the debtor's receipt of a discharge. The debtor did not confirm a chapter 13 plan in either of her two most recent chapter 13 cases.

On February 22, 2019, the debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 (the "Motion to Continue") [doc. 14]. Prior to the continued hearing on the Motion to Continue, the Court posted a tentative ruling [doc. 34]. In that tentative ruling, the Court stated that if the debtor agreed to the appointment of a chapter 11 trustee or conversion of the case to one under chapter 7, the Court would grant the Motion to Continue. At the continued hearing on March 20, 2019, and subsequently, the debtor did not agree to the appointment of a chapter 11 trustee or to the conversion of the case to one under chapter 7.

On March 21, 2019, the Court entered an order denying the debtor's motion to continue the automatic stay [doc. 36]. Further, on April 10, 2019, the Court entered an order granting a motion for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(4) as to the Property, filed by the first deed of trust holder [doc. 64]. Accordingly, at this time, there is no automatic stay as to the Property.

Moreover, the first deed of trust holder may have conducted a foreclosure sale of the Property. In the debtor's *Emergency Motion to Sell Property and Obtain Motion for an Order Suspending Injunction* [doc. 105], the debtor stated that the holder of the first deed of trust scheduled a foreclosure sale of the Property for June 7, 2019.

Thus, if this case was converted to one under chapter 7, at this point in time (following a foreclosure sale of the Property), it appears that there are not sufficient nonexempt assets for any chapter 7 trustee to administer for the benefit of creditors.

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CONT...

Paula Parisi

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As such, there being cause to dismiss or convert this chapter 11 case, it is in the best interest of creditors and the estate to dismiss this case rather than convert it to one under chapter 7.

The Court will prepare the order.

Party Information

Debtor(s):

Paula Parisi

Pro Se

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1:19-11386 FinCabiz, Inc.

Chapter 11

#15.00 U.S. Trustee Motion under 11 U.S.C. sec. 1112(b) to dismiss
or convert case

fr 7/18/19

Docket 14

***** VACATED *** REASON: Case dismissed on 8/9/19 [doc. 55]. The
motion is moot.**

Tentative Ruling:

Party Information

Debtor(s):

FinCabiz, Inc.

Represented By
Javier H Castillo

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1:13-15687 Antonio Lamar Dixon

Chapter 7

#16.00 Chapter 7 Trustee's Motion to leave certain asset of the estate unadministered

Docket 191

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):

Antonio Lamar Dixon

Represented By
Leslie A Cohen

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael T Delaney
Ashley M McDow
Teresa C Chow
Ron Bender
Carmela Pagay
Beth Ann R Young

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1:16-10543 Dean Albert Maury Cazares

Chapter 7

#17.00 Debtor's Motion that the Court set a date by which the Trustee must sell or abandon assets

Docket 131

Tentative Ruling:

For the reasons discussed below, the Court will deny the motion.

As an initial matter, service of the motion was improper. Pursuant to Fed. R. Bankr. P 6007(b), the motion and any notice of the motion must be served on the chapter 7 trustee, the United States trustee and all creditors. Here, the debtor only served the motion on the chapter 7 trustee's attorney and parties via NEF. The debtor did not serve all creditors.

Further, pursuant to Local Bankruptcy Rule 6007-1(c), the movant must serve notice of the motion, which states that any objection must be filed and served not more than 14 days after service of the notice. The debtor did not serve notice of the motion on any parties and the motion itself does not state a deadline for filing an opposition.

I. BACKGROUND

On February 25, 2016, Dean Albert Maury Cazares ("Debtor") filed a voluntary chapter 7 petition. Diane C. Weil was appointed as the chapter 7 trustee (the "Trustee").

Debtor is a member of several bands, including the band Fear Factory. Prepetition, Debtor had a series of disputes with current and former band members over a variety of issues [Declaration of Diane C. Weil ("Weil Decl."), ¶ 5]. One of these disputes led to entry of a judgment against Debtor and his band member, Burton Bell, in the Los Angeles Superior Court (the "State Court Action"). *Id.* It appears that this judgment arose out of a settlement, which resolved an earlier dispute regarding the break-up of a previous iteration of Fear Factory. *Id.*

In his amended schedule A/B [doc. 19], Debtor listed a 50% interest in Oxidizer,

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Chapter 7

Inc., Fear Campaign, Inc. and Fear Factory, Inc. Debtor also listed a 50% interest in the trademarked name, Fear Factory (the "Trademark") and an interest in copyrights to various music recordings (the "Catalog"). *Id.*

In the fall of 2016, Debtor went on tour with Fear Factory [Declaration of Dean Cazares ("Cazares Decl."), ¶ 6]. In early 2017, the Trustee filed a complaint against Debtor, members of Fear Factory, Fear Factory, Inc. and Oxidizer, Inc. related to funds owed to the Trustee, in part from the tour, and for exploitation of the Trademark, initiating adversary proceeding 1:17-ap-01017-VK (the "Adversary Proceeding").

Since 2018, the parties in the Adversary Proceeding have been involved in settlement discussions, which would resolve not only the Adversary Proceeding, but also issues related to Debtor's bankruptcy case, including the disposition of the estate's interest in the Catalog and the Trademark [Adversary Proceeding, doc. 105, ¶¶ B-F]. Settlement discussions have been stalled several times, in part, because Mr. Bell re-opened his 2011 bankruptcy case in the United States District Court for the Middle District of Pennsylvania (the "Pennsylvania Bankruptcy") in order to prosecute a motion for contempt (the "Contempt Motion"), arguing that the State Court Action judgment was void because of his discharge.

In the Adversary Proceeding, this Court has entered five orders granting stipulations to extend discovery deadlines and status conferences, in part, because of the Pennsylvania Bankruptcy [Adversary Proceeding, docs. 68, 93, 97, 102 and 106]. In the fifth stipulation [doc. 105], the parties stated that the Judge presiding over the Pennsylvania Bankruptcy issued a ruling on the Contempt Motion, which bifurcated the damages portion. On the same day that the Judge issued the ruling, the Judge passed away. Accordingly, the damages portion of the Contempt Motion was continued. Subsequently, the Trustee's counsel passed away, and it has taken time for new counsel to become familiar with the facts in this case. As such, to allow more time to continue settlement discussions, the parties requested that the Court extend the discovery cut-off to September 30, 2019 and the status conference date to October 30, 2019.

In Debtor's bankruptcy case, on February 21, 2019, the Court entered an order granting the Trustee's application to employ a broker to sell the estate's interest in the

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CONT... Dean Albert Maury Cazares

Chapter 7

Catalog [doc. 125]. To date, the Trustee has received \$60,000 in royalties from the Catalog. Weil Decl., ¶ 6. The Trustee's broker has marketed the Catalog and received five offers to purchase the Catalog [Declaration of Philip Fier ("Fier Decl."), ¶¶ 3-5]. He is currently negotiating with the highest bidder, while the highest bidder performs due diligence. *Id.* The Trustee anticipates filing a motion to approve the sale within 60 to 90 days. Weil Decl., ¶ 8.

On July 31, 2019, Debtor filed a *Motion that the Court Set a Date by which the Trustee Must Sell or Abandon Assets* (the "Motion") [doc. 131]. In the Motion, Debtor requests that the Court order the Trustee to abandon the estate's interest in: (1) the Catalog; (2) the Trademark; and (3) Fear Campaign Inc. and Oxidizer, Inc (collectively, the "Assets"). In the alternative, Debtor asks that the Court set a deadline by which the Trustee must sell or abandon the Assets. On August 8, 2019, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 133]. As of August 16, 2019, Debtor has not filed a reply to the Opposition.

II. DISCUSSION

Pursuant to 11 U.S.C. § 554(b): "On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To approve a motion to abandon property, the court must find, after notice and a hearing, that "(1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate" by a preponderance of the evidence. *In re Viet Vu*, 245 B.R. 644, 647, 650 (B.A.P. 9th Cir. 2000). "As the Sixth Circuit Court of Appeals noted, '[a]n order compelling abandonment is the exception, not the rule.'" *Id.*, at 647 (quoting *Morgan v. K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987)).

"Charged with the duty of maximizing the value of the estate, a trustee may abandon a cause of action only when he deems its value to be less than the cost of asserting it." *In re Sullivan & Lodge, Inc.*, 2003 WL 22037724, at *4 (N.D. Cal. Aug. 20, 2003).

Here, Debtor has not shown that the Assets are burdensome to the estate or that they are of inconsequential value. Debtor presented no evidence that the assets are

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burdensome to the estate. Further, it appears that the Catalog is of consequential value to the estate. The Trustee states that, to date, she has received approximately \$60,000 in royalties from the Catalog. Weil Decl., ¶ 6. The Trustee's broker states that he has received five offers to purchase the Catalog and is currently negotiating with the highest bidder. Fier Decl., ¶¶ 4-5. The Trustee anticipates filing a motion to approve the sale within 60 to 90 days. Weil Decl., ¶ 8.

At this point, the Court will allow additional time to the Trustee to market the Catalog and enter into a purchase and sale agreement. When the Trustee files a motion to approve the sale of the Catalog, the Court will evaluate the agreed-upon sale price and determine whether the sale is in the best interest of unsecured creditors.

Debtor alternatively requests that the Court set a deadline for the Trustee to market the Assets and file a sale motion. In *In re Pauline*, 119 B.R. 727 (B.A.P. 9th Cir. 1990), the BAP in affirmed the bankruptcy court's order abandoning the debtor's property after the court-imposed 60-day deadline ran. However, the BAP did not discuss the propriety of such a deadline or engage in any analysis regarding imposing a deadline. Nevertheless, based on *Pauline*, it appears the Court has authority to set a deadline if warranted. Here, it appears the Trustee has already hired a broker and started the marketing process, so there is not much of a concern that the Trustee is improperly delaying the sale of the Catalog.

Further, since 2018, the parties have been in settlement discussions regarding the estate's interest in the Catalog and the Trademark. It would be prejudicial to the Trustee for the Court to impose a deadline to abandon those assets, when the Trustee has not administered them, in part, because of settlement discussions. Consequently, the Court will deny the Motion.

III. CONCLUSION

Deny.

The Trustee 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, August 22, 2019

Hearing Room 301

2:00 PM

CONT... Dean Albert Maury Cazares

Chapter 7

Debtor(s):

Dean Albert Maury Cazares

Represented By
Andrew Edward Smyth
Stephen S Smyth

Movant(s):

Dean Albert Maury Cazares

Represented By
Andrew Edward Smyth
Andrew Edward Smyth
Stephen S Smyth
Stephen S 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**

Thursday, August 22, 2019

Hearing Room 301

2:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#18.00 Debtor's objection to claim 4 filed by Wilmington Savings Fund Society, FSB, d/b/a Christina Trust as Owner Trustee of the Residential Credit Opportunities Trust V

Docket 58

Tentative Ruling:

Overrule.

On August 8, 2019, the claimant filed an amended proof of claim. Claim 4-2. In the amended proof of claim, claimant accounts for \$195,819.57 in payments from the debtor between 2015 and March 2019. In the debtor's objection [doc. 58], the debtor states that he made \$182,576.42 in payments to claimant between September 2015 and March 2019. If the debtor disputes claimant's accounting in the amended proof of claim, the debtor can file an objection to the amended proof of claim.

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

Party Information

Debtor(s):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

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

Thursday, August 22, 2019

Hearing Room 301

2:00 PM

1:19-11421 Papanicolaou Enterprises

Chapter 11

#19.00 Motion for relief from stay [UD]

YASAM LEGACY LLC A CA. LTD. LIAB. CO.
VS
DEBTOR

RE: 11329 Magnolia Blvd., North Hollywood, CA 91601 .

fr. 7/17/19; 8/7/19

Docket 26

*** VACATED *** REASON: Case dismissed on 8/12/19 [doc. 93]. The motion is moot.

Tentative Ruling:

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

Movant(s):

Yasam Legacy LLC, A Ca Ltd. Liab.

Represented By
Paul E Gold

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

Thursday, August 22, 2019

Hearing Room 301

2:00 PM

1:19-11421 Papanicolaou Enterprises

Chapter 11

#20.00 Motion to assume non-residential real property lease
located at 11329 Magnolia Blvd., North Hollywood, CA. 91601

Docket 70

***** VACATED *** REASON: Case dismissed on 8/12/19 [doc. 93]. The
motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

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

Wednesday, August 28, 2019

Hearing Room 301

9:30 AM

1:19-11408 Luis Magdaleno

Chapter 13

#1.00 Motion in individual case for order imposing
a stay or continuing the automatic stay as
the court deems appropriate

fr. 7/3/19

Docket 13

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):

Luis Magdaleno

Represented By
Anil Bhartia

Movant(s):

Luis Magdaleno

Represented By
Anil Bhartia

Trustee(s):

Elizabeth (SV) 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 28, 2019

Hearing Room 301

9:30 AM

1:17-11965 Carmit Benbaruh

Chapter 13

#1.10 Motion for relief from stay [RP]

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

fr. 8/21/19

Docket 131

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 - SUSPENDED BK -

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

Wednesday, August 28, 2019

Hearing Room 301

9:30 AM

CONT... Carmit Benbaruh

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 28, 2019

Hearing Room 301

9:30 AM

1:19-11751 Margarita Lizett Miranda

Chapter 7

#2.00 Motion for relief from stay [UD]

MARIO, ROSA AND HERNAN AQUIRRE
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 obtain possession of the property.

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

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 property, not a creditor whose claim is secured by an interest in the property, as specified in the statute.

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):

Margarita Lizett Miranda

Pro Se

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

Wednesday, August 28, 2019

Hearing Room 301

9:30 AM

CONT... Margarita Lizett Miranda

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, August 28, 2019

Hearing Room 301

9:30 AM

1:19-11777 Winters-Schram & Associates

Chapter 7

#3.00 Motion for relief from stay [AN]

1501 LLC
VS
DEBTOR

Docket 6

Tentative Ruling:

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

Movant states that it seeks recovery primarily from applicable insurance.

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.

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 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.

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):

Winters-Schram & Associates

Represented By
Daniel H Reiss
Lindsey L Smith

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

Wednesday, August 28, 2019

Hearing Room 301

9:30 AM

CONT... Winters-Schram & Associates

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, August 28, 2019

Hearing Room 301

9:30 AM

1:17-11860 Juan Morales and Maria Morales

Chapter 13

#4.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 75

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):

Juan Morales

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Maria Morales

Represented By

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

Wednesday, August 28, 2019

Hearing Room 301

9:30 AM

CONT...

Juan Morales and Maria Morales

Rebecca Tomilowitz

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 28, 2019

Hearing Room 301

9:30 AM

1:18-12227 Augusto B. Lasam and Amparo Mores Lasam

Chapter 13

#5.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 30

Tentative Ruling:

On August 14, 2019, the debtors filed a response to the motion for relief from the automatic stay [doc. 32]. The debtors did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

Party Information

Debtor(s):

Augusto B. Lasam

Represented By
Andrew S Mansfield

Joint Debtor(s):

Amparo Mores Lasam

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**

Wednesday, August 28, 2019

Hearing Room 301

9:30 AM

1:19-10541 Adriana Garcia

Chapter 13

#6.00 Motion for relief from stay [PP]

CARMAX BUSINESS SERVICES LLC
VS
DEBTOR

Docket 27

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):

Adriana Garcia

Represented By
Kian Mottahedeh

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

Wednesday, August 28, 2019

Hearing Room 301

9:30 AM

CONT... Adriana Garcia

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 28, 2019

Hearing Room 301

9:30 AM

1:19-11491 Frank Nagib Khallouf

Chapter 13

#7.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
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 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):

Frank Nagib Khallouf

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 28, 2019

Hearing Room 301

9:30 AM

1:17-11041 Jasmine Bone

Chapter 13

#8.00 Motion for relief from stay [RP]

FREEDOM MORTGAGE CORPORATION
VS
DEBTOR

Docket 39

Tentative Ruling:

On August 16, 2019, the debtor filed a response to the motion for relief from the automatic stay [doc. 41]. The debtor did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

Party Information

Debtor(s):

Jasmine Bone

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, August 28, 2019

Hearing Room 301

9:30 AM

1:18-10831 Jose Reynaldo Juarez

Chapter 13

#9.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY, FSB
VS
DEBTOR

Docket 52

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Reynaldo Juarez

Represented By
Richard Mark Garber

Movant(s):

WILMINGTON SAVINGS FUND

Represented By
Erin Elam
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, August 28, 2019

Hearing Room 301

9:30 AM

1:19-10005 Manuel Borobia Bennet

Chapter 13

#10.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

Docket 34

Tentative Ruling:

The Court will continue this hearing to **October 2, 2019 at 9:30 a.m.** The movant did not serve the debtor at the address listed on the debtor's petition. Pursuant to Local Bankruptcy Rule 4001-1(c)(1)(C)(i), movant is required to serve the debtor with the motion, notice of hearing, and all supporting documents.

No later than September 4, 2019, the movant must serve the debtor at "13216 Norris Avenue, Sylmar, California 91342" with the motion, notice of the continued hearing, and all supporting documents.

Party Information

Debtor(s):

Manuel Borobia Bennet

Represented By
Kevin T Simon

Movant(s):

The Bank of New York Mellon as

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, August 28, 2019

Hearing Room 301

1:30 PM

1:17-13375 Adir Setton

Chapter 7

Adv#: 1:18-01035 Kessler v. Setton

#11.00 Pretrial conference re: complaint of Avigdor Kessler

from: 5/16/18; 6/20/18; 10/31/18; 12/12/18

Docket 1

***** VACATED *** REASON: Order approving stip to dismiss adversary proceeding entered 8/27/19.**

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 28, 2019

Hearing Room 301

2:30 PM

1:17-10266 Cindy Park

Chapter 13

Adv#: 1:18-01125 Park v. New Penn Financial, LLC dba Shellpoint Mortgage Se

#12.00 Defendant's motion to dismiss the first amended adversary complaint for damages and injunctive relief under Fed. R. Civ.P. 12(B)(6) and Fed.R.Bank.P. 7012

Docket 25

Tentative Ruling:

Grant.

I. BACKGROUND

On February 1, 2017, Cindy Park ("Plaintiff") filed a chapter 13 petition. In her schedule A/B, Plaintiff listed a fee simple interest in real property located at 19400 Wyandotte Street, #11, Reseda, California 91335 (the "Property"). In her schedule D, Plaintiff indicated that the Property is encumbered by a deed of trust in favor of "Shellpoint" in the amount of \$220,622.05. Plaintiff listed the debt as disputed.

On May 15, 2017, The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2005-26CB, Mortgage Pass-Through Certificates, Series 2005-26CB ("BONYM") filed proof of claim no. 1-1, asserting a secured claim in the amount of \$317,798.81. To the proof of claim, BONYM attached a promissory note, dated May 11, 2005, between America's Wholesale Lender ("AWL") and Plaintiff (the "Note"). In relevant part, the Note provides that Plaintiff agrees to pay \$252,000 plus interest to the lender at 6.125% interest with a maturity date of June 1, 2035. Note, p. 1. The Note also states that "the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the 'Note Holder.'" *Id.*

BONYM also attached a deed of trust (the "DOT"), recorded May 18, 2005 and signed by Plaintiff. The DOT listed AWL as the lender, but included a reference to Countrywide Home Loans, Inc. ("Countrywide") on the first page. Plaintiff initialed each page of the DOT and signed the last page of the DOT.

BONYM also attached an Assignment of Deed of Trust (the "Assignment"). Through

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Wednesday, August 28, 2019

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CONT... Cindy Park

Chapter 13

the Assignment, dated August 11, 2011 and recorded on August 17, 2011, AWL transferred "all beneficial interest under" the DOT "together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said" DOT to BONYM.

On December 10, 2018, Plaintiff filed a complaint (the "Complaint") against BONYM and Shellpoint (collectively, "Defendants"). In the Complaint, Plaintiff alleged that the Note, the DOT and the Assignment are void. Specifically, Plaintiff alleged that the Note and the DOT are void because: (A) AWL is a trade name and cannot hold recorded security interests, and there is no reference to AWL being a dba or associated with any other company; and (B) AWL did not exist before or at the time of signing the Note. Plaintiff also alleged that the Assignment is void on the following bases: (A) MERS did not have authority to execute the Assignment; (B) the Assignment and the Blank Indorsement are "robo-signed;" (C) Countrywide was bankrupt at the time one of its representatives signed the blank endorsement attached to the Note; and (D) the Blank Indorsement was not specifically indorsed to BONYM.

On January 9, 2019, Defendants filed a motion to dismiss the Complaint (the "First Motion to Dismiss") [doc. 6]. On April 24, 2019, the Court held a hearing on the First Motion to Dismiss. At that time, the Court issued a ruling dismissing the Complaint (the "First Ruling") [doc. 18]; however, the Court provided Plaintiff an opportunity to file an amended complaint to assert her unclean hands claim. In the First Ruling, the Court dismissed, with prejudice, Plaintiff's claims based on Countrywide's use of AWL as a trade name and/or Countrywide's alleged concealment of its identity and Plaintiff's robo-signing and blank endorsement allegations. As relevant to the current Motion, the Court also held that BONYM is an assignee that is a holder in due course. On May 1, 2019, the Court entered an order granting the First Motion to Dismiss [doc. 20].

On May 7, 2019, Plaintiff filed a first amended complaint (the "FAC") [doc. 22]. In the FAC, Plaintiff alleges that Countrywide, the original lender, engaged in predatory lending by hiding its true identity and providing Plaintiff a loan she could not afford. Plaintiff contends that BONYM should be held liable for this conduct as a successor to Countrywide. Plaintiff also alleges that, in light of Countrywide's misrepresentation of its identity and bad faith conduct, BONYM is barred from asserting a claim against Plaintiff under an unclean hands theory. Finally, Plaintiff briefly references the Truth in Lending Act ("TILA") and the Equal Credit Opportunity Act ("ECOA").

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CONT... Cindy Park

Chapter 13

On May 21, 2019, Defendants filed the Motion [doc. 25]. In the Motion, Defendants assert that: (A) Plaintiff signed the DOT, which included multiple references to Countrywide; (B) there is no independent cause of action for "predatory lending" and BONYM was not the original lender; (C) Plaintiff's TILA and ECOA claims are time barred; and (D) Plaintiff has not adequately stated a basis for relief under the unclean hands doctrine.

On June 12, 2019, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 32]. In the Opposition, Plaintiff again asserts that Countrywide concealed its identity. Although Plaintiff concedes Countrywide's name appears on the DOT, Plaintiff contends she believed Countrywide acted as a servicer, not as the lender; as a result, Plaintiff believes there was no "meeting of the minds" at the time she executed the Note. Plaintiff further argues that her claims are not time barred because Plaintiff did not discover the fraud until BONYM filed its proof of claim. Finally, Plaintiff asserts that BONYM is not a holder in due course and that the Note, which includes a "robo-signed" endorsement in blank, is invalid.

On July 17, 2019, Defendants filed a reply to the Opposition (the "Reply") [doc. 37]. In the Reply, Defendants argue that: (A) Plaintiff should not be allowed to repeat arguments already decided by the Court in connection with the First Motion to Dismiss; (B) Plaintiff's unclean hands theory involves Countrywide, not Defendants; (C) Plaintiff's assertion that there was no "meeting of the minds" is without basis given that Plaintiff intended to and did take the loan funds by executing the Note and DOT, which explicitly provide that the Note and DOT may be transferred; and (D) Plaintiff's argument regarding tolling of the statute of limitations references a clause in a separate Home Equity Line of Credit, not the Note and DOT at issue here.

II. ANALYSIS

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

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CONT...

Cindy Park

Chapter 13

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.").

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. Issues Determined by the First Ruling

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2:30 PM

CONT... Cindy Park

Chapter 13

As a preliminary matter, Plaintiff repeats arguments already decided by the Court through the First Ruling. The FAC and the Opposition include arguments regarding Countrywide's use of AWL as a trade name and the use of robo-signing and blank endorsements to effectuate the Assignment. Given that the Court dismissed Plaintiff's claims based on these allegations with prejudice, Plaintiff may not seek relief on these bases through the FAC. To the extent these allegations are relevant to the new claims asserted by Plaintiff, the Court discusses them below.

C. Predatory Lending

"There is no common law claim for predatory lending. However, California Financial Code § 4973 prohibits certain predatory lending-type acts with respect to 'covered loans.'" *Pham v. Bank of Am., N.A.*, 2010 WL 3184263, at *4 (N.D. Cal. Aug. 11, 2010). If the plaintiff fails to allege facts which show that the loan meets § 4973 conditions, the claim fails. *See, e.g., Altman v. PNC Mortg.*, 850 F.Supp.2d 1057, 1081 (E.D. Cal. 2012) (dismissing a claim under § 4970 for failure to allege necessary facts to establish the loan was covered); *Fortaleza v. PNC Financial Services Group, Inc.*, 642 F.Supp.2d 1012, 1020 (N.D. Cal. 2009) (dismissing a claim under § 4973 because the plaintiff did not identify the specific section under which the plaintiff tried to sue, and did not identify the specific conduct by defendant which allegedly violated the statute).

Plaintiff does not include any allegations in the FAC regarding whether the subject loan is a "covered loan" for purposes of this statute. Although Plaintiff's predatory lending claim fails on this basis, even if the Court assumes the loan is a "covered loan," California's predatory lending statute does not apply to BONYM. Pursuant to California Financial Code § 4979.8—

The provisions of this division shall not impose liability on an assignee that is a holder in due course. The provisions of this division shall not apply to persons chartered by Congress to engage in secondary mortgage market transactions.

The Court held in the First Ruling that BONYM is a holder in due course. As such, BONYM is exempt from the predatory lending statutes under California law. Consequently, the Court will dismiss Plaintiff's predatory lending claim with prejudice.

D. The Truth in Lending Act

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CONT... Cindy Park

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Under 15 U.S.C. § 1635—

- (a) Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this subchapter, whichever is later, by notifying the creditor, in accordance with regulations of the Bureau, of his intention to do so.
...
- (f) An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor....

"[T]he three year time period to exercise a right of rescission under TILA is a statute of repose, not a statute of limitations." *In re Velardi*, 547 B.R. 147, 155 (Bankr. M.D. Pa. 2016); *see also Satre v. Wells Fargo Bank, NA*, 771 F. App'x 387, 388 (9th Cir. May 29, 2019) (confirming that 15 U.S.C. § 1635(f) is a statute of repose "depriving the courts of subject matter jurisdiction" if brought outside the three-year time frame and holding the plaintiffs' claim was barred because they did not send the required notice of rescission within three years of consummation of the loan).

Pursuant to 15 U.S.C. § 1640(e), "any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation...."

Here, to the extent Plaintiff seeks rescission of the Note, Plaintiff has not alleged that she sent a notice of rescission within three years of consummation of the Note, i.e., by May 2008. Because 15 U.S.C. § 1635(f) is a statute of repose, the Court does not have

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subject matter jurisdiction to adjudicate this claim.

To the extent Plaintiff seeks damages under 15 U.S.C. § 1640, first, the FAC does not include any allegations regarding damages incurred by Plaintiff. Second, Plaintiff's claim is time barred because Plaintiff did not bring this action within one year from the date of violation, i.e., by May 2006. In the Opposition, Plaintiff contends that she did not discover the violations until BONYM filed its proof of claim. However, Plaintiff cites cases applicable to discovery of fraud, not TILA or any other claims asserted by Plaintiff. To toll a claim equitably under TILA, Plaintiff must allege that "despite all due diligence, the party invoking equitable tolling is unable to obtain vital information bearing on the existence of the claim." *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1045 (9th Cir. 2011). For instance, in *Cervantes*, the Ninth Circuit Court of Appeals held that the Spanish-speaking plaintiffs could have timely sought the services of a translator to understand the loan documents they signed and received. *Id.*, at 1045-46; *see also Hubbard v. Fidelity Fed. Bank*, 91 F.3d 75, 79 (9th Cir. 1996) (holding that the statute of limitations should not be tolled because "nothing prevented [the mortgagor] from comparing the loan contract, [the lender's] initial disclosures, and TILA's statutory and regulatory requirements").

Plaintiff has not alleged any circumstances that were outside Plaintiff's control. Based on Plaintiff's own allegations, Plaintiff could have learned that AWL is a trade name for Countrywide. Plaintiff also could have learned that Mr. Weatherman was not a co-borrower on the loan, such that Plaintiff could assess whether she was able to afford the loan with her income alone. As such, Plaintiff has not stated a claim for relief under TILA, and the Court will dismiss this claim with prejudice.

E. The Equal Credit Opportunity Act

Pursuant to 15 U.S.C. § 1691(a)—

It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

- (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

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(2) because all or part of the applicant's income derives from any public assistance program; or

(3) because the applicant has in good faith exercised any right under this chapter.

Here, the FAC does not include any allegations regarding any acts of discrimination by either Countrywide or Defendants. In addition, Plaintiff's claim is time barred under 15 U.S.C. § 1691e(f), which sets a five-year statute of limitations to bring a claim under the ECOA. Consequently, the Court will dismiss Plaintiff's ECOA claim with prejudice.

F. Unclean Hands

"A plaintiff asking a court for equitable relief must come with clean hands. Specifically, the doctrine of unclean hands requires that a plaintiff shall have acted fairly and without fraud or deceit as to the controversy in issue." *Northbay Wellness Grp., Inc. v. Beyries*, 789 F.3d 956, 959 (9th Cir. 2015) (internal citations and quotations omitted). "The Supreme Court has emphasized, however, that the doctrine of unclean hands 'does not mean that courts must always permit a defendant wrongdoer to retain the profits of his wrongdoing merely because the plaintiff himself is possibly guilty of transgressing the law.'" *Id.*, at 960 (quoting *Johnson v. Yellow Cab Transit Co.*, 321 U.S. 383, 387, 64 S.Ct. 622, 88 L. Ed. 814 (1944)). "Rather, determining whether the doctrine of unclean hands precludes relief requires balancing the alleged wrongdoing of the plaintiff against that of the defendant, and 'weigh[ing] the substance of the right asserted by [the] plaintiff against the transgression which, it is contended, serves to foreclose that right.'" *Id.* (quoting *Republic Molding Corp. v. B.W. Photo Utils.*, 319 F.2d 347, 350 (9th Cir. 1963)).

Here, the FAC does not include any allegations regarding conduct by *Defendants*. All of the allegations regarding unclean hands involve Countrywide. In a similar case, a court held that imputing liability on an assignee based on conduct by an assignor that may amount to unclean hands was improper. *Bank of New York Mellon v. Lezdey*, 2016 WL 5539759, at *9 (D. Mass. Aug. 25, 2016). In *Lezdey*, the plaintiff bank, an assignee of the original note and deed of trust executed by the defendant borrowers, filed a lawsuit against the defendants to obtain declaratory relief regarding the validity of its lien. *Id.*, at

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*1. In their answer, the defendants asserted an affirmative defense of unclean hands, asserting that the plaintiff cannot recover from the defendants because of the original lender's misconduct and predatory lending practices. *Id.*, at *8. The defendants argued that the plaintiff-assignee was "tainted" by the conduct of the assignor. *Id.* In relevant part, the *Lezdey* court held that "allowing the unclean hands of plaintiff's upstream assignee in relation to the loan to bar plaintiff's declaratory relief declaring the validity of the... mortgage... would result in a windfall to [the borrower] of retaining the loan proceeds without being subject to the mortgage." *Id.*, at *9. Other courts have similarly held that the facts supporting an unclean hands theory must involve the party subject to the defense, not a predecessor. *See, e.g. Washington Capitols Basketball Club, Inc. v. Barry*, 304 F.Supp. 1193, 1199 (N.D. Cal.), *aff'd*, 419 F.2d 472 (9th Cir. 1969) ("[The defendants] have not cited any persuasive authorities to support their view that Washington, the successor, is tainted in equity by the malfeasance of Oaks, its predecessor."); *and Nat. -Immunogenics Corp. v. Newport Trial Grp.*, 2019 WL 1751837, at *7 (C.D. Cal. Feb. 28, 2019) (relying on *Barry* to hold that the "immoral conduct... must touch and taint" the party to the action).

Plaintiff has not offered any allegations that *Defendants* have engaged in conduct that would prevent Defendants from asserting a claim under the Note and the DOT. Instead, the allegations involve Countrywide, the original lender. Even if Plaintiff sufficiently alleged unclean hands as to Countrywide, such allegations would be insufficient to bar Defendants from recovering on their claim. The Court will dismiss Plaintiff's unclean hands claim with prejudice.

III. CONCLUSION

The Court will dismiss the FAC without leave to amend.

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

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

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CONT... Cindy Park

Chapter 13

Defendant(s):

New Penn Financial, LLC dba	Pro Se
The Bank of New York Mellon fka	Pro Se
New Penn Financial, LLC DBA	Represented By Erin M McCartney

Plaintiff(s):

Cindy Park	Pro Se
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Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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1:17-10266 Cindy Park

Chapter 13

Adv#: 1:18-01125 Park v. New Penn Financial, LLC dba Shellpoint Mortgage Se

- #13.00** Status conference re: first amended complaint of the plaintiff pursuant to 11 U.S.C. section 506(a),(d) and Bankrutpcy Rule 3012 to determine;
- 1) The fraud upon the court,
 - 2) The validity of creditor's proof of claim,
 - 3) The value of the security, and,
 - 4) Claim for damages, sanctions and injunctive relief

fr. 2/13/19; 4/24/19; 6/19/19

Docket 1

Tentative Ruling:

See calendar no. 12.

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

Defendant(s):

New Penn Financial, LLC dba

Pro Se

The Bank of New York Mellon fka

Pro Se

Plaintiff(s):

Cindy Park

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-11150 Robert Edward Zuckerman

Chapter 7

Adv#: 1:18-01086 Abel v. Zuckerman et al

#14.00 Motion to dismiss Richard Abel's March 27, 2019 second amended complaint's re first and second claims for declaratory relief against defendants

fr. 6/5/19

Docket 82

Tentative Ruling:

The Court will continue this hearing to September 4, 2019 at 2:30 p.m.

Apperances on August 28, 2019 are excused.

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

B. Edward McCutchan Jr. an

Represented By
Edward McCutchan

Sunderland/McCutchan LLP, a

Represented By
Edward McCutchan

Phoenix Holdings, LLC a California

Pro Se

DOES 1-20

Pro Se

Nickki B Allen, an individual

Pro Se

Sunderland/McCutchan, Inc., a

Represented By
Edward McCutchan

Maravilla Center, LLC, a California

Pro Se

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CONT... Robert Edward Zuckerman Chapter 7

San Jacinto Z, LLC, a California Pro Se

Contiental San Jacinto, LLC, a Pro Se

Zuckerman Building Company, a Pro Se

Valley Circle Estates Realty Co., a Pro Se

Continental Communities, LLC, a Pro Se

Robert Edward Zuckerman Represented By
Sandford L. Frey

Rezinate San Jacinto, LLC, a Pro Se

Plaintiff(s):

Richard Abel Pro Se

Trustee(s):

Diane C Weil (TR) Pro Se

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2:30 PM

1:18-11150 Robert Edward Zuckerman
Adv#: 1:18-01086 Abel v. Zuckerman et al

Chapter 11

- #15.00** Status conference re: second amended complaint for:
- 1) Declatratory relief re: determination of validity, priority or extent of interest in property
 - 2) Declaratoty 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) Nondischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)(A)
 - 5) Nondischargeability of debt pursuant to 11 U.S.C. 523(a)(2)(B) [28 U.S.C. sec 157(b)(2); FRBP., R. 7001]

fr. 11/14/18 (stip); 1/9/2019; 2/20/19; 3/13/19; 5/8/19; 6/5/19

Docket 75

Tentative Ruling:

The Court will continue this status conference to September 4, 2019 at 2:30 p.m.

Apperances on August 28, 2019 are excused.

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

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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
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Thursday, August 29, 2019

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#1.00 Hearing on Debtor's First Amended Disclosure Statement
Describing First Amended Chapter 11 Plan of Reorganization

Docket 113

Tentative Ruling:

The Court will not approve the amended disclosure statement [doc. 113] as containing adequate information.

Characterization of entities as secured creditors or lessors. In its liquidation analysis and Exhibits A, B and C to the amended disclosure statement, the debtor refers to Amur Equipment/Bank of Cardiff ("Amur"), Blue Bridge and BFG Corp./Mercury Capital ("BFG") as **secured** creditors. However, in the body of the disclosure statement and in schedule D [doc. 18], the debtor indicated these entities are lessors, and that the debtor has only **one** secured creditor, i.e., Valley Economic Development Center, Inc.

On September 18, 2019, BFG filed a proof of claim and attached a lease agreement. BFG did not indicate that it has a secured claim against the estate. On November 12, 2018, Amur filed a proof of claim and asserted a secured claim in the amount of \$50,000, based on a UCC-1 financing agreement.

The debtor must amend the disclosure statement and the attached exhibits to clarify whether Amur, Blue Bridge and BFG are lessors or secured creditors. If any of these entities is a **secured** creditor, the debtor must amend its chapter 11 plan to provide for treatment of the claim of that creditor (by adding a class for that claim); that class may be unimpaired. If an entity is a lessor, the debtor must amend the disclosure statement to discuss the remaining term of the lease.

Liquidation analysis. The debtor also must amend the disclosure statement to discuss the impact on the liquidation analysis of *properly* characterizing these entities, e.g., if the debtor owns the asset or if the asset is leased. At this time, the debtor conflates the personal property it owns (which may be encumbered) with its leased personal property.

For example, if an asset is leased, the value of that asset should *not* be included in the liquidation analysis. Moreover, if the case were converted to one under chapter 7, and

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CONT... Mr. Tortilla, Inc.

Chapter 11

the lease was rejected, the estate could be subject to lease rejection damages.

In order for creditors and the Court to assess what creditors would receive if the case were converted to a case under chapter 7, the debtor must provide the *liquidation* value of each of its assets (those that are not leased), and identify the claims secured by those assets.

In addition, the debtor should clarify the amount of the lien held by Valley Economic Development Center, Inc. ("VEDC"), if the debtor's chapter 11 plan is not confirmed, and the case were converted to a case under chapter 7. According to the debtor's stipulation with VEDC [doc. 109], if the debtor's plan is not confirmed, the terms of the stipulation will no longer be in effect. As such, if this case is converted, the amount of VEDC's secured claim may differ from the amount to be paid under the chapter 11 plan.

The malpractice action. The debtor should provide estimates of the administrative cost of litigating the malpractice claim against Roger Vega. The debtor should provide estimates for the cost of successfully mediating the claim compared with the cost of proceeding to trial in that case.

Moreover, the debtor indicated in the disclosure statement that the parties attended a Case Management Conference. In an amended disclosure statement, the debtor should discuss what happened at the Case Management Conference. The debtor also should include any information it has on Mr. Vega's malpractice insurance coverage and whether the parties have scheduled a mediation.

Objection to claims. In the reply filed by the debtor, the debtor indicates that it does not intend to object to the claim held by Diana's Mexican Food Products, Inc. ("Diana's"). In an amended disclosure statement, the debtor should note that it no longer intends to object to this claim.

Debtor's monthly income. The debtor's monthly operating reports for June and July 2019 reflect less than \$60,000 in receipts. Why does the debtor anticipate an increased income of \$84,500 in its projections attached as Exhibit D to the disclosure statement?

Confirmation issues. In an objection to the disclosure statement filed by Diana's [doc. 118], Diana's argues that the chapter 11 plan is not proposed in good faith and that the plan violates the absolute priority rule. These issues are properly considered at the

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CONT... Mr. Tortilla, Inc.

Chapter 11

confirmation stage, and Diana's may object to the chapter 11 plan at that time.

The debtor should be prepared to discuss the timing for preparing and filing an amended disclosure statement.

Party Information

Debtor(s):

Mr. Tortilla, Inc.

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

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1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#2.00 Status conference re chapter 11 case

fr. 10/11/18; 12/6/18; 2/21/19; 4/11/2019; 6/20/19; 8/8/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mr. Tortilla, Inc.

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

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Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#3.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **November 15, 2019.**

Deadline to mail notice of Bar Date: **September 13, 2019.**

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: **January 13, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on January 23, 2020.**

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):

Maryam Sheik

Represented By
Matthew D Resnik

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1:00 PM

1:19-11696 Peter M. Seltzer

Chapter 11

#4.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **November 15, 2019.**

Deadline to mail notice of Bar Date: **September 13, 2019.**

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, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on December 12, 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

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#4.10 Status conference re: chapter 11 case

fr. 4/4/19; 4/25/19; 8/15/19; 8/22/19

Docket 1

***** VACATED *** REASON: Rescheduled for 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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2:00 PM

1:18-10762 Jaime R Lara

Chapter 7

#5.00 Chapter 7 Trustee's objection to proof of claim No. 4-1
filed by Benjamin C. Lara

fr. 7/18/19

Docket 52

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):

Jaime R Lara

Pro Se

Trustee(s):

Diane C Weil (TR)

Represented By
Elissa Miller
Claire K Wu

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2:00 PM

1:18-10762 Jaime R Lara

Chapter 7

#6.00 Chapter 7 Trustee's objection to claims filed by
1) Yolanda Lara - POC #5-1;
2) Jose Mendoza - POC #6-1; and
3) Almaligia Lara - POC #7-1

[Continued as to claim #7]

fr. 7/18/19

Docket 54

Tentative Ruling:

Sustain as to claim 7-1.

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.

Party Information

Debtor(s):

Jaime R Lara

Pro Se

Trustee(s):

Diane C Weil (TR)

Represented By
Elissa Miller
Claire K Wu

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#7.00 Debtor's motion for entry of an order: (1) Approving settlement agreement and release pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure; and (2) Authorizing the parties to implement settlement agreement

Docket 88

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik
Jeffrey S Kwong

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#7.10 Status conference re: chapter 11 case

fr. 4/4/19; 4/25/19; 8/15/19; 8/22/19

Docket 1

Tentative Ruling:

In light of the settlement [*see* calendar no. 7], what are the debtor's intentions for its reorganization and what is the anticipated timing to effectuate that?

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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2:00 PM

1:19-10675 Michael Herbert Mueller

Chapter 11

#8.00 Motion for order determining value of collateral

fr. 6/13/19

Docket 22

***** VACATED *** REASON: Case dismissed on 6/27/19 [doc. 52].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Herbert Mueller

Represented By
Lionel E Giron
Crystle Jane Lindsey

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

Wednesday, September 4, 2019

Hearing Room 301

9:30 AM

1:16-13657 Mary Elizabeth Grant

Chapter 13

#1.00 Motion for relief from stay [RP]

NEWREZ LLC
VS
DEBTOR

fr. 8/21/19

Docket 66

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Elizabeth Grant

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, September 4, 2019

Hearing Room 301

9:30 AM

1:17-10158 Bryan David Blair

Chapter 13

#2.00 Motion for relief from stay [RP]

US BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 72

Tentative Ruling:

- NONE LISTED -

Party Information

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, September 4, 2019

Hearing Room 301

9:30 AM

1:18-11685 Maksym Tokarev

Chapter 13

#3.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 36

***** 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):

Maksym Tokarev

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, September 4, 2019

Hearing Room 301

9:30 AM

1:19-10869 Lizette L. Mendez and Wilder Mendez

Chapter 13

#4.00 Motion for relief from stay [RP]

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

Docket 33

Tentative Ruling:

On June 19, 2019, the Court entered an order denying the debtor's motion to continue the automatic stay under 11 U.S.C. § 362(a) [doc. 25]. To the extent that the automatic stay has not already fully terminated as to the real property at issue, the Court will grant relief under 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):

Lizette L. Mendez

Represented By
R Grace Rodriguez

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

Wednesday, September 4, 2019

Hearing Room 301

9:30 AM

CONT... Lizette L. Mendez and Wilder Mendez

Chapter 13

Joint Debtor(s):

Wilder Mendez

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 4, 2019

Hearing Room 301

1:30 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

Adv#: 1:18-01114 Nassif et al v. THE BANK OF NEW YORK MELLON fka THE BANK OF

- #5.00** Pretrial conference re: complaint for:
1. Violation of California homeowner bill of rights;
 2. Breach of written agreement;
 3. Breach of vovenant of good faith and fair dealing;
 4. Negligence;
 5. Unlawful business practices

fr. 1/9/2019; 6/5/19(stip)

Docket 1

***** VACATED *** REASON: Continued by stip to 12/4/19 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

Defendant(s):

THE BANK OF NEW YORK

Pro Se

Nationstar Mortgage LLC, A

Pro Se

Bank of America, N.A, a National

Pro Se

Aztec Foreclosure Corporation., a

Pro Se

Plaintiff(s):

Christopher Sabin Nassif

Represented By

Matthew D. Resnik

Robin Nassif

Represented By

Matthew D. Resnik

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

Wednesday, September 4, 2019

Hearing Room 301

1:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

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

Wednesday, September 4, 2019

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#6.00 Status conference re: creditor H. Samuel Hopper's motion to dismiss debtor Kenneth C. Scott's chapter 13 petition

fr. 7/17/19

Docket 70

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on October 2, 2019**, to be held with the hearing on the debtor's motion to dismiss [Adversary Docket, doc. 12].

Appearances on September 4, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) 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 4, 2019

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #7.00** Status conference re amended complaint for:
1. Declaratory relief re nondischargeability of Civil Penalties [11 U.S.C. sec.523(a)(7)]
 3. Declaratory relief re nondischargeability of fraud damages [11 U.S.C. sec. 523(a)(2), (4)]
 3. Declaratory relief re ownership of \$17,247 in business account
 4. Annulment of transfer in fraud of creditors
 5. Fraud and deceit [Cal.Civ. Code, secs. 1572-1573, 1709-1710]
 6. Unlawful retaliation [Cal. Lab. Code, sec. 98.6]
 7. Unlawful retaliation [Cal. Lab. Code, sec. 1102.5]
 8. Failure to maintain and timely produce personnel records [Cal. Lab. Code, sec. 1198.5(k)]

Docket 8

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on October 2, 2019**, to be held with the hearing on the defendants' motion to dismiss [doc. 12].

Appearances on September 4, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Defendant(s):

Kenneth C. Scott

Represented By
Arash Shirdel

My Private Practice, Inc. a

Represented By
Arash Shirdel

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

Wednesday, September 4, 2019

Hearing Room 301

1:30 PM

CONT... **Kenneth C. Scott**
Kenneth Scott, PSY.D. a California

Represented By
Arash Shirdel

Chapter 13

Plaintiff(s):

H. Samuel Hopper

Represented By
Daniel Parker Jett

Trustee(s):

Elizabeth (SV) 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 4, 2019

Hearing Room 301

2:30 PM

1:10-17214 Darin Davis

Chapter 7

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

#8.00 Darin Davis' Motion for attorney's fees

fr. 6/19/19

Docket 275

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on October 23, 2019**, to be heard with the hearing on the defendant's second motion for attorneys' fees incurred on appeal [doc. 290].

Appearances on September 4, 2019 are excused.

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

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

Wednesday, September 4, 2019

Hearing Room 301

2:30 PM

CONT...

Darin Davis

Richard K Diamond

Chapter 7

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

Wednesday, September 4, 2019

Hearing Room 301

2:30 PM

1:19-10319 James Lamont Dubose

Chapter 7

Adv#: 1:19-01060 Jackson v. Dubose

#9.00 Plaintiff's motion for default judgment

Docket 14

Tentative Ruling:

For the reasons discussed below, the Court will continue this hearing to **October 16, 2019 at 2:30 p.m.**

On February 12, 2019, James Lamont Dubose ("Defendant") filed a voluntary chapter 7 petition. On May 24, 2019, Steven Jackson ("Plaintiff") filed a complaint against Defendant requesting nondischargeability of the debt owed to him pursuant to 11 U.S.C. §§ 523(a)(2)(A) (the "Complaint"), initiating this adversary proceeding. The debt is based on a default judgment entered against Defendant, among others, by the District Court, Clark County, Nevada for breach of contract, breach of contract/personal guaranty, breach of quasi-contract/implied in fact contract, breach of good faith and fair dealing, unjust enrichment fraudulent inducement, intentional misrepresentation and negligent misrepresentation in the amount of \$570,686.73, plus post judgment interest (the "Judgment"). The Judgment states that Defendant was served with the summons and the state court complaint, but failed to appear, plead or answer the state court complaint.

On May 30, 2019, Plaintiff served a summons and the Complaint on Defendant [doc. 3]. On June 28, 2019, Plaintiff filed a second request that the Court enter a default against Defendant [doc. 10]. On July 1, 2019, the Court entered default against Defendant [doc. 12].

On July 12, 2019, Plaintiff filed a *Motion for Default Judgment Under LBR 7055-1* (the "Motion") [doc. 14]. To the Motion, Plaintiff attached a copy of the Judgment. However, Plaintiff did not attach a declaration or other evidence attesting to the allegations in the Complaint to establish his claim under 11 U.S.C. § 523(a)(2)(A).

Here, it appears that Plaintiff is attempting to rely on issue preclusion to satisfy the elements of § 523(a)(2)(A). "A United States bankruptcy court determines the issue-

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

Wednesday, September 4, 2019

Hearing Room 301

2:30 PM

CONT... James Lamont Dubose

Chapter 7

preclusive effect of a state court judgment by the law of the court that rendered judgment." *In re Sandoval*, 126 Nev. 136, 138, 232 P.3d 422, 423 (2010). Here, the Judgment was rendered in Nevada. Accordingly, Nevada law applies to whether the Judgment has issue preclusive effect.

Under Nevada law, "[f]our factors must be met for issue preclusion to apply:

- (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; ... (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated.

Id. at 139.

In Nevada, default judgments are generally not given preclusive effect. *Id.* Regarding the actually and necessarily litigated prong, in *Sandoval*, the Nevada Supreme Court held that "[w]hen a default judgment is entered where an answer has not been filed, the issue presented was not actually and necessarily litigated, and issue preclusion does not apply in such circumstances." *Id.* at 141.

This appears to be the circumstance in this case. The Judgment indicates that default judgment was entered against Defendant because he did not make an appearance, file a pleading or otherwise answer the state court complaint. Accordingly, under Nevada law, the Judgment cannot provide a basis for issue preclusion.

In the Motion, Plaintiff did not attach a declaration or other evidence attesting to the allegations in the Complaint. As such, Plaintiff has not proven the merits of his claim.

Accordingly, the Court will continue this hearing to **October 16, 2019 at 2:30 p.m.** to allow Plaintiff to supplement the Motion with additional evidence. **By October 2, 2019**, Plaintiff must file and serve an amended motion and notice of the continued hearing on Defendant.

Appearances on September 4, 2019 are excused.

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

Wednesday, September 4, 2019

Hearing Room 301

2:30 PM

CONT... James Lamont Dubose

Chapter 7

Party Information

Debtor(s):

James Lamont Dubose

Represented By
Stephen L Burton

Defendant(s):

James Lamont Dubose

Pro Se

Plaintiff(s):

Steven Jackson

Represented By
Brian Hockett
Jeffrey N Brown

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 4, 2019

Hearing Room 301

2:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 7

Adv#: 1:18-01086 Abel v. Zuckerman et al

#10.00 Motion to dismiss Richard Abel's March 27, 2019 second amended complaint's re first and second claims for declaratory relief against defendants

fr. 6/5/19; 8/28/19

Docket 82

Tentative Ruling:

The Court will continue this hearing to September 11, 2019 at 2:30 p.m.

Apperances on September 4, 2019 are excused.

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

B. Edward McCutchan Jr. an

Represented By
Edward McCutchan

Sunderland/McCutchan LLP, a

Represented By
Edward McCutchan

Phoenix Holdings, LLC a California

Pro Se

DOES 1-20

Pro Se

Nickki B Allen, an individual

Pro Se

Sunderland/McCutchan, Inc., a

Represented By
Edward McCutchan

Maravilla Center, LLC, a California

Pro Se

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

Wednesday, September 4, 2019

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman Chapter 7

San Jacinto Z, LLC, a California	Pro Se
Contiental San Jacinto, LLC, a	Pro Se
Zuckerman Building Company, a	Pro Se
Valley Circle Estates Realty Co., a	Pro Se
Continental Communities, LLC, a	Pro Se
Robert Edward Zuckerman	Represented By Sandford L. Frey
Rezinate San Jacinto, LLC, a	Pro Se

Plaintiff(s):

Richard Abel	Pro Se
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Trustee(s):

Diane C Weil (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 4, 2019

Hearing Room 301

2:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01086 Abel v. Zuckerman et al

- #11.00** Status conference re: second amended complaint for:
- 1) Declaratory relief re: determination of validity, priority or extent of interest in property
 - 2) Declaratory 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) Nondischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)(A)
 - 5) Nondischargeability of debt pursuant to 11 U.S.C. 523(a)(2)(B) [28 U.S.C. sec 157(b)(2); FRBP., R. 7001]

fr. 11/14/18 (stip); 1/9/2019; 2/20/19; 3/13/19; 5/8/19; 6/5/19; 8/28/19

Docket 75

Tentative Ruling:

The Court will continue this hearing to September 11, 2019 at 2:30 p.m.

Appearances on September 4, 2019 are excused.

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

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

Wednesday, September 4, 2019

Hearing Room 301

2:30 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
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

1:17-13142 Amir Elosseini

Chapter 11

#1.00 Revised first interim application of Libertybell Law Group for allowance of fees and reimbursement of expenses

fr. 8/8/19

Docket 115

Tentative Ruling:

Libertybell Law Group ("Applicant"), special litigation counsel to the debtor and the debtor in possession – approve fees in the amount of \$43,656.25 and reimbursement of expenses in the amount of \$1,187.16, pursuant to 11 U.S.C. § 331, for the period between November 24, 2017 through March 7, 2019, on an interim basis. **Applicant may collect up to 100% of the expenses and 50% of the approved fees at this time, in accordance with the debtor and debtor in possession's ability to pay those expenses and approved fees.** The Court will not approve \$1,912.50 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 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 301 Calendar**

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

CONT... Amir Elosseini

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.

On February 8, 2018, the Court entered an order approving Applicant's employment effective November 24, 2017 [doc. 33]. The Court will not approve the fees billed by Applicant for the services identified below because Applicant provided the services prior to November 24, 2017.

Date	Timekeeper	Description	Rate	Time	Fee Billed
11/3/17	Mayra Bustamante	Preparation of Documents: Prepared shells for discovery	\$175.00	1.00	\$175.00
11/7/17	Dave Miller	Attend Meeting: meeting	\$375.00	0.75	\$281.25
11/7/17	Alina Stone	Attend Meeting: meeting	\$225.00	0.75	\$168.75
11/8/17	Alina Stone	Attend Meeting: meeting to discuss preliminary answer to 4 discovery sets	\$225.00	3.50	\$787.50
11/20/17	Alina Stone	Attend Meeting: meeting to finalize document production and obtain more documents, scanning to system, copy documents	\$225.00	3.00	\$675.00

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):

Amir Elosseini

Represented By
Kevin Tang
David Miller

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

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

1:17-13142 Amir Elosseini

Chapter 11

#2.00 Application for interim compensation for Kevin Tang, Debtor's Attorney
fr. 8/8/19

Docket 145

Tentative Ruling:

Tang & Associates ("Applicant"), counsel to the debtor and the debtor in possession – approve fees in the amount of \$19,207.17 and reimbursement of expenses in the amount of \$281.87, pursuant to 11 U.S.C. § 331, for the period between November 24, 2017 through June 17, 2019, on an interim basis. **Applicant may collect up to 100% of the expenses and 50% of the approved fees at this time, in accordance with the debtor and debtor in possession's ability to pay those expenses and approved fees.** The Court will not approve \$610.00 in fees for the reasons stated in the ruling from August 8, 2019.

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):

Amir Elosseini

Represented By
Kevin Tang
David Miller

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

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

1:18-11125 Marcelo Martinez

Chapter 11

#3.00 First and final application by Resnik Hayes Moradi LLP, general bankruptcy counsel for the debtor, for allowance of fees and reimbursement of costs for the Period May 1, 2018 through June 19, 2019

Docket 106

Tentative Ruling:

Resnik Hayes Moradi LLP ("Applicant"), counsel to the debtor and the debtor-in-possession – pursuant to the stipulation between Applicant and the United States trustee [doc. 110], approve fees in the amount of \$42,783.00 and reimbursement of expenses in the amount of \$1,867.00, pursuant to 11 U.S.C. § 330, for the period between May 1, 2018 through June 19, 2019, on an final basis.

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):

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, September 5, 2019

Hearing Room 301

10:30 AM

1:18-11342 Victory Entertainment Inc

Chapter 7

#4.00 Final fee and expense application of George J Paukert, debtor's attorney

Docket 154

Tentative Ruling:

The Court will continue this hearing to **October 17, 2019 at 10:30 a.m. By September 19, 2019**, the applicant must cure the deficiencies noted below.

Contrary to LBR 2016-1(a)(2)(B), the notice of the hearing did not identify the period covered by the application and the deadline for filing and serving a written opposition.

Contrary to LBR 2016-1(a)(1)(A)(iii), the application does not discuss the amount of cash on hand in the estate or the estimated amount of other accrued expenses of administration.

Contrary to LBR 2016-1(a)(1)(D), the applicant did not include a brief narrative of the services rendered and the time expended during the period covered by the application

Contrary to LBR 2016-1(a)(1)(H), the application does not contain the information required for the billing individuals.

Contrary to LBR 2016-(a)(1)(J), the applicant did not include a declaration by the debtor or describe the steps that were taken to obtain the debtor's consent to the application.

Further, according to the United States trustee guidelines ¶ C.8, "[t]o facilitate effective review of the application, all time and service entries should be arranged by project categories." ¶ C.8.a; *see also* ¶ C.8.b and Exhibit D-1 – Summary of Compensation Requested by Project Category. Moreover, "[e]ntries should give sufficient detail about the work, identifying the subject matter of the communication, hearing, or task and any recipients or participants." ¶ C.8.e.

The billing records attached to the application do not conform to these guidelines. Having assessed the application, the Court requires that the applicant separate his

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

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

CONT... Victory Entertainment Inc

Chapter 7

billing entries into the applicable categories from the United States trustee guidelines. For example, the applicant attached screen shots of his email (Exh. B), however, the screen shots do not give sufficient detail about the service provided by the applicant. In order for the Court to review the application effectively, the applicant must file amended billing records, which conform to ¶ C.8.

Appearances on September 5, 2019 are excused.

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**

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

1:18-12354 MidiCi Group, LLC

Chapter 11

#5.00 First and final application by Resnik Hayes Moradi LLP, counsel for the Committee of Unsecured Creditors for allowance of fees and reimbursement of costs for the period February 1, 2019 through July 20, 2019

Docket 177

Tentative Ruling:

Resnik Hayes Moradi LLP ("Applicant"), counsel for the Official Committee of Unsecured Creditors of MidiCi Group, LLC – approve fees in the amount of \$24,444.00, pursuant to 11 U.S.C. § 330, for the period between February 1, 2019 through July 20, 2019, on a final basis.

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton

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

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

1:18-12354 **MidiCi Group, LLC**

Chapter 11

#6.00 First interim application of Lathrop Gage, LLP for payment of fees and reimbursement of expenses by attorneys for debtor for the period of September 21, 2018 through July 16, 2019

Docket 180

Tentative Ruling:

The Court will continue this hearing to **October 17, 2019 at 10:30 a.m. By October 3, 2019**, the applicant must cure the deficiencies noted below.

Contrary to LBR 2016-1(a)(1)(D), the applicant did not include a brief narrative of the services rendered and the time expended during the period covered by the application.

Except for Eric Riess and Marilyn Nathanson, neither the employment application [doc. 63] nor the fee application contain the information required by LBR 2016-1(a)(1)(H) with respect to the billing individuals.

After reviewing the applicant's reply [doc. 195], the Court will not approve the fees billed for the services identified below unless the applicant provides additional information sufficiently describing the services provided.

Date	Timekeeper	Description	Hours	Amount
9/24/18	ERR	Attention to follow up with clients	0.50	\$212.50
9/24/18	ERR	Conference with bankruptcy attorney and client	0.30	\$127.50
9/26/18	ERR	Conference with bankruptcy attorney and client	1.30	\$552.50
11/30/18	ERR	Conference with client regarding various matters	0.50	\$212.50

Further, the Court agrees with the United States trustee, and will not approve \$1,771.70 in expenses for "relativity monthly external user access, litigation support managed service provider labor, relativity data processing and relativity data hosting" without further explanation. From the description in the application, the Court cannot determine whether the expenses are reasonable and whether they are non-compensable overhead.

Appearances on September 5, 2019 are excused.

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

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

CONT... MidiCi Group, LLC

Chapter 11

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton

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

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

1:18-12354 MidiCi Group, LLC

Chapter 11

#7.00 First interim application of G&B Law, LLP for payment of fees and reimbursement of expenses by attorneys for debtor for the period September 21, 2018 through July 16, 2019

Docket 181

Tentative Ruling:

G&B Law, LLP ("Applicant"), counsel for the reorganized debtor – approve fees in the amount of \$265,318.30 and reimbursement of expenses in the amount of \$16,312.82, pursuant to 11 U.S.C. § 331, for the period between September 21, 2018 through July 16, 2019, on an interim basis. The Court will not approve \$17,680.20 in fees for the reasons discussed 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 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).

In accordance with the foregoing, the Court will reduce the following fees by 25% because they are excessive:

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

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

CONT... MidiCi Group, LLC

Chapter 11

Date	Timekeeper	Description	Time	Rate	Fee	Reduced Fee
4/25/19	35	Review incoming ballots update ballot schedule	0.10	\$240.00	\$24.00	\$18.00
5/1/19	35	Review incoming ballots update ballot schedule and emails with Tom re same	0.30	\$240.00	\$72.00	\$54.00
5/2/19	35	Review incoming ballots update ballot schedule	0.10	\$240.00	\$24.00	\$18.00
5/3/19	35	Follow up on ballots	0.10	\$240.00	\$24.00	\$18.00
5/6/19	35	Review additional ballots and update summary re same; emails to and from Tome re additional ballots	0.20	\$240.00	\$48.00	\$36.00
5/8/19	35	Review ballots received to date and prepare update summary chart re same	0.40	\$240.00	\$96.00	\$24.00
5/9/19	35	Review and response to multiple emails re ballots received and update chart re same	0.20	\$240.00	\$48.00	\$36.00

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

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

CONT... MidiCi Group, LLC

Chapter 11

5/14/19	35	Review emails and follow up on ballots for several claimants who only provided 1 ballot; update summary of ballots received	0.20	\$240.00	\$48.00	\$36.00
5/16/19	35	Review new ballots and emails on same, prepare further updated chart re ballot	0.20	\$240.00	\$48.00	\$36.00
5/17/19	35	Further work on ballot summary; review new ballots and outstanding one; emails to and from Tom re ballots	0.30	\$240.00	\$72.00	\$54.00
5/20/19	35	Review new ballots and update summary re same	0.10	\$240.00	\$24.00	\$18.00
5/21/19	35	Review new ballots and update summary; emails and follow up re . . . ; review numbers on ballots re allowed vs. amount listed on ballot	0.30	\$240.00	\$72.00	\$54.00

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

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

CONT... MidiCi Group, LLC

Chapter 11

5/22/19	35	Review new ballots and update summary re same; brief telephone conference with Tome following up on	0.20	\$240.00	\$48.00	\$36.00
5/23/19	35	Further work and follow up on ballots for tomorrow's deadline; emails to claimants and work on updated summary	0.60	\$240.00	\$144.00	\$108.00
5/24/19	35	Follow up on ballots for today's deadline; numerous emails to and from claimants re same; update summary re approx.. 30 new ballots received; phone calls re same	5.60	\$240.00	\$1,344.00	\$1,008.00
5/28/19	35	Review and process late filed ballots	0.30	\$240.00	\$72.00	\$54.00

In the United States trustee's objection [doc. 191], the United States trustee noted \$53,574.00 in fees for multiple attorneys billing for the same intra-office conferences, meetings and hearings. The United States trustee proposed a 40% reduction in those fees. Notwithstanding the debtor's reply [docs. 196 and 197], the Court will not approve \$16,072.20 (a 30% reduction) in those fees, because those fees, for overlapping services provided by multiple attorneys, constitute unnecessary duplication of services.

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

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

CONT... MidiCi Group, LLC

Chapter 11

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

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton

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

Thursday, September 5, 2019

Hearing Room 301

10:30 AM

1:18-12694 Sergio Martinez Gomez and Maria T. Alvarado

Chapter 7

#8.00 Trustee's final report and applications for compensation

David K. Gottlieb, Chapter 7 Trustee

Docket 25

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee - approve fees of \$899.23 and reimbursement of expenses of \$5.60, pursuant to 11 U.S.C. § 330, on a final 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 relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Sergio Martinez Gomez

Represented By
Stephen Parry

Joint Debtor(s):

Maria T. Alvarado

Represented By
Stephen Parry

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, September 5, 2019

Hearing Room 301

1:00 PM

1:18-11580 Kaliston Jose Nader

Chapter 11

#9.00 U.S. Trustee motion under 11 U.S.C. sec. 1112(b) to dismiss
or convert case

fr. 7/18/19

Docket 91

***** VACATED *** REASON: Voluntary dismissal of motion filed
7/25/2019.**

Tentative Ruling:

- NONE LISTED -

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, September 5, 2019

Hearing Room 301

1:00 PM

1:18-11580 Kaliston Jose Nader

Chapter 11

#10.00 Status conference re: chapter 11 case

fr. 8/2/18; 1/17/19; 2/21/19; 4/25/19; 6/20/19;7/18/19

Docket 1

Tentative Ruling:

The Court will set a hearing on the adequacy of the disclosure statement [doc. 116] filed by the debtor at **1:00 p.m. on November 7, 2019**. The debtor must file and serve notice of the hearing, and the deadline to file objections, on all creditors no later than **September 26, 2019**.

The Court also will continue this status conference to **1:00 p.m. on November 7, 2019**, to be held with the hearing on the adequacy of the debtor's disclosure statement.

Appearances on September 5, 2019 are excused.

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, September 5, 2019

Hearing Room 301

1:00 PM

1:19-11843 14554 Friar, LLC

Chapter 11

#11.00 U.S. Trustee's motion under 11 U.S.C. § 1112(b) to dismiss or convert case

Docket 10

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 1112(b)(1) and (b)(4)(C) and (b)(4)(H), this case will be converted to one under chapter 7. Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, filed on August 5, 2019, there appears to be sufficient assets in the debtor's estate that could be administered for the benefit of creditors. Accordingly, the Court concludes that it is in the best interest of creditors and the estate to convert this case to one under chapter 7.

The U.S. 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):

14554 Friar, LLC

Represented By
Donna Bullock

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

Friday, September 6, 2019

Hearing Room 301

10:00 AM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:17-01069 Seror v. Muennichow et al

#1.00 Trial 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; 11/21/18; 4/3/19; 8/2/19

Docket 1

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

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

Friday, September 6, 2019

Hearing Room 301

10:00 AM

CONT... Hermann Muennichow

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**

Tuesday, September 10, 2019

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 10, 2019

Hearing Room 301

10:30 AM

1:14-11542 Andrea Nicole Williams-Hart

Chapter 13

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

fr. 5/14/19; 7/2/19;

Docket 149

***** VACATED *** REASON: Withdrawal of motion filed 9/5/19. [Dkt 154]**

Tentative Ruling:

- NONE LISTED -

Party Information

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 10, 2019

Hearing Room 301

10:30 AM

1:14-12143 Almayvonne Dixon

Chapter 13

#42.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 51

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Almayvonne Dixon

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 10, 2019

Hearing Room 301

10:30 AM

1:14-13176 Nick Steel

Chapter 13

#43.00 Trustee's motion to dismiss case for failure to submit all tax returns

fr. 8/13/19;

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nick Steel

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 10, 2019

Hearing Room 301

10:30 AM

1:14-13450 Jacqueline A. Owuor

Chapter 13

#44.00 Trustee's motion to dismiss case for failure to submit all tax returns
fr. 08/13/19;

Docket 70

***** VACATED *** REASON: Voluntary dismissal of motion filed 8/29/19**

Tentative Ruling:

- NONE LISTED -

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, September 10, 2019

Hearing Room 301

10:30 AM

1:14-15221 Vicki D Blumenthal

Chapter 13

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

Docket 132

Tentative Ruling:

- NONE LISTED -

Party Information

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, September 10, 2019

Hearing Room 301

10:30 AM

1:15-10278 Laura Lee Stone

Chapter 13

#46.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 41

*** VACATED *** REASON: Voluntary dismissal of motion filed 8/29/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laura Lee Stone

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 10, 2019

Hearing Room 301

10:30 AM

1:15-12332 Veronik Oganyan

Chapter 13

#47.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 52

*** VACATED *** REASON: Motion withdrawn 9/3/19 - jc

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, September 10, 2019

Hearing Room 301

10:30 AM

1:15-13042 Ericka Evalinda Mitchell

Chapter 13

#48.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 75

***** VACATED *** REASON: Motion withdrawn 9/3/19 - jc**

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, September 10, 2019

Hearing Room 301

10:30 AM

1:15-14149 Norma Castellon

Chapter 13

#49.00 Trustee's motion to dismiss case for failure to submit all tax returns

Docket 82

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Norma Castellon

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 10, 2019

Hearing Room 301

10:30 AM

1:16-10023 Angelina Rodriguez

Chapter 13

#50.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 7/2/19;

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angelina Rodriguez

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, September 10, 2019

Hearing Room 301

10:30 AM

1:16-12540 Francisco Perez and Gloria Yuridia Perez

Chapter 13

#51.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 08/13/19;

Docket 80

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Perez

Represented By
Steven A Alpert

Joint Debtor(s):

Gloria Yuridia Perez

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, September 10, 2019

Hearing Room 301

10:30 AM

1:16-13171 Regla Vera

Chapter 13

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

Docket 129

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Regla Vera

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 10, 2019

Hearing Room 301

10:30 AM

1:17-11488 Dana Anthony Bambo and Carla Lombardo Bambo

Chapter 13

#53.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 7/2/19;

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dana Anthony Bambo

Represented By
William G Cort

Joint Debtor(s):

Carla Lombardo Bambo

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, September 10, 2019

Hearing Room 301

10:30 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 74

Tentative Ruling:

- NONE LISTED -

Party Information

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, September 10, 2019

Hearing Room 301

10:30 AM

1:17-13192 Stephanie Marie Wilson

Chapter 13

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

Docket 52

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephanie Marie Wilson

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 10, 2019

Hearing Room 301

10:30 AM

1:18-10660 Jose Olegario Contreras

Chapter 13

#56.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 8/13/19;

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Olegario Contreras

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, September 10, 2019

Hearing Room 301

10:30 AM

1:18-10780 Anna Rosa Alvarado

Chapter 13

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

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna Rosa Alvarado

Represented By
Barry E Borowitz

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

10:30 AM

1:18-12467 Colin Basil MacLean

Chapter 13

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

fr. 8/13/19;

Docket 54

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Colin Basil MacLean

Represented By
William E. Winfield

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

10:30 AM

1:18-12993 Nam Nhat Nguyen

Chapter 13

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

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nam Nhat Nguyen

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 10, 2019

Hearing Room 301

10:30 AM

1:19-10005 Manuel Borobia Bennet

Chapter 13

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

fr. 8/13/19;

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Borobia Bennet

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 10, 2019

Hearing Room 301

10:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

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

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

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, September 10, 2019

Hearing Room 301

11:00 AM

1:14-15148 Mehdi Hamedani and Mina Hamedani Elya

Chapter 13

#62.00 U.S. Trustee's motion for account reconciliation statement including waiver and/or refund of unnoticed mortgage payment changes in response to Wells Fargo Bank N.A.'s failure to timely file notices of mortgage payment change

Stip to continue filed 8/26/19

Docket 81

***** VACATED *** REASON: Order entered 8/27/19. Hearing continued to 11/12/19 at 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mehdi Hamedani

Represented By
Joshua L Sternberg

Joint Debtor(s):

Mina Hamedani Elya

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 10, 2019

Hearing Room 301

11:00 AM

1:16-10680 Patricia Prichard Leedom

Chapter 13

#63.00 Nunc Pro Tunc motion to allow debtor to transfer and record title to beneficiary Sara Ives

Docket 70

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):

Patricia Prichard Leedom

Represented By
Kevin T Simon

Movant(s):

Patricia Prichard Leedom

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 10, 2019

Hearing Room 301

11:00 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

#64.00 Application of attorney for debtor for additional fees and related expenses in a pending chapter 13 case subject to a rights and responsibilities agreement

Docket 94

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):

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, September 10, 2019

Hearing Room 301

11:00 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

#65.00 Application of attorney for debtor for additional fees and related expenses in a pending chapter 13 case subject to a rights and responsibilities agreement

Docket 102

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):

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, September 10, 2019

Hearing Room 301

11:00 AM

1:18-10660 Jose Olegario Contreras

Chapter 13

#66.00 Show cause hearing why debtor's counsel should not be sanctioned for failure to appear at hearing on trustee's motion to dismiss

Docket 32

Tentative Ruling:

On June 26, 2019, the chapter 13 trustee filed a motion to dismiss the debtor's case for failure to make plan payments ("Motion to Dismiss") [doc. 28].

On August 13, 2019, the Court held a hearing on the Motion to Dismiss. The debtor's counsel did not appear. On August 13, 2019, 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. 32], on the grounds that the debtor's counsel failed to appear at the hearing on the 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 August 27, 2019.

On August 13, 2019, the debtor's counsel filed his response ("Response") [doc. 34], 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 properly calendar the Motion to Dismiss hearing. Response, ¶ 5. The debtor's counsel states that he has made changes to office procedures to ensure this error is not repeated in the future. Response, ¶ 6.

If the debtor's counsel or an appearance attorney appears at the continued Motion to Dismiss hearing on September 10, 2019 at 10:30 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 consider imposing sanctions on the debtor's counsel.

Party Information

Debtor(s):

Jose Olegario Contreras

Represented By

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

Tuesday, September 10, 2019

Hearing Room 301

11:00 AM

CONT... Jose Olegario Contreras

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**

Tuesday, September 10, 2019

Hearing Room 301

11:00 AM

1:18-11857 Robert Winn, Jr

Chapter 13

#67.00 Motion for order disallowing claim of Real Time Resolutions,
claim no. 9

fr. 5/14/19 (stip); 8/13/19;

Docket 83

***** VACATED *** REASON: Order approving stipulation entered on
9/3/19 [doc. 102].**

Tentative Ruling:

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, September 10, 2019

Hearing Room 301

11:00 AM

1:19-10589 Paul Anthony Matulewicz

Chapter 13

#68.00 Application of attorney for debtor for additional fees and related expenses in a pending chapter 13 case subject to a rights and responsibilities agreement

Docket 41

Tentative Ruling:

Resnik Hayes Moradi LLP (“Applicant”), counsel for the debtor – approve fees of \$1,920 and reimbursement of expenses of \$0.00. The Court will not allow \$400.00 in fees for the reasons stated below.

On July 8, 2019, Applicant filed an *Application of Attorney for Debtor for Additional fees and Related Expenses in a Pending Chapter 13 Case Subject to a Rights and Responsibilities Agreement (RARA)* (the “Application”) [doc. 41]. In the Application, Applicant attached billing records showing that Roksana D. Moradi-Brovia (a partner at Applicant’s firm) and Pardis Akhavan provided the additional services. Applicant billed both attorneys at \$400 per hour. According to the resumes attached to the Application [Exh. B], Ms. Akhavan graduated from law school in 2017 and became an associate attorney in 2018. In 2018, Applicant billed Ms. Akhavan at \$185 in chapter 11 cases.

Accordingly, the Court entered an order setting the Application for hearing (the “Order”) [doc. 48]. Pursuant to the Order, Applicant was required to file evidence of Ms. Akhavan’s hourly billing rate for 2019 and a written explanation demonstrating that \$400 per hour is a reasonable hourly rate for service provided by Ms. Akhavan.

On August 27, 2019, Applicant filed a reply to the Order (the “Reply”) [doc. 52]. In the Reply, Applicant states, among other things, that throughout her employment with Applicant, Ms. Akhavan has almost exclusively worked on chapter 13 matters and more than 50 chapter 13 cases [Declaration of Matthew D. Resnik, ¶¶ 10 and 13]. As such, Applicant has billed Ms. Akhavan at the same hourly rate as in the RARA. *Id.* at ¶ 11. However, recently, Ms. Akhavan has been billed at \$300 per hour. *Id.* Applicant also states that it bills Ms. Akhavan at a lower hourly rate in chapter 11 cases because Ms. Akhavan has “done virtually no work on chapter 11 matters.” *Id.* at 13.

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

Tuesday, September 10, 2019

Hearing Room 301

11:00 AM

CONT... Paul Anthony Matulewicz

Chapter 13

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).

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 accordance with the foregoing, the Court will reduce Ms. Akhavan's billing rate to \$300 per hour—the rate stated in the Reply.

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

Party Information

Debtor(s):

Paul Anthony Matulewicz

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, September 10, 2019

Hearing Room 301

11:00 AM

1:19-11097 Patrick Alfred Fugate, JR

Chapter 13

#69.00 Motion re: objection to claim number 7-1 by claimant Internal Revenue Service

Docket 18

Tentative Ruling:

The Court will continue this hearing to **November 12, 2019 at 11:00 a.m.**

The debtor has not served notice the United States (for matters involving the Internal Revenue Service) in accordance with Local Bankruptcy Rule 2002-2(c) and Fed. R. Bankr. P. 5003(e) and used 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, under "Rules & Procedures." In accordance with the foregoing, by **October 1, 2019**, the Internal Revenue Service must be served with the notice of continued hearing and objection to claim 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 on September 10, 2019 are excused.

Party Information

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

Tuesday, September 10, 2019

Hearing Room 301

11:00 AM

CONT... Patrick Alfred Fugate, JR

Chapter 13

Debtor(s):

Patrick Alfred Fugate JR

Represented By
David H Chung

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

11:30 AM

1:18-11729 Richard Philip Dages

Chapter 11

#70.00 Motion for order determining value of collateral

Docket 94

Tentative Ruling:

In light of the secured creditor's supplement to opposition [doc. 100], the parties should be prepared to discuss dates for an evidentiary hearing, such as a date between and including September 20, 2019 through October 1, 2019.

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**

Tuesday, September 10, 2019

Hearing Room 301

11:30 AM

1:19-11388 Schonte Patrice Hamilton

Chapter 13

#71.00 Debtor's motion for order determining value of collateral
fr. 8/13/19;

Docket 21

Tentative Ruling:

Grant relief to bifurcate lienholder's claim subject to completion of chapter 13 plan. The claim of this lienholder, Jefferson Capital Systems, LLC, in the amount of \$12,000 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.

Party Information

Debtor(s):

Schonte Patrice Hamilton

Represented By
Michael E Clark

Trustee(s):

Elizabeth (SV) 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 11, 2019

Hearing Room 301

9:30 AM

1:15-11825 Donald M. Baarns and Lisa A. Baarns

Chapter 13

#1.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 8/7/19

Docket 41

Tentative Ruling:

On July 31, 2019, the debtors filed an untimely response to the motion for relief from the automatic stay [doc. 43]. The debtors did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

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 debtors are borrowers as defined in Cal. Civ. Code § 2920.5(c)(2)(C).

The 14-day stay prescribed by FRBP 4001(a)(3) is NOT waived.

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

Party Information

Debtor(s):

Donald M. Baarns

Represented By
Ali R Nader

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

Wednesday, September 11, 2019

Hearing Room 301

9:30 AM

CONT... Donald M. Baarns and Lisa A. Baarns

Chapter 13

Joint Debtor(s):

Lisa A. Baarns

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, September 11, 2019

Hearing Room 301

9:30 AM

1:16-11663 Robert Lazar Levitan and Catherine Palmerino Levitan

Chapter 13

#2.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

fr. 8/7/19

Stip for adequate protection filed 8/13/19

Docket 57

*** VACATED *** REASON: Order approving stip entered 8/14/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Lazar Levitan

Represented By
Raj T Wadhvani
Gregory M Shanfeld

Joint Debtor(s):

Catherine Palmerino Levitan

Represented By
Raj T Wadhvani
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 11, 2019

Hearing Room 301

9:30 AM

1:18-11580 Kaliston Jose Nader

Chapter 11

#3.00 Motion for relief from stay [PP]

CAPITAL ONE AUTO FINANCE
VS
DEBTOR

fr. 8/21/19

Docket 102

Tentative Ruling:

- NONE LISTED -

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, September 11, 2019

Hearing Room 301

9:30 AM

1:19-12065 Karla Branch

Chapter 7

#4.00 Motion for relief from stay [UD]

DEBBIE L. JENSEN, WILLIAM M. JENSEN, SUCCESSOR TRUSTEES OF
THE MILDRED M. JENSEN LIVING TRUST
VS
DEBTOR

Docket 8

Tentative Ruling:

On September 3, 2019, 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 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):

Karla Branch

Pro Se

Movant(s):

Debbie L. Jensen, William M.

Represented By
David S Hagen

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

Wednesday, September 11, 2019

Hearing Room 301

9:30 AM

CONT... Karla Branch

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, September 11, 2019

Hearing Room 301

9:30 AM

1:19-11789 Melbert Briones

Chapter 7

#5.00 Motion for relief from stay [PP]

LOGIX FEDERAL CREDIT UNION
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.

Party Information

Debtor(s):

Melbert Briones

Represented By
Glenn Ward Calsada

Movant(s):

LOGIX FEDERAL CREDIT

Represented By
Reilly D Wilkinson

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

Wednesday, September 11, 2019

Hearing Room 301

9:30 AM

CONT... Melbert Briones

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, September 11, 2019

Hearing Room 301

9:30 AM

1:19-11888 Yendi Anabella Santiago

Chapter 7

#6.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC.
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):

Yendi Anabella Santiago

Represented By
David H Chung

Movant(s):

Santander Consumer USA Inc.

Represented By
Jennifer H Wang

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

Wednesday, September 11, 2019

Hearing Room 301

9:30 AM

CONT... Yendi Anabella Santiago

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, September 11, 2019

Hearing Room 301

9:30 AM

1:19-11697 Hemman Sweis

Chapter 7

#7.00 Motion for relief from stay [RP]

WELLS FARGO BANK, NATIONAL ASSOCIATION
VS
DEBTOR

Docket 25

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.

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 11, 2019

Hearing Room 301

9:30 AM

CONT... Hemman Sweis

Chapter 7

Party Information

Debtor(s):

Hemman Sweis

Represented By
Stephen L Burton

Movant(s):

Wells Fargo Bank, National

Represented By
Angie M Marth

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 11, 2019

Hearing Room 301

9:30 AM

1:18-10288 Adaure Chinyere Egu

Chapter 13

#8.00 Motion for relief from stay [AN]

EDWIN I. AIMUFUA
VS
DEBTOR

Docket 60

***** VACATED *** REASON: voluntary dismissal of motion filed 9/9/119**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adaure Chinyere Egu

Represented By
Jeffrey J Hagen

Movant(s):

Edwin I Aimufua

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, September 11, 2019

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 58

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

Movant(s):

MUFG Union Bank, N.A, fka Union

Represented By
Drew A Callahan
Justin S Moyer
Pietro Vella
Jonathan C Cahill
Gilbert R Yabes
Joseph C Delmotte

Trustee(s):

Elizabeth (SV) 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 11, 2019

Hearing Room 301

9:30 AM

1:19-11073 Farzad Khalili

Chapter 13

#10.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
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.

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, the debtor filed his petition on May 1, 2019. Movant was unaware of the debtor's bankruptcy petition prior to the foreclosure sale, which was held on the same day as the debtor filed his petition.

The filing of this case appears to be part of a scheme to delay, hinder or defraud the

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

Wednesday, September 11, 2019

Hearing Room 301

9:30 AM

CONT...

Farzad Khalili

Chapter 13

debtor's creditors. The debtor has executed many unauthorized grant deeds transferring a 5% interest in the subject property to individuals, many of whom shortly after the transfer, filed bankruptcy petitions [Exhs. 3-25]. Further, the debtor's case was dismissed for failure to file schedules, statements and a chapter 13 plan. Consequently, retroactive relief from the automatic stay is appropriate in this case.

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):

Farzad Khalili

Pro Se

Movant(s):

Deutsche Bank National Trust

Represented By
Raymond Jereza
Joseph C Delmotte

Trustee(s):

Elizabeth (SV) 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 11, 2019

Hearing Room 301

9:30 AM

1:18-11580 Kaliston Jose Nader

Chapter 11

#11.00 Motion for relief from stay [RP]

DEUTSCHE BANK TRUST COMPANY AMERICAS
VS
DEBTOR

Docket 97

*** VACATED *** REASON: Voluntary dismissal of motion filed 8/28/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kaliston Jose Nader

Represented By
Onyinye N Anyama

Movant(s):

DEUTSCHE BANK TRUST

Represented By
Gilbert R Yabes

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

Wednesday, September 11, 2019

Hearing Room 301

2:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 7

Adv#: 1:18-01086 Abel v. Zuckerman et al

#12.00 Motion to dismiss Richard Abel's March 27, 2019 second amended complaint's re first and second claims for declaratory relief against defendants

fr. 6/5/19; 8/28/19; 9/4/19

Docket 82

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

The Court provided additional background in its ruling on March 13, 2019 (the "2019 Ruling"). Some facts are repeated here.

On May 4, 2018, Robert Edward Zuckerman ("Defendant") filed a voluntary chapter 11 petition. On August 2, 2018, Richard Abel ("Plaintiff") filed a complaint against Debtor and Sunderland/McCutchan, Inc., among others, initiating this adversary proceeding.

On September 13, 2018, Plaintiff filed a first amended complaint (the "FAC") [doc. 11], adding Sunderland/McCutchan LLP and B. Edward McCutchan, Jr. as defendants (collectively with Sunderland/McCutchan, Inc., the "McCutchan Defendants"). As relevant to the McCutchan Defendants, Plaintiff asserted claims for declaratory and injunctive relief and avoidance of transfers under 11 U.S.C. §§ 547 and 549.

In relevant part, Plaintiff made the following allegations in the FAC:

Plaintiff has a claim against Debtor in connection with Liebling v. Goodrich, Sonoma County Superior Court Case No. SCV-245743 (the "State Court Action"). On June 29, 2017, in enforcing a judgment entered in favor of Plaintiff in the State Court Action, Plaintiff

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obtained a *Notice of Judgment Lien* (the "JL1 Lien"). On January 24, 2018, the state court issued an Order: (i) Granting Motion for Assignment Order (ii) Granting Motion for Restraining Order (iii) Granting Order to Seize (the "Assignment Order"). On January 25, 2018, the Notice of Entry of Order and the Assignment Order were served on Debtor and the McCutchan Defendants.

On January 24, 2018, Debtor's attorney, Nikki B. Allen, held funds that belonged to Debtor in Ms. Allen's Interest on Lawyer's Trust Account ("IOLTA") and additional amounts of Debtor's funds were deposited into the IOLTA after January 24, 2018. On April 10, 2018, Debtor, Ms. Allen and the McCutchan Defendants appeared in state court to discuss bench warrants issued against Debtor. At that time, Debtor directed Ms. Allen to use the funds from the IOLTA to pay one of the McCutchan Defendants \$8,135.00 for unpaid sanctions owed by Debtor (the "Sanctions Payment").

Plaintiff was not a party to the bench warrants against Debtor, and Plaintiff was not served with any notice of the April 10, 2018 hearing, although Ms. Allen did represent in a voicemail that she would appear on that date for an *ex parte* hearing. The state court judge did not order the payment of sanctions; instead, the McCutchan Defendants requested the sanctions.

The Assignment Order transferred all title, rights and interest in Debtor's IOLTA funds to Plaintiff as of January 24, 2018. Therefore, the Sanctions Payments was a preferential transfer. Debtor, Ms. Allen and the McCutchan Defendants willfully and intentionally violated the Assignment Order and are in contempt of that order. Debtor's funds are now in the control of the McCutchan Defendants.

On October 10, 2018, the McCutchan Defendants filed a motion to dismiss the FAC (the "McCutchan Motion") [doc. 24], asserting, in relevant part, that Plaintiff does not have standing to pursue avoidance of transfers on behalf of the estate and that the Sanction Payment does not qualify as a preferential transfer under 11 U.S.C. § 547(b). On January 10, 2019, Debtor filed a motion to dismiss the FAC (the "Debtor Motion")

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[doc. 55]. In the Debtor Motion, Debtor argued, in relevant part, that Plaintiff did not sufficiently make allegations for declaratory relief as to the Assignment Order and that Plaintiff does not have standing to pursue avoidance of transfers on behalf of the estate.

On March 18, 2019, the Court entered an order converting Debtor's case to one under chapter 7 [1:18-bk-11150-VK, doc. 129]. Subsequently, Diane C. Weil was appointed chapter 7 trustee (the "Trustee") [1:18-bk-11150-VK, doc. 138].

On April 1, 2019, the Court entered an order granting in part and denying in part the McCutchan Motion and the Debtor Motion (the "MTD Order") [doc. 77]. In relevant part, the Court dismissed Plaintiff's claim for declaratory relief as to the IOLTA funds and Plaintiff's claim under 11 U.S.C. §§ 547 and 549 against the McCutchan Defendants.

The MTD Order provided that Plaintiff must file and serve an amended complaint no later than March 27, 2019. On March 27, 2019, Plaintiff timely filed and served a second amended complaint against the McCutchan Defendants and Debtor, among others (the "SAC"), seeking declaratory relief, turnover of property of the estate under 11 U.S.C. § 542 and nondischargeability of the debt owed to Plaintiff pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(2)(B) [doc. 75].

In the SAC, in relevant part, Plaintiff largely makes the same allegations regarding the Sanction Payment. However, Plaintiff does assert new allegations and facts, as detailed below.

Plaintiff is informed and believes that on June 19, 2017, and thereafter, Ms. Allen was holding funds which belonged to Debtor in the IOLTA, and that additional amounts of Debtor's funds were deposited into the IOLTA after June 29, 2017.

Plaintiff is *informed and believes* that Debtor's funds held in the IOLTA *originated from sources subject to the JLI Lien*. Upon deposit, the funds became and remained the property of Debtor, who had the right to use, or request the return thereof.

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Plaintiff is *informed and believes* that on June 29, 2017, when the JL1 Lien was created, and on February 6, 2018 upon service of the Assignment Order to Ms. Allen, *all funds held for the benefit of Debtor in the IOLTA* had been attached, with Plaintiff holding a lien on April 10, 2018.

(emphasis added).

SAC, pp. 11-14. To the SAC, Plaintiff attached the Assignment Order. SAC, Exhibit P. In the Assignment Order, the state court held, in relevant part:

PART (1) – THE ASSIGNMENT ORDER

IT IS HEREBY ORDERED that pursuant to Code of Civil Procedure section 708.510, the interests of judgment debtors Cruickshank, Skarpias and Zuckerman, whether standing in the names of Cruickshank, Skarpias, and Zuckerman or from or through any 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 . . .*

PART (2) – THE RESTRAINING ORDER

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.

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SAC, Exhibit P (emphasis added).

On April 22, 2019, the McCutchan Defendants filed a motion to dismiss the first and second causes of action in the SAC (the "Motion") [docs. 82 and 83]. In the Motion, the McCutchan Defendants assert that Plaintiff failed to plead the elements for declaratory relief against the McCutchan Defendants. Specifically, the McCutchan Defendants argue that Plaintiff failed to allege that the funds in the IOLTA originated from a source covered by the Assignment Order and that the declaratory relief causes of action are an improper attempt to relitigate Plaintiff's dismissed cause of action for preferential transfer in the FAC. On May 22, 2019, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 122]. On May 28, 2019, the McCutchan Defendants filed a reply to the Opposition (the "Reply") [doc. 124].

On June 5, 2019, the Court held a hearing on the Motion. Prior to that hearing, the Court posted a tentative ruling on the Motion that stated when the SAC was filed, the Trustee had not been appointed as chapter 7 trustee in the debtor's case. The Court was concerned that the Trustee has not been properly served and apprised of this litigation. Accordingly, the Court continued the hearing on the Motion to August 28, 2019, in order for Plaintiff to amend the SAC to add the Trustee, in that capacity, as a defendant and to serve a summons and the SAC on the Trustee.

On June 7, 2019, Plaintiff filed an amendment to the SAC naming the Trustee, in that capacity, as a defendant [doc. 125]. On June 12, 2019, Plaintiff filed a proof of service of the summons and SAC on the Trustee [doc. 129]. As of August 23, 2019, the Trustee has not filed a response to the SAC.

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

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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.").

Here, the McCutchan Defendants request that the Court take judicial notice of: (1) Debtor's bankruptcy filing; (2) April 10, 2018 minutes in Sonoma County Superior Court [doc. 9, Exh. A]; (3) the order converting Debtor's case to one under chapter 7 [1:18-bk-11150-VK, doc. 129]; (4) the Court's ruling on Plaintiff's motion to restrict

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use of cash collateral [1:18-bk-11150-VK, doc. 75]; and (5) the notice of chapter 7 bankruptcy case [1:18-bk-11150-VK, doc. 130]. Plaintiff requests the Court take judicial notice of California State Rules of Professional Conduct, Rule 1.15 ("Rule 1.15") [doc. 123, Exh. A]. As these documents are all either court filings or matters of public record, the Court may properly take judicial notice of these documents.

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).

1. Plaintiff's First Claim for Declaratory Relief Related to the Assignment Order

As to Plaintiff's first claim, Plaintiff requests a declaratory judgment that: (1) the Assignment Order attached to any transfer of funds subject to the Assignment Order that the chapter 7 trustee may recover from any party, including Ms. Allen and the McCutchan Defendants; (2) in the event that the chapter 7 trustee does not pursue recovery of the preferential transfers from Ms. Allen, the McCutchan Defendants and others, that the Court grant Plaintiff permission to pursue recovery of the preferential transfers; and (3) the Assignment Order attached all funds that were transferred from the IOLTA.

Plaintiff's first two requests are based on avoidance claims. As the Court noted in the 2019 Ruling, once Debtor's case was converted to one under chapter 7, the Trustee has exclusive standing to pursue avoidance claims on behalf of the estate. Because the Trustee has exclusive standing to pursue avoidance claims on behalf of the estate, the Court dismissed Plaintiff's claim under 11 U.S.C. §§ 547 and 549 against the McCutchan Defendants. In some circumstances, it may be appropriate for the Court to give permission to a creditor to bring avoidance claims on *behalf of the estate*, where the trustee wrongfully refuses to bring an action under 11 U.S.C. § 547. *In re Conley*, 159 B.R. 323, 324 (Bankr. Idaho 1993). However, Plaintiff has failed to allege that this is the case here. Further, any such avoidance action would be on behalf of the estate, not in Plaintiff's name alone.

"As an equitable remedy, declaratory relief is 'dependent upon a substantive basis for

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liability' and has 'no separate viability' if all other causes of action are barred." Flores, 997 F. Supp 2d at 1111 (quoting *Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal.App.4th 1018, 1023, n. 3, 98 Cal. Rptr. 2d 661 (2000). "[D]eclaratory relief does not serve to 'furnish a litigant with a second cause of action for the determination of identical issues.'" *Gayduchik v. Countrywide Home Loans, Inc.*, 2010 WL 1737109, at *4 (E.D. Cal. 2010) (quoting *General of Am. Ins. Co. v. Lilly*, 258 Cal. App. 2d 465, 470, 65 Cal. Rptr. 750 (1968)). This is what Plaintiff is attempting to do. As such, under Rule 12(b)(6), Plaintiff has not stated a claim for relief regarding his first two requests.

Plaintiff's third request is based on whether the Assignment Order attached to the funds in the IOLTA. Pursuant to CCP § 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.

(emphasis added).

Under to CCP § 708.510(a), the Assignment Order includes all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments and includes, but is not limited to, the enumerated categories in the statute. In the Opposition, Plaintiff argues that the funds in the IOLTA were a receivable to Debtor. Specifically, Plaintiff points to State Bar Rule of Professional

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Conduct ("Rule") 1.15(d)(7) which provides that a lawyer shall "promptly distribute, as requested by the client or other person, any undisputed funds or property in the possession of the lawyer or law firm that the client or other person is entitled to receive." Although an account receivable is not an enumerated category in the statute, it is a right to payment due or to become due. Accordingly, Plaintiff has made sufficient allegations that the IOLTA funds originated from a source covered by the Assignment Order. As such, under Rule 12(b)(6), Plaintiff has stated a claim for relief regarding his third request.

2. Plaintiff's Second Claim for Declaratory Relief Related to the JL1 Lien

As to Plaintiff's second claim, Plaintiff requests a declaratory judgment that: (1) the JL1 Lien attaches to any transfer of funds subject to the JL1 Lien that the chapter 7 trustee may recover from any party, including Ms. Allen and the McCutchan Defendants; (2) as of June 29, 2017, the JL1 Lien attached to all of Debtor's pre-petition and post-petition personal property of the type enumerated by C.C.P. § 697.530, including Debtor's right to payment from the IOLTA; and (3) as of June 29, 2017, the JL1 Lien attached to the funds in the IOLTA, including funds that were later transferred to Ms. Allen, the McCutchan Defendants and any others.

Plaintiff's first request is based on an avoidance claim, which the Court previously dismissed. As stated above, the chapter 7 trustee has exclusive power to pursue any avoidance claims on behalf of the estate. As such, under Rule 12(b)(6), Plaintiff has not stated a claim for relief regarding his first request.

Plaintiff's second and third request are based on whether the JL1 Lien attached to funds in the IOLTA and Debtor's other personal property as of June 29, 2017. 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

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(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 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.

(emphasis added).

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,

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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 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. [FN1].

(emphasis added).

In the SAC, Plaintiff alleged that the funds held in the IOLTA originated from sources subject to the JL1 Lien. Plaintiff contends that because of Rule 1.15(d)(7), all funds in the IOLTA on June 29, 2017 were an account receivable to Debtor. Under C.C.P. § 697.530 accounts receivable are one of the enumerated categories of personal property that is subject to a personal property judgment lien. As such, the JL1 Lien would attach to those funds. Accordingly, at this stage, Plaintiff has made sufficient allegations that the IOLTA funds originated from a source covered by the JL1 Lien. As such, under Rule 12(b)(6), Plaintiff has stated a claim for relief regarding his second and third requests.

III. CONCLUSION

For the reasons discussed above, the Court will grant the Motion in part and deny the Motion in part. The McCutchan Defendants must file and serve an answer or other response to the SAC no later than 14 days after the entry of the order.

The McCutchan Defendants must submit the order within seven (7) days.

FOOTNOTES

1. In the Opposition, Plaintiff argues that the IOLTA is an account receivable. Accordingly, the Court will only discuss whether the IOLTA can be included within the definition of account receivable.

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Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

B. Edward McCutchan Jr. an

Represented By
Edward McCutchan

Sunderland/McCutchan LLP, a

Represented By
Edward McCutchan

Phoenix Holdings, LLC a California

Pro Se

DOES 1-20

Pro Se

Nickki B Allen, an individual

Pro Se

Sunderland/McCutchan, Inc., a

Represented By
Edward McCutchan

Maravilla Center, LLC, a California

Pro Se

San Jacinto Z, LLC, a California

Pro Se

Contiental San Jacinto, LLC, a

Pro Se

Zuckerman Building Company, a

Pro Se

Valley Circle Estates Realty Co., a

Pro Se

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Continental Communities, LLC, a Pro Se

Robert Edward Zuckerman Represented By
Sandford L. Frey

Rezinate San Jacinto, LLC, a Pro Se

Plaintiff(s):

Richard Abel Pro Se

Trustee(s):

Diane C Weil (TR) Pro Se

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1:18-11150 Robert Edward Zuckerman
Adv#: 1:18-01086 Abel v. Zuckerman et al

Chapter 11

- #13.00** Status conference re: second amended complaint for:
- 1) Declaratory relief re: determination of validity, priority or extent of interest in property
 - 2) Declaratory 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) Nondischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)(A)
 - 5) Nondischargeability of debt pursuant to 11 U.S.C. 523(a)(2)(B)
- [28 U.S.C. sec 157(b)(2); FRBP., R. 7001]

fr. 11/14/18 (stip); 1/9/2019; 2/20/19; 3/13/19; 5/8/19; 6/5/19; 8/28/19; 9/4/19

Docket 75

Tentative Ruling:

Given that the Court has dismissed the plaintiff's avoidance and turnover claims, the Court intends to issue an Order to Show Cause (the "OSC") why this Court has subject matter jurisdiction over the remaining dispute between the plaintiff and Sunderland/McCutchan, Inc., Sunderland/McCutchan LLP and B. Edward McCutchan, Jr. (the "McCutchan Defendants") and, if the Court does have subject matter jurisdiction, why this Court should not abstain from deciding this dispute among non-debtor parties.

The plaintiff and the McCutchan Defendants are non-debtor parties and it appears these non-debtor parties agree that the funds at issue are not property of the estate. Now that the Court has dismissed the plaintiff's avenues for bringing any such funds into the estate, why does this Court have jurisdiction over this third party dispute over non-estate funds?

The Court will continue this status conference to **1:30 p.m. on October 16, 2019**. No later than **October 2, 2019**, all remaining parties must file a joint status report. The Court also intends to set the OSC for the same time and date. No later than **October 2, 2019**, unless both parties file a stipulation agreeing that this Court does not have

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subject matter jurisdiction over their dispute, the plaintiff and the McCutchan Defendants must file a response to the OSC and discuss why this Court either has or lacks subject matter jurisdiction over their dispute. The parties may file a response to the other party's brief no later than **October 9, 2019**.

All remaining parties to this adversary proceeding must appear in person at the October 16, 2019 status conference and OSC hearing.

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

DOES 1-20

Pro Se

Phoenix Holdings, LLC a California

Pro Se

Sunderland/McCutchan LLP, a

Pro Se

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B. Edward McCutchan Jr. an

Pro Se

Plaintiff(s):

Richard Abel

Pro Se

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

Chapter 11

#1.00 Post confirmation status conference

Docket 1

Tentative Ruling:

The Court will prepare an Order to Show Cause why this case should not be dismissed or converted to one under chapter 7, based on the reorganized debtors' failure to file a post-confirmation status report, supported by evidence, in compliance with the *Order Confirming Third Amended Chapter 11 Plan of Reorganization*, entered on March 19, 2019 [doc 132].

Party Information

Debtor(s):

Roger Ronald Steinbeck

Represented By
Michael R Totaro

Joint Debtor(s):

Stannis Veronica Steinbeck

Represented By
Michael R Totaro

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1:17-13142 Amir Elosseini

Chapter 11

#2.00 U.S. Trustee's motion under 11 U.S.C. § 1112(b) to dismiss or convert case

Docket 157

***** VACATED *** REASON: Withdrawal filed 8/20/19 [Dkt.166]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amir Elosseini

Represented By
Kevin Tang
David Miller

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1:19-11843 14554 Friar, LLC

Chapter 11

#3.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

On August 7, 2019, the Court entered an *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* (the "Order") [doc. 14]. Contrary to the Order, the debtor did not timely file a case status report.

Pursuant to 11 U.S.C. §§ 105(a), 1112(b)(1) and (4)(E), the Court may convert this case to one under chapter 7. Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, filed on August 5, 2019, the Court concludes that it is in the best interest of creditors and the estate to convert this case to one under chapter 7.

The Court will prepare the order.

Party Information

Debtor(s):

14554 Friar, LLC

Represented By
Donna Bullock

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1:19-11849 Beverly R Lux-Kaplan

Chapter 7

#4.00 U.S. Trustee's Motion to dismiss case pursuant to 11 U.S.C. §§ 707(a) and 727(a)(8)

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):

Beverly R Lux-Kaplan

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, September 12, 2019

Hearing Room 301

1:00 PM

1:19-11994 John Euclid Corallis

Chapter 7

#5.00 U.S. Trustee's motion to dismiss case pursuant to 11 U.S.C. §§ 707(a) and 727(a)(8)

Docket 9

Tentative Ruling:

Grant.

Pursuant to 11 U.S.C. § 727(a)(8), "[t]he court shall grant the debtor a discharge, unless...the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition."

Because the debtor obtained a chapter 7 discharge in a case filed on October 11, 2011, the debtor is not eligible for another discharge until after October 11, 2019. Given that the U.S. Trustee is not seeking a bar to refiling, the debtor will be able to file another chapter 7 case after that time.

The debtor should consider hiring legal counsel; in a future chapter 7 case, the debtor may have to file a motion to continue the automatic stay and have that motion heard within 30 days of the petition date.

The U.S. Trustee must submit the order within seven (7) days.

Party Information

Debtor(s):

John Euclid Corallis

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, September 12, 2019

Hearing Room 301

2:00 PM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#6.00 Trustee's Motion pursuant to Federal Rule of Bankruptcy 9019(a) for an order approving settlement between David Gottlieb, Chapter 7 Trustee, Roxe', LLC, Michael Martin and Duane Martin

fr. 8/21/19

Docket 219

Tentative Ruling:

The Court will grant the chapter 7 trustee's motion to approve the compromise with Duane Martin, Roxe, LLC and Michael Martin (the "Motion") [doc. 219].

On August 22, 2019, the chapter 7 trustee (the "Trustee") filed and served notice of the Motion on all creditors [doc. 250]. No creditor has sought to continue to prosecute, in place of the Trustee and City National Bank, the revocation of discharge action against Duane Martin.

Regarding any disputed sale proceeds distributed by the Trustee pursuant to the settlement agreement (the "Agreement"), the parties may pursue their rights and remedies to those distributed proceeds in the appropriate forum, such as state court, or through an interpleader proceeding.

As to the Trustee's settlement agreement with Tisha Martin, and Ms. Martin's assertion that she is entitled to reimbursement of \$60,000, the Court will address that issue if and when it is properly before the Court, *e.g.*, Ms. Martin or the Trustee commences the required contested matter or adversary proceeding or the Trustee disputes any administrative expense claim filed by Ms. Martin. The Court's approval of the Agreement at this time will not preclude Ms. Martin from seeking enforcement of her separate settlement agreement with the Trustee, or damages for breach of that agreement, in accordance with her understanding of the terms of that agreement.

In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider:

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

Thursday, September 12, 2019

Hearing Room 301

2:00 PM

CONT...

Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

See In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986) (citations omitted). Given that the settlement agreement meets the standard for approval of a compromise under this standard, the Court will grant the Motion.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

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 12, 2019

Hearing Room 301

2:00 PM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#7.00 Trustee's Motion for an order: (1) Approving sale of property of the estate (Real Property Located At 22401 Summitridge Circle, Chatsworth, Ca 91311); (2) Waiving the 14-day stay period set forth in Bankruptcy Rule 6004(H) and (3) Granting related relief

fr. 8/21/19

Docket 223

Tentative Ruling:

Grant, except the Court will not waive the 14-day stay period set forth in Fed. R. Bankr. P. 6004(h).

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

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

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 12, 2019

Hearing Room 301

2:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#8.00 Debtor's motion to extend time or deadline for filing
plan of reorganization and disclosure statement

fr. 8/8/19

Docket 84

Tentative Ruling:

The Court will extend the deadline for the debtor to file a chapter 11 plan and related disclosure statement to **November 1, 2019**.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

Movant(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, September 12, 2019

Hearing Room 301

2:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#9.00 Status conference re chapter 11 case

fr. 8/16/18; 1/10/19; 3/14/19; 5/23/19;7/18/19; 8/8/19

Docket 1

Tentative Ruling:

In light of the extension for the debtor to file his chapter 11 plan of reorganization and related disclosure statement (see calendar no. 8), the Court will continue this status conference to **November 14, 2019 at 1:00 p.m.** to see if the debtor has timely filed a chapter 11 plan and related disclosure statement. **No later than October 31, 2019**, the debtor must file and serve an updated status report **supported by evidence** in the form of declarations and supporting documents.

Appearances on September 11, 2019 are excused.

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**

Thursday, September 12, 2019

Hearing Room 301

2:00 PM

1:19-11336 Cristian B Fuentes

Chapter 7

#10.00 Order to show cause re dismissal for failure to comply with rule 1006(B)

Docket 11

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.

Party Information

Debtor(s):

Cristian B Fuentes

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, September 12, 2019

Hearing Room 301

2:00 PM

1:19-11482 Kimball West Small

Chapter 7

#11.00 Debtor's Motion for waiver of financial management course requirement

Docket 18

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Kimball West Small

Represented By
Varand Gourjian

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, September 17, 2019

Hearing Room 301

8:30 AM

1:19-11298 Jose A Valdivia

Chapter 7

#1.00 Reaffirmation agreement between debtor and Nissan-Infiniti LT

Docket 12

Party Information

Debtor(s):

Jose A Valdivia

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**

Tuesday, September 17, 2019

Hearing Room 301

8:30 AM

1:19-11379 Raymond Anthony Lopez

Chapter 7

#2.00 Reaffirmation agreement between debtor and
Americredit Financial Services, Inc. Dba GM Financial

Docket 10

Party Information

Debtor(s):

Raymond Anthony Lopez

Represented By
Barry E Borowitz

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, September 17, 2019

Hearing Room 301

8:30 AM

1:19-11677 Genesis Vanesa Carvajal

Chapter 7

#3.00 Reaffirmation agreement between debtor and Kia Motors Finance

Docket 9

Party Information

Debtor(s):

Genesis Vanesa Carvajal

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, September 17, 2019

Hearing Room 301

8:30 AM

1:19-11805 Arlyne G Singer

Chapter 7

#5.00 Reaffirmation agreement between debtor and Toyota Motor Credit Corporation (

Docket 9

Party Information

Debtor(s):

Arlyne G Singer

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, September 18, 2019

Hearing Room 301

9:30 AM

1:16-13657 Mary Elizabeth Grant

Chapter 13

#1.00 Motion for relief from stay [RP]

NEWREZ LLC
VS
DEBTOR

fr. 8/21/19; 9/4/19

Adequate protection stipulation filed 9/17/19.

Docket 66

*** VACATED *** REASON: Order approving stip entered 9/17/19.
[Dkt.71]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Elizabeth Grant

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, September 18, 2019

Hearing Room 301

9:30 AM

1:18-11150 Robert Edward Zuckerman

Chapter 7

#2.00 Amended motion for relief from stay [AN]

EDWARD ALBINI, ET AL
VS
DEBTOR

Docket 155

***** VACATED *** REASON: Continued to 10/2/19 per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

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 18, 2019

Hearing Room 301

9:30 AM

1:19-11777 Winters-Schram & Associates

Chapter 7

#3.00 Motion for relief from stay [AN]

ROBERT AND NINA DEYCH
VS
DEBTOR

Docket 9

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, if any, and waives any deficiency or other 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.

Movant may proceed against the non-debtor defendants in the nonbankruptcy action.

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):

Winters-Schram & Associates

Represented By
Daniel H Reiss
Lindsey L Smith

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

Wednesday, September 18, 2019

Hearing Room 301

9:30 AM

CONT... Winters-Schram & Associates

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, September 18, 2019

Hearing Room 301

9:30 AM

1:19-11706 Miguel Angel Gonzalez

Chapter 7

#4.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC
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):

Miguel Angel Gonzalez

Represented By
Jaime A Cuevas Jr.

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 18, 2019

Hearing Room 301

9:30 AM

1:19-11730 Ruby Desirae Alvarado

Chapter 7

#5.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
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.

Party Information

Debtor(s):

Ruby Desirae Alvarado

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, September 18, 2019

Hearing Room 301

9:30 AM

1:19-11774 Mona Kaddoura

Chapter 7

#6.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC.
VS
DEBTOR

Docket 11

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):

Mona Kaddoura

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**

Wednesday, September 18, 2019

Hearing Room 301

9:30 AM

1:18-11560 Elizabeth Roberts

Chapter 13

#7.00 Motion for relief from stay [RP]

SILVERHAWK RIDGE COMMUNITY ASSOCIATION
VS
DEBTOR

Docket 70

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):

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**

Wednesday, September 18, 2019

Hearing Room 301

9:30 AM

1:19-12082 Robert M. Gerstein

Chapter 7

#8.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 11

Tentative Ruling:

Grant.

In a chapter 7, 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 not be concluded with a chapter 7 discharge. *See In re Castaneda*, 342 B.R. 90, 94 n.5 (Bankr. S.D. Cal. 2006).

Although the debtor has not shown a substantial change in financial circumstances, at this time, there is no reason for the Court to conclude that the pending case will not be concluded with a chapter 7 discharge. Accordingly, the debtor has met his burden under 11 U.S.C. § 362(c)(3)(C)(i).

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

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

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 18, 2019

Hearing Room 301

9:30 AM

1:19-12093 Tony Jesus Almeida

Chapter 13

#8.10 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 15

Tentative Ruling:

Grant motion on an interim basis and continue hearing to **November 6, 2019 at 9:30 a.m.**

The First Case

On May 7, 2019, Tony Jesus Almeida ("Debtor") filed a prior chapter 13 petition, initiating case 1:19-bk-11132-MT (the "First Case"). In his prior schedules, Debtor disclosed monthly income in the amount of \$10,196.36 and monthly expenses in the amount of \$7,770.62, leaving net monthly income of \$2,425.74 [First Case, docs. 9 and 13].

On May 22, 2019, Debtor filed a proposed chapter 13 plan [First Case, doc. 14]. Under that chapter 13 plan, Debtor was to pay \$2,425.00 per month for sixty months. That plan also proposed to cure arrearages on Debtor's principal residence (the "Residence") in the amount of \$45,000 and on his rental property in Hayward, California (the "Rental") in the amount of \$25,000. On June 28, 2019, the Court entered an order dismissing the First Case because Debtor failed to make the required payments [First Case, doc. 18].

The Pending Case

On August 21, 2019, Debtor filed the pending chapter 13 case. On August 10, 2019, Debtor filed a motion to continue the automatic stay as to secured creditors (the "Motion to Continue") [doc. 15]. In the Motion to Continue, Debtor represents that during the pendency of the First Case, Debtor was offered an \$80,000 loan secured by the Residence [doc. 20, Exh. A]. Debtor claims that the proceeds from the loan would have been sufficient to cure the arrears on the Residence and the Rental, as well as the majority of his other debt. Accordingly, Debtor did not prosecute the First Case. Debtor alleges that the loan ended up being a scam.

In his pending case, Debtor's Schedules I & J indicate monthly income of \$8,945.76 and

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Judge Victoria Kaufman, Presiding
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Wednesday, September 18, 2019

Hearing Room 301

9:30 AM

CONT...

Tony Jesus Almeida

Chapter 13

monthly expenses of \$7,964.70, leaving net monthly income of \$981.06 [doc. 11]. In addition, Debtor responded "No" to the question of whether he expected an increase in income within the first year of filing the petition.

In his proposed chapter 13 plan (the "Plan") [doc. 10], Debtor proposes to pay \$981.00 per month for months 1 through 6, then \$2,621.00 per month for months 7 through 16, then \$3,074.00 per month for months 17 through 38, then \$3,414.00 per month for months 39 through 44, then \$4,174.00 per month for months 45 through 60. The Plan also proposes to cure arrearages on the Property in the amount of \$0.00 and on the Rental in the amount of \$53,379.96. The Plan is a 100% plan. On September 13, 2019, the chapter 13 trustee filed an objection to the Plan [doc. 21].

In the Motion to Continue, Debtor states that he will seek to refinance both the Residence and the Rental and use any proceeds towards the Plan. Alternatively, Debtor states that his brother and sister have offered to contribute to the Plan. Debtor did not include a declaration by his brother or sister attesting to their willingness and ability to contribute to the Plan.

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 discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

Notwithstanding the assertions in the Motion to Continue, Debtor has not provided at this time clear and convincing evidence that his financial affairs have improved since the First Case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. Debtor has less net monthly disposable income than during the First Case. Additionally, Debtor has not provided evidence of his brother and sister's ability to contribute to the Plan. Without that contribution, Debtor will not be able to afford the step-up in his proposed plan payment. Finally, at this point, Debtor's ability to refinance the Residence and the Rental and use the proceeds towards the Plan is speculative.

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

Wednesday, September 18, 2019

Hearing Room 301

9:30 AM

CONT... Tony Jesus Almeida

Chapter 13

In light of the foregoing, the Court will grant the motion on an interim basis up to the date of the continued hearing. Debtor must timely pay: (1) his September 2019 and October 2019 deed of trust payments in the aggregate amount of \$5,282.33 (as stated in his current Schedule J) as to the Residence and the Rental; and (2) his September 2019 and October 2019 plan payments in the amount of \$981.00 to the chapter 13 trustee.

No later than November 1, 2019, the debtor must file a declaration to demonstrate that he timely made his required post-petition deed of trust and chapter 13 plan payments.

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Tony Jesus Almeida

Represented By
William J Smyth
Stephen S Smyth

Trustee(s):

Elizabeth (SV) 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 18, 2019

Hearing Room 301

1:30 PM

1:17-11358 Thomas Jang Young Yoon

Chapter 7

Adv#: 1:17-01093 Zamora v. Yoon

#9.00 Pretrial 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); 10/3/18; 5/15/19(stip) 7/17/19 (stip)

Docket 1

***** VACATED *** REASON: Order of dismissal entered 7/11/19. [Dkt.59]**

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, September 18, 2019

Hearing Room 301

1:30 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

Adv#: 1:18-01113 VitaVet Labs, Inc. v. Gashtili

- #10.00** Pre-trial 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)

fr, 12/19/18;

Docket 4

***** VACATED *** REASON: Order entered 6/13/19 continuing hearing to 10/23/19 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

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, September 18, 2019

Hearing Room 301

1:30 PM

1:18-10982 Gabriel Medina

Chapter 13

Adv#: 1:18-01126 Medina v. Strunzo Development Corp., a California Corporatio

#11.00 Pretrial conference re complaint for equitable relief:

1. Cancellation of instrument/deed of trust;
2. Declaratory relief

fr. 2/6/19; 7/17/19(stip)

Docket 1

***** VACATED *** REASON: Hearing continued to 11/6/2019 at 1:30 p.m.
per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Medina

Represented By
Anthony Obegi Egbase
Sedoo Manu

Defendant(s):

Strunzo Development Corp., a

Pro Se

Does 1-50 Inclusive

Pro Se

Plaintiff(s):

Gabriel Medina

Represented By
Anthony Obegi 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, September 18, 2019

Hearing Room 301

1:30 PM

1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:18-01131 Goldman v. Pavehzadeh et al

#12.00 Pre-trial conference re complaint:
(1) for declaratory relief;
(2) sale of interest of co-owner in property of the estate;
(3) turnover of property of the estate
[11U.S.C. §§ 363(h) and 542]

fr. 6/12/19; 8/7/19

Docket 1

*** VACATED *** REASON: Order dismissing adversary entered 9/11/19
[doc. 29].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Hadizadeh

Represented By
Stella A Havkin

Defendant(s):

Houshang Pavehzadeh

Represented By
Joel S Seidel

Mona Soleimani

Pro Se

Plaintiff(s):

Amy L. Goldman

Represented By
Todd A Frealy
Anthony A Friedman

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Anthony A Friedman

**United States Bankruptcy Court
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CONT... Maryam Hadizadeh

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, September 18, 2019

Hearing Room 301

1:30 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 11

Adv#: 1:19-01010 Strategic Funding Source, Inc. v. Armand Zaharian et al

#13.00 Status conference re: complaint to determine nondischargeability of debt

fr. 4/24/19 (stip); 6/12/19(stip); 8/7/19(stip)

Stip to cont filed 09/04/19

Docket 1

***** VACATED *** REASON: Order approving stip entered 9/5/19.
Hearing continued to 11/20/19 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

Defendant(s):

Armand Zaharian

Pro Se

Elizabeth Y. Zaharian

Pro Se

Plaintiff(s):

Strategic Funding Source, Inc.

Represented By
Brian T Harvey

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

Wednesday, September 18, 2019

Hearing Room 301

1:30 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:19-01045 Coast to Coast Holdings, LLC v. Leonardi

#14.00 Status conference re: complaint for:
(1) Breach of contract; (2) Breach of implied covenant of good faith and fair dealing;
(3) Fraud in forming a contract; (4) Tortious fraud; (5) Negligent misrepresentation;
(6) Statue of frauds - declaratory relief; (7) Avoidance of fraudulent transfer; (8)
Preservation of avoided transfers and avoided liens; (9) Slander of title; (10) Waste;
(11) Right to setoff of recoupment (12) Turnover of property of the estate (rents);
(13) Turnover of property of the estate (real property); (14) Violation of the automatic
stay; (15) Disallowance of claim; (16) Avoidance of lien

fr. 6/19/19; 7/3/19; 7/17/19; 8/21/19(stip)

Counter-claim filed 5/17/19:

Joseph Leonardi, counter-claimant
vs
Coast to Coast Holdings, LLC; Oscar Torres;
Elizabeth Ramos; and Jeff Turner, counter-defendants

Docket 1

***** VACATED *** REASON: Order resolving matter entered 9/11/19 [19-10112, doc. 105].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

Defendant(s):

Joseph Leonardi

Pro Se

**United States Bankruptcy Court
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CONT... Coast to Coast Holdings, LLC

Chapter 11

Plaintiff(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, September 18, 2019

Hearing Room 301

1:30 PM

1:19-10790 Nelson Sargsyan

Chapter 7

Adv#: 1:19-01080 Radium2 Capital Inc. v. Sargsyan

#15.00 Status conference re: complaint for determination of nondischargeability of debt pursuant to §523(a)(2)(A) & (B)

Docket 1

Tentative Ruling:

The Court will set the plaintiff's motion for default judgment for hearing at **2:30 p.m. on October 16, 2019**. The plaintiff must file and serve an amended notice of the hearing on all parties in interest.

The Court also will continue this status conference to **2:30 p.m. on October 16, 2019**, to be held with the hearing on the motion for default judgment.

Appearances on September 18, 2019 are excused.

Party Information

Debtor(s):

Nelson Sargsyan

Represented By
Thomas B Ure

Defendant(s):

Nelson Sargsyan

Pro Se

Plaintiff(s):

Radium2 Capital Inc.

Represented By
Jennifer Witherell Crastz

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, September 18, 2019

Hearing Room 301

2:30 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

#16.00 Motion to be relieved from serving as counsel for Roxe, LLC and Michael Martin (Defendants)

Docket 89

***** VACATED *** REASON: Order entered granting motion on 8/22/19 [doc. 99]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Defendant(s):

Roxe, LLC, a California limited

Represented By
Dawn M Coulson

Michael Martin an individual

Represented By
Dawn M Coulson

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
Lindsey L Smith

**United States Bankruptcy Court
Central District of California
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Wednesday, September 18, 2019

Hearing Room 301

2:30 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
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Wednesday, September 18, 2019

Hearing Room 301

2:30 PM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:18-01077 The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

#17.00 Defendant's motion to transfer for lack of subject matter jurisdiction or in the alternative to dismiss the claims of David Seror

Docket 71

Tentative Ruling:

For the reasons discussed below, the Court will deny the motion.

I. BACKGROUND

On March 16, 2017, Hermann Muennichow ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee"). During the pendency of the bankruptcy case, Debtor passed away.

On June 29, 2018, The Lincoln National Life Insurance Company, an Indiana Corporation ("Lincoln National") filed a complaint for interpleader (the "Complaint"). In the Complaint, Lincoln National alleged, in relevant part:

Lincoln National assumed responsibility for a life insurance policy issued on April 27, 2006 insuring the life of Debtor (the "Policy"). In the Policy, Debtor designated Helayne Muennichow, his wife at the time, as the sole primary beneficiary. On March 27, 2013, Debtor submitted an Ownership Change for Life Policy form transferring ownership of the Policy to the Van Dyke Trust. On April 25, 2013, the Van Dyke Trust modified the beneficiary designation under the Policy to designate the Van Dyke Trust as the sole primary beneficiary and removed Ms. Muennichow as a beneficiary.

On November 11, 2017, Debtor died. The amount due under the Policy is \$1,003,240.92, comprised of a \$1 million death benefit and a \$3,240.92 premium refund, which became payable to the proper beneficiary upon Debtor's death. In December 2017, Ms. Muennichow sent a letter to Lincoln National claiming an interest in the Policy; Ms. Muennichow alleges that the Policy was purchased during her marriage

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CONT...

Hermann Muennichow

Chapter 7

to Debtor and is a community property asset and that Debtor unlawfully transferred ownership of the Policy without her knowledge or consent.

The Van Dyke Trust, Ms. Muennichow and the Trustee have asserted a claim to the Policy. Lincoln National has deposited the Policy's funds with the Court pending a determination regarding which party has an interest in the Policy.

On March 4, 2019, the Trustee filed an answer to the Complaint and a cross claim (the "Trustee's Cross Claim") [doc. 23]. In the Trustee Cross Claim, the Trustee alleges five claims for relief. The first four claims for relief are for avoidance of fraudulent transfer of the Policy to the Van Dyke Trust under 11 U.S.C. § 544 and Cal. Civ. Code § 3439.04 and recovery of the fraudulent transfer of the Policy from the Van Dyke Trust into the bankruptcy estate under 11 U.S.C. § 550 and Cal. Civ. Code § 3439.07. The fifth claim for relief is for declaratory relief. The Trustee prays that the Court will enter an order declaring: (1) that but for the alleged fraudulent transfer of ownership of the Policy, the Policy would have been property of the bankruptcy estate; (2) that upon avoidance and recovery of the Policy by the bankruptcy estate, the Policy is property of the estate; and (3) that the Trustee is entitled to name the beneficiary under the Policy, *nunc pro tunc* as of the petition date.

On March 13, 2019, the Van Dyke Trust filed an answer to the Complaint (the "Van Dyke Answer") [doc. 30]. In the Van Dyke Answer, the Van Dyke Trust alleges, among other things, that Debtor provided accounting services for Duane Van Dyke and Mr. Van Dyke's business entities. During the course of their professional relationship, Debtor allegedly embezzled \$800,00 from Mr. Van Dyke. In January 2013, Debtor purportedly agreed with Mr. Van Dyke that he had embezzled the funds and supposedly agreed to return the money to Mr. Van Dyke. Accordingly, Debtor and Mr. Van Dyke allegedly executed a promissory note for \$800,000 secured by business guarantees and deeds of trust. In addition, the Van Dyke Trust claims that Debtor transferred ownership of the Policy to the Van Dyke Trust to ensure that the funds were returned to Mr. Van Dyke if Debtor passed away.

On July 11, 2018, Mr. Van Dyke filed a \$1,310,294.71 claim in Debtor's bankruptcy case [1:17-bk-10673-VK, claim 6]. In that proof of claim, Mr. Van Dyke alleges that the basis of his claim is the purported promissory note and that \$1,000,000 of the claim is secured by the Policy.

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CONT... Hermann Muennichow

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On March 15, 2019, Ms. Muennichow filed an answer to the Compliant [doc. 33] and cross claims against the Van Dyke Trust and the Trustee (the "Muennichow Cross Claim") [doc. 34]. In the Muennichow Cross Claim, Ms. Muennichow alleges, among other things, that Mr. Van Dyke physically assaulted Debtor and Mr. Van Dyke threatened to take the lives of Debtor, Ms. Muennichow and their grandchildren. Ms. Muennichow claims that Debtor transferred ownership of the Policy to the Van Dyke Trust because Debtor was in fear for his life and the lives of his family members.

In the Muennichow Cross Claim, Ms. Muennichow asserts six claims for relief. The first and second claims are for avoidance of fraudulent transfer pursuant to 11 U.S.C. §§ 522 and 544 and Cal. Civ. Code § 3439. The third claim is for avoidance of transfer of marital assets under Cal. Fam. Code § 1101 and 11 U.S.C. §§ 522 and 544. The fourth claim for relief is to recover damages for breach of contract by the Van Dyke Trust. The fifth and sixth claims are for declaratory relief. Ms. Muennichow prays that the Court enter an order declaring: (1) that but for the fraudulent transfer of the Policy to the Van Dyke Trust, the Policy would have been property of Ms. Muennichow; (2) that upon avoidance and recovery of the Policy by Ms. Muennichow, the Policy is Ms. Muennichow's sole personal property; (3) that Ms. Muennichow is the only beneficiary under the Policy; (4) that the benefits of the Policy are not property of the bankruptcy estate; and (5) that the Trustee has no ability take actions against the Policy or to interplead funds that would allow him to change the beneficiary under the Policy.

On September 11, 2018, the Court entered a consent order (the "Consent Order") [doc. 11]. In the Consent Order, the parties agreed, among other things, that: (A) Lincoln National will deposit \$1 million, plus applicable interest, into the Registry of the Court; (B) upon deposit of the funds, Lincoln National will be dismissed from this action with prejudice; (C) Lincoln will be discharged from any and all liability with respect to the Policy, the deposited funds and payment of the deposited funds; (D) the claimants to the funds will be enjoined from commencing or prosecuting any other action against Lincoln National with respect to the Policy, the deposited funds and payment of the deposited funds; (E) Lincoln National waives any right to attorneys' fees and costs in connection with this action; and (F) no costs will be taxed against Lincoln National.

On March 12, 2019, Ms. Muennichow filed a *Motion to Reconsider Entry of Consent Order* (the "Motion to Reconsider") [doc. 29]. On May 15, 2019, the Court held a hearing on the Motion to Reconsider. At that hearing, the Court decided that an evidentiary hearing was required to rule on the Motion to Reconsider. That evidentiary hearing is scheduled for December 20, 2019. On May 31, 2019, the Court entered a

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Chapter 7

Scheduling Order Pertaining to Discovery, Briefing and Evidentiary Hearing on Helayne Muennichow's Motion to Reconsider Entry of Consent Order (the "Scheduling Order") [doc. 69]. Pursuant to the Scheduling Order, all litigation pertaining to this adversary proceeding, with the exception of litigation to obtain a determination as to whether the Court has subject matter jurisdiction, is stayed until further order of the Court.

On June 21, 2019, Ms. Muennichow filed a *Motion to Transfer for Lack of Subject Matter Jurisdiction or in the Alternative to Dismiss the Claims of David Seror* (the "Motion") [docs. 71 and 73]. In the Motion, Ms. Muennichow argues that the Court should transfer this adversary proceeding to the district court and vacate all previously issued orders, including the Consent Order, for lack of subject matter jurisdiction. Ms. Muennichow argues, among other things, that the Court does not have subject matter jurisdiction because the claims in the Trustee Cross Claim are frivolous. In the alternative, Ms. Muennichow seeks a judgment dismissing the Trustee Cross Claim with prejudice pursuant to Fed. R. Civ. Proc. 12(c).

On September 4, 2019, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 79]. On September 6, 2019, Lincoln National filed a joinder in the Opposition [doc. 80]. On September 11, 2019, Ms. Muennichow filed a reply to the Opposition [doc. 81].

II. DISCUSSION

A. Judgment on the Pleadings

Federal Rule of Civil Procedure ("FRCP") 12(c), applicable through Federal Rule of Bankruptcy Procedure ("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)").

Here, Ms. Muennichow argues that the Court should dismiss the Trustee Cross Claim because the claims in it are frivolous. Specifically, Ms. Muennichow asserts that the Trustee cannot alter the beneficiary under the Policy and does not have an interest in the Policy. Ms. Muennichow claims that under Cal. Code Civ. Proc. § 703.130, unmatured

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Chapter 7

life insurance policies are exempt without claiming an exemption. Ms. Muennichow further argues that the exemption under "[s]ection 522 . . . protects the debtor's ownership interest in the policy, that is, the right to maintain the policy and name a beneficiary." *In re Woodson*, 839 F.2d 610, 617-18 (9th Cir. 1988). Thus, according to Ms. Muennichow, the Trustee does not have the power to change the beneficiary of the Policy.

Pursuant to the Scheduling Order, all litigation pertaining to this adversary proceeding, with the exception of litigation to obtain a determination as to whether the Court has subject matter jurisdiction, is stayed until further order of the Court. Accordingly, at this time, the Court will not make any findings regarding the validity of the claims in the Trustee Cross Claim. As such, the Court will not dismiss the Trustee Cross Claim.

B. Subject Matter Jurisdiction

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.").

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.

a. 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).

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Chapter 7

b. 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).

c. 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

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CONT...

Hermann Muennichow

Chapter 7

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 has "arising under" jurisdiction because the matter involves statutory provisions of the Bankruptcy Code. The Trustee's claims for avoidance and recovery of estate property arise under 11 U.S.C. §§ 544 and 550. Further, the first, second and third claims in the Muennichow Cross Claim arise under 11 U.S.C. §§ 544 and 522.

Moreover, in the Trustee Cross Claim, the Van Dyke Answer and the Muennichow Cross Claim, each party requests that this Court make a determination that the Policy either is or is not property of the bankruptcy estate. This Court has subject matter jurisdiction to determine whether the Policy and the proceeds from the Policy are property of the estate.

In the Motion, Ms. Muennichow argues that pursuant to 11 U.S.C. § 541(a)(5)(C), the life insurance proceeds are not part of the estate because Debtor died more than 180 days after the petition. As stated above, the Court will not make any findings at this time regarding the issues in the adversary proceeding. Ms. Muennichow is free to bring a motion under Fed. R. Civ. Proc. 12(c) or 56 when litigation has resumed.

Further, even assuming that the Court does not have "arising under" jurisdiction, this Court does have "related to" jurisdiction over this matter. The determination of which party ultimately will receive the proceeds of the Policy will have a direct and substantial impact on the estate. Mr. Van Dyke has filed a \$1,310,294.71 claim in Debtor's bankruptcy case. Whether the proceeds from the Policy are distributed to Mr. Van Dyke, Ms. Muennichow or other creditors of the bankruptcy estate affects administration of Debtor's estate.

C. CONCLUSION

For the foregoing reasons, the Court will deny the Motion.

The Trustee must submit the order within seven (7) days.

Party Information

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CONT... Hermann Muennichow

Chapter 7

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Defendant(s):

Duane Van Dyke Irrevocable Trust

Represented By
Kelly Warren
Benjamin Blakeman

Helayne Muennichow

Represented By
Robert J McKennon
Gary A Kurtz

David Seror

Represented By
Richard Burstein

Plaintiff(s):

The Lincoln National Life Insurance

Represented By
Erin Illman
David W. Meadows
Robert R Marcus

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

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2:30 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:19-01063 Leonardi v. Turner et al

#18.00 Defendant's motion to remand

Docket 8

***** VACATED *** REASON: Order resolving matter entered 9/11/19 [19-10112, doc. 105].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik
Jeffrey S Kwong

Defendant(s):

Jeff Turner

Pro Se

Oscar Torres

Pro Se

Coast To Coast Holdings, LLC

Represented By
Jeffrey S Kwong
John-Patrick M Fritz

DOES 1 through 25, inclusive

Pro Se

Plaintiff(s):

Joseph Leonardi

Represented By
Emanuel D Zola

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2:30 PM

1:19-10112 Coast to Coast Holdings, LLC
Adv#: 1:19-01063 Leonardi v. Turner et al

Chapter 11

#19.00 Status conference re: notice of removal of civil action under 28 U.S.C. § 1452(a)
fr. 7/17/19

Docket 1

***** VACATED *** REASON: Order resolving matter entered 9/11/19 [19-10112, doc. 105].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik
Jeffrey S Kwong

Defendant(s):

Jeff Turner

Pro Se

Oscar Torres

Pro Se

Coast To Coast Holdings, LLC

Represented By
Jeffrey S Kwong
John-Patrick M Fritz

DOES 1 through 25, inclusive

Pro Se

Plaintiff(s):

Joseph Leonardi

Represented By
Emanuel D Zola

**United States Bankruptcy Court
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Wednesday, September 18, 2019

Hearing Room 301

2:30 PM

1:19-10790 Nelson Sargsyan

Chapter 7

Adv#: 1:19-01080 Radium2 Capital Inc. v. Sargsyan

#20.00 Motion for Default Judgment

Docket 12

***** VACATED *** REASON: Entry made in error.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nelson Sargsyan

Represented By
Thomas B Ure

Defendant(s):

Nelson Sargsyan

Pro Se

Plaintiff(s):

Radium2 Capital Inc.

Represented By
Jennifer Witherell Crastz

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, September 19, 2019

Hearing Room 301

10:30 AM

1:15-13561 Akop Terpogosyan and E. Eyov Avtalyon Group, LTD.

Chapter 7

#1.00 Hearing on Amended Application for final fees and/or expenses (11 U.S.C. § 330) for Regis F Boyle, paraprofessional

fr. 8/8/19

Docket 238

Tentative Ruling:

Regis Boyle, Jr. ("Applicant"), field agent for the chapter 7 trustee – approve fees in the amount of \$1,545.00, pursuant to 11 U.S.C. § 330, on an final basis.

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):

Akop Terpogosyan

Pro Se

Joint Debtor(s):

Lilit Chaghayan

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By

**United States Bankruptcy Court
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**CONT... Akop Terpogosyan and E. Eyov Avtalyon Group, LTD.
Leonard Pena**

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, September 19, 2019

Hearing Room 301

10:30 AM

1:10-14974 Ronald Simon Sempelsz and Clara Sempelsz

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

Docket 43

Tentative Ruling:

Nancy Hoffmeier, chapter 7 trustee - approve fees of \$250.00 and reimbursement of expenses of \$434.60, pursuant to 11 U.S.C. § 330, on a final 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 relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Ronald Simon Sempelsz

Represented By
Steven A Alpert

Joint Debtor(s):

Clara Sempelsz

Represented By
Steven A Alpert

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

Thursday, September 19, 2019

Hearing Room 301

10:30 AM

CONT... Ronald Simon Sempelsz and Clara Sempelsz

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, September 19, 2019

Hearing Room 301

10:30 AM

1:10-17214 Darin Davis

Chapter 7

#3.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Danning Gill Diamond & Kollitz LLP, general counsel to Chapter 7 Trustee

SLBiggs, Accountant to Chapter 7 Trustee

Docket 320

***** VACATED *** REASON: Hearing continued to 10/17/19 at 10:30 AM.
[Dkt.348]**

Tentative Ruling:

- NONE LISTED -

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, September 19, 2019

Hearing Room 301

10:30 AM

1:15-11350 Pedram Shirzad

Chapter 7

#4.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Gonzalez & Gonzalez Law, PC, counsel for Chapter 7 Trustee

LEA Accountancy LLP, Accountants to Chapter 7 Trustee

Docket 144

Tentative Ruling:

David Seror, chapter 7 trustee – approve fees of \$15,750.80 and reimbursement of expenses of \$43.50, pursuant to 11 U.S.C. § 330, on a final basis.

Gonzalez & Gonzalez Law, P.C. (“Gonzalez Law”), counsel to chapter 7 trustee – approve fees of \$27,801.00 in fees and reimbursement of expenses of \$1,381.00, pursuant to 11 U.S.C. § 330, on a final basis. The Court will not approve \$2,794.00 in fees and reimbursement of \$110.15 in expenses for the reasons stated below.

LEA Accountancy, LLP (“LEA”), accountant to chapter 7 trustee – approve \$9,322.00 in fees and reimbursement of \$136.61 in expenses, pursuant to 11 U.S.C. § 330, on a final basis. The Court will not approve reimbursement of \$210.00 in expenses 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

**United States Bankruptcy Court
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CONT... Pedram Shirzad

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. § 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 by Gonzalez Law 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

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CONT... **Pedram Shirzad**
chapter 7 trustee, as a trustee.

Chapter 7

Category	Date	Timekeeper	Time	Fee	Description
Fee & Employment Applications	12/31/15	RG	0.30	\$120.00	Prepare notice of application to employ real estate brokers for the Dickens property
Fee & Employment Applications	12/31/15	RG	1.50	\$600.00	Prepare application to employ real estate brokers for the Dickens property
Fee & Employment Applications	1/25/16	RG	0.70	\$280.00	Preparation of pleadings re: declaration and order to employ real estate broker

In addition to violating the Local Rules, lumped or blocked billing is generally frowned upon by courts because it prevents the court from “fairly evaluating whether individual tasks were expeditiously performed within a reasonable time frame.” *In re Thomas*, 2009 WL 7751299, *5 (9th Cir. BAP), quoting *In re Hudson*, 364 B.R. 875, 880 (Bankr. N.D.N.Y. 2007). When fee applications contain lumped billing, courts disallow or reduce the lumped entries. See *In re Breeden*, 180 B.R. 802, 810 (Bankr. N.D. W.Va. 1995) (court disallowed all lumped fee entries solely because their format); *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942 at 948 (9th Cir. 2007) (court may properly impose a reduction for block billing).

Many of Gonzalez Law’s time entries, approximately \$11,960.00 of the requested fees, contain entries with lumped services. Accordingly, this Court will reduce the fees based on lumped billing by 15%, which will reduce the fees sought by \$1,794.00. See e.g. *Thomas*, *7 (upheld 10% reduction of fees from lumped billing); *Darling Intern., v. Baywood Partners, Inc.*, 2007 WL 4532233, *9 (N.D. Cal. 2007) (“courts typically make an adjustment ranging from 5% to over 30%); *In re SAIF, Inc.*, 2009 WL 6690966 (Bankr. S.D.Cal. 2009) (due to substantial lumping, court reduced the fees sought by 10%); *In re Stewart*, 2008 WL 8462960, *6 (9th Cir. BAP 2008) (upheld 20% reduction for inappropriate lumping).

Category	Date	Timekeeper	Time	Fee	Description
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CONT... Pedram Shirzad

Chapter 7

Asset Analysis & Recovery	12/31/15	RG	1.00	\$400.00	Review 9 letters from L. Cohen and J. Williams, B. Friedman, B. Kupnick and client re: Dickens property; trustee's efforts to market and sell; cooperation for access to property; estate's interest. Draft responses re: same. Tel. conference with B. Friedman re: same
Asset Analysis & Recovery	9/8/15	RG	1.70	\$680.00	Review client's two letters, pleadings filed in this case including petition, schedules, amended schedules and complaint. Draft response to client's letter re: same
Asset Analysis & Recovery	2/5/16	RG	1.80	\$720.00	Prepare emergency motion seeking access and turnover to Encino Property pursuant to Sections 541 and 542 of the Bankruptcy Code; draft letter to D. Seror, B. Friedman and B. Kurnik re: same
Asset Analysis & Recovery	2/9/16	RG	0.70	\$280.00	Review debtor's opposition to emergency motion for access. Review S. Bereliani two letters and two letters from B. Kinik re: access to the property; draft response re: same; opposition to motion. Draft letter to client and brokers re: same.
Asset Analysis & Recovery	12/9/15	RG	0.80	\$320.00	Court Appearance [telephonic] re: Wells Fargo motion for relief; draft letter to client and B. Friedman re: same
Asset Analysis & Recovery	1/29/16	RG	1.00	\$400.00	Review letter from Trustee re: S. Shirzad refusal to cooperate; draft response; draft extensive letter to S. Shirzad re: Encino Property; motion for relief to foreclose, adversary proceeding; demand to cooperate; threat of turnover motion
Asset Analysis & Recovery	1/25/16	RG	1.40	\$560.00	Preparation of declaration re: supplemental opposition to WFB motion for relief from stay and status of bk interest in Encino Property. Draft letter to D. Seror re: same

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CONT... Pedram Shirzad

Chapter 7

Asset Analysis & Recovery	1/28/16	RG	1.80	\$720.00	Review Bayview motion for relief from stay; prepare opposition to the motion; prepare evidentiary objections to the motion; draft letter to client re: same
Asset Analysis & Recovery	5/26/16	RG	0.70	\$280.00	Review two letter from L. Cohen re: debtor and spouse payments; possible exposure; documents produced. Review client's letter re: same. Draft response letters re: same; Rule 2004 document and examination
Case Administration	9/9/15	RG	1.20	\$480.00	Review client's letter; prepare stipulation to continue deadlines under Sections 727 and 707; draft letter to L. Cohen re: same
Case Administration	9/27/15	RG	1.20	\$480.00	Review debtor's opposition to motion to continue deadlines; draft letter to client re: same; prepare response to the opposition
Dneprovsky Adversary Proceeding	6/13/16	RG	0.70	\$280.00	Review L. Cohen's letter re: settlement agreement; draft response re: same. Revise settlement agreement
Dneprovsky Adversary Proceeding	3/16/16	RG	1.00	\$400.00	Review two letters from Williams and Cohen re: settlement; draft response re: same. Prepare and revise complaint against debtor's inlaws
Dneprovsky Adversary Proceeding	8/2/16	RG	1.60	\$640.00	Preparation of pleadings re: motion seeking approval of compromise; draft letter to client re: same
Dneprovsky Adversary Proceeding	6/8/16	RG	1.70	\$680.00	Preparation of pleadings re: settlement agreement; draft letter to J. Williams re: same
Shirzad Fraudulent Transfer Adversary Proceeding	1/26/16	RG	0.70	\$280.00	Review client's letter re: complaint; revise and finalize complaint and declaration; draft letter to client re: strategy
Shirzad Fraudulent Transfer Adversary Proceeding	2/23/16	RG	0.70	\$280.00	Conference with L. Cohen and S. Barelli re: settlement; releases. Draft letter to client re: same; strategy. Review client's response re: same. Draft letter to L. Cohen and S. Barelli re: settlement terms

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CONT... Pedram Shirzad

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Shirzad Fraudulent Transfer Adversary Proceeding	3/1/16	RG	0.80	\$320.00	Review 7 letters from S. Berrelli, L. Cohen and Trustee re: global settlement agreement; draft responses re: same. Tel. conference with L. Cohen re: same; counter offer
Shirzad Fraudulent Transfer Adversary Proceeding	3/2/16	RG	0.80	\$320.00	Review 7 letters from client and S. Barrelli re: settlement; counter offer; the 2 nd dickens property; value; claims. Draft responses re: same
Shirzad Fraudulent Transfer Adversary Proceeding	3/2/16	RG	1.70	\$680.00	Prepare settlement agreement with S. Shirzad and Living Trust; draft letter to Barelli re: same
Shirzad Fraudulent Transfer Adversary Proceeding	3/9/16	RG	1.70	\$680.00	Prepare motion seeking approval of compromise with S. Shirzad; draft letter to client re: same
Shirzad Fraudulent Transfer Adversary Proceeding	6/9/16	RG	1.40	\$560.00	Prepare and revise settlement agreement with A. Shirzad. Draft letter to J. Williams re: same
Shirzad Fraudulent Transfer Adversary Proceeding	6/13/16	RG	0.70	\$280.00	Review L. Cohen's letter re: A. Shirzad settlement agreement; draft response re: same. Revise settlement agreement.
Shirzad Fraudulent Transfer Adversary Proceeding	4/5/16	RG	1.50	\$600.00	Prepare response to Cook's objection to compromise agreement; draft letter to client re: same
Shirzad Fraudulent Transfer Adversary Proceeding	8/2/16	RG	1.60	\$640.00	Preparation of pleading re: motion seeking approval of compromise with the Shirzads; draft letter to client re: same

The Court will not approve the reimbursement of the following expenses by Gonzalez Law because Gonzalez Law did not include a description of the expense. Accordingly, the Court cannot determine whether the expenses are reasonable and whether they are nonreimbursable overhead.

Date	Description	Charge
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CONT... Pedram Shirzad

Chapter 7

9/10/15		\$0.40
9/11/15		\$12.96
9/30/15		\$1.84
9/11/15		\$3.28
		\$3.72
9/30/15		\$3.72
9/11/15		\$2.30
9/30/15		\$2.30
9/11/15		\$2.52
9/30/15		\$2.96
8/30/16		\$3.56
6/28/16		\$0.93
8/4/16		\$10.70
4/6/16		\$11.52
5/11/16		\$4.73
4/6/16		\$2.82
8/23/16		\$2.25
		\$0.89
4/6/16		\$1.15
8/4/16		\$4.71
8/22/16		\$5.34
8/23/16		\$5.97
8/4/16		\$2.41

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CONT... Pedram Shirzad

Chapter 7

		\$2.41
8/22/16		\$2.83
8/23/16		\$3.25
8/20/16		\$0.20
6/28/16		\$0.68
5/11/16		\$1.10
8/6/16		\$1.90
6/20/16		\$2.10
6/9/16		\$2.70

Pursuant to the United States Trustee Guidelines, 28 C.F.R. Part 58, Appendix A, overhead expenses are nonreimbursable. "Overheard consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges." 28 C.F.R. Part 58, Appendix A, ¶ (b)(5)(vii).

In accordance with the foregoing, the Court will not approve reimbursement of the following expenses to LEA because the expense appears to be nonreimbursable overhead.

Date	Amount	Description
4/30/19	\$210.00	Tax Software 2016, 2017 & 2018

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

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CONT... Pedram Shirzad

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):

Pedram Shirzad

Represented By
Leslie A Cohen

Trustee(s):

David Seror (TR)

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

10:30 AM

1:16-12321 Derek John Greeff

Chapter 7

#5.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Brutzkus Gubner, attorneys for Chapter 7 Trustee

SLBiggs, Accountant to Chapter 7 Trustee

Docket 64

Tentative Ruling:

David Seror, chapter 7 trustee – approve fees of \$11,499.86 and reimbursement of expenses of \$16.76, pursuant to 11 U.S.C. § 330, on a final basis.

Brutzkus Gubner, counsel to chapter 7 trustee – approve fees of \$51,400.00 in fees and reimbursement of expenses of \$750.61, pursuant to 11 U.S.C. § 330, on a final basis. The Court will not approve \$2,630.50 in fees for the reasons stated below.

SLBiggs, A Division of SingerLewak, accountant to chapter 7 trustee – approve \$4,882.50 in fees and reimbursement of \$152.62 in expenses, pursuant to 11 U.S.C. § 330, on a final basis.

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

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CONT... **Derek John Greeff**

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. § 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.

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. 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.

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CONT... **Derek John Greeff**

Chapter 7

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed by Brutzkus Gubner 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	Time	Rate	Fee	Description
Asset Analysis & Recovery	1/24/17	RBX	0.4	\$495.00	\$198.00	Review vehicle valuations re: demand for turnover
Asset Disposition	3/15/17	RBX	0.2	\$495.00	\$99.00	Review and respond to debtor's counsel re: offer to purchase estate asset
Asset Disposition	3/16/17	RBX	0.3	\$495.00	\$148.50	Correspondence to debtor's counsel re: vehicle valuation and decline offer (2x)
Asset Disposition	3/16/17	RBX	0.2	\$495.00	\$99.00	Respond to debtor's offer to purchase estate asset
Asset Disposition	3/31/17	RBX	1.5	\$495.00	\$742.50	Revise sale motion for private sale to debtor
Asset Disposition	3/31/17	RBX	0.2	\$495.00	\$99.00	Conversation with counsel for debtor re: purchase of estate interest in vehicle
Asset Disposition	4/3/17	RBX	0.5	\$495.00	\$247.50	Finalize motion to sell estate asset
Asset Disposition	4/3/17	RBX	0.3	\$495.00	\$187.50	Review and revise R. Boyce draft motion to sell Lexus to debtor
Asset Disposition	5/1/17	RBX	0.3	\$495.00	\$187.50	Review and revise R. Boyce draft sale motion re Lexus
Asset Disposition	6/7/17	RBX	0.4	\$495.00	\$198.00	Prepare declaration of no opposition to sale of Lexus
Case Administration	3/7/17	RBX	0.2	\$495.00	\$99.00	Conference call with counsel for main creditor re: status of case
Case Administration	6/29/17	RBX	0.2	\$495.00	\$99.00	Respond to creditor inquiry re: status of case
Case Administration	10/2/17	RBX	0.2	\$495.00	\$99.00	Conference call to creditor counsel re: status of asset liquidation
Case Administration	2/14/18	RBX	0.1	\$495.00	\$49.50	Conference call with creditor counsel inquiring about status of case
Case Administration	8/16/18	RBX	0.1	\$495.00	\$49.50	Respond to inquiry from creditor

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;

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CONT... Derek John Greeff

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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 Brutzkus Gubner for the services identified below:

Category	Date	Timekeeper	Time	Rate	Fee	Description
Case Administration	10/7/16	KB	0.1	\$280.00	\$28.00	Obtain creditor matrix

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.

Party Information

Debtor(s):

Derek John Greeff

Represented By
Clifford Bordeaux

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Steven T Gubner
Reagan E Boyce

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10:30 AM

1:17-13186 Kayvan Torabian

Chapter 7

#6.00 Trustee's Final Report and Applications for Compensation

Amy L. Goldman, Chapter 7 Trustee

Pena & Soma APC, attorneys for Chapter 7 Trustee

SLBiggs, Accountant for Chapter 7 Trustee

Docket 60

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee – approve fees of \$7,972.71 and reimbursement of expenses of \$32.82, pursuant to 11 U.S.C. § 330, on a final basis.

Peña & Soma, APC counsel to chapter 7 trustee – approve fees of \$9,240.00 in fees and reimbursement of expenses of \$113.86, pursuant to 11 U.S.C. § 330, on a final basis.

SLBiggs, A Division of SingerLewak, accountant to chapter 7 trustee – approve \$4,241.00 in fees and reimbursement of \$138.95 in expenses, pursuant to 11 U.S.C. § 330, on a final 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 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):

Kayvan Torabian

Pro Se

**United States Bankruptcy Court
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CONT... Kayvan Torabian

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Represented By
Leonard Pena

**United States Bankruptcy Court
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Thursday, September 19, 2019

Hearing Room 301

10:30 AM

1:18-13069 Sergio Cotero

Chapter 7

#7.00 Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

Docket 29

Tentative Ruling:

Nancy Hoffmeier, chapter 7 trustee - approve fees of \$647.46 and reimbursement of expenses of \$281.45, pursuant to 11 U.S.C. § 330, on a final 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 relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Sergio Cotero

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**

Thursday, September 19, 2019

Hearing Room 301

1:00 PM

1:19-12055 Josephine E Williams

Chapter 7

**#8.00 U.S. Trustee's Motion to Dismiss Case Pursuant
to 11 U.S.C. sections 707(a) and 727(a)(8)**

Docket 4

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):

Josephine E Williams

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, September 19, 2019

Hearing Room 301

1:00 PM

1:19-11965 Alen Avanossian

Chapter 7

#9.00 U.S. Trustee's Motion to Dismiss Case Pursuant to 11 U.S.C. sections 707(a) and 727(a)(8)

Docket 11

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):

Alen Avanossian

Pro Se

Movant(s):

United States Trustee (SV)

Represented By
S Margaux Ross

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, September 19, 2019

Hearing Room 301

1:00 PM

1:19-11212 Gabriel Taslagian

Chapter 7

#10.00 U.S. Trustee's Motion for extension of time
to file a complaint objecting to discharge
and/or motion to dismiss per section 707(b)

Docket 17

*** VACATED *** REASON: Withdrawal of motion filed 9/11/19. [Dkt.20]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Taslagian

Pro Se

Movant(s):

United States Trustee (SV)

Represented By
Russell Clementson

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Thursday, September 19, 2019

Hearing Room 301

1:00 PM

1:18-12607 Claudia Carola Gonzalez

Chapter 7

#11.00 United States Trustee's Application For Issuance Of Order To Show Cause Why Claudia Cisneros Should Not Be Held In Contempt Of The Court And Directing Claudia Cisneros To Personally Appear To Explain Why She Failed To Comply With The Courts Order

Docket 40

Tentative Ruling:

I. BACKGROUND

On October 24, 2018, Claudia Carola Gonzalez ("Debtor") filed a voluntary chapter 7 petition. Debtor hired Claudia Cisneros as a bankruptcy petition preparer to help file her chapter 7 case.

On March 8, 2019, the United States Trustee (the "UST") filed a *Motion Under 11 U.S.C. § 110 for Disgorgement of Fees and Fines Against Bankruptcy Petition Preparer Claudia Cisneros* (the "Motion to Disgorge") [doc. 17]. On April 25, 2019, the Court held a hearing on the Motion to Disgorge. Ms. Cisneros and her counsel appeared at the hearing.

On May 3, 2019, the Court entered an order granting the Motion to Disgorge (the "Order") [doc. 31]. Pursuant to the Order, Ms. Cisneros was to within 30 days: (1) disgorge \$1,500 to Debtor; (2) pay Debtor \$1,650 in damages; and (3) pay the UST \$1,350 in fines. The Order was served on Ms. Cisneros and her counsel [doc. 35].

On August 12, 2019, the UST filed an *Application for Issuance of Order to Show Cause Why Claudia Cisneros Should Not Be Held in Contempt of the Court and Directing Claudia Cisneros to Personally Appear to Explain Why She Failed to Comply with the Court's Order* (the "Application for OSC") [doc. 40]. The Application for OSC was served on Ms. Cisneros and her counsel. In the Application for OSC, the UST states that, as of the date of filing the Application for OSC, Ms. Cisneros has failed to pay Debtor \$1,650 in damages and the UST \$1,350 in fines [Declaration of Joyce Hong and Declaration of Claudia Carola Gonzalez]. Ms.

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CONT... Claudia Carola Gonzalez

Chapter 7

Cisneros did not respond to the Application for OSC.

On August 2, 2019, the Court granted the Application for OSC and issued an *Order to Show Cause Why Claudia Cisneros Should Not be Held in Contempt of the Court and Directing Claudia Cisneros to Personally Appear to Explain Why she Failed to Comply with the Court's Order* (the "OSC") [doc. 42]. The OSC was served on Ms. Cisneros. Pursuant to the OSC, Ms. Cisneros was to file a written response to the OSC by September 4, 2019. Ms. Cisneros has not filed a response to the OSC.

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 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). "Substantial compliance with the terms of a court's order is a defense to civil contempt." *In re Count Liberty, LLC*, 370 B.R. 259, 275 (Bankr. C.D. Cal. 2007). The party being held in contempt must show that he or she took every reasonable step to comply with the Court's order. *Stone v. City & Cnty. of San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992) (citing *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 404 (9th Cir. 1976)); see also *Count Liberty*, 370 B.R. at 275 ("To establish substantial compliance, the contemnor must show that he took all reasonable steps within his power to comply.").

"[C]riminal contempt sanctions are not available under § 105(a). Section 105(a) contains no explicit grant of authority to award punitive damages. Rather, the language of § 105(a) authorizes only those remedies 'necessary' to enforce the bankruptcy code. The sanctions associated with civil contempt—that is, compensatory damages, attorney fees, and the offending creditor's compliance—adequately meet that goal...rendering serious punitive sanctions unnecessary." *Dyer*, 322 F.3d at 1193.

Here, Ms. Cisneros violated a specific and definite order of the Court, namely, to pay

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CONT... Claudia Carola Gonzalez Chapter 7

Debtor \$1,650 in damages and the UST \$1,350 in fines within 30 days of entry of the Order. Ms. Cisneros appeared at the hearing on the Motion to Disgorge and was served the Order. However, Ms. Cisneros failed to make the payments required under the Order and has not timely responded to the OSC. As such, a finding of civil contempt is appropriate.

III. CONCLUSION

The Court will hold Ms. Cisneros in civil contempt for failing to make the required payments under the Order.

The UST must submit the order within seven (7) days.

Party Information

Debtor(s):

Claudia Carola Gonzalez	Pro Se
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Movant(s):

United States Trustee (SV)	Represented By S Margaux Ross
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Trustee(s):

Diane C Weil (TR)	Pro Se
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Central District of California
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1:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#12.00 U.S. Trustee's Motion Under 11 U.S.C.
section 1112(b) To Dismiss Or Convert Case

adv fr. 10/3/19

Docket 95

*** VACATED *** REASON: Withdrawal of motion filed 9/16/19.
[Dkt.109]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik
Jeffrey S Kwong

Movant(s):

United States Trustee (SV)

Represented By
Katherine Bunker

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#13.00 Status conference re: chapter 11 case

fr. 4/4/19; 4/25/19; 8/15/19; 8/22/19; 8/29/19

Docket 1

Tentative Ruling:

The Court will continue this hearing to **1:00 p.m. on October 17, 2019**. No later than **October 3, 2019**, the debtor must file and serve a status report updating the Court on how it intends to proceed with this case.

Appearances on September 19, 2019 are excused.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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Central District of California
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Judge Victoria Kaufman, Presiding
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Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#14.00 Status conference re: chapter 11 case

fr. 5/23/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on November 14, 2019**. If the debtor has not timely filed a proposed chapter 11 plan and disclosure statement by the extended deadline of October 30, 2019, the debtor must file and serve a status report, **supported by evidence**, updating the Court on the status of this case no later than **October 31, 2019**.

Appearances on September 19, 2019 are excused.

Party Information

Debtor(s):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

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1:00 PM

1:17-10830 ColorFX, Inc.

Chapter 11

#15.00 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; 11/8/18; 3/14/19; 4/4/19

Docket 1

Tentative Ruling:

On September 12, 2019, the Post-Confirmation Committee of Unsecured Creditors filed an untimely status report [doc. 247] and declaration in support [doc. 248].

The Court will continue this status conference to **March 19, 2020 at 1:00 p.m. On or before March 5, 2020**, the Post-Confirmation Committee of Unsecured Creditors 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.

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau

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1:00 PM

1:19-11902 John Christian Lukes

Chapter 11

#16.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **December 2, 2019**

Deadline to mail notice of Bar Date: **September 30, 2019**

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 17, 2020**

Continued chapter 11 case status conference to be held at **1:00 p.m. on February 6, 2020**

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):

John Christian Lukes

Represented By

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CONT...

John Christian Lukes

Matthew D Resnik

Chapter 11

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Hearing Room 301

2:00 PM

1:18-11318 Marcin Lambirth LLP

Chapter 7

#17.00 Motion for Order Approving Settlement Agreement By
And Between (A) The Chapter 7 Turstee, Amy L. Goldman,
and (B) Osvaldo Ureta, Rosario Ureta, Savanna Ureta, A Minor,
By And Through Her Guardian Ad Litem, Juana Velasco, By
And Through Dale K. Galipo and The Law Offices of Dale Galipo

Docket 63

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):

Marcin Lambirth LLP

Pro Se

Movant(s):

Amy L Goldman (TR)

Represented By
Christopher Celentino
Peter J Mastan

Trustee(s):

Amy L Goldman (TR)

Represented By
Christopher Celentino
Peter J Mastan

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2:00 PM

1:10-17214 Darin Davis

Chapter 7

#18.00 Motion to (1) Determine The Leon Nevada Trust's Untimely Proof of Claim as Timely Filed, or (2) to Allow The Nevada Trust to Participate in Distribution to Creditors Which Timely Filed Proofs of Claim

Docket 330

Tentative Ruling:

Deny.

I. BACKGROUND

A. Before the Deadline to File Proofs of Claim

On September 29, 2005, Asphalt Professionals, Inc. ("API") filed a state court complaint against Darin Davis ("Debtor") and other defendants, initiating a state court action assigned case number SC044181 (the "State Court Action"). Request for Judicial Notice ("RJN") [doc. 336], ¶ 1. On May 15, 2007, API filed a fourth amended complaint in the State Court Action, naming (in addition to Debtor) Jose F. Leon, individually, and Jose F. Leon, as trustee of the Leon Family Trust u/d/t September 11, 1997 (the "Trust"), as defendants. RJN, ¶ 2, Exhibit 1.

Debtor, Mr. Leon and the Trust were represented by the Semper Law Group. RJN, ¶ 16, Exhibit 12. Mr. Leon is the trustee of the Trust. Declaration of Jose F. Leon (the "Leon Declaration") [doc. 330], ¶ 1.

On June 15, 2010, Darin Davis ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee"). Since the inception of Debtor's case, Debtor has been represented by attorney Alan Forsley of Fredman Lieberman Pearl, LLP ("FLP"). Debtor did not list the Trust as a creditor in his schedules. However, in his schedule F, Debtor listed a debt owed to "Pancho Leon c/o Semper Law Group."

On June 20, 2010, the Clerk of Court sent the *Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines* (the "Notice of Bankruptcy Case") to creditors,

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Darin Davis

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including to "Pancho Leon, c/o Semper Law Group" [doc. 6]. The Notice of Bankruptcy Case included the following language:

Do Not File a Proof of Claim at This Time

There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.

(emphasis in Notice of Bankruptcy Case). The Notice of Bankruptcy Case listed Mr. Forsley as Debtor's attorney, and provided contact information for Mr. Forsley. Notice of Bankruptcy Case, p. 1. The Notice of Bankruptcy Case was mailed to Mr. Forsley's office, and the Court's electronic receipt reflects that Mr. Forsley also received electronic notice of the Notice of Bankruptcy Case.

Shortly thereafter, on June 22, 2010, Semper Law Group filed a *Notice of Filing of Bankruptcy by Defendant Darin Davis* (the "State Court Notice of Bankruptcy") in the State Court Action. RJN, ¶ 7, Exhibit 5. Through the State Court Notice of Bankruptcy, Semper Law Group notified the state court parties of Debtor's bankruptcy case and referenced the bankruptcy case number. *Id.*

On December 8, 2010, Semper Law Group filed the *Declaration of Scott D. Zonder in Lieu of Appearance at Case Management Conference re Status of Darin Davis Bankruptcy Removal* (the "Zonder Declaration"). RJN, ¶ 8, Exhibit 6. In the Zonder Declaration, Mr. Leon's counsel referenced and attached an order entered in Debtor's bankruptcy case granting API relief from the automatic stay to prosecute the State Court Action. *Id.*

On January 5, 2011, the Clerk of Court served a *Notice of Possible Dividend and Order Fixing Time to File Claims* (the "Notice of Dividend") [doc. 35] on creditors, including on "Pancho Leon, c/o Semper Law Group." In the Notice of Dividend, the Clerk of Court advised creditors that they must file their proofs of claim on or before

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CONT... **Darin Davis**

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April 8, 2011.

According to Mr. Leon's sworn testimony, he learned about Debtor's bankruptcy case in February 2011. Leon Declaration, ¶ 6. On February 7, 2011, the Trustee filed an application to employ Ray B. Bowen as special counsel (the "Application to Employ") [doc. 37]. The Trustee served notice of the Application to Employ on "Pancho Leon, c/o Semper Law Group." On February 22, 2011, Mr. Leon timely filed an opposition to the Application to Employ (the "Employment Opposition") [doc. 39]. Mr. Forsley filed the Employment Opposition on behalf of Mr. Leon. On March 17, 2011, the Court held a hearing on the Application to Employ. Mr. Forsley appeared on behalf of Mr. Leon.

B. After the Deadline to File Proofs of Claim

Neither Mr. Leon nor the Trust filed a timely proof of claim by the deadline of April 8, 2011. On December 27, 2012, after the deadline to file a claim expired, the Trustee filed a no-asset report. On May 6, 2014, the Trustee filed a withdrawal of the no-asset report [doc. 82].

According to Mr. Leon, in late February 2015, Mr. Leon learned that the Trustee sold certain estate assets. Leon Declaration, ¶ 8. Believing there may be a distribution to creditors, on March 2, 2015, approximately four years after the deadline, both Mr. Leon and the Trust filed their proofs of claim. *Id.* The proofs of claim are signed by Mr. Forsley as Mr. Leon's and the Trust's attorney.

On August 13, 2019, the Trustee filed a *Notice of Trustee's Final Report and Applications for Compensation and Deadline to Object* (the "Trustee's Final Report") [doc. 320]. In the Trustee's Final Report, the Trustee listed the Trust's claim as a tardily filed claim with lower priority than timely filed unsecured claims. Although general unsecured creditors with timely filed claims are set to receive a *pro rata* distribution of \$151,316.78, creditors with tardily filed claims are set to be paid \$0.

On August 23, 2019, the Trust filed a motion to deem its claim timely or allow the claim to participate in distribution with timely filed claims (the "Motion") [doc. 330]. In the Motion, the Trust requests that the Court to deem its untimely proof of claim timely under Federal Rule of Bankruptcy Procedure ("FRBP") 3002(c)(6) because notice to the Trust was insufficient or, alternatively, to allow the Trust to receive

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CONT... **Darin Davis**

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distribution with timely filed claims on the basis that the Trust did not timely receive notice of the bar date.

On September 5, 2019, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 336]. On the same day, API filed an opposition to the Motion (the "API Opposition") [doc. 339]. Given that the Court has disallowed API's claim in full, and the Trustee's Final Report reflects that API will not be receiving a distribution of funds, API does not appear to have standing to oppose the Motion. In any event, the API Opposition includes arguments that mirror the Trustee's arguments. On September 12, 2019, the Trust filed replies to the Opposition and the API Opposition [docs. 342, 345].

II. ANALYSIS

The Trust requests that its untimely proof of claim be considered timely for purposes of distribution with other timely filed unsecured claims in accordance with 11 U.S.C. § 726(a)(2)(C), or that the Court extend the time for the Trust to file a proof of claim under FRBP 3002(c)(6). Pursuant to 11 U.S.C. § 502(b)(9), a court "shall allow [a] claim... except to the extent that... proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure...."

A. *Due Process*

The Ninth Circuit Court of Appeals addressed due process concerns related to notice of a claims bar date in *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428 (9th Cir. 1990). In *Coastal Alaska*, the debtor filed a chapter 7 petition and did not list Zidell, Inc. ("Zidell") as a creditor. *Coastal Alaska*, 920 F.2d at 1429. Subsequently, the Clerk of Court sent a notice establishing a claims bar date to the debtor's listed creditors; because Zidell was not listed as a creditor, it did not receive notice. *Id.*

Approximately two months before the claims bar date, Zidell learned that Coastal Hawaiian Lines, Inc. ("CHL"), a subsidiary of the debtor, filed a chapter 7 petition. *Id.* CHL listed Zidell as a creditor. *Id.* Zidell's general counsel then contacted CHL's attorneys, who also represented the debtor, and learned that the debtor also had filed bankruptcy. *Id.* CHL's attorneys did not inform Zidell's attorney that a claims bar date had been set. *Id.* In fact, Zidell's attorney believed that the debtor's case was a

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"no asset" chapter 7 case. *Id.*

Zidell's attorney then received copies of the notice of the first creditors' meeting, which stated, in relevant part:

4. It appears from the schedules of the debtor that there are no assets from which any dividend can be paid to creditors. It is unnecessary for any creditor to file his claim at this time in order to share in any distribution from the estate. If it subsequently appears that there are assets from which a dividend may be paid, creditors will be notified and given an opportunity to file their claims.

Id. Zidell did not timely file a proof of claim. *Id.* Approximately one year after the claims bar date, Zidell received notice of the chapter 7 trustee's intention to make a distribution to creditors. *Id.* At that time, Zidell filed its proof of claim. *Id.* The chapter 7 trustee objected, and Zidell asked for an enlargement of time under FRBP 3002(c). *Id.*, at 1429-30. The bankruptcy court sustained the chapter 7 trustee's objection and held that Zidell was not entitled to an enlargement of time or to participate in a distribution of assets under § 726(a)(2)(C). *Id.*, at 1430. The district court affirmed the bankruptcy court's order. *Id.*

In affirming the district court, the Ninth Circuit Court of Appeals held that Zidell's due process rights were not violated despite the fact that Zidell did not receive actual notice of the claims bar date. *Id.*, at 1430-31. The Court of Appeals stated—

Zidell received a copy of the first notice of creditors' meeting which stated:

4. It appears from the schedules of the debtor that there are no assets from which any dividend can be paid to creditors. It is unnecessary for any creditor to file his claim at this time in order to share in any distribution from the estate. *If it subsequently appears that there are assets from which a dividend may be paid, creditors will be notified and given an opportunity to file their claims.*

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Thus, Zidell knew that, if assets were found, the court would notify the *listed creditors* and give them an opportunity to file their claims. Zidell also knew that it had not been named as a creditor and therefore would not receive the statutory notice. Under these circumstances, Zidell had sufficient notice and reasonable opportunity to appear as a creditor and receive statutory notice. It should have had itself added to the list of creditors in order to preserve its rights.

Id. (emphases in *Coastal Alaska*). The Court of Appeals, referencing two of its earlier decisions, also noted that Zidell had adequate notice under those authorities—

In *Gregory*, an unsecured creditor received the Order for Meeting of Creditors, which stated it did "not propose" payment of unsecured creditors. The creditor did not receive the bankrupt's plan, which explicitly provided for zero payment to unsecured creditors. *Id.* at 1122. Chapter 13 does not require that the plan be sent to all creditors. *Id.* at 1123. We held the creditor in *Gregory* had received constitutionally adequate notice, reasoning that "[w]hen the holder of a large, unsecured claim ... receives any notice from the bankruptcy court that its debtor has initiated bankruptcy proceedings, it is under constructive or inquiry notice that its claim may be affected, and it ignores the proceedings to which the notice refers at its peril." *Id.* at 1123.

We have applied *Gregory* in a situation where the unscheduled creditor received actual notice of bankruptcy proceedings from the debtor's counsel. *See In re Price*, 871 F.2d 97, 99 (9th Cir.1989) (debtor's counsel gave creditor's counsel actual notice of the bankruptcy proceedings during state court litigation of the creditor's claim). Like the creditors in *Gregory* and *Price*, Zidell actually received information about the bankruptcy proceedings that was sufficient to put it on inquiry notice. Its due process claim thus fails.

Id., at 1431 (citing *Matter of Gregory*, 705 F.2d 1118, 1123 (9th Cir. 1983); and *In re Price*, 871 F.2d 97, 99 (9th Cir. 1989)).

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Darin Davis

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In *Price*, the creditor sued the debtor in state court and, before the suit was resolved, the debtor filed a chapter 7 petition. *Price*, 871 F.2d at 97. The creditor was not listed in the debtor's schedules and was not notified of any pertinent deadlines. *Id.* However, the creditor's attorney in the state court action received a Notice of Injunction from the debtor's counsel regarding the automatic stay. *Id.*, at 97-98. The Notice of Injunction did not contain any deadlines, and the creditor's counsel assumed the court would send future notices of deadlines. *Id.*, at 98. After the deadline for requesting nondischargeability of a debt expired, the creditor moved for leave to file a late complaint. *Id.* The bankruptcy court granted the motion, but the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") reversed, holding that notice to the creditor's attorney constituted notice to the creditor. *Id.*

On appeal, the Ninth Circuit Court of Appeals agreed with the BAP. The Court of Appeals held that—

Counsel for the appellant in the present appeal was given actual notice of the bankruptcy proceedings in time to file a complaint, or at least to file a timely motion for an extension of time. At that time he was pursuing the same claim in state court that the appellant now seeks to have declared nondischargeable. We hold that under these circumstances notice to counsel constituted notice to the appellant. ...

The fact that Price failed to list Lompa as a creditor did not relieve Lompa of his obligation to take timely action to protect his claim. *See In re Alton*, 837 F.2d 457, 460 (11th Cir.1988) ("The statutory language [of section 523(a)(3)(B)] clearly contemplates that mere knowledge of a pending bankruptcy proceeding is sufficient to bar the claim of a creditor who took no action, whether or not that creditor received official notice from the court of various pertinent dates."); *Neely v. Murchison*, 815 F.2d 345, 347 (5th Cir.1987).

Id., at 99.

Under these cases, the Trust's due process rights were not violated by the manner of notice. The Trust essentially argues that it did not receive adequate notice because: (A) the subject notices were sent to Semper Law Group instead of to the Trust

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directly; and (B) the notices sent by the Clerk of Court and/or the Trustee contained conflicting information regarding whether Debtor's case was a no-asset case.

Regarding the Trust's first argument, although Debtor did not include the Trust as a creditor, all state court parties, including the Trust, were notified of Debtor's bankruptcy filing via the State Court Notice of Bankruptcy. In addition, by February 2011, when Mr. Leon filed the Employment Opposition, Mr. Leon had actual knowledge of Debtor's bankruptcy case. Significantly, Mr. Leon retained Mr. Forsley, Debtor's bankruptcy counsel, to file the Employment Opposition on his behalf. Mr. Leon filed the Employment Opposition approximately two months before the claims bar date. As the trustee of the Trust, Mr. Leon would have known that the Trust has a claim against Debtor, and could have taken action to file a proof of claim on behalf of the Trust. Given that the Court of Appeals has found notice to a creditor's general counsel (as in *Coastal Alaska*) or to a creditor's state court attorney (as in *Price*) sufficient, notice to *both* Mr. Leon's bankruptcy counsel, who timely received notices of all documents filed in the case, *and* to Mr. Leon's state court counsel was sufficient in this case.

That the Trust received adequate notice is evident by the fact that Mr. Leon, the trustee, was apprised of relevant developments in Debtor's bankruptcy case. In June 2010, Semper Law Group, the Trust's state court attorneys, filed a notice of Debtor's bankruptcy case in state court and, in December 2010, a declaration updating the state court about API's filing of a motion for relief from the automatic stay. When the Trustee filed the Application to Employ, Mr. Leon timely filed his opposition and appeared, through Mr. Forsley, at the hearing on the Application to Employ. Almost immediately after learning that the Trustee sold assets in Debtor's case, Mr. Leon and the Trust filed proofs of claim. Upon learning about the Trustee's Final Report, Mr. Leon and the Trust promptly filed these motions.

The Trust's arguments regarding receipt of conflicting notices about whether Debtor's case qualified as a no-asset case are similarly unavailing. Notwithstanding the fact that any confusion about the notices necessarily implies that Mr. Leon *received* the notices, any notices dated *after* the bar date are irrelevant to Mr. Leon's decision to file a claim, on behalf of the Trust, *by* the bar date.

As such, the two relevant notices are the Notice of Bankruptcy Case and the Notice of

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Dividend. The Trust is correct that the Notice of Bankruptcy Case advised creditors not to file a proof of claim. However, as in *Coastal Alaska*, the Notice of Bankruptcy Case also advised creditors that "[i]f it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim." Notice of Bankruptcy Case, p. 2 (emphasis added). In *Coastal Alaska*, the Court of Appeals held that similar language was sufficient to place creditors on notice that a future deadline may be set. *Coastal Alaska*, 920 F.2d at 1430-31.

Given that the Notice of Bankruptcy Case explicitly informed creditors that a deadline may be set in the future, there was no conflicting information about Debtor's case prior to the expiration of the claims bar date. Because Mr. Forsley, who represented Mr. Leon prior to the claims bar date, received both the Notice of Bankruptcy Case and the Notice of Dividend, Mr. Leon had adequate notice of the claims bar date and could have timely filed a proof of claim on his behalf and on behalf of the Trust.

B. 11 U.S.C. § 727(a)(2)(C)

Under 11 U.S.C. § 726(a)(2)(C), an unsecured claim that is tardily filed may be distributed with timely filed unsecured claims if two conditions are met: "(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and (ii) proof of such claim is filed in time to permit payment of such claim...." (emphasis added).

In *Coastal Alaska*, the Court of Appeals held that Zidell, the creditor, was not entitled to distribution under § 726(a)(2)(C) because "Zidell knew of [the debtor's] bankruptcy... over two months before the claims bar date" and "had knowledge of the case in time to file a timely claim." *Coastal Alaska*, 920 F.2d at 1433. The Court of Appeals also rejected Zidell's argument that its lack of knowledge regarding whether the chapter 7 case is a no-asset case impacted its notice as to the claims bar date—

This interpretation is not consistent with the statutory language and is not supported by case law. For example one case interpreting § 726(c) found that actual knowledge of the bankruptcy proceeding before the claims bar date precludes a creditor from seeking relief under § 726. *In*

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re Kragness, 82 B.R. 553, 555 (Bankr.D.Or.1988) (mem.) (relief denied to creditor that has actual knowledge of bankruptcy but is not aware of its claim). Actual knowledge was also the standard applied in *In re Columbia Ribbon & Carbon Manufacturing Co., Inc.*, 54 B.R. 714 (Bankr.S.D.N.Y.1985) where the creditor was entitled to relief because it had no actual knowledge of the bankruptcy before the claims bar date and had filed its claim before final distribution.

Id., at 1433; *see also In re Sunland, Inc.*, 534 B.R. 793, 798 (Bankr. D.N.M. 2015) ("The language 'unless such creditor had notice or actual knowledge of the case in time for such timely filing' has been interpreted to burden the creditor with inquiry notice if it receives actual notice of a bankruptcy case.").

Here, Mr. Leon had actual knowledge of Debtor's bankruptcy case prior to the claims bar date of April 8, 2011. As is evident from the authorities above, the "actual knowledge" prong of § 726(a)(2)(C) refers to actual knowledge of the *case*, not actual knowledge of the claims bar date. In his declaration, Mr. Leon admits that he learned of Debtor's case in February 2011, months before the claims bar date. Leon Declaration, ¶ 6. This knowledge alone was enough to place Mr. Leon on inquiry notice. Upon receipt of this knowledge, Mr. Leon had a duty to inquire as to relevant deadlines to protect his rights. Because Mr. Leon, the trustee of the Trust, had actual knowledge of the case prior to the deadline, the Trust is not entitled to distribution with timely filed claims under § 726(a)(2)(C).

C. FRBP 3002(c)(6)

Under FRBP 3002(c), which governs the timing for filing proofs of claim—

- (5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.
- (6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60

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days from the date of the order granting the motion. The motion may be granted if the court finds that:

(A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or

(B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address.

Here, FRBP 3002(c)(5) is inapplicable because the Clerk of Court *did* give at least 90 days' notice to creditors that payment of a dividend is possible via the Notice of Dividend. In addition, FRBP 3002(c)(6)(B) is inapplicable because the Notice of Dividend was not mailed to a foreign address.

As to FRBP 3002(c)(6)(A), two elements must be met: (A) the creditor must "receive insufficient notice to give them reasonable time to file a proof of claim;" and (B) the debtor failed to timely file the list of creditors' names and addresses required by FRBP 1007(a). *In re Price*, 2019 WL 2895006, at *2 (Bankr. W.D. Va. Jul. 3, 2019). Currently, there is conflicting authority regarding the interpretation of the second element. One court has held that the timely filing of a creditor matrix, even if it excludes the creditor at issue, is sufficient to satisfy the second element. *In re Wulff*, 598 B.R. 459, 464-65 (Bankr. E.D. Wis. 2019). Another court held that the element was not satisfied where the debtor filed a mailing matrix, but omitted a creditor or otherwise included inaccurate information about the creditor. *In re Mazik*, 592 B.R. 812, 818-19 (Bankr. E.D. Penn. 2018).

Either way, courts appear to agree that the first element is not satisfied where the creditor received actual notice with "reasonable time" to file a proof of claim. *See, e.g. Price*, 2019 WL 2895006 at *3; and *In re Blakely*, 440 B.R. 443, 445 (Bankr. E.D. Va. 2010). For instance, in *Blakely*, the court held that the creditor had sufficient notice when it discovered the debtor's bankruptcy case via a PACER search approximately two months prior to expiration of the claims bar date. *Blakely*, 440 B.R. at 445-46. Here, Mr. Leon, the trustee of the Trust, admits he had notice of the

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bankruptcy case approximately two months prior to the claims bar date. Leon Declaration, ¶ 6. As in *Blakely*, the two months between Mr. Leon's notice of the case and the claims bar date provided Mr. Leon with "reasonable time" to timely file a proof of claim on behalf of the Trust. Consequently, the Trust is not entitled to relief under FRBP 3002(c)(6).

III. CONCLUSION

The Court will deny the Motion.

The Trustee must submit an order within seven (7) days.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declaration of Ray B. Bowen, Jr. set forth below:

paras. 2, 4: sustain

para. 3: sustain as to "Further, Leon and/or the Leon as trustee of his trusts owned about one-third of D & S Homes and in early 2010 acquired almost 100 percent of D and S."

Party Information

Debtor(s):

Darin Davis

Represented By
Alan W Forsley
Casey Z Donoyan

Movant(s):

The Leon Nevada Trust

Represented By
Alan W Forsley

Trustee(s):

David Seror (TR)

Represented By
Richard K Diamond (TR)
Robert A Hessling
Robert A Hessling
Michael G D'Alba

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Richard K Diamond

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- #19.00 Motion to Determine:
(1) Jose Leon Has an Informal Proof of Claim,
(2) Jose Leon's Untimely Proof of Claim as Timely Filed, or
(3) to Allow Jose Leon to Participate in Distribution with
Creditors that Filed Timely Proofs of Claim

Docket 327

Tentative Ruling:

Deny.

I. BACKGROUND

A. Before the Deadline to File Proofs of Claim

On September 29, 2005, Asphalt Professionals, Inc. ("API") filed a state court complaint against Darin Davis ("Debtor") and other defendants, initiating a state court action assigned case number SC044181 (the "State Court Action"). Request for Judicial Notice ("RJN") [doc. 337], ¶ 1. On May 15, 2007, API filed a fourth amended complaint in the State Court Action, naming (in addition to Debtor) Jose F. Leon, individually, and Jose F. Leon, as trustee of the Leon Family Trust u/d/t September 11, 1997 (the "Trust"), as defendants. RJN, ¶ 2, Exhibit 1. Debtor, Mr. Leon and the Trust were represented by the Semper Law Group. RJN, ¶ 16, Exhibit 12.

On June 15, 2010, Darin Davis ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee").

Since the inception of Debtor's case, Debtor has been represented by attorney Alan Forsley of Fredman Lieberman Pearl, LLP ("FLP"). In his schedule F, filed concurrently with his petition, Debtor listed a debt owed to "Pancho Leon c/o Semper Law Group." Debtor noted that the debt arose from a personal guaranty, but indicated that the amount of the debt was "unknown."

On June 20, 2010, the Clerk of Court sent the *Notice of Chapter 7 Bankruptcy Case*,

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Meeting of Creditors, & Deadlines (the "Notice of Bankruptcy Case") to creditors, including to "Pancho Leon, c/o Semper Law Group" [doc. 6]. The Notice of Bankruptcy Case included the following language:

Do Not File a Proof of Claim at This Time

There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.

(emphasis in Notice of Bankruptcy Case). The Notice of Bankruptcy Case listed Mr. Forsley as Debtor's attorney, and provided contact information for Mr. Forsley. Notice of Bankruptcy Case, p. 1. The Notice of Bankruptcy Case was mailed to Mr. Forsley's office, and the Court's electronic receipt reflects that Mr. Forsley also received electronic notice of the Notice of Bankruptcy Case.

Shortly thereafter, on June 22, 2010, Semper Law Group filed a *Notice of Filing of Bankruptcy by Defendant Darin Davis* (the "State Court Notice of Bankruptcy") in the State Court Action. RJN, ¶ 7, Exhibit 5. Through the State Court Notice of Bankruptcy, Semper Law Group notified the state court parties of Debtor's bankruptcy case and referenced the bankruptcy case number. *Id.*

On August 19, 2010, Debtor attended a continued § 341(a) meeting of creditors. Declaration of Alan W. Forsley (the "Forsley Declaration"), ¶ 3. According to Mr. Forsley, at that time, the Trustee requested documents from Debtor regarding the scheduled debt to "Pancho Leon." *Id.* On August 20, 2010, an associate at FLP sent an email to others at FLP listing the documents requested by the Trustee; the list included documents related to Mr. Leon's debt. *Id.*, ¶ 4.

On September 17, 2010, FLP obtained the relevant documents from Debtor, including promissory notes and guaranties in favor of Mr. Leon, and saved them into a file in FLP's computer system (together, the "Leon Documents"). *Id.*, ¶¶ 6-7. Although Mr. Forsley contends FLP sent the Leon Documents to the Trustee, Mr. Forsley has not

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produced a copy of an email or letter reflecting any such transfer, and has not specified the timing of the transfer. In his declaration, Mr. Forsley simply states that FLP "then sent the [Leon Documents] to the Trustee." *Id.*, ¶ 6.

On December 8, 2010, Semper Law Group filed the *Declaration of Scott D. Zonder in Lieu of Appearance at Case Management Conference re Status of Darin Davis Bankruptcy Removal* (the "Zonder Declaration"). RJN, ¶ 8, Exhibit 6. In the Zonder Declaration, Mr. Leon's counsel referenced and attached an order entered in Debtor's bankruptcy case granting API relief from the automatic stay to prosecute the State Court Action. *Id.*

On January 5, 2011, the Clerk of Court served a *Notice of Possible Dividend and Order Fixing Time to File Claims* (the "Notice of Dividend") [doc. 35] on creditors, including on "Pancho Leon, c/o Semper Law Group." In the Notice of Dividend, the Clerk of Court advised creditors that they must file their proofs of claim on or before April 8, 2011.

According to Mr. Leon's sworn testimony, he learned about Debtor's bankruptcy case in February 2011. Declaration of Jose Leon ("Leon Declaration") [doc. 327], ¶ 5. On February 7, 2011, the Trustee filed an application to employ Ray B. Bowen as special counsel (the "Application to Employ") [doc. 37]. The Trustee served notice of the Application to Employ on "Pancho Leon, c/o Semper Law Group." On February 22, 2011, Mr. Leon timely filed an opposition to the Application to Employ (the "Employment Opposition") [doc. 39]. Mr. Forsley filed the Employment Opposition on behalf of Mr. Leon. On the first page of the Employment Opposition, Mr. Leon indicated in a footnote that he is listed in Debtor's schedule F as "Pancho Leon." Mr. Leon also referred to himself as a "creditor." However, with the exception of referencing Debtor's schedule F, Mr. Leon did not otherwise explain the basis of his claim against the estate or the amount of the alleged debt owed to him. On March 17, 2011, the Court held a hearing on the Application to Employ. Mr. Forsley appeared on behalf of Mr. Leon.

B. After the Deadline to File Proofs of Claim

Mr. Leon did not file a proof of claim by the deadline of April 8, 2011. On December 27, 2012, after the deadline to file a claim expired, the Trustee filed a no-asset report.

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On May 6, 2014, the Trustee filed a withdrawal of the no-asset report [doc. 82].

According to Mr. Leon, in late February 2015, Mr. Leon learned that the Trustee sold certain estate assets. Leon Declaration, ¶ 7. Believing there may be a distribution to creditors, on March 2, 2015, approximately four years after the deadline, Mr. Leon filed a proof of claim. *Id.* The proof of claim is signed by Mr. Forsley as Mr. Leon's attorney.

On August 13, 2019, the Trustee filed a *Notice of Trustee's Final Report and Applications for Compensation and Deadline to Object* (the "Trustee's Final Report") [doc. 320]. In the Trustee's Final Report, the Trustee listed Mr. Leon's claim as a tardily filed claim with lower priority than timely filed unsecured claims. Although general unsecured creditors with timely filed claims are set to receive a *pro rata* distribution of \$151,316.78, creditors with tardily filed claims are set to be paid \$0.

On August 23, 2019, Mr. Leon filed a motion to deem its claim timely or allow the claim to participate in distribution with timely filed claims (the "Motion") [doc. 328]. In the Motion, Mr. Leon requests that the Court consider the Employment Opposition and/or the Leon Documents as informally filed proofs of claim. Mr. Leon also asks the Court to deem his untimely proof of claim timely under Federal Rule of Bankruptcy Procedure ("FRBP") 3002(c)(6) because notice to Mr. Leon was insufficient or, alternatively, to allow Mr. Leon to receive distribution with timely filed claims on the basis that Mr. Leon did not timely receive notice of the bar date.

On September 5, 2019, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 337]. On the same day, API filed an opposition to the Motion (the "API Opposition") [doc. 338]. Given that the Court has disallowed API's claim in full, and the Trustee's Final Report reflects that API will not be receiving a distribution of funds, API does not appear to have standing to oppose the Motion. In any event, the API Opposition includes arguments that mirror the Trustee's arguments. On September 12, 2019, Mr. Leon filed replies to the Opposition and the API Opposition [docs. 343, 346].

II. ANALYSIS

A. *Informal Proofs of Claim*

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Mr. Leon contends that both the Employment Opposition and the Leon Documents qualify as timely filed informal proofs of claim. "The Ninth Circuit has long recognized the informal proof of claim doctrine...." *In re Fish*, 456 B.R. 413, 417 (B.A.P. 9th Cir. 2011). "Under this doctrine, a timely informal proof of claim may be amended after the bar date by the filing of a formal proof of claim." *Id.* "For a document to constitute an informal proof of claim, it must state an explicit demand showing the nature and amount of the claim against the estate, and evidence an intent to hold the debtor liable." *In re Holm*, 931 F.2d 620, 622 (9th Cir. 1991) (internal quotation omitted). The requirements for establishing an informal proof of claim are:

- (1) presentment of a writing;
- (2) within the time for the filing of claims;
- (3) by or on behalf of the creditor;
- (4) bringing to the attention of the court;
- (5) the nature and amount of a claim asserted against the estate.

Fish, 456 B.R. at 417.

Under this test, neither the Employment Opposition nor the Leon Documents qualify as informal proofs of claim. As to the Employment Opposition, Mr. Leon referred to himself as a creditor, but did not include any information about the nature and amount of his claim. Mr. Leon's reference to Debtor's schedule F did not serve this purpose; Debtor's schedule F indicated that the amount of Mr. Leon's claim was "unknown." In addition, in light of the fact that Debtor indicated in his schedules that the debt arose from a guaranty, nothing in the Employment Opposition "evidence[d] an intent to hold the *debtor* liable" for the debt. *Holm*, 931 F.2d at 622 (emphasis added).

As for the Leon Documents, Mr. Forsley states in his declaration that the Leon Documents were saved in his firm's system on September 17, 2010, and that FLP "then sent the documents to the Trustee." Forsley Declaration, ¶ 6. Mr. Leon has not advanced any evidence that demonstrates *when* FLP sent the documents. As a result, there is no evidence that the Leon Documents were sent to the Trustee prior to

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expiration of the bar date. In addition, as noted by the Trustee, the Leon Documents were sent by Debtor in support of his schedules. They were *not* sent by Mr. Leon, and do not satisfy the "by or on behalf of the creditor" requirement under *Fish*. Consequently, Mr. Leon did not timely file an informal proof of claim.

***B. 11 U.S.C. § 727(a) and Federal Rule of Bankruptcy Procedure 3002(c)
(6)***

Alternatively, Mr. Leon requests that his untimely proof of claim be considered timely for purposes of distribution with other timely filed unsecured claims in accordance with 11 U.S.C. § 726(a)(2)(C), or that the Court extend the time for Mr. Leon to file a proof of claim under FRBP 3002(c)(6). Pursuant to 11 U.S.C. § 502(b)(9), a court "shall allow [a] claim... except to the extent that... proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure...."

i. Due Process

The Ninth Circuit Court of Appeals addressed due process concerns related to notice of a claims bar date in *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428 (9th Cir. 1990). In *Coastal Alaska*, the debtor filed a chapter 7 petition and did not list Zidell, Inc. ("Zidell") as a creditor. *Coastal Alaska*, 920 F.2d at 1429. Subsequently, the Clerk of Court sent a notice establishing a claims bar date to the debtor's listed creditors; because Zidell was not listed as a creditor, it did not receive notice. *Id.*

Approximately two months before the claims bar date, Zidell learned that Coastal Hawaiian Lines, Inc. ("CHL"), a subsidiary of the debtor, filed a chapter 7 petition. *Id.* CHL listed Zidell as a creditor. *Id.* Zidell's general counsel then contacted CHL's attorneys, who also represented the debtor, and learned that the debtor also had filed bankruptcy. *Id.* CHL's attorneys did not inform Zidell's attorney that a claims bar date had been set. *Id.* In fact, Zidell's attorney believed that the debtor's case was a "no asset" chapter 7 case. *Id.*

Zidell's attorney then received copies of the notice of the first creditors' meeting, which stated, in relevant part:

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4. It appears from the schedules of the debtor that there are no assets from which any dividend can be paid to creditors. It is unnecessary for any creditor to file his claim at this time in order to share in any distribution from the estate. If it subsequently appears that there are assets from which a dividend may be paid, creditors will be notified and given an opportunity to file their claims.

Id. Zidell did not timely file a proof of claim. *Id.* Approximately one year after the claims bar date, Zidell received notice of the chapter 7 trustee's intention to make a distribution to creditors. *Id.* At that time, Zidell filed its proof of claim. *Id.* The chapter 7 trustee objected, and Zidell asked for an enlargement of time under FRBP 3002(c). *Id.*, at 1429-30. The bankruptcy court sustained the chapter 7 trustee's objection and held that Zidell was not entitled to an enlargement of time or to participate in a distribution of assets under § 726(a)(2)(C). *Id.*, at 1430. The district court affirmed the bankruptcy court's order. *Id.*

In affirming the district court, the Ninth Circuit Court of Appeals held that Zidell's due process rights were not violated despite the fact that Zidell did not receive actual notice of the claims bar date. *Id.*, at 1430-31. The Court of Appeals stated—

Zidell received a copy of the first notice of creditors' meeting which stated:

4. It appears from the schedules of the debtor that there are no assets from which any dividend can be paid to creditors. It is unnecessary for any creditor to file his claim at this time in order to share in any distribution from the estate. *If it subsequently appears that there are assets from which a dividend may be paid, creditors will be notified and given an opportunity to file their claims.*

Thus, Zidell knew that, if assets were found, the court would notify the *listed creditors* and give them an opportunity to file their claims. Zidell also knew that it had not been named as a creditor and therefore would not receive the statutory notice. Under these circumstances, Zidell had sufficient notice and reasonable opportunity to appear as a

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creditor and receive statutory notice. It should have had itself added to the list of creditors in order to preserve its rights.

Id. (emphases in *Coastal Alaska*). The Court of Appeals, referencing two of its earlier decisions, also noted that Zidell had adequate notice under those authorities—

In *Gregory*, an unsecured creditor received the Order for Meeting of Creditors, which stated it did "not propose" payment of unsecured creditors. The creditor did not receive the bankrupt's plan, which explicitly provided for zero payment to unsecured creditors. *Id.* at 1122. Chapter 13 does not require that the plan be sent to all creditors. *Id.* at 1123. We held the creditor in *Gregory* had received constitutionally adequate notice, reasoning that "[w]hen the holder of a large, unsecured claim ... receives any notice from the bankruptcy court that its debtor has initiated bankruptcy proceedings, it is under constructive or inquiry notice that its claim may be affected, and it ignores the proceedings to which the notice refers at its peril." *Id.* at 1123.

We have applied *Gregory* in a situation where the unscheduled creditor received actual notice of bankruptcy proceedings from the debtor's counsel. *See In re Price*, 871 F.2d 97, 99 (9th Cir.1989) (debtor's counsel gave creditor's counsel actual notice of the bankruptcy proceedings during state court litigation of the creditor's claim). Like the creditors in *Gregory* and *Price*, Zidell actually received information about the bankruptcy proceedings that was sufficient to put it on inquiry notice. Its due process claim thus fails.

Id., at 1431 (citing *Matter of Gregory*, 705 F.2d 1118, 1123 (9th Cir. 1983); and *In re Price*, 871 F.2d 97, 99 (9th Cir. 1989)).

In *Price*, the creditor sued the debtor in state court and, before the suit was resolved, the debtor filed a chapter 7 petition. *Price*, 871 F.2d at 97. The creditor was not listed in the debtor's schedules and was not notified of any pertinent deadlines. *Id.* However, the creditor's attorney in the state court action received a Notice of Injunction from the debtor's counsel regarding the automatic stay. *Id.*, at 97-98. The

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Notice of Injunction did not contain any deadlines, and the creditor's counsel assumed the court would send future notices of deadlines. *Id.*, at 98. After the deadline for requesting nondischargeability of a debt expired, the creditor moved for leave to file a late complaint. *Id.* The bankruptcy court granted the motion, but the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") reversed, holding that notice to the creditor's attorney constituted notice to the creditor. *Id.*

On appeal, the Ninth Circuit Court of Appeals agreed with the BAP. The Court of Appeals held that—

Counsel for the appellant in the present appeal was given actual notice of the bankruptcy proceedings in time to file a complaint, or at least to file a timely motion for an extension of time. At that time he was pursuing the same claim in state court that the appellant now seeks to have declared nondischargeable. We hold that under these circumstances notice to counsel constituted notice to the appellant. ...

The fact that Price failed to list Lompa as a creditor did not relieve Lompa of his obligation to take timely action to protect his claim. *See In re Alton*, 837 F.2d 457, 460 (11th Cir.1988) ("The statutory language [of section 523(a)(3)(B)] clearly contemplates that mere knowledge of a pending bankruptcy proceeding is sufficient to bar the claim of a creditor who took no action, whether or not that creditor received official notice from the court of various pertinent dates."); *Neely v. Murchison*, 815 F.2d 345, 347 (5th Cir.1987).

Id., at 99.

Under these cases, Mr. Leon's due process rights were not violated by the manner of notice. Mr. Leon essentially argues that he did not receive adequate notice because: (A) the subject notices were sent to Semper Law Group instead of to Mr. Leon directly; and (B) the notices sent by the Clerk of Court and/or the Trustee contained conflicting information regarding whether Debtor's case was a no-asset case.

Mr. Leon's first argument is unpersuasive whether or not Semper Law Group qualifies as an entity suited to receive notice on behalf of Mr. Leon. By February 2011, when

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CONT...

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Chapter 7

Mr. Leon filed the Employment Opposition, Mr. Leon had actual knowledge of Debtor's bankruptcy case. Significantly, Mr. Leon retained Mr. Forsley, Debtor's bankruptcy counsel, to file the Employment Opposition on his behalf. Mr. Leon filed the Employment Opposition approximately two months before the claims bar date. Given that the Court of Appeals has found notice to a creditor's general counsel (as in *Coastal Alaska*) or to a creditor's state court attorney (as in *Price*) sufficient, notice to *both* Mr. Leon's bankruptcy counsel, who timely received notices of all documents filed in the case, *and* to Mr. Leon's state court counsel was sufficient in this case.

That Mr. Leon received adequate notice is evident by the fact that Mr. Leon was apprised of relevant developments in Debtor's bankruptcy case. In June 2010, Semper Law Group, Mr. Leon's state court attorneys, filed a notice of Debtor's bankruptcy case in state court and, in December 2010, a declaration updating the state court about API's filing of a motion for relief from the automatic stay. When the Trustee filed the Application to Employ, Mr. Leon timely filed his opposition and appeared, through Mr. Forsley, at the hearing on the Application to Employ. Almost immediately after learning that the Trustee sold assets in Debtor's case, Mr. Leon filed a proof of claim. Upon learning about the Trustee's Final Report, Mr. Leon promptly filed this Motion.

Mr. Leon's arguments regarding receipt of conflicting notices about whether Debtor's case qualified as a no-asset case are similarly unavailing. Notwithstanding the fact that any confusion about the notices necessarily implies that Mr. Leon *received* the notices, any notices dated *after* the bar date are irrelevant to Mr. Leon's decision to file a claim *by* the bar date.

As such, the two relevant notices are the Notice of Bankruptcy Case and the Notice of Dividend. Mr. Leon is correct that the Notice of Bankruptcy Case advised creditors not to file a proof of claim. However, as in *Coastal Alaska*, the Notice of Bankruptcy Case also advised creditors that "[i]f it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim." Notice of Bankruptcy Case, p. 2 (emphasis added). In *Coastal Alaska*, the Court of Appeals held that similar language was sufficient to place creditors on notice that a future deadline may be set. *Coastal Alaska*, 920 F.2d at 1430-31. Given that the Notice of Bankruptcy Case explicitly informed creditors that a deadline may be set in the future,

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there was no conflicting information about Debtor's case prior to the expiration of the claims bar date. Because Mr. Forsley, who represented Mr. Leon prior to the claims bar date, received both the Notice of Bankruptcy Case and the Notice of Dividend, Mr. Leon had adequate notice of the claims bar date.

ii. 11 U.S.C. § 727(a)(2)(C)

Under 11 U.S.C. § 726(a)(2)(C), an unsecured claim that is tardily filed may be distributed with timely filed unsecured claims if two conditions are met: "(i) the creditor that holds such claim did not have notice *or actual knowledge of the case* in time for timely filing of a proof of such claim under section 501(a) of this title; and (ii) proof of such claim is filed in time to permit payment of such claim...." (emphasis added).

In *Coastal Alaska*, the Court of Appeals held that Zidell, the creditor, was not entitled to distribution under § 726(a)(2)(C) because "Zidell knew of [the debtor's] bankruptcy... over two months before the claims bar date" and "had knowledge of the case in time to file a timely claim." *Coastal Alaska*, 920 F.2d at 1433. The Court of Appeals also rejected Zidell's argument that its lack of knowledge regarding whether the chapter 7 case is a no-asset case impacted its notice as to the claims bar date—

This interpretation is not consistent with the statutory language and is not supported by case law. For example one case interpreting § 726(c) found that actual knowledge of the bankruptcy proceeding before the claims bar date precludes a creditor from seeking relief under § 726. *In re Kragness*, 82 B.R. 553, 555 (Bankr.D.Or.1988) (mem.) (relief denied to creditor that has actual knowledge of bankruptcy but is not aware of its claim). Actual knowledge was also the standard applied in *In re Columbia Ribbon & Carbon Manufacturing Co., Inc.*, 54 B.R. 714 (Bankr.S.D.N.Y.1985) where the creditor was entitled to relief because it had no actual knowledge of the bankruptcy before the claims bar date and had filed its claim before final distribution.

Id., at 1433; *see also In re Sunland, Inc.*, 534 B.R. 793, 798 (Bankr. D.N.M. 2015) ("The language 'unless such creditor had notice or actual knowledge of the case in time for such timely filing' has been interpreted to burden the creditor with inquiry

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notice if it receives actual notice of a bankruptcy case.").

Here, Mr. Leon had actual knowledge of Debtor's bankruptcy case prior to the claims bar date of April 8, 2011. As is evident from the authorities above, the "actual knowledge" prong of § 726(a)(2)(C) refers to actual knowledge of the *case*, not actual knowledge of the claims bar date. In his declaration, Mr. Leon admits that he learned of Debtor's case in February 2011, months before the claims bar date. Leon Declaration, ¶ 5. This knowledge alone was enough to place Mr. Leon on inquiry notice. Upon receipt of this knowledge, Mr. Leon had a duty to inquire as to relevant deadlines to protect his rights. Because Mr. Leon had actual knowledge of the case prior to the deadline, Mr. Leon is not entitled to distribution with timely filed claims under § 726(a)(2)(C).

iii. FRBP 3002(c)(6)

Under FRBP 3002(c), which governs the timing for filing proofs of claim—

- (5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.
- (6) On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that:
 - (A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a); or
 - (B) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim, and the notice was mailed to the creditor at a foreign address.

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Here, FRBP 3002(c)(5) is inapplicable because the Clerk of Court *did* give at least 90 days' notice to creditors that payment of a dividend is possible via the Notice of Dividend. In addition, FRBP 3002(c)(6)(B) is inapplicable because the Notice of Dividend was not mailed to a foreign address.

As to FRBP 3002(c)(6)(A), two elements must be met: (A) the creditor must "receive insufficient notice to give them reasonable time to file a proof of claim;" and (B) the debtor failed to timely file the list of creditors' names and addresses required by FRBP 1007(a). *In re Price*, 2019 WL 2895006, at *2 (Bankr. W.D. Va. Jul. 3, 2019). Currently, there is conflicting authority regarding the interpretation of the second element. One court has held that the timely filing of a creditor matrix, even if it excludes the creditor at issue, is sufficient to satisfy the second element. *In re Wulff*, 598 B.R. 459, 464-65 (Bankr. E.D. Wis. 2019). Another court held that the element was not satisfied where the debtor filed a mailing matrix, but omitted a creditor or otherwise included inaccurate information about the creditor. *In re Mazik*, 592 B.R. 812, 818-19 (Bankr. E.D. Penn. 2018).

Either way, courts appear to agree that the first element is not satisfied where the creditor received actual notice with "reasonable time" to file a proof of claim. *See, e.g. Price*, 2019 WL 2895006 at *3; and *In re Blakely*, 440 B.R. 443, 445 (Bankr. E.D. Va. 2010). For instance, in *Blakely*, the court held that the creditor had sufficient notice when it discovered the debtor's bankruptcy case via a PACER search approximately two months prior to expiration of the claims bar date. *Blakely*, 440 B.R. at 445-46. Here, Mr. Leon admits he had notice of the bankruptcy case approximately two months prior to the claims bar date. Leon Declaration, ¶ 5. As in *Blakely*, the two months between Mr. Leon's notice of the case and the claims bar date provided Mr. Leon with "reasonable time" to timely file a proof of claim. Consequently, Mr. Leon is not entitled to relief under FRBP 3002(c)(6).

III. CONCLUSION

The Court will deny the Motion.

The Trustee must submit an order within seven (7) days.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in

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the Declaration of Ray B. Bowen, Jr. set forth below:

paras. 2, 4: sustain

para. 3: sustain as to "Further, Leon and/or the Leon as trustee of his trusts owned about one-third of D & S Homes and in early 2010 acquired almost 100 percent of D and S."

Party Information

Debtor(s):

Darin Davis

Represented By
Alan W Forsley
Casey Z Donoyan

Movant(s):

Jose Leon

Represented By
Alan W Forsley

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
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Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Monday, September 23, 2019

Hearing Room 301

10:00 AM

1:17-11965 Carmit Benbaruh

Chapter 13

#1.00 Motion for relief from stay [RP]
[Evidentiary Hearing]

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

fr. 8/21/19; 8/28/19

Docket 131

***** VACATED *** REASON: Continued on the Court's own motion to
9/24/19 at 10:00 a.m. - jc**

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
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Tuesday, September 24, 2019

Hearing Room 301

10:00 AM

1:17-11965 Carmit Benbaruh

Chapter 13

#1.00 Motion for relief from stay [RP]
[Evidentiary Hearing]

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

fr. 8/21/19; 8/28/19; 9/23/19

Docket 131

*** VACATED *** REASON: Order approving stip entered 9/23/19.
Hearing continued to 10/16/19 at 9:30 AM.

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
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Courtroom 301 Calendar**

Wednesday, October 2, 2019

Hearing Room 301

9:30 AM

1:17-11860 Juan Morales and Maria Morales

Chapter 13

#1.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

fr. 8/28/19

Docket 75

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.

Party Information

Debtor(s):

Juan Morales

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Maria Morales

Represented By
Rebecca Tomilowitz

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Wednesday, October 2, 2019

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
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Wednesday, October 2, 2019

Hearing Room 301

9:30 AM

1:18-12227 Augusto B. Lasam and Amparo Mores Lasam

Chapter 13

#2.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

fr. 8/28/19

Stip for adequate protection filed 09/10/19

Docket 30

*** VACATED *** REASON: Order approving stipulation entered
9/11/19. [Dkt.35]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Augusto B. Lasam

Represented By
Andrew S Mansfield

Joint Debtor(s):

Amparo Mores Lasam

Represented By
Andrew S Mansfield

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Wednesday, October 2, 2019

Hearing Room 301

9:30 AM

1:19-10005 Manuel Borobia Bennet

Chapter 13

#3.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 8/28/19

Docket 34

*** VACATED *** REASON: On September 11, 2019, the debtor was dismissed [doc. 41]. The motion is moot.

Tentative Ruling:

Party Information

Debtor(s):

Manuel Borobia Bennet

Represented By
Kevin T Simon

Movant(s):

The Bank of New York Mellon as

Represented By
Jennifer C Wong

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
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Wednesday, October 2, 2019

Hearing Room 301

9:30 AM

1:19-10869 Lizette L. Mendez and Wilder Mendez

Chapter 13

#4.00 Motion for relief from stay [RP]

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

fr. 9/4/19

STIP FOR APO FILED on 9/5/19 doc # 39

Docket 33

*** VACATED *** REASON: Order approving stipulation entered 9/6/19.
[Dkt.41]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lizette L. Mendez

Represented By
R Grace Rodriguez

Joint Debtor(s):

Wilder Mendez

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, October 2, 2019

Hearing Room 301

9:30 AM

1:19-12206 F.A. SOLIMAN MANAGEMENT, INC.

Chapter 7

#5.00 Motion for relief from stay [UD]

REXFORD INDUSTRIAL REALTY, L.P.
VS
DEBTOR

Docket 5

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.

Party Information

Debtor(s):

F.A. SOLIMAN MANAGEMENT,

Represented By
Dominic Afzali

Movant(s):

Rexford Industrial Realty, L.P.

Represented By
Lane M Nussbaum

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CONT... F.A. SOLIMAN MANAGEMENT, INC.

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

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Wednesday, October 2, 2019

Hearing Room 301

9:30 AM

1:18-11150 Robert Edward Zuckerman

Chapter 7

#6.00 Amended motion for relief from stay [AN]

EDWARD ALBINI, ET AL
VS
DEBTOR

fr. 9/18/19(stip)

Docket 155

Tentative Ruling:

Grant.

I. BACKGROUND

Dozens of individuals and entities ("Plaintiffs") filed a complaint against Robert E. Zuckerman ("Debtor"), initiating state court case no. SCV-245738 (the "State Court Action"). On October 5, 2016, the state court held a trial on the issues presented in the State Court Action. On April 4, 2017, the state court entered an amended judgment against Debtor (the "Amended Judgment").

On May 4, 2018, Defendant filed a voluntary chapter 11 petition; his case subsequently was converted to one under chapter 7. On July 20, 2018, Plaintiffs filed a complaint against Debtor, initiating adversary proceeding 1:18-ap-01081-VK (the "Adversary Proceeding"). In the Adversary Proceeding, Plaintiffs sought a determination that the debt owed to them was nondischargeable, under 11 U.S.C. § 523(a)(2)(A).

On March 25, 2019, Plaintiffs filed a motion for summary judgment (the "MSJ") [Adversary Proceeding, doc. 50], asserting that the state court's determinations, as set forth in the Amended Judgment, conclusively established that the debt owed to them was nondischargeable.

On May 15, 2019, Debtor filed an opposition to the MSJ (the "MSJ Opposition")

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CONT... Robert Edward Zuckerman

Chapter 7

[Adversary Proceeding, doc. 74]. In the MSJ Opposition, Debtor argued, in relevant part, that summary judgment is inappropriate as to certain plaintiffs who dismissed their claims prior to entry of the Amended Judgment. On June 5, 2019, the Court held a hearing on the MSJ. At that hearing, the Court instructed Debtor to supplement the record with evidence that 14 of the plaintiffs were dismissed prior to entry of a judgment in state court. Debtor did not file any such evidence.

On July 3, 2019, Richard Abel, the plaintiff in a separate adversary proceeding against Debtor, filed a response (the "Abel Response") [Adversary Proceeding, doc. 89]. In the Abel Response, Mr. Abel contended that certain plaintiffs assigned their claims to him, and that others were dismissed in state court. Concurrently, Mr. Abel filed a declaration (the "Abel Declaration") [Adversary Proceeding, doc. 90].

On July 17, 2019, the Court held a continued hearing on the MSJ. On July 31, 2019, the Court entered an order granting the MSJ (the "Order") [doc. 99]. In relevant part, the Court noted in its ruling [Adversary Proceeding, doc. 96],

The only evidence regarding potential dismissals are from Mr. Abel. However, with the exception of certain undated documents [Abel Declaration, Exhibits F, O and Y], Mr. Abel's documents regarding assignments or dismissals predate the state court's judgment. All of the named plaintiffs in the operative complaint in this adversary proceeding are named in the state court's amended judgment, discussed in the Court's prior ruling on this motion. Because the state court entered judgment in favor of those plaintiffs, this Court does not have the power to undo the state court's judgment. To the extent Mr. Abel believes the state court mistakenly included names of dismissed plaintiffs in its judgment, Mr. Abel must file a motion before the state court.

...

Nothing in this ruling precludes Mr. Abel from obtaining relief from the state court or otherwise receiving assignments of judgments held by other plaintiffs. Given that the only admissible evidence before this Court at this time concerns assignments and dismissals that appear to have occurred prior to the state court's entry of judgment, and because the state court's judgment names all of the plaintiffs named in this action, this Court will not dismiss any of the

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CONT... Robert Edward Zuckerman
plaintiffs.

Chapter 7

On August 13, 2019, Debtor filed a notice of appeal of the Order (the "Appeal") [doc. 107]. On August 13, 2019, Plaintiffs filed an *Amended Motion for Relief from Automatic Stay Under 11 U.S.C. § 362* (the "Motion") [doc. 155]. In the Motion, Plaintiffs request that the Court grant limited relief from the automatic stay for them or any other party, like Mr. Abel, to file a motion in the state court to correct clerical and mathematical errors in the Amended Judgment, as discussed in the Abel Declaration.

On September 4, 2019, Debtor filed an opposition to the Motion [doc. 157]. On September 6, 2019, Plaintiffs filed a reply to that opposition [doc. 158].

II. DISCUSSION

"The principle that a timely notice of appeal immediately transfers jurisdiction to the appellate court is a judge-made doctrine that is designed to promote judicial economy and to avoid the confusion and ineptitude resulting when two courts are dealing with the same issue at the same time." *In re Mirzai*, 236 B.R. 8, 10 (9th Cir. B.A.P. 1999) (citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982)). "The trial court cannot take actions 'over those aspects of the case involved in the appeal.'" *Id.* (quoting *Griggs*, 459 U.S. at 58, 103 S.Ct. 400). "The focus is on whether the trial court is being asked to alter the status quo with respect to the appeal." *Id.* "Thus, a trial court cannot enter an order that supplements the order on appeal because such supplementation would change the status quo." *Id.* (citing *McClatchy Newspapers v. Central Valley Typographical Union*, 686 F.2d 731, 734–35 (9th Cir.1982)).

"The rule of exclusive appellate jurisdiction is not, however, absolute." *Id.* (citing *Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955 (9th Cir.1983)). "The court can correct clerical errors, take steps to maintain the status quo, take steps that aid in the appeal, award attorney's fees, impose sanctions, and proceed with matters not involved in the appeal." *Id.*; see also *Pyrodyne Corp. v. Pyrotronics Corp.*, 847 F.2d 1398, 1403 (9th Cir.1988); *Mastro v. Rigby (In re Imperial Real Estate Corp.)*, 234 B.R. 760, 762 (9th Cir. B.A.P. 1999).

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In the Motion, Plaintiffs request that the Court grant limited relief from the automatic stay for them or any other party, like Mr. Abel, to file a motion in the state court to correct clerical and mathematical errors in the Amended Judgment. Although Debtor has appealed the Order, that appeal does not deprive this Court of jurisdiction to grant relief from the automatic stay.

Pursuant to the Order, based on the state court's findings, this Court held that the Amended Judgment was a nondischargeable debt, in accordance with § 523(a)(2)(A). A correction of any clerical or mathematical error will not change the state court's fraud findings - on which this Court substantially based its determination that the debt was nondischargeable. Thus, by granting the Motion, this Court is not supplementing or altering the Order. Furthermore, with respect to the appeal, granting relief from stay will not alter the status quo.

III. CONCLUSION

For the reasons discussed above, the Court will grant the Motion.

Plaintiffs 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):

Edward P Albini

Represented By
Edward McCutchan

Trustee(s):

Diane C Weil (TR)

Pro Se

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9:30 AM

1:19-11777 Winters-Schram & Associates

Chapter 7

#7.00 Motion for relief from stay [AN]

DBL, LLC
VS
DEBTOR

Docket 21

Tentative Ruling:

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

Movant states that it seeks recovery primarily from applicable insurance, if any.

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.

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 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.

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):

Winters-Schram & Associates

Represented By
Daniel H Reiss

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CONT... Winters-Schram & Associates

Chapter 7

Lindsey L Smith

Movant(s):

DBL, LLC, a California Limited

Represented By
James L Goldman

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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9:30 AM

1:19-12082 Robert M. Gerstein

Chapter 7

#8.00 Motion for relief from stay [AN]

GREG HIMES
VS
DEBTOR

Docket 26

Tentative Ruling:

Deny.

As an initial matter, movant did not include a proof of service in the motion. Further, movant has not shown sufficient cause under 11 U.S.C. § 362(d)(1) to warrant relief from the automatic stay.

[A]n order granting limited relief from an automatic stay to allow a creditor to proceed to judgment in a pending state court action is effective only as to those claims *actually pending in the state court at the time the order modifying the stay issues*, or that were expressly brought to the attention of the bankruptcy court during the relief from stay proceedings.

Griffin v. Wardrobe (In re Wardrobe), 559 F.3d 932, 937 (9th Cir. 2009) (emphasis added). Here, it appears that the four nonbankruptcy actions cited in the motion have been resolved. Three of the cases ended in final judgments against the debtor, and the fourth case ended in a dismissal because the parties entered into a settlement agreement. As such, there are no pending actions in the state court at this time.

It appears that movant would like relief from stay to enforce his purported assignment orders and restraining order entered in the state court. However, at this time, movant has not shown sufficient cause under 11 U.S.C. § 362(d)(1) to warrant relief from the automatic stay.

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CONT... Robert M. Gerstein

Chapter 7

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

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Movant(s):

Greg Himes

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By
Carmela Pagay

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Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 2, 2019

Hearing Room 301

9:30 AM

1:19-11643 Larry M Halpern

Chapter 7

#9.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, N.A.
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 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):

Larry M Halpern

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 2, 2019

Hearing Room 301

9:30 AM

CONT... Larry M Halpern

Chapter 7

Movant(s):

JPMorgan Chase Bank, National

Represented By
Jennifer C Wong

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 2, 2019

Hearing Room 301

9:30 AM

1:19-11194 Hector Guerrero

Chapter 7

#10.00 Motion for relief from stay [RP]

PLATINUM LOAN SERVICING, INC.
VS
DEBTOR

Docket 50

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.

Any other request for relief is denied.

On June 25, 2019, the Court entered an order granting the debtor's motion to continue the automatic stay (the "Order") [doc. 35]. In the Order, the Court made a finding that the presumption of bad faith under 11 U.S.C. § 362(c)(3)(C)(i) had been overcome as to all creditors. Accordingly, the Court will not grant the movant's requests for relief based on the debtor's bad faith in filing the petition.

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
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9:30 AM

CONT... Hector Guerrero

Chapter 7

Debtor(s):

Hector Guerrero

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Movant(s):

Platinum Loan Servicing, Inc.

Represented By
Lewis R Landau

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 2, 2019

Hearing Room 301

9:30 AM

1:16-10282 Nikolaos Theodorou and Larisa Theodorou

Chapter 13

#11.00 Motion for relief from stay [PP]

ACAR LEASING LTD
VS
DEBTOR

Docket 45

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):

Nikolaos Theodorou

Represented By
Elena Steers

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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CONT... Nikolaos Theodorou and Larisa Theodorou

Chapter 13

Joint Debtor(s):

Larisa Theodorou

Represented By
Elena Steers

Movant(s):

ACAR Leasing LTD d/b/a GM

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 2, 2019

Hearing Room 301

9:30 AM

1:19-10517 Edwin Rolando Perez Mendez

Chapter 13

#12.00 Motion for relief from stay [PP]

JPMORGAN CHASE BANK, N.A.
VS
DEBTOR

Docket 57

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):

Edwin Rolando Perez Mendez

Represented By
Lionel E Giron
Crystle Jane Lindsey

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CONT... Edwin Rolando Perez Mendez

Chapter 13

Movant(s):

JPMorgan Chase Bank, N.A.

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
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Wednesday, October 2, 2019

Hearing Room 301

9:30 AM

1:18-12689 Mary Ann Irvine

Chapter 13

#13.00 Motion for relief from stay [RP]

CITIBANK, NA
VS
DEBTOR

Docket 30

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):

Mary Ann Irvine

Represented By
Nathan A Berneman

**United States Bankruptcy Court
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CONT... Mary Ann Irvine

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 2, 2019

Hearing Room 301

9:30 AM

1:18-10122 Orlando Velazco

Chapter 13

#14.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

Docket 51

*** 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):

Orlando Velazco

Represented By
Jeffrey J Hagen

Movant(s):

DEUTSCHE BANK NATIONAL

Represented By
Sean C Ferry
Tyneia Merritt
Eric P Enciso

Trustee(s):

Elizabeth (SV) 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 2, 2019

Hearing Room 301

9:30 AM

1:16-12236 Gloria Solis

Chapter 13

#15.00 Motion for relief from stay [RP]

BANC OF CALIFORNIA, N.A.
VS
DEBTOR

Docket 46

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gloria Solis

Represented By
Matthew D. Resnik

Movant(s):

Banc of California, National

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
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9:30 AM

1:19-12282 Erick Chicas

Chapter 13

#16.00 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 **November 6, 2019 at 9:30 a.m.**

Movant has not served the motion and provided notice of the hearing thereon and the deadline to file a response in accordance with Judge Kaufman's self-calendar procedure for motions that are set for hearing on shortened time. The notice of the motion fails to indicate that a written response must be filed and served at least two days before the hearing.

By October 9, 2019, movant must file and serve notice of the continued hearing and the deadline to file a written response (14 days prior to the continued hearing) on all creditors in accordance with Fed. R. Bankr. P. 7004(b)(3) and (H).

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

Appearances on October 2, 2019 are excused.

Party Information

Debtor(s):

Erick Chicas

Represented By
Eric Bensamochan

Trustee(s):

Elizabeth (SV) 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 2, 2019

Hearing Room 301

9:30 AM

1:19-12216 Cheryl Placencia

Chapter 11

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

Docket 13

Tentative Ruling:

Deny.

I. BACKGROUND

Previously, the debtor filed the following seven 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
18-10459	11	Dismissed on 12/17/18 with 180-day bar to refile on OSC re Failure to Comply with Court's Orders

The Fifth Bankruptcy Case

On September 9, 2016, the debtor filed a chapter 11 petition, commencing case no. 1:16-bk-12629-VK (the "Fifth Bankruptcy Case"). In her Schedules I and 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*. She did not give a name or address for her employer [Fifth Case, 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 "December 2016 Motion to Dismiss") [Fifth Case, doc. 37]. The UST alleged that the debtor had

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CONT...

Cheryl Placencia

Chapter 11

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 December 2016 Motion to Dismiss. On January 19, 2017, the Court entered an order granting the December 2016 Motion to Dismiss and dismissing the Fifth Bankruptcy Case [Fifth Case, doc. 46].

The Sixth Bankruptcy Case

On July 12, 2017, the debtor filed a chapter 11 petition, commencing case no. 1:17-bk-11847-VK (the "Sixth Bankruptcy Case"). The debtor was represented by attorney Dana Douglas. In her Schedules I and 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* [Sixth Case, doc. 10, at pp. 19–22].

On August 6, 2017, the debtor filed a motion to continue the automatic stay (the "August 2017 Motion to Continue Stay") [Sixth Case, doc. 20]. So that the debtor could cure her service errors, the Court twice continued the hearing on the August 2017 Motion to Continue Stay. On September 20, 2017, the Court granted the August 2017 Motion to Continue Stay and directed 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 "November 2017 Motion to Dismiss") [Sixth Case, 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 November 2017 Motion to Dismiss and dismissing the Sixth Bankruptcy Case [Sixth Case, doc. 57].

The Seventh Bankruptcy Case

On February 21, 2018, the debtor filed a chapter 11 petition, commencing case no. 1:18-bk-10459-VK (the "Seventh Bankruptcy Case"). The debtor was again represented by Ms. Douglas. In her Schedules I and J, the debtor listed her monthly income as \$7,350.00 and monthly expenses as \$5,825.00, leaving net monthly income of \$1,525.00. The debtor indicated that she was self-employed as a registered nurse

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Chapter 11

for *ten years* [Seventh Case, doc. 1, at pp. 29–32].

On March 9, 2018, the debtor filed a motion to continue the automatic stay (the "March 2018 Motion to Continue Stay") [Seventh Case, doc. 14] and an application for an order shortening time to hear the March 2018 Motion to Continue Stay (the "First Application") [Seventh Case, doc. 15]. On March 12, 2018, the Court entered an order granting the First Application [Seventh Case, doc. 16].

In the March 2018 Motion to Continue Stay, the debtor alleged 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 stated that she lost 90% of her income. The debtor stated that in the Seventh Case she was substantially compliant with UST requirements and had "arranged backup" in the form of family contributions to remain compliant. The debtor further stated that her income had increased and stabilized. The debtor stated that she was willing to provide monthly adequate protection payments to her secured lender.

On March 22, 2018, the Court entered an order granting the March 2018 Motion to Continue Stay on an interim basis [Seventh Case, doc. 24]. On May 11, 2018, the Court entered an order granting the March 2018 Motion to Continue on a final basis [Seventh Case, doc. 37].

On May 16, 2018, the Court entered an order setting September 17, 2018, as the deadline for the debtor to file a proposed chapter 11 plan and related disclosure statement [Seventh Case, doc. 41]. On September 24, 2018, the debtor belatedly moved to extend the deadline for the debtor to file a proposed chapter 11 plan and related disclosure statement (the "Motion to Extend") [Seventh Case, doc. 50]. In a status report [Seventh Case, doc. 49] filed concurrently with the Motion to Extend, the debtor stated that she was attempting to obtain a consensual loan modification with her mortgage lender.

On June 28, 2018, the debtor's mortgage lender filed claim 5-1, asserting a claim in the amount of \$1,459,019.51, secured by the debtor's real property. In that claim, the mortgage lender stated that the debtor owed \$308,829.31 in pre-petition arrears.

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CONT...

Cheryl Placencia

Chapter 11

On September 26, 2018, the Court entered an order granting the Motion to Extend and extending the deadline for the debtor to file a proposed chapter 11 plan and related disclosure statement to October 17, 2018 [Seventh Case, doc. 51]. On October 4, 2018, the Court issued a ruling continuing the status conference to November 1, 2018 and instructing the debtor that, if the debtor did not timely file a proposed chapter 11 plan and related disclosure statement by October 17, 2018, the debtor must file a status report no later than October 18, 2018.

The debtor did not timely file a proposed chapter 11 plan or related disclosure statement. In addition, prior to the continued status conference, the debtor did not file a chapter 11 case status conference report.

On November 1, 2018, the Court held a continued status conference. The debtor appeared. At that time, the Court informed the debtor that the Court would provide the debtor an opportunity to participate in the Court's Loan Modification Management Pilot Program ("LMM"). In the ruling, the Court noted if the debtor did not timely comply with LMM procedure or, in the alternative, file a proposed chapter 11 plan and related disclosure statement, the Court would dismiss the Seventh Bankruptcy Case.

On November 6, 2018, the Court issued an *Order to Show Cause Why this Case Should Not Be Dismissed with a 180-Day Bar for Failure to Comply with Court's Orders* (the "OSC") [Seventh Case, doc. 56]. In the OSC, the Court ordered the debtor to file a Motion to Commence LMM and a status report no later than December 6, 2018. The Court also ordered that, if the debtor elected not to proceed via the LMM, that the debtor was required to file a proposed chapter 11 plan and related disclosure statement no later than December 6, 2018.

The debtor did not timely file a Motion to Commence LMM, a status report or a proposed chapter 11 plan and related disclosure statement. In addition, the debtor did

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Chapter 11

not timely file a monthly operating report for October 2018. On December 13, 2018, the Court held a hearing on the OSC. On December 17, 2018, the Court entered an order dismissing the Seventh Case with a 180-day bar to refile [Seventh Case, doc. 61].

The Pending Bankruptcy Case

On September 4, 2019, the debtor filed the pending chapter 11 case. The debtor is again represented by Ms. Douglas. The debtor's schedules and statements were due on September 18, 2019. The debtor did not timely file her schedules and statements. On September 19, 2019, the debtor filed a *Ex-Parte Request/Motion for Relief from Possible Order of Dismissal for Failure to Timely File Deficient Documents and/or Deem Documents Filed Timely* (the "Ex Parte Motion") [doc. 10]. On September 19, 2019, the debtor filed her missing schedules and statements [doc. 12]. On September 23, 2019, the Court entered an order granting the Ex Parte Motion [doc. 19].

In her Schedule A/B [doc. 12], the debtor listed an interest in real property with a fair market value of \$200,000.00. In her Schedule D [doc. 12], the debtor indicates that Nationstar Mortgage holds a claim in the amount of \$1,450,000.00, secured by her real property.

In her Schedules I and J [doc. 12], the debtor lists her monthly income as \$10,500.00 and her monthly expenses as \$9,200.00, leaving net monthly income of \$1,300.00. The debtor indicates that she is self-employed as a registered nurse and has been for ten years. *Id.*

On September 20, 2019, the debtor filed a motion to continue the automatic stay (the "September 2019 Motion to Continue Stay") [doc. 13] and an application for an order shortening time to hear the September 2019 Motion to Continue Stay (the "Second Application") [doc. 14]. On September 23, 2019, the Court entered an order granting the Second Application (the "OST") [doc. 16].

In the September 2019 Motion to Continue Stay, the debtor alleges that in the Seventh Bankruptcy Case, she was initially compliant with UST requirements. However, because of the debtor's continued illness and family illnesses, she could not remain compliant. In regard to the pending case, the debtor claims that she has taken steps to

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CONT...

Cheryl Placencia

Chapter 11

ensure that she is and remains compliant with Court and UST requirements. The debtor further asserts that she has "arranged backup" to remain compliant. Additionally, the debtor claims that her income has increased and stabilized. The debtor contends that pre-petition, she was striving to reach an agreement with her secured creditor regarding the mortgage on her real property, but was unable to effectuate such an agreement. Lastly, the debtor claims that she has vacated her real property, and will repair and rent the real property to generate mortgage payments and to fund a chapter 11 plan of reorganization.

In the Second Application, Ms. Douglas states that toward the end of the Sixth Bankruptcy Case and during the Seventh Bankruptcy Case, Ms. Douglas was contending with health and family issues that made it difficult for her to assist the debtor [Declaration of Dana M. Douglas, doc. 14]. Ms. Douglas states that she has made changes to her practice that she believes will enable her to advocate effectively for her clients. *Id.* Ms. Douglas does not explain what changes she has made. Ms. Douglas further states that she and the debtor have put procedures in place that should enable the debtor to remain complaint even in the event of illness. *Id.* Ms. Douglas does not explain what procedures have been put in place.

On September 27, 2019, the UST filed a motion under 11 U.S.C. § 1112(b) to dismiss or convert the pending case (the "September 2019 Motion to Dismiss") [doc. 24]. In the September 2019 Motion to Dismiss, the UST alleges that the debtor has not filed a statement of related cases, provided sufficient evidence of closing all pre-petition bank accounts, provided sufficient evidence of maintenance of debtor-in-possession bank accounts and provided evidence that the UST has been added to receive notice regarding insurance policy. The hearing on the September 2019 Motion to Dismiss is set for November 7, 2019.

II. DISCUSSION

In the OST, the Court ordered the debtor to serve written notice of the hearing on the September 2019 Motion to Continue Stay on secured creditors and the 20 largest unsecured creditors by *overnight mail, facsimile or email*. Contrary to the OST, the debtor has served the notice and the OST by United States mail - resulting in a delay in notice.

Under 11 U.S.C. § 362(c)(3), in order to extend the automatic stay in a case filed

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CONT... Cheryl Placencia

Chapter 11

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. A debtor may rebut this presumption by providing "clear and convincing" evidence to the contrary.

In the September 2019 Motion to Continue Stay, the debtor states that her income has increased and stabilized since the dismissal of the Seventh Bankruptcy Case. In the Seventh Bankruptcy Case, the debtor's schedules showed monthly income of \$7,350.00 and monthly expenses of \$5,825.00, leaving net monthly income of \$1,525.00. In her pending case, the debtor's alleged monthly income is \$10,500.00 and her monthly expenses are \$9,200.00, leaving net monthly income of \$1,300.00. In addition, the debtor states that she is compliant with UST requirements and has "arranged backup" to ensure compliance. However, because the debtor is not in compliance with UST requirements, the UST has filed the September 2019 Motion to Dismiss.

Notwithstanding the debtor's assertions in the September 2019 Motion to Continue Stay, the debtor has not provided 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.

This is the debtor's eighth bankruptcy case. Despite three prior chapter 11 filings, the debtor has yet to confirm a chapter 11 plan. The debtor has continued to be delinquent on her deed of trust payments.

Further, the debtor's financial affairs have not improved since the Seventh Bankruptcy Case. The debtor states that, in order to generate mortgage payments and fund a chapter 11 plan, she will repair and lease her real property. However, the debtor has provided no evidence of her financial ability to make any repairs to the real property and no evidence regarding the rental income which the property reasonably could generate, once repaired.

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CONT... Cheryl Placencia

Chapter 11

The debtor states that the fair market value of the real property is \$200,000.00; the mortgage lender holds a claim for \$1,450,000.00. The debtor has not demonstrated how she will generate sufficient rental income to pay the secured claim and have sufficient funds remaining to fund a chapter 11 plan.

The debtor's assertions that she will repair and lease the property to generate income to fund a chapter 11 plan are speculative. Moreover, the debtor has not filed an application to employ a broker to find a tenant for the property, nor has the debtor filed a motion to approve a proposed lease agreement.

In addition, neither the debtor nor her bankruptcy attorney (who has represented the debtor in her two preceding chapter 11 cases) presented any evidence of what procedures have been put in place to ensure that the debtor remains compliant with UST requirements.

Because the debtor has not met her burden of proving that she filed this case in good faith, the Court will deny the September 2019 Motion to Continue.

The Court will prepare the order.

Party Information

Debtor(s):

Cheryl Placencia

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
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Wednesday, October 2, 2019

Hearing Room 301

1:30 PM

1:18-10329 Ali P Dargah

Chapter 13

Adv#: 1:19-01091 Dargah v. DIVERSIFIED ACCEPTANCE CORPORATION, a California c

- #17.00** Status conference re: Complaint for:
1. Quiet Title;
 2. Slander of title;
 3. Declaratory relief

Docket 1

Tentative Ruling:

The Court intends to vacate the defaults entered against BEGL Construction Co., Inc. ("BEGL"), USB Leasing Lt. ("USB") and Martin Serraf. The plaintiff did not serve either BEGL or USB at the correct addresses registered for service of process. In addition, the plaintiff should serve Martin Serraf directly.

Regarding BEGL, the agent for service of process listed on the California Secretary of State website is Mehr Zad Beglari, with an address at 5632 Van Nuys Blvd., #234, Van Nuys, CA 91401. As to USB, the Delaware Division of Corporations lists the agent for service of process as U.S. Bank Trust National Association, with an address at 300 East Delaware Avenue, 8th Floor, Wilmington, DE 19809.

The plaintiff must request Another Summons from the Court. The plaintiff can obtain Another Summons by filing form F 7001-1.2.REQUEST.ANOTHER.SUMMONS, located on the Court's website. Upon receiving the filing of the Request that the Clerk Issue Another Summons and Notice of Status Conference, the Clerk will issue Another Summons.

The Another Summons must be served upon defendants BEGL, USB and Mr. Serraf 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 Another Summons a copy of the complaint and a copy of Judge Kaufman's Status Conference Instructions.

To demonstrate proper service of the Another Summons and the complaint and instructions to be served with that summons, the plaintiff must file a signed proof of service indicating that the Another Summons and the documents to be served with

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CONT... Ali P Dargah

Chapter 13

that summons were timely served on the defendants. If the plaintiff can obtain an issued Another Summons from the Court by November 1, 2019, the status conference will be continued to **1:30 p.m. on December 18, 2019.**

Party Information

Debtor(s):

Ali P Dargah

Represented By
Matthew D Resnik

Defendant(s):

DIVERSIFIED ACCEPTANCE	Pro Se
USB LEASING LT, a Delaware	Pro Se
BEGL CONSTRUCTION CO.,	Pro Se
MARTIN SERRAF, an individual;	Pro Se
MARYAM OLOOMI, 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

Trustee(s):

Elizabeth (SV) 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 2, 2019

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01088 Elissa D. Miler, chapter 7 trustee for the estate v. Adri

#18.00 Status conference re: complaint to deny discharge

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the chapter 7 trustee 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: 6/1/2020.

Deadline to complete expert disclosures and written reports: 7/31/2020.

Deadline to complete counter-expert disclosures and written reports: 9/15/20.

Deadline to complete one day of mediation: 9/30/20.

Deadline to file pretrial motions: 10/15/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 11/4/20.

Pretrial: 1:30 p.m. on 11/18/20.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the chapter 7 trustee 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, October 2, 2019

Hearing Room 301

1:30 PM

CONT... Deborah Lois Adri

Chapter 7

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Deborah Lois Adri

Pro Se

Plaintiff(s):

Elissa D. Miler, chapter 7 trustee for

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta
Larry W Gabriel

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

Wednesday, October 2, 2019

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01072 Adri v. Adri

#19.00 Status conference re: complaint to deny debtor's discharge

fr. 8/21/19

Docket 1

Tentative Ruling:

See calendar no. 18.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub

Defendant(s):

Deborah Adri

Pro Se

Plaintiff(s):

Moshe Adri

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta

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

Wednesday, October 2, 2019

Hearing Room 301

1:30 PM

1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01116 Bars v. Sheikh

#20.00 Pretrial conference re complaint to determine dischargeability
and in objection to discharge [11 U.S.C. §§727(a)(4)(A)' 523(a) (2)

fr. 1/9/2019; 6/12/19; 8/7/19

Docket 1

Tentative Ruling:

At the prior pretrial conference, the parties indicated that they settled this matter. Because the plaintiff has asserted claims under 11 U.S.C. § 727, the plaintiff must file and serve notice of the dismissal of her claims under § 727 on the chapter 7 trustee, the United States trustee and **all creditors of the debtor's estate**. Fed. R. Bankr. P. 7041. The notice should include language informing these parties of their right to intervene as the plaintiff in this action.

The Court will continue this pretrial conference to **1:30 p.m. on November 13, 2019**. No later than **October 16, 2019**, the plaintiff must file and serve notice of the dismissal of the plaintiff's § 727 claims on the parties specified above.

Party Information

Debtor(s):

Atif Sheikh

Represented By
Steven M Gluck

Defendant(s):

Atif Sheikh

Pro Se

Joint Debtor(s):

Naureen Sheikh

Represented By
Steven M Gluck

Plaintiff(s):

Candace Marie Bars

Represented By

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

Wednesday, October 2, 2019

Hearing Room 301

1:30 PM

CONT... Atif Sheikh

David C Bernstein

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 2, 2019

Hearing Room 301

1:30 PM

1:18-12560 Remon Ramzy Hanna

Chapter 7

Adv#: 1:19-01005 Patel et al v. Hanna et al

#21.00 Pretrial conference re: complaint to determine dischargeability of debt under 11 U.S.C. sec 523(a)(2), (4), (6)

fr. 4/3/19

Docket 1

***** VACATED *** REASON: Order ent continuing hrg to 2/19/20 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Remon Ramzy Hanna

Represented By
Michael H Raichelson

Defendant(s):

Remon Ramzy Hanna

Pro Se

Gamatat Youssef Khalil

Pro Se

Joint Debtor(s):

Gamatat Youssef Khalil

Represented By
Michael H Raichelson

Plaintiff(s):

Dipesh Patel

Represented By
Randy B Soref

Nilay Patel

Represented By
Randy B Soref

Mark Ross, Jr.

Represented By

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

Wednesday, October 2, 2019

Hearing Room 301

1:30 PM

CONT... Remon Ramzy Hanna

Chapter 7

Raied Francis

Randy B Soref

Represented By
Randy B Soref

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 2, 2019

Hearing Room 301

1:30 PM

1:19-10062 Andrew Marc Pitsicalis

Chapter 11

Adv#: 1:19-01040 Experience Hendrix, LLC et al v. Pitsicalis

#22.00 Status conference re: complaint to determine the non-dischargeability of a debt

fr. 6/12/19; 8/7/19(stip); 8/21/19

Docket 1

Tentative Ruling:

Having reviewed the record, the Court finds there was cause to grant relief from the automatic stay for the parties to proceed with the action in the United States District Court, Southern District of New York (the "SDNY Action").

On August 19, 2019, the Court approved a settlement agreement between the chapter 7 trustee (the "Trustee") and the plaintiffs (the "Agreement") [Bankruptcy Docket, doc. 93]. In the Agreement, the Trustee and the plaintiffs agreed to give the plaintiffs relief from the automatic stay to proceed with the SDNY Action.

However, even if the Court had not already granted the plaintiffs relief from the automatic stay in connection with the Court's approval of the Settlement Agreement, the Court finds that there would be cause to grant relief from the automatic stay. *In re City of San Bernardino*, 558 B.R. 321, 332 (Bankr. C.D. Cal. 2016) (citing *In re Curtis*, 40 B.R. 795, 806 (Bankr. D. Utah 1984)) (listing the *Curtis* factors used to determine if relief from the automatic stay is appropriate for parties to proceed with litigation in a nonbankruptcy forum).

Using the *Curtis* factors, the SDNY court has presided over a lengthy docket, and the interests of judicial economy and the expeditious and economical determination of litigation necessitate relief for that court to continue adjudicating the SDNY Action. Moreover, there is no stated prejudice to other creditors by allowing the SDNY Action to proceed, and the SDNY Action will not hinder administration of the defendant's bankruptcy estate. As such, relief from the automatic stay was appropriately given to the plaintiffs via the order approving the Agreement.

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

Wednesday, October 2, 2019

Hearing Room 301

1:30 PM

CONT... **Andrew Marc Pitsicalis**

Chapter 11

In addition, the plaintiffs concede that this Court is the only court capable of adjudicating whether the plaintiffs' future judgment, if any, is nondischargeable. The language in the Agreement regarding issue preclusion prevents the plaintiffs from using an order for injunction for preclusive effect. Given that an order for injunction would not qualify as a final judgment, such an order would not preclude this Court's adjudication of the nondischargeability action. However, nothing in the Agreement bars the plaintiffs from moving for summary judgment based on the preclusive effect of a *judgment* entered by the court presiding over the SDNY Action.

In light of the above, the Court will set the following extended deadlines:

Deadline to complete discovery: 6/30/20.

Deadline to file pretrial motions: 7/31/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 9/2/20.

Pretrial: 1:30 p.m. on 9/16/20.

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):

Andrew Marc Pitsicalis	Pro Se
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Defendant(s):

Andrew Marc Pitsicalis	Pro Se
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Plaintiff(s):

Experience Hendrix, LLC	Represented By Jason D Strabo
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 2, 2019

Hearing Room 301

1:30 PM

CONT... Andrew Marc Pitsicalis

Chapter 11

Authentic Hendrix, LLC

Represented By
Jason D Strabo

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall

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

Wednesday, October 2, 2019

Hearing Room 301

1:30 PM

1:19-10981 Mehdi Zemrani

Chapter 7

Adv#: 1:19-01093 First National Bank Of Omaha v. Zemrani

#23.00 Status conference re: complaint seeking exception to discharge pursuant to 11 U.S.C. sec. 523(a)(2)(A)

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 13, 2019.**

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)."

Upon receipt of an entry of default, the Court will set the plaintiff's motion for default judgment [doc. 4] for hearing.

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 2, 2019 is excused.

Party Information

Debtor(s):

Mehdi Zemrani

Represented By
Donald E Iwuchuku

Defendant(s):

Mehdi Zemrani

Pro Se

Plaintiff(s):

First National Bank Of Omaha

Represented By
Cory J Rooney

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

Wednesday, October 2, 2019

Hearing Room 301

1:30 PM

CONT... Mehdi Zemrani

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 2, 2019

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mor et al

- #24.00** Status conference re: complaint for:
1. Fraud and intentional deceit;
 2. Breach of contract;
 3. Breach of the covenant of good faith and fair dealing;
 4. Breach of fiduciary duty;
 5. Vicarious liability-ostensible agent;
 6. Negligent supervision or training of an employee and/or agent;
 7. Financial elder abuse

Docket 1

*** VACATED *** REASON: Continued to 11/6/19 per order

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharon Mizrahi

Represented By
Shai S Oved

Defendant(s):

Ido Mor

Pro Se

Sharon Mizrahi, an Individual

Pro Se

Sharon Mizrahi dba Divine Builders

Pro Se

Divine Builders

Pro Se

GHR Divine Remodeling

Pro Se

Does 1 Through 10, Inclusive

Pro Se

Plaintiff(s):

Michael Frias

Represented By
Ezedrick S Johnson III

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

Wednesday, October 2, 2019

Hearing Room 301

1:30 PM

CONT... **Sharon Mizrahi**
Patricia Bartlett

Represented By
E. Samuel Johnson

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 2, 2019

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#25.00 Defendant's motion to dismiss pursuant to Rules 8,9, and 12

Docket 12

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on October 16, 2019.**

Appearances on October 2, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Defendant(s):

Kenneth C. Scott

Represented By
Arash Shirdel

My Private Practice, Inc. a

Represented By
Arash Shirdel

Kenneth Scott, PSY.D. a California

Represented By
Arash Shirdel

Plaintiff(s):

H. Samuel Hopper

Represented By
Daniel Parker Jett

Trustee(s):

Elizabeth (SV) 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 2, 2019

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#26.00 Status conference re: creditor H. Samuel Hopper's motion to dismiss debtor Kenneth C. Scott's chapter 13 petition

fr. 7/17/19; 9/4/19

Docket 70

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on October 16, 2019**, to be held with the hearing on the debtor's motion to dismiss [Adversary Docket, doc. 12].

Appearances on October 2, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) 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 2, 2019

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #27.00** Status conference re amended complaint for:
1. Declaratory relief re nondischargeability of Civil Penalties [11 U.S.C. sec.523(a)(7)]
 3. Declaratory relief re nondischargeability of fraud damages [11 U.S.C. sec. 523(a)(2), (4)]
 3. Declaratory relief re ownership of \$17,247 in business account
 4. Annulment of transfer in fraud of creditors
 5. Fraud and deceit [Cal.Civ. Code, secs. 1572-1573, 1709-1710]
 6. Unlawful retaliation [Cal. Lab. Code, sec. 98.6]
 7. Unlawful retaliation [Cal. Lab. Code, sec. 1102.5]
 8. Failure to maintain and timely produce personnel records [Cal. Lab. Code, sec. 1198.5(k)]

fr. 9/4/19

Docket 8

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on October 2, 2019**, to be held with the hearing on the defendants' motion to dismiss [Adversary Docket, doc. 12].

Appearances on October 2, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Defendant(s):

Kenneth C. Scott

Represented By
Arash Shirdel

My Private Practice, Inc. a

Represented By

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

Wednesday, October 2, 2019

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

Arash Shirdel

Kenneth Scott, PSY.D. a California

Represented By
Arash Shirdel

Plaintiff(s):

H. Samuel Hopper

Represented By
Daniel Parker Jett

Trustee(s):

Elizabeth (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, October 3, 2019

Hearing Room 301

10:30 AM

1:18-11729 Richard Philip Dagnes

Chapter 11

#1.00 Application for payment of interim fees and or expenses for
Onyinye N Anyama, Debtor's attorney

Docket 102

Tentative Ruling:

Pursuant to Local Bankruptcy Rule 2016-(a)(1)(J), the Anyama Law Firm ("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 to the debtor and the debtor-in-possession – approve fees in the amount of \$13,644.00 and reimbursement of expenses in the amount of \$854.08, pursuant to 11 U.S.C. § 331, for the period between July 11, 2017 through September 9, 2019, on an interim basis. Applicant may collect 100% of the approved expenses at this time.

According to Applicant, a prepetition retainer in the amount of \$6,082.00 remains viable to pay approved fees and expenses. Based on the debtor's most recent monthly operating report, as of August 31, 2019, the debtor had an ending balance of \$12,982.26 in all the debtor-in-possession accounts. If all funds in the debtor's accounts are used to pay Applicant's allowed fees and expenses (net the prepetition retainer), the Court is concerned about the debtor having sufficient cash reserves to continue to operate. Accordingly, Applicant may draw down on the prepetition retainer to collect \$6,082.00 of the approved fees at this time.

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

Party Information

Debtor(s):

Richard Philip Dagnes

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 3, 2019

Hearing Room 301

10:30 AM

1:19-10785 Attilio E Armeni

Chapter 11

#2.00 HearingRE: [69] Application for Compensation for AOE Law & Associates, Debtor's Attorney, Period: 4/4/2019 to 8/23/2019, Fee: \$15,450.00, Expenses: \$230.10. (Egbase, Anthony)

Docket 69

Tentative Ruling:

Unless an appearance is made at the hearing on October 3, 2019, the hearing is continued to November 7, 2019 at 10:30.m., and the applicant must cure the deficiencies noted below by October 10, 2019.

Contrary to Local Bankruptcy Rule ("LBR") 2016-1(a)(2)(B), the notice of the application did not identify the deadline for filing and serving a written opposition. Contrary to LBR 2016-1(a)(1)(A)(iii), the application does not discuss the amount of cash on hand in the estate.

If the requested fees and expenses are allowed, it is unclear how the debtor would pay the allowed fees and expenses. Applicant requests allowance and payment of \$15,025.10 in attorneys' fees and costs. Based on the debtor's most recent monthly operating report, as of August 2019, the debtor had an ending balance of \$8,973.89 in his DIP account.

Assuming other deficiencies are cured, the Court will not allow the following 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, October 3, 2019

Hearing Room 301

10:30 AM

CONT... Attilio E Armeni

Chapter 11

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).

In accordance with the foregoing, the Court will reduce the following fees because they are excessive:

Category	Date	Timekeeper	Description	Time	Rate	Fee	Reduced Time	Reduced Fee
Fee/Employment Application	4/16/19	SYS	Prepare notice of motion and motion in individual ch 11 case for order employing professional Hector Perez as appraiser	2.00	\$350.00	\$700.00	1.00	\$350.00
Fee/Employment Application	4/29/19	SYS	Prepare and file declaration that no party requested a hearing on motion in individual ch 11 case for order employing professional A.O.E. Law & Associates, APC as general bankruptcy counsel	0.50	\$350.00	\$175.00	0.20	\$70.00

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

Thursday, October 3, 2019

Hearing Room 301

10:30 AM

CONT... Attilio E Armeni

Chapter 11

Fee/Employment Application	4/29/19	SYS	Prepare and lodge order granting motion in individual case to authorize debtor-in-possession to employ general bankruptcy counsel	0.50	\$350.00	\$175.00	0.20	\$70.00
Fee/Employment Application	5/2/19	SYS	Prepare and file notice of lodgment of order in bankruptcy case re: motion in individual case to authorize debtor-in-possession to employ general bankruptcy counsel	0.80	\$350.00	\$280.00	0.20	\$70.00
Fee/Employment Application	5/3/19	SYS	Prepare and file declaration that no party requested a hearing on motion employing professional: Hector Perez as appraiser with proof of service	0.80	\$350.00	\$280.00	0.20	\$70.00
Fee/Employment Application	5/3/19	SYS	Prepare and lodge order granting motion employing professional appraiser	0.50	\$350.00	\$175.00	0.20	\$70.00

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

Thursday, October 3, 2019

Hearing Room 301

10:30 AM

CONT... Attilio E Armeni

Chapter 11

Fee/Employment Application	5/3/19	SYS	Prepare and file notice of lodgment of order in bankruptcy case re: motion in individual case to authorize debtor-in-possession to employ professional other than general bankruptcy counsel Hector Perez as appraiser	0.80	\$350.00	\$280.00	0.20	\$70.00
Administration/Cause	5/6/19	SYS	Review order granting motion in individual case to authorize debtor-in-possession to employ professional other than general bankruptcy counsel Hector Perez as appraiser	0.20	\$350.00	\$70.00	0.10	\$35.00
Administration/Cause	5/6/19	SYS	Review Order granting motion in individual ch 11 case for order employing professional/general counsel	0.20	\$350.00	\$70.00	0.10	\$35.00
Hearing Preparation	5/8/19	AOE	Review Court's tentative ruling re: motion for order setting budget, submit on tentative	0.40	\$450.00	\$180.00	0.20	\$90.00

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, October 3, 2019

Hearing Room 301

10:30 AM

CONT... Attilio E Armeni

Chapter 11

Motions	5/10/19	SYS	Prepare and lodge order approving a budget for the used of the debtor's cash and postpetition income	0.50	\$350.00	\$175.00	0.20	\$70.00
Hearing Preparation	5/22/19	SYS	Review Court's tentative ruling: motion granted. RE: motion for imposing a stay or continuing the automatic stay, submit on tentative	0.20	\$350.00	\$70.00	0.10	\$35.00
Motions	5/22/19	SYS	Prepare and lodge order granting motion for order imposing a stay or continuing the automatic stay	0.80	\$350.00	\$280.00	0.20	\$70.00
Motions	5/24/19	SYS	Prepare and file notice of bar date for filing proofs of claim	1.00	\$350.00	\$350.00	0.50	\$175.00
Administration/Case	5/24/19	JF	Draft proof of service re: order setting (1) deadlines concerning chapter 11 plan and disclosure statement and (2) continued status conference	1.00	\$200.00	\$200.00	0.50	\$100.00
Administration/Case	7/5/19	JF	Draft notice of hearing re: debtor's objection to claim 4 filed by Wilmington Savings Fund Society, FSB	0.50	\$200.00	\$100.00	0.20	\$40.00

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

Thursday, October 3, 2019

Hearing Room 301

10:30 AM

CONT... Attilio E Armeni

Chapter 11

In addition, the billing records attached to the application [Exh. B], indicate that on May 15, 2019, the applicant spent 0.5 hours reviewing the debtor's April 2019 monthly operating report. In that monthly operating report [doc. 43], the debtor indicates that, on April 23, 2019, he made or paid a \$10,100 "loan" to Greg Greenberg. The Court did not approve the payment or making of any such loan. At the continued hearing, the applicant must be prepared to discuss the details concerning this loan.

Party Information

Debtor(s):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

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

Thursday, October 3, 2019

Hearing Room 301

1:00 PM

1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan

Chapter 11

#3.00 Post-confirmation status conference

fr. 10/19/17; 3/15/18; 6/14/18; 9/13/18; 10/18/18; 11/1/18;
12/13/18; 2/7/19; 4/4/19

Docket 1

Tentative Ruling:

Continue to **1:00 p.m. on April 16, 2020**. On or before **April 2, 2020**, 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 October 3, 2019 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, October 3, 2019

Hearing Room 301

1:00 PM

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

Chapter 11

#4.00 Post confirmation status conference

fr. 9/12/19

Docket 1

Tentative Ruling:

Continue to **1:00 p.m. on April 16, 2020**. On or before **April 2, 2020**, 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 October 3, 2019 are excused.

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, October 3, 2019

Hearing Room 301

1:00 PM

1:18-11181 Rowena Benito Macedo

Chapter 11

#5.00 Post-confirmation status conference

fr. 6/21/18; 10/18/18; 11/1/18; 12/13/18; 2/7/19; 4/4/19

Docket 1

Tentative Ruling:

Contrary to the Court's *Order Confirming Debtor's Plan or Reorganization* (the "Confirmation Order") [doc. 83], the debtor did not timely file and serve a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The Court will continue this status conference to **1:00 p.m. on November 7, 2019.**

No later than **October 24, 2019**, the debtor must file and serve on the United States trustee and the 20 largest unsecured creditors the status report required by the Confirmation Order.

If the debtor does not **timely** file and serve the status report with the required information, the Court will convert this case to chapter 7 or dismiss this case.

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 3, 2019

Hearing Room 301

1:00 PM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#6.00 U.S. Trustee's Motion Under 11 U.S.C. section 1112(b)
To Dismiss Or Convert Case

Docket 91

***** VACATED *** REASON: Motion withdrawn 9/16/19 - jc**

Tentative Ruling:

- NONE LISTED -

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, October 3, 2019

Hearing Room 301

1:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#7.00 U.S. Trustee Motion under 11 U.S.C. § 1112(b) to dismiss or convert case

Docket 95

***** VACATED *** REASON: Advanced to 9/19/19 at 1:00 PM [Dkt. 103]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik
Jeffrey S Kwong

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

Thursday, October 3, 2019

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#8.00 Application for payment of interim fees and/or expenses for
AOE Law & Associates, Debtor's Attorney

Docket 69

*** VACATED *** REASON: Set in error.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

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

Thursday, October 3, 2019

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#9.00 U.S. Trustee's Motion to dismiss or convert Case

Docket 72

***** VACATED *** REASON: Motion withdrawn 9/12/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

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

Thursday, October 3, 2019

Hearing Room 301

1:00 PM

1:19-11843 14554 Friar, LLC

Chapter 11

#10.00 Status conference re: chapter 11 case

fr 9/12/19

Docket 1

Tentative Ruling:

The parties should address the following:

In the status report filed on September 12, 2019 [doc. 25], the debtor indicates that it is not a small business debtor. However, the debtor has filed two small business debtor monthly operating reports [doc. 22 and 27].

Deadline to file proof of claim ("Bar Date"): **December 16, 2019**

Deadline to mail notice of Bar Date: **October 15, 2019**

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, 2020**

Continued chapter 11 case status conference to be held at **1:00 p.m. on February 20, 2020.**

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.

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

Thursday, October 3, 2019

Hearing Room 301

1:00 PM

CONT... 14554 Friar, LLC

Chapter 11

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):

14554 Friar, LLC

Represented By
Donna Bullock

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

Thursday, October 3, 2019

Hearing Room 301

1:00 PM

1:19-12229 Tom Boy Farms

Chapter 7

#11.00 Order to Show Cause Re: Dismissal as a Result of the Debtor's Failure to File a Peition and Otherwise Appear with Counsel as Required by Local Bankruptcy Rule 9011-2(a)

Docket 8

Tentative Ruling:

The Court will dismiss this case with a 180 day bar to the debtor filing another bankruptcy petition. The debtor has not filed a petition and otherwise appeared with counsel as required by LBR 9011-2(a).

In addition, the petition was filed by an individual named Raul Aguila. Mr. Aguila has filed several prior bankruptcy cases listing the real property located at 8636 Topanga Canyon Blvd, West Hills, CA 91304 (the "West Hills Property") as an asset. *See* 1:18-bk-10378-MB; 17-bk-11223-MT; 1:16-bk-11352-MB; 1:16-bk-10257-MT; 1:14-bk-15568-VK; and 1:14-bk-15214-MT. Six of these seven prior cases were dismissed for Mr. Aguila's failure to file schedules and/or statements, failure to make plan payments within a month of filing a chapter 13 petition or failure to appear at a required hearing or § 341(a) meeting of creditors.

Pursuant to 11 U.S.C. § 105(a) and 362(d)(1), in light of Mr. Aguila's repeated filings and dismissals based on Mr. Aguila's failure to comply with his obligations related to a bankruptcy filing, the Court also will annul the automatic stay in this case. In addition, the Court will order that the automatic stay will not apply to the West Hills Property during the first 180 days of any future bankruptcy case filed by the debtor, Mr. Aguila or the debtor's listed dbas, Medallion Capital Financial and Atlantic Funding.

The Court will prepare the order.

Party Information

Debtor(s):

Tom Boy Farms

Pro Se

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

Thursday, October 3, 2019

Hearing Room 301

1:00 PM

CONT... Tom Boy Farms

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**

Thursday, October 3, 2019

Hearing Room 301

2:00 PM

1:17-10378 Kandy Kiss of California, Inc. and Mary Teresa Barnes

Chapter 7

#12.00 Chapter 7 Trustee's Omnibus Motion to reclassify priority unsecured claims under 11 U.S.C. § 507 to general unsecured claims

Docket 190

Tentative Ruling:

In the reply [doc. 216] filed by the chapter 7 trustee (the "Trustee"), the Trustee agrees to the treatment of the claims filed by Moustris Enterprises, Inc., Eris Fine, Larry Moser, Mary Teresa Barnes, Caroline Ann Gilchrist, Alicia Bernadette Flores and Erica Bledsoe as set forth by the claimants in their oppositions [docs. 203, 204, 207, 210, 211, 213, 214]. As such, the Court will approve the treatment of these claims as agreed to by the parties in their oppositions and the Trustee's reply.

With respect to claim no. 16, filed by Diane Sifuentes, the Trustee objects on the basis that there is no evidence that Ms. Sifuentes' claim for paid time off ("PTO") was incurred within 180 days prior to the petition date. 11 U.S.C. § 507(a)(4). In her proof of claim, Ms. Sifuentes states that she is owed \$4,200 for PTO, but does not specify when she incurred the \$4,200. There being no evidence on the record that Ms. Sifuentes' claim is entitled to priority under 11 U.S.C. § 507(a)(4), the Court will reclassify claim no. 16 as a general unsecured claim.

The 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, October 3, 2019

Hearing Room 301

2:00 PM

1:17-10830 ColorFX, Inc.

Chapter 11

#13.00 The Post-Confirmation Committee of Unsecured Creditor's
Motion for final decree and closing case

Docket 249

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):

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, October 3, 2019

Hearing Room 301

2:00 PM

1:19-11696 Peter M. Seltzer

Chapter 11

#14.00 Motion Authorizing Fed. R. Bankr. P. 2004 Oral Examination of Debtor by Darren Kessler and Production of Documents by Debtor Pursuant to Fed. R. Bankr. P. 2004 and 9016

Docket 36

Tentative Ruling:

The Court will continue this matter to **November 7, 2019 at 2:00 p.m.**

In the opposition to the motion [doc. 42], the debtor indicates his willingness to appear for an oral examination, but disputes that he should be required to produce all documents requested in the Fed. R. Bankr. P. 2004 motion [doc. 36]. 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.

No later than October 24, 2019, the parties must file a stipulation re: discovery issues pursuant to LBR 7026-1(c)(3).

Appearances on October 3, 2019 are excused.

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

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

Tuesday, October 8, 2019

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 8, 2019

Hearing Room 301

10:30 AM

1:14-13821 Edwin Flamenco and Sonia Turcios

Chapter 13

#33.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 36

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edwin Flamenco

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Sonia Turcios

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, October 8, 2019

Hearing Room 301

10:30 AM

1:14-14009 Michele Amy Schneider

Chapter 13

#34.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 74

***** VACATED *** REASON: Voluntary dismissal of motion filed 09/12/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michele Amy Schneider

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 8, 2019

Hearing Room 301

10:30 AM

1:14-14009 Michele Amy Schneider

Chapter 13

#35.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 75

***** VACATED *** REASON: Motion of voluntary dismissal filed 09/12/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michele Amy Schneider

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 8, 2019

Hearing Room 301

10:30 AM

1:15-10157 Roy Guzman and Barbara J Jankovich

Chapter 13

#36.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roy Guzman

Represented By
Julie J Villalobos

Joint Debtor(s):

Barbara J Jankovich

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 8, 2019

Hearing Room 301

10:30 AM

1:15-10755 Toni Frances Magallanes

Chapter 13

#37.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 47

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Toni Frances Magallanes

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, October 8, 2019

Hearing Room 301

10:30 AM

1:15-11547 Rodolfo Trujillo and Annette Marie Trujillo

Chapter 13

#38.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rodolfo Trujillo

Represented By
Daniel F Jimenez

Joint Debtor(s):

Annette Marie Trujillo

Represented By
Daniel F Jimenez

Trustee(s):

Elizabeth (SV) 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 8, 2019

Hearing Room 301

10:30 AM

1:15-11825 Donald M. Baarns and Lisa A. Baarns

Chapter 13

#39.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald M. Baarns

Represented By
Ali R Nader

Joint Debtor(s):

Lisa A. Baarns

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 8, 2019

Hearing Room 301

10:30 AM

1:15-11943 Sharlene Rees

Chapter 13

#40.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharlene Rees

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 8, 2019

Hearing Room 301

10:30 AM

1:15-12061 Carmen Jacqueline Der Krikorian

Chapter 13

#41.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 58

*** VACATED *** REASON: Motion withdrawn 9/3/19 - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carmen Jacqueline Der Krikorian

Represented By
Mark M Sharf

Trustee(s):

Elizabeth (SV) 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 8, 2019

Hearing Room 301

10:30 AM

1:15-12261 Jesus Leon and Victoria Cabrales

Chapter 13

#42.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 47

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Leon

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Victoria Cabrales

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, October 8, 2019

Hearing Room 301

10:30 AM

1:15-12899 Roseanne Edwards

Chapter 13

#43.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 41

*** VACATED *** REASON: voluntary dismissal of motion filed 9/9/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roseanne Edwards

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 8, 2019

Hearing Room 301

10:30 AM

1:15-13062 Hector Flores and Martha Flores

Chapter 13

#44.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 82

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Flores

Represented By
Donald E Iwuchuku

Joint Debtor(s):

Martha Flores

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 8, 2019

Hearing Room 301

10:30 AM

1:15-13159 John Charles Salvatore Vitale and Grettell Vanessa Vitale

Chapter 13

#45.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Charles Salvatore Vitale

Represented By
Michael Poole

Joint Debtor(s):

Grettell Vanessa Vitale

Represented By
Michael Poole

Trustee(s):

Elizabeth (SV) 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 8, 2019

Hearing Room 301

10:30 AM

1:15-13422 Roy Glen Stout and Sherri Sue Kirby-Stout

Chapter 13

#46.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 80

Tentative Ruling:

- NONE LISTED -

Party Information

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, October 8, 2019

Hearing Room 301

10:30 AM

1:15-13479 Brian Jeffrey Bolokofsky and Sara Joanne Bolokofsky

Chapter 13

#47.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 65

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Jeffrey Bolokofsky

Represented By
Allan S Williams

Joint Debtor(s):

Sara Joanne Bolokofsky

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, October 8, 2019

Hearing Room 301

10:30 AM

1:15-14197 Crystal Dawn Flowers

Chapter 13

#48.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 105

***** VACATED *** REASON: Voluntary dismissal of motion filed 9/9/190**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Dawn Flowers

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 8, 2019

Hearing Room 301

10:30 AM

1:16-10023 Angelina Rodriguez

Chapter 13

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

fr. 7/2/19; 9/10/19;

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angelina Rodriguez

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, October 8, 2019

Hearing Room 301

10:30 AM

1:16-10043 Betty Lynn Paul

Chapter 13

#50.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 63

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, October 8, 2019

Hearing Room 301

10:30 AM

1:16-10314 Gil Loera

Chapter 13

#51.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gil Loera

Represented By
Daniel King

Trustee(s):

Elizabeth (SV) 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 8, 2019

Hearing Room 301

10:30 AM

1:16-11888 Elisa De Maria Linarez

Chapter 13

#52.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 42

***** VACATED *** REASON: Motion withdrawn 9/4/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elisa De Maria Linarez

Represented By
Eric Bensamochan

Trustee(s):

Elizabeth (SV) 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 8, 2019

Hearing Room 301

10:30 AM

1:16-12306 Debbie Giovany Otzoy

Chapter 13

#53.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Debbie Giovany Otzoy

Represented By
David H Chung

Trustee(s):

Elizabeth (SV) 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 8, 2019

Hearing Room 301

10:30 AM

1:16-12364 Reginald Castro

Chapter 13

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

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Reginald Castro

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 8, 2019

Hearing Room 301

10:30 AM

1:16-12540 Francisco Perez and Gloria Yuridia Perez

Chapter 13

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

fr. 08/13/19; 09/10/19;

Docket 80

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Perez

Represented By
Steven A Alpert

Joint Debtor(s):

Gloria Yuridia Perez

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, October 8, 2019

Hearing Room 301

10:30 AM

1:16-12647 Freddy Benjamin Castro

Chapter 13

#56.00 Trustee's Motion to Dismiss Case for
Failure to Submit All Tax Returns

Docket 101

*** VACATED *** REASON: Motion withdrawn 9/3/19 - jc

Tentative Ruling:

- NONE LISTED -

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 8, 2019

Hearing Room 301

10:30 AM

1:16-12767 Ezequiel Diaz

Chapter 13

#57.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ezequiel Diaz

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, October 8, 2019

Hearing Room 301

10:30 AM

1:16-12806 Daniel Martinez

Chapter 13

#58.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 49

*** VACATED *** REASON: Motion withdrawn 9/3/19 - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Martinez

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 8, 2019

Hearing Room 301

10:30 AM

1:16-13190 JeanPaul Reneaux

Chapter 13

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

Docket 118

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**

Tuesday, October 8, 2019

Hearing Room 301

10:30 AM

1:16-13639 Jesus Jose Esquivel

Chapter 13

#60.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 48

***** VACATED *** REASON: Motion withdrawn 9/3/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Jose Esquivel

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, October 8, 2019

Hearing Room 301

10:30 AM

1:16-13657 Mary Elizabeth Grant

Chapter 13

#61.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 6/11/19; 8/13/19;

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Elizabeth Grant

Represented By
William G Cort

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Courtroom 301 Calendar**

Tuesday, October 8, 2019

Hearing Room 301

10:30 AM

1:17-12481 Daniel Schreiber

Chapter 13

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

Docket 30

*** VACATED *** REASON: Withdrawal filed 9/25/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Schreiber

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
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Tuesday, October 8, 2019

Hearing Room 301

10:30 AM

1:17-12531 Jeffrey Edwards and Toni Thomson-Edwards

Chapter 13

#63.00 Trustee's motion to dismiss case for failure to submit all tax returns

fr. 8/13/19;

Docket 60

*** VACATED *** REASON: Motion withdrawn 9/3/19 - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Edwards

Represented By
Todd J Roberts

Joint Debtor(s):

Toni Thomson-Edwards

Represented By
Todd J Roberts

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Courtroom 301 Calendar**

Tuesday, October 8, 2019

Hearing Room 301

10:30 AM

1:17-12572 Shelly Anne Monroe

Chapter 13

#64.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shelly Anne Monroe

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
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Tuesday, October 8, 2019

Hearing Room 301

10:30 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

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

fr. 4/9/19; 6/11/19; 8/13/19;

Docket 90

Tentative Ruling:

- NONE LISTED -

Party Information

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, October 8, 2019

Hearing Room 301

10:30 AM

1:18-10983 Daniele C Kenney

Chapter 13

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

Docket 46

Tentative Ruling:

- NONE LISTED -

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
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Courtroom 301 Calendar**

Tuesday, October 8, 2019

Hearing Room 301

10:30 AM

1:18-11157 Patrick Jay Poteat

Chapter 13

#67.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 8/13/19;

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patrick Jay Poteat

Represented By
Gregory M Shanfeld

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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Tuesday, October 8, 2019

Hearing Room 301

10:30 AM

1:18-11288 Neli Maria Negrea

Chapter 13

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

Docket 84

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Neli Maria Negrea

Represented By
Stella A Havkin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Courtroom 301 Calendar**

Tuesday, October 8, 2019

Hearing Room 301

10:30 AM

1:18-12178 Jose Espino

Chapter 13

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

Docket 55

Tentative Ruling:

- NONE LISTED -

Party Information

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
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Tuesday, October 8, 2019

Hearing Room 301

11:00 AM

1:15-10931 James Tomas and Imelda Tomas

Chapter 13

#70.00 Debtor's Motion for Hardship Discharge Pursuant to 11 U.S.C. Sec. 1328(b)

Docket 100

Tentative Ruling:

Pursuant to 11 U.S.C. § 1328(c), a hardship discharge discharges the debtor from all unsecured debts provided for by the plan or disallowed under § 502. On September 16, 2015, the Court entered an order granting a motion to avoid junior lien on the debtors' principal residence, *subject to completion of their chapter 13 plan* (the "Order") [doc. 32]. Pursuant to the Order, until completion of the debtors' chapter 13 plan, the junior lien on their principal residence remains a secured claim. As such, if the Court grants the debtors' motion for hardship discharge, it would not discharge the debtors' liability for the junior lien.

In order for the junior lien to be avoided, the debtors must successfully complete their chapter 13 plan. In the motion, the debtors state that they can borrow funds from Mr. Tomas' 401(k) to pay the remaining balance on the plan. What is the status of the debtors filing a motion to modify their plan, *i.e.* to provide for an early payoff, using funds in the debtors' 401(k) account?

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
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Tuesday, October 8, 2019

Hearing Room 301

11:00 AM

1:18-11680 Alba Interiano

Chapter 13

#71.00 Ex Parte Motion for Order Directing Turnover of Property
of the Estate Pursuant to 11 U.S.C. Sec 542(a)

Docket 88

Tentative Ruling:

The parties must appear. The Court intends to set a briefing schedule regarding the debtor's request for damages under 11 U.S.C. § 362(k).

I. BACKGROUND

Prepetition, on September 17, 2013, the Superior Court of California entered a default judgment against Alba Interiano ("Debtor") and in favor of TX Collect, Inc. ("TX Collect") in the amount of \$20,211.71 (the "Judgment"). Declaration of Alba Interiano ("Interiano Declaration") [doc. 88], ¶ 2. On May 18, 2017, TX Collect assigned to Persolve Legal Group, LLP ("Persolve") all title, right and interest in the Judgment. Interiano Declaration, ¶ 3.

On February 8, 2018, Persolve filed a *Memorandum of Cost after Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (the "Cost Memorandum"). Interiano Declaration, ¶ 4. On March 29, 2018, Persolve submitted a writ of execution (the "Writ") to the Los Angeles County Sheriff's Department (the "Sheriff"). Interiano Declaration, ¶ 5. On April 24, 2018, the Sheriff served the Writ on Bank of America, N.A. ("Bank of America"). Interiano Declaration, ¶ 6.

On July 3, 2018, Debtor filed a chapter 13 petition. On August 6, 2018, Debtor filed her schedules and statements [doc. 14]. In her schedule A/B, Debtor listed a Bank of America account containing \$500.

On September 27, 2018, Bank of America released to the Sheriff \$58,245.25 from Debtor's account. Interiano Declaration, ¶ 8. It is unclear if this is the same Bank of America account which Debtor stated contained only \$500.

On August 12, 2019, Debtor filed amended schedules A/B and C [doc. 83]. In the

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amended schedule A/B, Debtor listed an interest in the cash held by the Sheriff. In her amended schedule C, Debtor claimed an exemption in \$10,000 of the funds.

On August 22, 2019, Debtor filed a motion requesting turnover of the funds (the "Motion") [doc. 88]. On September 16, 2019, Persolve filed an opposition to the Motion (the "Opposition") [doc. 96]. In the Opposition, Persolve argues that Debtor must initiate an adversary proceeding to obtain turnover. Persolve also argues that the funds are not property of the estate because the funds were levied prepetition, on April 24, 2018, and because Debtor did not claim an interest in the funds until she filed her amended schedules approximately one year after the petition date. On September 27, 2019, Debtor filed a reply to the Opposition (the "Reply") [doc. 100]. In the Reply, Debtor asserts that Debtor had an interest in the funds as of the petition date and that Debtor listed her interest in the funds in her amended schedules. For the first time in the Reply, Debtor also asserts that Persolve violated the automatic stay and requests damages pursuant to 11 U.S.C. § 362(k).

II. ANALYSIS

A. Need for Adversary Proceeding

In the Reply, Debtor requests damages under 11 U.S.C. § 362(k) based on Persolve's alleged violation of the automatic stay. Although generally an adversary proceeding is required for a request of turnover from a party other than the debtor, Fed. R. Bankr. P. 7001(1), an adversary proceeding is not required for damages, including a return of funds, incurred as a violation of the automatic stay. *See, e.g. In re Ballard*, 502 B.R. 311 (Bankr. S.D. Ohio 2013). Because Debtor now requests damages under 11 U.S.C. § 362(k), Debtor need not initiate an adversary proceeding. As discussed below, because Debtor raised § 362(k) for the first time in the Reply, the Court intends to provide Persolve an opportunity to respond to Debtor's arguments regarding whether Persolve willfully violated the automatic stay.

B. Whether the Funds are Property of the Estate

Pursuant to 11 U.S.C. § 541—

- (a) The commencement of a case under section 301, 302, or 303 of this

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Alba Interiano

Chapter 13

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.

Persolve does not appear to dispute the timeline in the Interiano Declaration, in which Debtor notes that Persolve served the Writ on April 24, 2018, but that Bank of America did not transfer the funds to Persolve until September 27, 2018, i.e., postpetition. Pursuant to California Code of Civil Procedure ("CCP") § 700.140—

- (a) Subject to Sections 684.115 and 700.160, to levy upon a deposit account, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the deposit account is maintained.
- (b) The execution lien that arises upon service of a writ of execution and notice of levy reaches only amounts in a deposit account at the time of service on the financial institution, including the amount of any deposit not yet finally collected unless the deposit is returned unpaid to the financial institution.
...
- (f) When the amount levied upon pursuant to this section is paid to the levying officer, the execution lien on the deposit account levied upon

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terminates.

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The Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") addressed a similar set of facts in *In re Hernandez*, 483 B.R. 713 (B.A.P. 9th Cir. 2012), with the exception that, in *Hernandez*, the levying officer seized the funds in the debtor's bank account prior to the petition date. *Hernandez*, 483 B.R. at 717. On these facts, the BAP referenced CCP § 700.140 as the controlling statute regarding the judgment creditor's rights in the deposit account—

Under the plain language of CCP § 700.140, Collect obtained an execution lien on the amounts in the deposit account at the time of the service on the financial institution. These amounts were not available for debtor's use. The lien was terminated under subsection (e) at the time the funds were paid to the levying officer. The termination of Collect's execution lien occurred well before debtor's bankruptcy.

Id., at 721. However, the BAP concluded that the termination of the execution lien did not necessarily equate with a termination of the judgment debtor's rights in the funds. *Id.* The BAP explained that certain exemption statutes automatically exempt funds from collection by judgment creditors; in *Hernandez*, the source of the judgment debtor's funds was the debtor's Social Security income, and California law exempts such income from collection. *Id.*, at 723-24. In light of this automatic exemption, the BAP held that the levy never extinguished the debtor's rights in the funds, even after the transfer from the debtor's account to the levying officer. *Id.*, at 724-25.

Here, Bank of America did not transfer the funds to the Sheriff until September 27, 2018, months after the petition date. Under CCP § 700.140(a) and (b), as of the petition date, Persolve had an execution lien against the debtor's account. However, because the levied amounts were not paid to the levying officer until after the petition date, Persolve's rights under CCP § 700.140 did not change *as of the petition date*; in other words, Persolve had an execution lien, but the funds remained in Debtor's account and became property of the estate as of the petition date.

Even if the Sheriff had obtained the funds prepetition, under *Hernandez*, neither the levy nor the transfer of the funds to the Sheriff would necessarily terminate Debtor's interest in the funds. At least as to the \$10,000 exemption claimed by Debtor under CCP § 704.070, the exemption appears to be automatic. Pursuant to CCP §

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704.070—

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- (b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 *are exempt* in the following amounts:
- (1) All of the paid earnings *are exempt* if prior to payment to the employee they were subject to an earnings withholding order or an earnings assignment order for support.
 - (2) Seventy-five percent of the paid earnings that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment *are exempt* if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support.

(emphases added). Because the statute appears to automatically exempt earnings as described above, Debtor would have an interest in \$10,000 of the funds even if Bank of America had transferred the funds prepetition. In any event, the funds remained in Debtor's account as of the petition date and, although Persolve had an execution lien against the account, the account was property of the estate.

Moreover, Debtor's amendment of her schedules does not have any bearing on whether the funds are property of the estate. Although Debtor did not claim an exemption in the funds until approximately one year after the petition date, debtors may amend their schedules "as a matter of course at any time before the case is closed." Fed. R. Bankr. P. 1009(a).

Persolve also argues that Debtor did not disclose the funds in her original schedules. In her original schedules, Debtor indicated she had \$500 in a Bank of America account as of the petition date. To the extent this account is the same Bank of America account against which Persolve had an execution lien, the Sheriff obtained \$58,245.25 from the account approximately two months after the petition date. Given that over two months passed between the petition date and the withdrawal of funds from Debtor's Bank of America account, it is unclear if Debtor inaccurately scheduled the amount of funds in her account as of the petition date. Nevertheless, Debtor's lack

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of disclosure of assets does not alter the characterization of the assets as property of the estate; other punitive measures are available against Debtor for any intentional failure to accurately complete her schedules.

In light of the authorities above, the funds are property of the estate. However, Debtor did not request damages under § 362(k) until filing the Reply. As such, Persolve has not had a meaningful opportunity to respond to Debtor's arguments regarding whether Persolve willfully violated the automatic stay. The Court will set a briefing schedule for Persolve to respond to Debtor's arguments under § 362(k).

III. CONCLUSION

The Court holds that the funds were property of the estate as of the petition date. The parties should be prepared to discuss a briefing schedule regarding Debtor's request for damages under 11 U.S.C. § 362(k).

Party Information

Debtor(s):

Alba Interiano

Represented By
Anthony Obehi Egbase

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

11:00 AM

1:19-11097 Patrick Alfred Fugate, JR

Chapter 13

#72.00 Motion RE: Objection to Claim Number 8 by Claimant Marcus Morales

Docket 22

Tentative Ruling:

I. BACKGROUND

On May 2, 2019, Patrick Alfred Fugate, Jr. ("Debtor") filed a voluntary chapter 13 petition. In his schedule E/F [doc. 1], Debtor listed a disputed nonpriority unsecured claim in favor of Chris Vallee ("Claimant") in the amount of \$0.00. Debtor indicated that this claim was based on a civil suit in state court.

On May 2, 2019, Debtor filed a chapter 13 plan (the "Plan") [doc. 2]. On June 26, 2019, the chapter 13 trustee filed an objection to the Plan [doc. 12]. That objection is not based on feasibility of the Plan. The hearing on the confirmation of the Plan is continued to November 12, 2019.

On July 9, 2019, Claimant filed proof of claim 8 (the "Claim") in the amount of \$1,000,000 based on the pending state court action for negligence, personal injury, intentional tort and punitive damages.

On September 6, 2019, Debtor filed an *Objection to Claim 8-1 of Marcus Morales* (the "Objection") [doc. 22], which is not supported by a declaration or any other evidence. [FN1]. In the Objection, Debtor requests that the Court enter an order barring disbursement of the Plan funds to pay the Claim pending estimation of the value of the Claim in the district court and to value the Claim at zero for the purposes of plan confirmation. As of October 3, 2019, no opposition has been filed.

II. DISCUSSION

A. Debtor's Burden of Proof

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

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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) (emphasis added); *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*") (emphasis added); *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).").

Here, Debtor has not met his burden of proof. Debtor argues that Claimant filed a skeletal proof of claim without any supporting documentation. However, Debtor did not include a declaration or any evidence in the Objection regarding the validity of the Claim. The Objection without evidence is inadequate to disallow the Claim, even though the Claim lacks documentation.

B. Claim Estimation

In the Objection, Debtor requests that the Court value the Claim at zero for the purposes of plan confirmation.

Under 11 U.S.C. § 502(c), there shall be estimated for purpose of allowance under this section ... any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case. "The statute's use of the words 'there shall be' makes it clear that estimation of contingent or

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unliquidated claims is mandated and required if the claims are such that their fixing or liquidation would ‘*unduly delay*’ the case’s administration.” *In re N. Am. Health Care, Inc.*, 544 B.R. 684, 688 (Bankr. C.D. Cal. 2016) (emphasis added). Whether a claim is “unliquidated” and subject to estimation depends on whether it is capable of ready computation. *In re Audre, Inc.*, 216 B.R. 19, 30 (9th Cir. BAP 1997).

Estimation is a summary procedure whereby the Court estimates the value of a claim. *N. Am. Health Care*, 544 B.R. at 688. Estimation can take various forms and can be made for different purposes. *Id.* “Title 28 of the United States Code draws a critically important distinction between the estimation of an unliquidated claim for the purpose of confirming a plan (which includes estimating for voting because plan confirmation usually requires voting by creditors) and estimation for purposes of distribution.” *Id.* at 688-89. The former is a core matter; the latter is noncore. 28 U.S.C. § 157(b)(2)(B).

28 U.S.C. § 157 delineates the bankruptcy courts’ jurisdiction as follows:

(b)(1) Bankruptcy judges may hear and determine *all core proceedings* arising under title 11, or arising in a case under title 11, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(b)(2) core proceedings include, but are not limited to--

(B) allowance and disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12 or 13 of title 11 *but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11. . . .*

(emphasis added).

Pursuant to the § 157(b)(2)(B) exclusion, “a bankruptcy court may not hear proceedings to liquidate or estimate personal injury tort or wrongful death claims for the purpose of determining the distribution payable to such claimants.” *In re Chateaugay Corp.*, 111 B.R. 67, 72–73 (Bankr. S.D.N.Y. 1990); *see also In re Waterman S.S. Corp.*, 63 B.R. 435, 436 (Bankr.S.D.N.Y.1986); *In re UNR Industries*,

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Inc., 45 B.R. 322, 324–25 (N.D.Ill.1984). "However, the estimation of such claims by a bankruptcy court for other purposes, such as determining the feasibility of a debtor's plan of reorganization, is permissible and constitutes a "core" proceeding." *Chateaugay Corp.*, 111 B.R. at 72–73; *see also, e.g., N. Am. Health Care*, 544 B.R. at 688; *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1012 (4th Cir.1986); *In re Johns–Manville Corp.*, 45 B.R. 823, 825–26 (S.D.N.Y.1984); *In re Poole Funeral Chapel, Inc.*, 63 B.R. 527, 532 (Bankr.N.D.Ala.1986). "It [also] does not limit a bankruptcy court's ability to address substantive issues regarding the validity of claims against the estate as a matter of law." *In re G-I Holdings, Inc.*, 323 B.R. 583, 614 (Bankr. D.N.J. 2005).

Here, neither Debtor nor Claimant has filed the state court complaint with the Court. However, both parties represent that the state court action involves a personal injury claim. If that is true, the Court may not have jurisdiction to estimate the Claim for purposes of distribution under the Plan.

The Court may estimate the Claim for purposes other than distribution, such as feasibility or voting on confirmation of a plan. The Court also may determine the validity of the Claim as a matter of law. Here, Debtor requests that the Court value the Claim for plan confirmation purposes. However, the Court does not need to value the Claim for plan confirmation purposes.

Neither the chapter 13 trustee nor any other creditors have objected to the Plan based on feasibility. Debtor has provided no evidence that the Claim is invalid. Further, administration of Debtor's case will not be unduly delayed, because the Court can confirm the Plan, without estimating the Claim.

C. 11 U.S.C. § 109(e)

In the Objection, Debtor argues that the Claim pushes Debtor over the debt limit in 11 U.S.C. § 109(e) and that exceeding the debt limit will make plan confirmation untenable, leading to dismissal of the bankruptcy case.

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 \$419,275.00 may be a debtor under chapter 13. Only debt that is both

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11:00 AM

CONT... Patrick Alfred Fugate, JR

Chapter 13

noncontingent and liquidated on the date the petition is filed is counted toward the dollar limit set out in § 109(e). *Id.* "A debt is liquidated if the amount of the debt is readily determinable." *In re Ho*, 274 B.R. 867, 873 (B.A.P. 9th Cir. 2002). "Whether a debt is subject to 'ready determination' depends on whether the amount is easily calculable or whether an extensive hearing is needed to determine the amount of the debt." *Id.*

Here, the Claim appears to be unliquidated. Neither Debtor nor Claimant has presented evidence of a judgment in the state court action. Further, to determine the amount of the Claim, the Court may need to hold evidentiary hearings. Accordingly, at this time, the Claim will not be counted in the debt limit under § 109(e). Thus, for plan confirmation purposes, the Court does not need to estimate the Claim, at this time.

D. Disbursements under the Plan

In the Objection, Debtor also requests that the Court enter an order barring distribution of the Plan funds to pay the Claim, pending the district court's possible estimation of the value of the Claim. Debtor has provided no authority for this request.

In the Objection, Debtor did not meet the standards for the Court to disallow the Claim. Consequently, as of now, Claimant holds an allowed claim against the bankruptcy estate, and the Court will not bar distribution of funds to pay the Claim, in accordance with the Plan (if and when the Plan is confirmed).

Debtor subsequently may file an objection to the Claim that is supported by evidence.

III. CONCLUSION

For the reasons discussed above, the Court will overrule the Objection, without prejudice.

The Court will prepare the order.

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CONT... **Patrick Alfred Fugate, JR**

Chapter 13

FOOTNOTES

1. Marcus Morales is Claimant's attorney.

Party Information

Debtor(s):

Patrick Alfred Fugate JR

Represented By
David H Chung

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Tuesday, October 8, 2019

Hearing Room 301

11:00 AM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 13

#73.00 Debtors' Motion to Convert Case From Chapter 13 to Chapter 11

Docket 24

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.

Party Information

Debtor(s):

Melida Jimenez

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Joint Debtor(s):

Jose Luis Jimenez Escobar

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

11:30 AM

1:18-11729 Richard Philip Dages

Chapter 11

#74.00 Motion for order determining value of collateral
fr. 09/10/19;

Docket 94

***** VACATED *** REASON: Stipulation resolving motion entered on
10/2/19 [doc. 110].**

Tentative Ruling:

- NONE LISTED -

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
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Tuesday, October 8, 2019

Hearing Room 301

11:30 AM

1:19-11241 Ernestina Tejada Flores

Chapter 13

#75.00 Motion for Order Determining Value of Collateral

Docket 21

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):

Ernestina Tejada Flores

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
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Thursday, October 10, 2019

Hearing Room 301

1:00 PM

1:18-11181 Rowena Benito Macedo

Chapter 11

#1.00 U.S. Trustee's Motion to dismiss or convert case

Docket 100

***** VACATED *** REASON: Motion withdrawn 9/5/19 - jc**

Tentative Ruling:

- NONE LISTED -

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 10, 2019

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#2.00 Debtor's Second Amended Disclosure Statement hearing
describing Second Amended Chapter 11 Plan of Reorganization

fr. 8/29/19

Docket 123

Tentative Ruling:

Proposed dates and deadlines regarding "Debtor's Second Amended Chapter 11 Plan of Reorganization" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "Debtor's Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization:"

Hearing on confirmation of the Plan: **December 5, 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: **October 18, 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: **November 15, 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: **November 25, 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.

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1:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

Party Information

Debtor(s):

Mr. Tortilla, Inc.

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
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Thursday, October 10, 2019

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#3.00 Status conference re chapter 11 case

fr. 10/11/18; 12/6/18; 2/21/19; 4/11/2019; 6/20/19; 8/8/19; 8/29/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on December 5, 2019**, to be held with the confirmation hearing on the debtor's second amended chapter 11 plan of reorganization [doc. 124].

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, October 10, 2019

Hearing Room 301

1:00 PM

1:19-11849 Beverly R Lux-Kaplan

Chapter 7

#4.00 U.S. Trustee's Motion under 11 U.S.C. § 110; for disgorgement of fees and fines against bankruptcy petition preparer Patty Melinda aka Patty Perez

Docket 20

Tentative Ruling:

Grant. Pursuant to 11 U.S.C. § 110(h)(5), respondent must remit the fines set forth below to the Office of the U.S. Trustee:

1. Respondent gave legal advice in violation of 11 U.S.C. § 110(e)(2): **\$500.00**
2. Respondent used the word "legal" in advertisements in violation of 11 U.S.C. § 110(f): **\$500.00**
3. Respondent failed to notify the debtor of the maximum allowable fee chargeable by a bankruptcy petition preparer in violation of 11 U.S.C. § 110(h)(1): **\$500.00**

Pursuant to 11 U.S.C. § 110(h)(3)(A), the Court will also require disgorgement of **\$650.00** in unreasonable fees paid by the debtor. Finally, pursuant to 11 U.S.C. § 110(i)(1)(B), the Court will order that respondent pay **\$2,000.00** in damages to the debtor based on the respondent's fraudulent, unfair or deceptive conduct.

Based on the above, respondent must remit the following amounts to the Office of the U.S. Trustee: **\$2,650.00 payable to the debtor and \$1,500.00 payable to the U.S. Trustee.** Respondent must send **certified** funds to the Office of the U.S. Trustee within 30 days after the order is served.

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.

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1:00 PM

CONT... Beverly R Lux-Kaplan

Chapter 7

Party Information

Debtor(s):

Beverly R Lux-Kaplan

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, October 10, 2019

Hearing Room 301

2:00 PM

1:19-11690 Mansour Cisse

Chapter 7

#5.00 Debtor's Motion for redemption of 2016 Nissan Rogue financed through Nissan Motor Acceptance Corporation under 11 U.S.C. 722

Docket 10

***** VACATED *** REASON: Order resolving motion entered on 10/7/19 [doc. 16].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mansour Cisse

Represented By
Rabin J Pournazarian

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, October 10, 2019

Hearing Room 301

2:00 PM

1:16-10934 Amparo Cetina

Chapter 7

**#6.00 Debtor's motion to avoid lien under 11 U.S.C. § 522(f)
with LVNV FUNDING LLC**

Docket 26

Tentative Ruling:

Deny.

On February 22, 2019, the debtor filed his first motion to avoid the lien (the "First Motion") [doc. 15] of LVNV Funding, LLC ("LVNV"). LVNV opposed the First Motion [doc. 19]. On April 11, 2019, the Court held a hearing on the First Motion. At that time, the Court continued the hearing to provide the debtor an opportunity to supplement the First Motion with authenticated mortgage statements reflecting the balance of the voluntary liens against the subject property, dated close in time to the petition date, and evidence of the value of the subject property as of the petition date.

On May 8, 2019, the debtor filed a declaration attempting to supplement with the information required by the Court [doc. 24]. On May 23, 2019, the Court held a continued hearing on the First Motion. At that time, the Court denied the First Motion because: (A) the debtor failed to provide mortgage statements reflecting the balance of the voluntary liens against the property close in time to the petition date; (B) although the debtor provided two appraisals, the debtor did not provide a declaration by the appraiser signed under penalty of perjury; and (C) the debtor did not file a reply responding to the arguments in the opposition filed by LVNV. On May 31, 2019, the Court entered an order denying the First Motion.

On May 28, 2019, the debtor filed the current motion to avoid LVNV's lien (the "Motion") [doc. 26]. This time, although the debtor attaches mortgage statements reflecting the balance of the voluntary lien in favor of HSBC Mortgage Corp. ("HSBC") close in time to the petition date, the debtor did not authenticate the mortgage statement in his declaration.

In addition, the debtor failed to provide a declaration, signed under penalty of perjury, by the appraiser who completed the appraisal attached to the Motion. Further, the

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CONT...

Amparo Cetina

Chapter 7

information in the Motion does not match the information in the debtor's declaration or the (unauthenticated) documents attached thereto. In the declaration and attached documents, the debtor indicates that, as of the petition date, the subject property was worth \$400,000 and the balance of HSBC's lien against the property was \$510,631.60. In the Motion, the debtor indicates that, as of the petition date, the subject property was worth \$587,850 and the balance of HSBC's lien against the property was \$500,000.

The debtor also attached his original schedule C to the Motion. In his original schedule C, the debtor did not claim an exemption in the subject property. In fact, the debtor claimed only a \$0.00 exemption in his amended schedule C. Although the debtor asserted in the First Motion and this Motion that he is entitled to a \$24,060 homestead exemption, to date, the debtor has not amended his schedule C to claim an exemption in this amount.

On June 11, 2019, LVNV filed an opposition to the Motion [doc. 30]. The debtor did not set the Motion for hearing; instead, on September 25, 2019, LVNV filed a notice of hearing on the Motion, amended on September 27, 2019 [docs. 32, 34].

On October 8, 2019, the debtor filed a belated reply declaration [doc. 36]. The debtor included a declaration by Leslie A. Boyle, the appraiser who completed the appraisals on the subject property, signed under penalty of perjury. Although the debtor has now provided evidence of the value of the subject property, the debtor did not address any of the other deficiencies above.

In light of the above, the Court will deny the Motion.

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

Party Information

Debtor(s):

Amparo Cetina

Represented By
Beatriz Chen

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2:00 PM

CONT... Amparo Cetina

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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8:30 AM

1:19-11663 Romulo Guerra

Chapter 7

#1.00 Reaffirmation Agreement Between Debtor and Mechanics Bank

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Romulo Guerra

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
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Tuesday, October 15, 2019

Hearing Room 301

8:30 AM

1:19-11666 Philip George Latour

Chapter 7

#2.00 Reaffirmation Agreement Between Debtor and Onemain Financial Group, LLC

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philip George Latour

Pro Se

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Hearing Room 301

8:30 AM

1:19-11950 Farzan Bassala

Chapter 7

#4.00 Reaffirmation Agreement Between Debtor and Daimler Trust

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Farzan Bassala

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Wednesday, October 16, 2019

Hearing Room 301

9:30 AM

1:15-11825 Donald M. Baarns and Lisa A. Baarns

Chapter 13

#1.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 8/7/19; 9/11/19

Docket 41

Tentative Ruling:

On July 31, 2019, the debtors filed an untimely response to the motion for relief from the automatic stay [doc. 43]. The debtors did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

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 debtors are borrowers as defined in Cal. Civ. Code § 2920.5(c)(2)(C).

The 14-day stay prescribed by FRBP 4001(a)(3) is NOT waived.

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

Party Information

Debtor(s):

Donald M. Baarns

Represented By
Ali R Nader

**United States Bankruptcy Court
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CONT... Donald M. Baarns and Lisa A. Baarns

Chapter 13

Joint Debtor(s):

Lisa A. Baarns

Represented By
Ali R Nader

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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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. 8/21/19; 8/28/19; 9/23/19; 9/24/19(stip)

Docket 131

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
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San Fernando Valley
Judge Victoria Kaufman, Presiding
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Hearing Room 301

9:30 AM

1:19-12206 F.A. SOLIMAN MANAGEMENT, INC.

Chapter 7

#2.10 Motion for relief from stay [UD]

REXFORD INDUSTRIAL REALTY, L.P.
VS
DEBTOR

fr. 10/2/19

Docket 5

Tentative Ruling:

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

On July 22, 2019, movant served on the debtor a 5 Day Notice to Pay Rent or Quit on the debtor (“Notice to Quit”) [doc. 5, Exh. 2]. The Notice to Quit contains an election to declare the lease forfeited. *Id.* On August 2, 2019, movant filed an unlawful detainer complaint (“UD Complaint”) in state court against the debtor [doc 5, Exh. 3].

On September 2, 2019, the debtor filed its chapter 7 petition. On September 5, 2019, movant filed and served the pending motion [doc. 5]. On October 10, 2019, the debtor untimely filed its opposition (the “Opposition”) [doc.16] and declaration of Fahd Soliman in support of the Opposition [doc. 15].

Pursuant to *Vanderpark Props. Inc. v. Buchbinder (In re Windmill Farms, Inc.)*, 841 F.2d 1467 (9th Cir. 1987), under California law a nonresidential lease:

terminates for nonpayment of rent at least by the time the lessor files an unlawful detainer action, provided that a proper three-days’ notice to pay rent or quit has been given, and the lessee has failed to pay the rent in default within the three-day period, and further provided that the lessor’s notice contained an election to declare the lease forfeited.

Id. at 1471 (9th Cir. 1988).

Here, the parties dispute whether movant provided a proper three-days’ notice to pay

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CONT... F.A. SOLIMAN MANAGEMENT, INC. Chapter 7

rent or quit. On August 2, 2019, movant filed the UD Complaint. Subsequently, on September 2, 2019, the debtor filed its chapter 7 petition. If the conditions under California law have been met, as of the filing of the UD Complaint, the nonresidential lease at issue would have been terminated.

In the Opposition, debtor argues, among other things, that the Notice to Quit is defective and that the lease was not terminated prepetition. There is cause to grant relief from stay to allow the parties to adjudicate these issues in state court. The state court is a specialized tribunal that has the expertise to hear the UD Complaint.

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.

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

Party Information

Debtor(s):

F.A. SOLIMAN MANAGEMENT,	Represented By Dominic Afzali
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Movant(s):

Rexford Industrial Realty, L.P.	Represented By Lane M Nussbaum
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Trustee(s):

David Seror (TR)	Pro Se
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9:30 AM

1:18-10885 Qiuling Sun Kai

Chapter 7

#3.00 Motion for relief from stay [AN]

JONATHAN WERSHOW, AS SPECIAL GARDIAN AD LITEM
VS
DEBTOR

Docket 66

Tentative Ruling:

Grant relief from the automatic 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 and 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):

Qiuling Sun Kai

Represented By
William E Windham

Movant(s):

Jonathan Wershow

Represented By
Yi S Kim

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CONT...

Qiuling Sun Kai

Chapter 7

James R Felton

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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

Hearing Room 301

9:30 AM

1:19-12005 Mabel Ayala

Chapter 7

#4.00 Motion for relief from stay [AN]

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMANY
VS
DEBTOR

Docket 12

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.

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.

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):

Mabel Ayala

Pro Se

Movant(s):

State Farm Mutual Automobile

Represented By
Richard L Mahfouz

**United States Bankruptcy Court
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9:30 AM

CONT... Mabel Ayala

Chapter 7

Trustee(s):

Diane C Weil (TR)

Pro Se

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Wednesday, October 16, 2019

Hearing Room 301

9:30 AM

1:19-11922 Ger Jamie Cha

Chapter 7

#5.00 Motion for relief from stay [PP]

TD AUTO FINANCE LLC
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):

Ger Jamie Cha

Represented By
Navid Kohan

Movant(s):

TD Auto Finance LLC

Represented By
Sheryl K Ith

**United States Bankruptcy Court
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CONT...

Ger Jamie Cha

Jennifer H Wang

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, October 16, 2019

Hearing Room 301

9:30 AM

1:19-12167 Vicky Kay Fayton

Chapter 7

#6.00 Motion for relief from stay [PP]

ACAR LEASING LTD d/b/a GM FINANCIAL LEASING
VS
DEBTOR

Docket 8

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):

Vicky Kay Fayton

Represented By
Karen Ware

Movant(s):

ACAR Leasing LTD d/b/a GM

Represented By
Jennifer H Wang

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CONT... Vicky Kay Fayton

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
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Wednesday, October 16, 2019

Hearing Room 301

9:30 AM

1:19-11491 Frank Nagib Khallouf

Chapter 13

#7.00 Motion for relief from stay [RP]

LOGIX FEDERAL CREDIT UNION
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):

Frank Nagib Khallouf

Represented By
Kevin T Simon

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

Wednesday, October 16, 2019

Hearing Room 301

9:30 AM

CONT... Frank Nagib Khallouf

Chapter 13

Movant(s):

Logix Federal Credit Union

Represented By
Diana Torres-Brito

Trustee(s):

Elizabeth (SV) 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 16, 2019

Hearing Room 301

9:30 AM

1:19-11491 Frank Nagib Khallouf

Chapter 13

#8.00 Motion for relief from stay [PP]

JPMORGAN CHASE BANK, N.A.
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 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):

Frank Nagib Khallouf

Represented By
Kevin T Simon

Movant(s):

JPMorgan Chase Bank, N.A.

Represented By

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

Wednesday, October 16, 2019

Hearing Room 301

9:30 AM

CONT... Frank Nagib Khallouf

Raymond Jereza

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 302 Calendar**

Wednesday, October 16, 2019

Hearing Room 302

9:30 AM

1:18-10033 Mildred Annett Barajas

Chapter 13

#9.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY, FSB
VS
DEBTOR

Docket 49

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mildred Annett Barajas

Represented By
Steven A Wolvek

Movant(s):

WILMINGTON SAVINGS FUND

Represented By
Kelsey X Luu

Trustee(s):

Elizabeth (SV) 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 16, 2019

Hearing Room 301

9:30 AM

1:18-12349 Chinweike Okonkwo

Chapter 13

#10.00 Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING, LLC
VS
DEBTOR

Docket 59

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):

Chinweike Okonkwo

Represented By
Laleh Ensafi

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

Wednesday, October 16, 2019

Hearing Room 301

9:30 AM

CONT... Chinweike Okonkwo

Chapter 13

Movant(s):

Lakeview Loan Servicing, LLC

Represented By
Darlene C Vigil
Cassandra J Richey

Trustee(s):

Elizabeth (SV) 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 16, 2019

Hearing Room 301

9:30 AM

1:19-10795 Jeffrey Charles Yellin

Chapter 13

#11.00 Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING, LLC
VS
DEBTOR

Docket 38

*** VACATED *** REASON: Continued by Stipulation to 11/6/19 at 9:30
a.m. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Charles Yellin

Represented By
Jeffrey J Hagen

Movant(s):

Lakeview Loan Servicing, LLC

Represented By
Cassandra J Richey
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, October 16, 2019

Hearing Room 301

9:30 AM

1:18-12939 Arianne Beth Pachter

Chapter 13

#12.00 Motion for relief from stay [RP]

19350 SHERMAN WAY HOMEOWNERS ASSOCIATION
VS
DEBTOR

Docket 29

Tentative Ruling:

Because the debtor is not current postpetition, and has paid movant postpetition with checks that were returned for "Non-Sufficient Funds," 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 Court will not waive the 14-day stay prescribed by FRBP 4001(a)(3).

Any other request for relief is denied.

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

Party Information

Debtor(s):

Arianne Beth Pachter

Represented By
William G Cort

Movant(s):

19350 Sherman Way Homeowners

Represented By
Alyssa B Klausner

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

Wednesday, October 16, 2019

Hearing Room 301

9:30 AM

CONT... Arianne Beth Pachter

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 16, 2019

Hearing Room 301

9:30 AM

1:19-12093 Tony Jesus Almeida

Chapter 13

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

Docket 15

***** VACATED *** REASON: Hearing held on 9/18/19 at 9:30 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tony Jesus Almeida

Represented By
William J Smyth

Trustee(s):

Elizabeth (SV) 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 16, 2019

Hearing Room 301

9:30 AM

1:19-12274 RDFORD PROPERTIES, INC.

Chapter 11

#13.10 Motion for relief from stay [RP]

REDWOOD BPL HOLDINGS, INC.
VS
DEBTOR

Docket 40

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.

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 16, 2019

Hearing Room 301

9:30 AM

CONT... RDFORD PROPERTIES, INC.

Chapter 11

Debtor(s):

RDFORD PROPERTIES, INC.

Represented By
Matthew Abbasi

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

Wednesday, October 16, 2019

Hearing Room 301

1:30 PM

1:18-10329 Ali P Dargah

Chapter 13

Adv#: 1:18-01045 Dargah v. Dargah et al

- #14.00** Pre-trial 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; 12/12/18; 5/8/19; 7/17/19

Docket 10

***** VACATED *** REASON: Order granting summary judgment [doc. 54] entered 5/31/19 & order dismissing cross-complaint [doc. 61] entered 7/30/19.**

Tentative Ruling:

- NONE LISTED -

Party Information

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

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

Wednesday, October 16, 2019

Hearing Room 301

1:30 PM

CONT... Ali P Dargah Chapter 13

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 16, 2019

Hearing Room 301

1:30 PM

1:19-10319 James Lamont Dubose

Chapter 7

Adv#: 1:19-01060 Jackson v. Dubose

#15.00 Status conference re: complaint to determine non-dischargeability of debt

fr. 7/17/19

Docket 1

Tentative Ruling:

See calendar no. 18, at 2:30 p.m.

Plaintiff's appearance on October 16, 2019 is excused.

Party Information

Debtor(s):

James Lamont Dubose

Represented By
Stephen L Burton

Defendant(s):

James Lamont Dubose

Pro Se

Plaintiff(s):

Steven Jackson

Represented By
Brian Hockett

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 16, 2019

Hearing Room 301

1:30 PM

1:19-10448 Linda Moraga

Chapter 7

Adv#: 1:19-01061 The Roberts Container Corporation v. Moraga

#16.00 Status conference re: complaint to determine nondischargeability of debt pursuant to 11 U.S.C. 7523

fr. 7/17/19

Docket 1

Tentative Ruling:

During the prior status conference, the Court instructed the plaintiff to request entry of default and, upon entry of default, to file a motion for default judgment no later than **September 19, 2019**. To date, the plaintiff has neither requested entry of default nor timely filed a motion for default judgment. Consequently, the Court will issue an Order to Show Cause why this adversary proceeding should not be dismissed for failure to prosecute.

Party Information

Debtor(s):

Linda Moraga

Represented By
Daniel King

Defendant(s):

Linda Moraga

Pro Se

Plaintiff(s):

The Roberts Container Corporation

Represented By
Michael A Wallin

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 16, 2019

Hearing Room 301

1:30 PM

1:19-11131 Amornrat Kaewthongkam

Chapter 7

Adv#: 1:19-01098 Dechathong v. Kaewthongkam

- #17.00** Status conference re: complaint for non-dischargeability of debt under 523(a) for:
1. False pretenses, false representation and fraud [§523(a)(@)A];
 2. Willful and malicious injury [§523(a)(6); and
 3. For denial of discharge pursuant to 11 U.S.C. 7727(a)(2)(A), (a)(3), (a)(4)(A), and (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 January 15, 2020.**

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 **December 16, 2019.**

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 16, 2019 is excused.

Party Information

Debtor(s):

Amornrat Kaewthongkam

Represented By
Byron M Johnson

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

Wednesday, October 16, 2019

Hearing Room 301

1:30 PM

CONT... Amornrat Kaewthongkam

Chapter 7

Defendant(s):

Amornrat Kaewthongkam

Pro Se

Plaintiff(s):

Vanee Dechathong

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**

Wednesday, October 16, 2019

Hearing Room 301

2:30 PM

1:19-10319 James Lamont Dubose

Chapter 7

Adv#: 1:19-01060 Jackson v. Dubose

#18.00 Plaintiff's amended motion for default judgment

fr. 9/4/19

Docket 29

Tentative Ruling:

Grant motion for default judgment pursuant to 11 U.S.C. § 523(a)(2). Movant will be awarded a judgment for the principal amount of \$570,686.73.

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):

James Lamont Dubose

Represented By
Stephen L Burton

Defendant(s):

James Lamont Dubose

Pro Se

Plaintiff(s):

Steven Jackson

Represented By
Brian Hockett
Jeffrey N Brown

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 16, 2019

Hearing Room 301

2:30 PM

1:19-10790 Nelson Sargsyan

Chapter 7

Adv#: 1:19-01080 Radium2 Capital Inc. v. Sargsyan

#19.00 Plaintiff's motion for default judgment

Docket 12

***** VACATED *** REASON: Order of dismissal entered 10/8/19 [Dkt.22]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nelson Sargsyan

Represented By
Thomas B Ure

Defendant(s):

Nelson Sargsyan

Pro Se

Plaintiff(s):

Radium2 Capital Inc.

Represented By
Jennifer Witherell Crastz

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 16, 2019

Hearing Room 301

2:30 PM

1:19-10790 Nelson Sargsyan

Chapter 7

Adv#: 1:19-01080 Radium2 Capital Inc. v. Sargsyan

#20.00 Status conference re: complaint for determination of nondischargeability of debt pursuant to §523(a)(2)(A) & (B)

fr. 9/18/19

Docket 1

***** VACATED *** REASON: Order of dismissal entered 10/8/19 [Dkt.22]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nelson Sargsyan

Represented By
Thomas B Ure

Defendant(s):

Nelson Sargsyan

Pro Se

Plaintiff(s):

Radium2 Capital Inc.

Represented By
Jennifer Witherell Crastz

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 16, 2019

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#21.00 Defendant's motion to dismiss pursuant to Rules 8,9, and 12

fr. 10/2/19

Docket 12

Tentative Ruling:

The Court will continue this matter to **November 13, 2019 at 2:30 p.m.**

Appearances on October 16, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Defendant(s):

Kenneth C. Scott

Represented By
Arash Shirdel

My Private Practice, Inc. a

Represented By
Arash Shirdel

Kenneth Scott, PSY.D. a California

Represented By
Arash Shirdel

Plaintiff(s):

H. Samuel Hopper

Represented By
Daniel Parker Jett

Trustee(s):

Elizabeth (SV) 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 16, 2019

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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

Wednesday, October 16, 2019

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #22.00** Status conference re amended complaint for:
1. Declaratory relief re nondischargeability of Civil Penalties [11 U.S.C. sec.523(a)(7)]
 3. Declaratory relief re nondischargeability of fraud damages [11 U.S.C. sec. 523(a)(2), (4)]
 3. Declaratory relief re ownership of \$17,247 in business account
 4. Annulment of transfer in fraud of creditors
 5. Fraud and deceit [Cal.Civ. Code, secs. 1572-1573, 1709-1710]
 6. Unlawful retaliation [Cal. Lab. Code, sec. 98.6]
 7. Unlawful retaliation [Cal. Lab. Code, sec. 1102.5]
 8. Failure to maintain and timely produce personnel records [Cal. Lab. Code, sec. 1198.5(k)]

fr. 9/4/19; 10/2/19

Docket 8

Tentative Ruling:

The Court will continue this matter to **November 13, 2019 at 2:30 p.m.**

Appearances on October 16, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Defendant(s):

Kenneth C. Scott

Represented By
Arash Shirdel

My Private Practice, Inc. a

Represented By
Arash Shirdel

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

Wednesday, October 16, 2019

Hearing Room 301

2:30 PM

CONT... **Kenneth C. Scott**
Kenneth Scott, PSY.D. a California

Represented By
Arash Shirdel

Chapter 13

Plaintiff(s):

H. Samuel Hopper

Represented By
Daniel Parker Jett

Trustee(s):

Elizabeth (SV) 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 16, 2019

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#23.00 Status conference re: creditor H. Samuel Hopper's motion to dismiss debtor Kenneth C. Scott's chapter 13 petition

fr. 7/17/19; 9/4/19; 10/2/19

Docket 70

Tentative Ruling:

The Court will continue this matter to **November 13, 2019 at 2:30 p.m.**

Appearances on October 16, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) 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 16, 2019

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#24.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper.
fr. 5/14/19

Docket 55

Tentative Ruling:

The Court will continue this matter to **November 13, 2019 at 2:30 p.m.**

Appearances on October 16, 2019 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (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, October 17, 2019

Hearing Room 301

10:30 AM

1:99-12461 Joseph Walter Jackson and Katherine Esther Jackson

Chapter 7

#1.00 Trustee's Final Report and Hearing on Applications for Compensation

Amy L. Goldman, Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith LLP, Attorneys for the Trustee

SLBiggs, Accountants for the Trustee

Docket 385

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee – approve fees of \$3,250.00 and reimbursement of expenses of \$5.25, pursuant to 11 U.S.C. § 330, on a final basis.

Lewis Brisbois Bisgaard & Smith LLP, counsel to chapter 7 trustee – approve fees of \$11,655.00 in fees and reimbursement of expenses of \$576.37, pursuant to 11 U.S.C. § 330, on a final basis.

SLBiggs, A Division of SingerLewak, accountant to chapter 7 trustee – approve \$3,862.50 in fees and reimbursement of \$213.89 in expenses, pursuant to 11 U.S.C. § 330, on a final 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 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):

Joseph Walter Jackson

Represented By

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

Thursday, October 17, 2019

Hearing Room 301

10:30 AM

CONT... Joseph Walter Jackson and Katherine Esther Jackson
Ronald E Michelman

Chapter 7

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, October 17, 2019

Hearing Room 301

10:30 AM

1:10-17214 Darin Davis

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Danning Gill Diamond & Kollitz LLP, general counsel to Chapter 7 Trustee

SLBiggs, Accountant to Chapter 7 Trustee

fr. 9/19/19

Docket 320

Tentative Ruling:

David Seror, chapter 7 trustee – approve fees of \$39,980.00 and reimbursement of expenses of \$79.88, pursuant to 11 U.S.C. § 330, on a final basis.

SLBiggs, A Division of SingerLewak, accountant to chapter 7 trustee – approve \$4,977.50 in fees and reimbursement of \$177.89 in expenses, 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.

Regarding the third and final application [doc. 314] by Danning Gill Diamond & Kollitz LLP ("Danning Gill"), the Court will continue this hearing to **November 7, 2019 at 10:30 a.m.** in order to assess the application. **By no later than October 21, 2019**, Danning Gill must deliver a Judge's copy of their third and final fee application to the Court.

Appearances on October 17, 2019 are excused.

Party Information

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

Thursday, October 17, 2019

Hearing Room 301

10:30 AM

CONT... Darin Davis

Chapter 7

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, October 17, 2019

Hearing Room 301

10:30 AM

1:18-11342 Victory Entertainment Inc

Chapter 7

#3.00 Final fee and expense application of
George J Paukert, debtor's attorney

fr. 9/5/19

Docket 154

Tentative Ruling:

George J. Paukert ("Applicant"), counsel to the debtor and the former debtor-in-possession – approve fees in the amount of \$4,078.20 and reimbursement of expenses in the amount of \$168.20, pursuant to 11 U.S.C. § 330, for the period between May 25, 2018 through July 12, 2018, on an final basis. The Court will delay Applicant collecting any approved fees or reimbursement of expenses before payments to the chapter 7 trustee and other estate professionals are made, and it is clear that sufficient funds are available to pay allowed chapter 11 administrative expenses.

The Court will not approve \$6,890.00 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

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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 reduce the fees billed by Applicant for the services identified below because they appear excessive:

Timekeeper	Date	Description	Time	Fee	Reduced Time	Reduced Fee
George Paukert	6/28/18	Travel to 341(a) meeting of creditors	6.20	\$1,240.00	3.10	\$620.00
George Paukert	6/29/18	Prep and filing opposition to UST motion to dismiss	3.50	\$700.00	2.00	\$400.00
George Paukert	7/5/18	Travel to hearing on UST Motion to Dismiss	5.10	\$1,020.00	2.55	\$510.00

The Court will not allow the fees billed by Applicant for the services identified below. Applicant did not properly serve the motion, and it was denied:

Timekeeper	Date	Description	Time	Fee
George Paukert	5/25/18	Filing motion order auth debtor provide adeq assur utilities	0.30	\$60.00
George Paukert	7/9/18	Prep and filing utility motion (2)	1.30	\$260.00

The Court will not allow the fees billed by Applicant for the services identified below because the services were not necessary to the administration of the case:

Timekeeper	Date	Description	Time	Fee
George Paukert	5/25/18	Filing motion for order auth payment of prepetition payroll	0.30	\$60.00

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George Paukert	5/30/18	Filing motion for setting budget for interim use of est property	0.30	\$60.00
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The Court not allow the fees billed by Applicant for the services identified below. Applicant was no longer counsel to the debtor in possession. On July 12, 2018, the Court entered an order appointing a chapter 11 trustee [doc. 53]. In connection with the appointment of a chapter 11 trustee, Applicant was no longer a professional employed by the estate and was no longer entitled to compensation from the estate.

Timekeeper	Date	Description	Time	Fee
George Paukert	7/26/18	Status conference hearing	0.30	\$60.00
George Paukert	7/26/18	Travel to status conference hearing	5.50	\$1,100.00
George Paukert	9/6/18	Prep and filing opposition of chapter 11 trustee motion to convert	3.70	\$740.00
George Paukert	9/20/18	Hearing order to show cause	1.50	\$300.00
George Paukert	9/20/18	Travel to hearing on order to show cause	5.70	\$1,140.00
George Paukert	12/6/18	Continued meeting of creditors	1.10	\$220.00
George Paukert	12/6/18	Travel to continued meeting of creditors	5.10	\$1,020.00

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,

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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 Applicant for the services identified below:

Timekeeper	Date	Description	Time	Fee
George Paukert	5/25/18	Filing of voluntary petition	0.20	\$40.00
George Paukert	5/25/18	Filing 20 largest unsec cred	0.10	\$20.00
George Paukert	5/25/18	Filing master mailing list	0.10	\$20.00
George Paukert	5/28/18	Filing corporate resolution	0.10	\$20.00
George Paukert	5/28/18	Filing equity security holders	0.10	\$20.00
George Paukert	6/6/18	Filing statement of rel. cases	0.10	\$20.00
George Paukert	6/6/18	Filing sum assets/liabilities	0.10	\$20.00
George Paukert	6/6/18	Filing schedules a to j	0.50	\$100.00

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George Paukert	6/6/18	Filing statement of financial affairs	0.20	\$40.00
George Paukert	6/6/18	Filing statement of comp.	0.10	\$20.00
George Paukert	6/6/18	Filing verif of mailing list	0.10	\$20.00

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

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

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1:18-12354 **MidiCi Group, LLC**

Chapter 11

#4.00 First interim application of Lathrop Gage, LLP for payment of fees and reimbursement of expenses by attorneys for debtor for the period of September 21, 2018 through July 16, 2019

fr. 9/5/19

Docket 180

Tentative Ruling:

Lathrop Gage, LLP ("Applicant"), special counsel for the reorganized debtor – approve fees in the amount of \$10,356.50 and reimbursement of expenses in the amount of \$95.00, pursuant to 11 U.S.C. § 331, for the period between September 21, 2018 through July 16, 2019, on an interim basis. The Court will not approve \$1,771.70 in expenses for "relativity monthly external user access, litigation support managed service provider labor, relativity data processing and relativity data hosting." From the description in supplemental declaration of Eric R. Riess [doc. 204], it appears that these expenses are non-compensable overhead.

Appearances on October 17, 2019 are excused.

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

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton

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1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#5.00 Application for payment of interim fees and/or expenses
second interim application for A.O.E. Law & Associates APC,
Debtor's Attorney

Stip to continue filed.

Docket 104

***** VACATED *** REASON: Order approving stip entered 10/15/19.
Hearing continued to 11/7/19 at 10:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elas, LLC dba Calnopoly, LLC

Represented By
Anthony Obehi Egbase

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1:18-12863 Angela Victoria Garcia

Chapter 7

#6.00 Trustee's Final Report and Applications for Compensation

Amy Goldman, Chapter 7 Trustee

Docket 22

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee – approve fees of \$304.70 and reimbursement of expenses of \$2.53, pursuant to 11 U.S.C. § 330, on a final 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 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):

Angela Victoria Garcia

Represented By
Frank X Ruggier

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:18-11729 Richard Philip Dages

Chapter 11

#6.10 Application for payment of interim fees and or expenses for
Onyinye N Anyama, Debtor's attorney

fr. 10/3/19

Docket 102

Tentative Ruling:

The Court having reviewed the *Declaration of Richard Philip Dages* [doc. 111], the Anyama Law Firm may collect 80% of the approved fees and 100% of the approved expenses, on an interim basis, in accordance with the terms of that Declaration.

Appearances on October 17, 2019 are excused.

Ruling from 10/3/19

Pursuant to Local Bankruptcy Rule 2016-(a)(1)(J), the Anyama Law Firm ("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 to the debtor and the debtor-in-possession – approve fees in the amount of \$13,644.00 and reimbursement of expenses in the amount of \$854.08, pursuant to 11 U.S.C. § 331, for the period between July 11, 2017 through September 9, 2019, on an interim basis. Applicant may collect 100% of the approved expenses at this time.

According to Applicant, a prepetition retainer in the amount of \$6,082.00 remains viable to pay approved fees and expenses. Based on the debtor's most recent monthly operating report, as of August 31, 2019, the debtor had an ending balance of \$12,982.26 in all the debtor-in-possession accounts. If all funds in the debtor's accounts are used to pay Applicant's allowed fees and expenses (net the prepetition retainer), the Court is concerned about the debtor having sufficient cash reserves to

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CONT... Richard Philip Dages

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continue to operate. Accordingly, Applicant may draw down on the prepetition retainer to collect \$6,082.00 of the approved fees at this time.

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

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

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1:18-10715 Nasrollah Gashtili

Chapter 11

#7.00 Disclosure statement hearing on debtor's
first amended disclosure statement

fr. 6/20/19(stip); 7/18/19

Docket 181

Tentative Ruling:

Taking into account the objection to the proposed amended disclosure statement [doc. 186] and the debtor's reply [doc. 187], it appears that the amended disclosure statement [doc. 181] contains adequate information.

Proposed dates and deadlines regarding "First Amended Plan of Reorganization" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "First Amended Disclosure Statement of Debtor Nasrollah Gashtili Describing Debtor's First Amended Chapter 11 Plan of Reorganization:"

Hearing on confirmation of the Plan: **December 19, 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: **November 1, 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: **November 29, 2019.**

Deadline for the debtor to file and serve the debtor's brief and evidence, including

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declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **December 9, 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

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

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1:18-10715 Nasrollah Gashtili

Chapter 11

#8.00 Status conference re: chapter 11 case

fr. 5/17/18; 6/7/18; 10/11/18; 10/18/18; 3/14/19; 5/16/19; 6/20/19;7/18/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

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1:18-11125 Marcelo Martinez

Chapter 11

#9.00 Post confirmation status conference re: chapter 11 case

fr. 6/21/18; 10/11/18; 11/15/18; 12/13/18; 1/17/19; 3/7/19; 5/16/19

Docket 1

***** VACATED *** REASON: Case closed on an interim basis [doc. 116].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marcelo Martinez

Represented By
Matthew D Resnik

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1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#10.00 Disclosure statement hearing re debtor's disclosure statement dated April 29, 2019

fr. 6/20/19; 7/18/19

Docket 189

Tentative Ruling:

In the debtor's reply [doc. 192], the debtor indicates that it will be amending the first amended chapter 11 plan of reorganization, *e.g.* to provide for the payment of interest on the secured claim of VitaVet Labs, Inc., and also has stated its intention to add specific footnotes, and certain financial statements for IDS India, and IDS India tax returns and bank statements, to the proposed disclosure statement.

Aside from making those modifications, taking into account the objection to the disclosure statement [doc. 191] and the debtor's reply, it appears that *Debtor's Disclosure Statement Dated September 13, 2019* [doc. 189] contains adequate information.

The Court will continue this hearing to **November 14, 2019 at 1:00 p.m. By no later than November 1, 2019**, the debtor must file any such amended chapter 11 plan of reorganization and related disclosure statement. The debtor also must file a red-lined version of any amended chapter 11 plan and a red-lined version of the text of the related disclosure statement.

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#11.00 Status conference re: chapter 11 case

fr. 10/11/18; 10/18/18; 3/14/19; 5/16/19; 6/20/19; 7/18/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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1:18-12785 Elizabeth Y. Zaharian

Chapter 11

#12.00 Status conference re: chapter 11 case

fr. 1/10/19, 1/24/19; 8/15/19; 8/22/19

Docket 1

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (4)(E), the Court will convert this case to a chapter 7 case.

On August 2, 2019, the Court entered an order extending the deadline for the debtor to file a proposed chapter 11 plan and disclosure statement to September 30, 2019 [doc. 79]. On August 23, 2019, the Court approved the sale of the debtor's residence located at 4146 Murietta Avenue, Sherman Oaks, CA 91423 (the "Residence") [doc. 89]. According to the debtor's schedules, the non-exempt equity in the Residence was the debtor's sole significant asset. In addition, the debtor indicated in her schedules I and J that the debtor is unemployed, receives \$0 in monthly income and incurs monthly expenses in the amount of \$16,754.35.

The debtor did not timely file a proposed chapter 11 plan and related disclosure statement by the deadline of September 30, 2019. Instead, on October 3, 2019, the debtor filed a status report [doc. 96] indicating that the debtor intends to move for conversion of this case. In the status report, the debtor requested a delay of the conversion order for the debtor to negotiate a settlement agreement with creditor Strategic Funding Source, Inc. ("Strategic Funding"). However, given that the debtor does not have the ability or intent to confirm a chapter 11 plan, and because the debtor has not articulated why conversion of this case would hinder the debtor's finalization of a settlement agreement with Strategic Funding, the Court will not delay conversion of this case to one under chapter 7.

The Court will prepare the order.

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Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#13.00 Status conference re: chapter 11 case

fr. 4/4/19; 4/25/19; 8/15/19; 8/22/19; 8/29/19;
9/19/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on December 5, 2019**. If the debtor has not moved to dismiss this case, the debtor must file and serve a status report, supported by evidence, no later than **November 21, 2019**.

Appearances on October 17, 2019 are excused.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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1:19-10224 Alpha Real Estate Investment & Development Propert

Chapter 11

#14.00 Status conference re: chapter 11 case

fr. 4/4/19

Docket 1

***** VACATED *** REASON: Case converted to one under chapter 7 [doc. 52].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alpha Real Estate Investment &

Represented By
R Grace Rodriguez

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1:10-17214 Darin Davis

Chapter 7

#15.00 Debtor's motion for attorney's fees and costs incurred to prosecute the objections to Asphalt Professionals, Inc.'s proofs of claim

Docket 303

Tentative Ruling:

Grant.

I. BACKGROUND

A. Debtor's Bankruptcy Case and the Original Objection to Claim

On June 15, 2010, Darin Davis ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee"). On January 12, 2011, Asphalt Professionals, Inc. ("API") filed proof of claim no. 4-1, asserting an unsecured claim in the amount of \$3 million. API's claim was based on claims pending before the state court (the "State Court Action"). During the pendency of Debtor's bankruptcy case, the state court entered an award of damages in favor of API based on some of API's state court claims, which had been tried in two phases by the state court. However, the state court did not adjudicate API's fraud claims. Instead, the state court left trial of those claims to a future third phase.

On June 26, 2013, API and the remaining defendants in the State Court Action, including Debtor, signed the *Stipulation re Satisfaction of Judgment and Payment of Attorney's Fees and Costs* (the "Satisfaction of Judgment"). Declaration of Leonard Tavera [doc. 306], ¶ 4, Exhibit 1. In the Satisfaction of Judgment, the parties agreed that the judgments entered by the state court during the first two phases of the State Court Action had been fully satisfied. The Satisfaction of Judgment excluded from its scope only future damages that may have arisen in connection with API's fraud claims, which had not been tried as of the date of the execution of the Satisfaction of Judgment. In relevant part, the Satisfaction of Judgment also included the following language:

[API] and [the remaining] Defendants stipulate and agree that should

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further legal action be required in order to compel the performance of either party of any of the foregoing terms and conditions on its or their part to be performed, the prevailing party in any such litigation shall be awarded an amount equal to the attorney's fees and costs of suit reasonably incurred in bringing or defending any such action, in addition to any other sum or amount awarded or obtained by the prevailing party therein....

Satisfaction of Judgment, ¶ 5(f). Debtor's state court counsel, Leonard M. Tavera, signed the Satisfaction of Judgment on behalf of Debtor and the other remaining defendants. Satisfaction of Judgment, p. 7.

On September 17, 2014, Debtor filed an objection to API's claim ("Debtor's Objection to Claim") [doc. 89]. [FN1]. On October 30, 2014, the Court held a hearing on Debtor's Objection to Claim. On November 20, 2014, the Court entered an order disallowing \$1,869,048.05 of API's claim because that portion of the claim had already been paid (the "Claim Order") [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 API was entitled to the remaining \$1,130,951.42. The Court refrained from deciding whether to disallow the remaining portion of API's claim until the State Court Action adjudicated API's fraud claim against Debtor.

B. The Adversary Proceeding

On August 16, 2010, API filed a complaint against Debtor, objecting to Debtor'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 API's claims under 11 U.S.C. § 727. On December 23, 2014, the Court entered judgment in favor of Debtor on API's claims under 11 U.S.C. § 727 [Adversary Docket, doc. 113]. Given that API's claim under § 523(a)(2)(A) mirrored its claim of fraud in the State Court Action, the Court initially stayed this adversary proceeding to await conclusion of the State Court Action. On April 19, 2017, nearly seven years after Debtor filed his chapter 7 petition, API and Debtor appeared for a status conference in connection with

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the adversary proceeding. At that time, the Court informed the parties that it would no longer delay prosecution of the adversary proceeding until the State Court Action was resolved.

On April 23 and 24, 2018, the Court held trial on API's claim under § 523(a)(2)(A). On June 13, 2018, the Court issued a ruling after trial, holding that API did not meet its burden of proof under § 523(a)(2)(A) [Adversary Docket, doc. 219]. On June 18, 2018, the Court entered judgment in favor of Debtor (the "Adversary Judgment") [Adversary Docket, doc. 221]. API filed an appeal with the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"). On January 31, 2019, the BAP issued an opinion affirming this Court in full. *In re Davis*, 2019 WL 406680 (B.A.P. 9th Cir. Jan. 31, 2019). API did not appeal the BAP's decision.

On June 29, 2018, Debtor filed a motion requesting attorneys' fees and costs as the prevailing party under California law (the "Adversary Motion for Fees") [Adversary Docket, doc. 228]. API opposed the Adversary Motion for Fees [Adversary Docket, doc. 238]. The Court held several hearings on the Adversary Motion for Fees and issued multiple rulings, including a published opinion (collectively, the "Fee Decisions") [Adversary Docket, docs. 248, 254, 270]. For the reasons stated in the Fee Decisions, the Court held that Debtor was entitled to an award of attorneys' fees and costs. The Court also assessed the reasonableness of the fees and costs requested by Debtor. In connection with this assessment, the Court held that Debtor's counsel's hourly rate was reasonable; however, the Court reduced certain fees and costs as excessive or unreasonable.

On December 3, 2018, the Court entered an order granting in part and denying in part the Adversary Motion for Fees (the "Fees Order") [Adversary Docket, doc. 260]. API appealed the Fees Order. On July 3, 2019, the BAP issued an opinion affirming the Fees Order (the "BAP Fee Opinion") [Adversary Docket, doc. 288]. On July 16, 2019, API appealed the BAP Fee Opinion to the Ninth Circuit Court of Appeals [Adversary Docket, doc. 292]. The appeal before the Court of Appeals remains pending.

C. The Trustee's Objection to Claim and Debtor's Joinder

On January 11, 2019, the Trustee filed an objection to API's claims (the "Trustee's

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Objection") [doc. 257], asserting that, in light of the Adversary Judgment in favor of Debtor, API no longer had a claim against Debtor's estate. Debtor filed a joinder to the Trustee's Objection [doc. 266]. The Court continued the initial hearing on the Trustee's Objection to allow API to file a supplemental brief and/or supplemental evidence regarding API's assertion that it still had a claim against the estate based on unpaid attorneys' fees and costs incurred prosecuting the second phase of the State Court Action.

In connection with the continued hearing, Debtor filed a reply, a declaration by Debtor's state court counsel and a request for judicial notice (the "Reply Documents") [docs. 277, 278, 279]. The Reply Documents, which together totaled 779 pages, established that API's claim for attorneys' fees and costs incurred litigating the first two phases of the State Court Action had been paid in full. The Reply Documents included the Satisfaction of Judgment, which, among other reasons, persuaded the Court that API had been paid in full as to the first two phases of the State Court Action. As such, on May 9, 2019, the Court entered an order sustaining the Trustee's Objection and disallowing API's claim in full (the "Objection to Claim Order") [doc. 296]. API has appealed the Objection to Claim Order, which appeal is currently pending before the BAP.

D. Debtor's Current Request for Attorneys' Fees

On May 23, 2019, Debtor filed a motion requesting attorneys' fees and costs incurred objecting to API's proofs of claim (the "Motion") [doc. 303]. On October 3, 2019, API filed an opposition to the Motion (the "Opposition") [doc. 362]. API's primary argument in the Opposition is that the Court erred in awarding fees and costs to Debtor. As noted above, these arguments are currently on appeal before the Ninth Circuit Court of Appeals. API also argues that Debtor's counsel's hourly rate is unreasonable, that the redacted portions of the requested fees and costs should not be allowed and that the requested fees and costs are excessive and unreasonable. On October 10, 2019, Debtor filed a reply to the Opposition [doc. 367].

II. ANALYSIS

A. Appellate Jurisdiction over Merits of API's Arguments

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

Thursday, October 17, 2019

Hearing Room 301

2:00 PM

CONT...

Darin Davis

Chapter 7

"The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 402, 74 L.Ed.2d 225 (1982). "The timely filing of a notice of appeal to either a district court or bankruptcy appellate panel will typically divest a bankruptcy court of jurisdiction 'over those aspects of the case involved in the appeal.'" *In re Sherman*, 491 F.3d 948, 967 (9th Cir. 2007) (quoting *In re Padilla*, 222 F.3d 1184, 1190 (9th Cir. 2000)). "The bankruptcy court retains jurisdiction over all other matters that it must undertake 'to implement or enforce the judgment or order,' although it 'may not alter or expand upon the judgment.'" *Id.* (quoting *Padilla*, 222 F.3d at 1190).

This Court addressed the merits of API's arguments in the Fee Rulings. The BAP affirmed the Fee Rulings, and API has appealed the BAP Fee Opinion to the Ninth Circuit Court of Appeals. Given the pending appeal before the Court of Appeals, this Court does not have jurisdiction to rule on API's substantive arguments; those arguments will be addressed by the Court of Appeals.

B. The Satisfaction of Judgment

The Court references its reasoning from the Fee Rulings as the basis for an award of attorneys' fees and costs to Debtor. Nevertheless, in addition to the Court's reasoning from the Fee Rulings, the Satisfaction of Judgment also serves as an alternative basis for awarding Debtor the fees and costs incurred disallowing the portion of API's claim that arose from the first two phases of the State Court Action. [FN2]. In the Satisfaction of Judgment, API acknowledged that it had been paid in full as to the first two phases of the State Court Action. In violation of the Satisfaction of Judgment, API contended in its opposition to the Trustee's Objection that the state court judgments had not been fully satisfied.

As noted above, the Satisfaction of Judgment included a provision that a prevailing party in any litigation to enforce the terms of the Satisfaction of Judgment is entitled to an award of attorneys' fees and costs. Satisfaction of Judgment, ¶ 5(f). Here, Debtor prevailed in disallowing API's claim by referencing the terms of the Satisfaction of Judgment. By the plain language of the attorneys' fees provision in the Satisfaction of Judgment, the prevailing party is entitled to an award of attorneys' fees

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Chapter 7

and costs "in *any* such litigation" to enforce the terms of the Satisfaction of Judgment. *Id.* (emphasis added). Consequently, in addition to the basis for an award set forth in the Fee Rulings, Debtor also is entitled to an award of the fees and costs under the terms of the Satisfaction of Judgment.

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 representation and the results obtained." *PSM Holding*, 2015 WL 11652518 at *4.

As noted above, the Court already has decided that Debtor's counsel's hourly rate of \$425 per hour is reasonable. In addition, Debtor is not requesting reimbursement of the redacted portions of the invoice attached to the Motion. The first four pages of Exhibit 1 to the Motion are a summary of the unredacted portions of the invoice, and Debtor only seeks an award of fees and costs for those unredacted amounts.

As such, the sole issue is whether the fees and costs requested by Debtor are reasonable using the standard above. To object to API's claim, in 2014, Debtor filed Debtor's Objection to Claim and a reply to API's opposition thereto and attended a hearing on Debtor's Objection to Claim, at which time Debtor prevailed as to disallowing a portion of API's claim. Upon entry of the Adversary Judgment, Debtor filed a joinder to the Trustee's Objection followed by the lengthy Reply Documents,

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CONT...

Darin Davis

Chapter 7

which established that API's claim should be disallowed in full. Debtor also appeared for two hearings on the Trustee's Objection. Given the amount of work involved in disallowing API's claim, and because the itemized statement provided by Debtor does not include any unreasonable or excessive entries, the Court will award Debtor \$29,421.50 in fees and \$76.58 in costs. *See* Declaration of Alan W. Forsley [doc. 303], ¶ 15.

III. CONCLUSION

The Court will grant the Motion and award Debtor \$29,421.50 in attorneys' fees and \$76.58 in costs.

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

FOOTNOTES

1. On October 15, 2014, after all the briefing on Debtor's Objection to Claim, API filed a separate claim for \$2 million, docketed as claim no. 15-1, based on the fraud action in state court. In his declaration, a representative of API stated that the \$2 million claim was meant to amend the original \$3 million claim. 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.
2. Unlike the agreement on which the Fee Rulings is based, the Court notes that Debtor is a signatory to the Satisfaction of Judgment. However, because the Satisfaction of Judgment covers only the first two phases of trial, any fees and costs incurred by Debtor to obtain disallowance of API's claim based on *fraud* would not be covered by the Satisfaction of Judgment. Nevertheless, because the Court is awarding Debtor the total requested fees and costs based on the subcontract agreement on which the Court's Fee Rulings are based, the Court need not separate the fees and costs incurred disallowing API's claim based on the first two phases of the State Court Action from API's claim based on fraud.

Party Information

**United States Bankruptcy Court
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2:00 PM

CONT... Darin Davis

Chapter 7

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
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Judge Victoria Kaufman, Presiding
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Thursday, October 17, 2019

Hearing Room 301

2:00 PM

1:18-10885 Qiuling Sun Kai

Chapter 7

#16.00 Motion for an order authorizing and directing chapter 7 trustee to disburse exempt funds in connection with sale of residence located at 12534 McLennan Avenue, Granada Hills, CA 91344

Docket 70

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):

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**

Tuesday, October 22, 2019

Hearing Room 301

9:30 AM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:18-01077 The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

#1.00 Motion to reconsider entry of consent order
 [Evidentiary Hearing]

fr. 5/15/19

Docket 24

***** VACATED *** REASON: Order entered 8/20/19 [Doc.77] continuing
hearing to 12/20/19 at 9:30 AM.**

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Defendant(s):

Duane Van Dyke Irrevocable Trust

Represented By
Kelly Warren

Helayne Muennichow

Represented By
Robert J McKennon
Gary A Kurtz

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
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Judge Victoria Kaufman, Presiding
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Tuesday, October 22, 2019

Hearing Room 301

9:30 AM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:18-01077 The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

#2.00 Status conference re: complaint for interpleader

fr. 9/12/18; 11/21/18; 2/20/19; 4/3/19; 5/15/19

Cross-claim

David Seror, soley in his capacity as the Chapter 7 Trustee for the bankruptcy estate of debtor Hermann Muennichow

v.

Helayne Muennichow, an individual; Duane Van Dyke Irrevocable Trust, an entity of unknown form; and John Van Duke, trustee of the Duane Van Dyke Irrevocable trust

Cross-claim

Helayne Muennichow,\

v.

Duane Van Dyke Irrevocable Trust; David Seror; and chapter 7 trustee

Docket 1

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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9:30 AM

CONT... Hermann Muennichow

Chapter 7

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
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Trustee(s):

David Seror (TR)	Represented By Richard Burstein
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United States Bankruptcy Court
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Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

1:16-12236 Gloria Solis

Chapter 13

#1.00 Motion for relief from stay [RP]

BANC OF CALIFORNIA, N.A.
VS
DEBTOR

fr. 10/2/19

Docket 46

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gloria Solis

Represented By
Matthew D. Resnik

Movant(s):

Banc of California, National

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, October 23, 2019

Hearing Room 301

9:30 AM

1:15-11825 Donald M. Baarns and Lisa A. Baarns

Chapter 13

#1.10 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 8/7/19; 9/11/19; 10/16/19

Docket 41

***** VACATED *** REASON: Order entered approving stipulation [doc. 48].**

Tentative Ruling:

Party Information

Debtor(s):

Donald M. Baarns

Represented By
Ali R Nader

Joint Debtor(s):

Lisa A. Baarns

Represented By
Ali R Nader

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

1:19-12280 Kasra Parivar

Chapter 7

#2.00 Motion for relief from stay [UD]

U.S. BANK NA
VS
DEBTOR

Docket 8

***** VACATED *** REASON: On September 30, 2019, the case was dismissed [doc. 10]. The motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kasra Parivar

Pro Se

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

1:19-12435 Christine Suzanne Sukau

Chapter 7

#3.00 Motion for relief from stay [UD]

CHAMPION PROPERTY INVESTMENTS LLC
VS
DEBTOR

Docket 11

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.

Party Information

Debtor(s):

Christine Suzanne Sukau

Pro Se

Movant(s):

Champion Property Investments,

Represented By
David S Hagen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

CONT... Christine Suzanne Sukau

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 23, 2019

Hearing Room 301

9:30 AM

1:17-12434 Robin DiMaggio

Chapter 7

#4.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 73

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):

Robin DiMaggio

Represented By
Moises S Bardavid

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 23, 2019

Hearing Room 301

9:30 AM

1:19-12045 Santiago Reyes Moreno

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.

Party Information

Debtor(s):

Santiago Reyes Moreno

Represented By
Sydell B Connor

Movant(s):

Ford Motor Credit Company LLC

Represented By
Jennifer H Wang

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

CONT... Santiago Reyes Moreno

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 23, 2019

Hearing Room 301

9:30 AM

1:19-11846 Mitchel John Sanders

Chapter 7

#6.00 Motion for relief from stay [PP]

VW CREDIT, INC.
VS
DEBTOR

Docket 8

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):

Mitchel John Sanders

Represented By
Eric Bensamochan

Movant(s):

VW Credit, Inc.

Represented By
Kirsten Martinez

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

Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

CONT... Mitchel John Sanders

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, October 23, 2019

Hearing Room 301

9:30 AM

1:19-12195 Glenn Burt Flores Herrera and Lorena Narcisa Anchundia

Chapter 7

#7.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 8

Tentative Ruling:

The Court will continue this hearing to **November 20, 2019 at 9:30 a.m.** The proof of service attached to the motion does not indicate the date the movant served the motion and notice. **By no later than October 28, 2019**, the movant must serve notice of the continued hearing and motion on all parties required by Local Bankruptcy Rule 4001-1(1)(C).

Appearances on October 23, 2019 are excused.

Party Information

Debtor(s):

Glenn Burt Flores Herrera

Represented By
Juan Castillo-Onofre

Joint Debtor(s):

Lorena Narcisa Anchundia Bajana

Represented By
Juan Castillo-Onofre

Movant(s):

Toyota Motor Credit Corporation

Represented By
Kirsten Martinez

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

1:19-11919 Alan Aba

Chapter 7

#8.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
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.

Party Information

Debtor(s):

Alan Aba

Represented By
Eliza Ghanooni

Movant(s):

Toyota Motor Credit Corporation,

Represented By
Austin P Nagel

**United States Bankruptcy Court
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9:30 AM

CONT... Alan Aba

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

1:19-12082 Robert M. Gerstein

Chapter 7

#9.00 Motion for relief from stay [RP]

WILMINGTON TRUST, NATIONAL ASSOCIATION
VS
DEBTOR

Docket 36

Tentative Ruling:

Based on the significant equity cushion, which provides the movant with adequate protection, the Court intends to continue the hearing to assess whether the property will be sold at a price that is sufficient to provide a distribution to unsecured creditors.

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Movant(s):

Wilmington Trust, National

Represented By
Darlene C Vigil

Trustee(s):

Amy L Goldman (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

1:11-11603 Kevan Harry Gilman

Chapter 7

#10.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

Docket 675

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. Moreover, movant did not serve its motion on the co-borrower and other lienholders as required by Local Bankruptcy Rule 4001-1(1)(C).

The Court will prepare the order.

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Movant(s):

US Bank Trust NA

Represented By
Lemuel Bryant Jaquez

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

1:19-11446 Jorge Reque

Chapter 7

#11.00 Motion for relief from stay [RP]

FIRSTBANK
VS
DEBTOR

Docket 20

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.

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, the debtor filed his petition on June 11, 2019. In his original schedule A/B [doc. 1], the debtor did not indicate that he held an ownership interest in the real property. On July 18, 2019, movant conducted a foreclosure sale of the property. At the time of

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Wednesday, October 23, 2019

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9:30 AM

CONT...

Jorge Reque

Chapter 7

the foreclosure sale, movant was unaware of the debtor's bankruptcy petition. Movant became aware of the debtor's petition from a facsimile received by the foreclosure trustee subsequent to the foreclosure sale [Exh. 4]. On July 19, 2019, the debtor filed an amended schedule A/B [doc. 11]. In his amended schedule A/B, the debtor indicates that he holds an ownership interest in the property.

The filing of this case appears to be part of a scheme to delay, hinder or defraud creditors. The original borrower, Harvey Ellis, executed an unauthorized grant deed, less than 14 days prior to the debtor filing his petition, transferring an interest in the property to the debtor for no consideration [Exh. 4]. Mr. Ellis has filed three bankruptcy petitions since October 2018, including one petition on July 17, 2019, the day before the foreclosure sale [Exh. 5]. Additionally, the debtor's case was dismissed for failure to appear at the 341(a) meeting of creditors. Two of Mr. Ellis' cases also were dismissed for failure to appear at the 341(a) meeting of creditors [1:18-bk-12498-MT; 1:19-bk-10329-MT] and the other was dismissed for failure to file information [1:19-bk-11798-VK]. Consequently, retroactive relief from the automatic stay is appropriate in this case.

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):

Jorge Reque

Pro Se

Movant(s):

FirstBank

Represented By
Jennifer C Wong

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

Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

CONT... Jorge Reque

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 23, 2019

Hearing Room 301

9:30 AM

1:19-11643 Larry M Halpern

Chapter 7

#12.00 Motion for relief from stay [RP]

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING
VS
DEBTOR

Docket 27

Tentative Ruling:

Why does the chapter 7 trustee question the validity of the lien of Sharon Halpern?
Why would it be invalid?

The debtor's description of the real property at issue, in the debtor's Schedule A/B ("Zillow says the fair market value is \$480,000 but the property is in need of significant repairs and maintenance and it may be worth significantly less. . . . The property is in significant disrepair.") casts doubt on the \$480,000 value that the debtor has ascribed to that real property, in his schedules.

Party Information

Debtor(s):

Larry M Halpern

Represented By
David S Hagen

Movant(s):

NewRez LLC d/b/a Shellpoint

Represented By
Daniel K Fujimoto
Caren J Castle

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 23, 2019

Hearing Room 301

9:30 AM

1:19-12417 Norma Saulter and Brian Saulter

Chapter 13

#13.00 Motion for relief from stay [UD]

CHRISTIE MCNALLY
VS
DEBTOR

Docket 7

Tentative Ruling:

On October 15, 2019, 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 either or both of the debtors for a period of 180-days, so that no further automatic stay will arise in that case as to the property at issue.

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

Party Information

Debtor(s):

Norma Saulter Pro Se

Joint Debtor(s):

Brian Saulter Pro Se

Movant(s):

CHRISTIE MCNALLY Represented By
Stephen C Duringer

Trustee(s):

Elizabeth (SV) 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 23, 2019

Hearing Room 301

9:30 AM

1:15-10278 Laura Lee Stone

Chapter 13

#14.00 Motion for relief from stay [RP]

BANK OF AMERICA NATIONAL ASSOCIATION
VS
DEBTOR

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laura Lee Stone

Represented By
Kevin T Simon

Movant(s):

Bank of America National

Represented By
Kirsten Martinez

Trustee(s):

Elizabeth (SV) 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 23, 2019

Hearing Room 301

9:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

#15.00 Motion for relief from stay [RP]

JPMC SPECIALTY MORTGAGE LLC
VS
DEBTOR

Docket 65

*** VACATED *** REASON: Order approving stip entered on 10/22/19
[doc. 69].

Tentative Ruling:

Party Information

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 23, 2019

Hearing Room 301

9:30 AM

1:18-11560 Elizabeth Roberts

Chapter 13

#16.00 Motion for relief from stay [RP]

BANK OF AMERICA NATIONAL ASSOCIATION
VS
DEBTOR

Docket 76

Tentative Ruling:

On October 3, 2019, the debtor filed a response to the motion for relief from the automatic stay [doc. 78]. The debtor did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

Party Information

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

Wednesday, October 23, 2019

Hearing Room 301

9:30 AM

1:19-11902 John Christian Lukes

Chapter 11

#17.00 Motion for relief from stay [RP]

WELLS VARGO BANK, N.A.
VS
DEBTOR

Stip to continue filed 10/10/19

Docket 44

***** VACATED *** REASON: Order approving stip entered 10/16/19.
Hearing is continued to 11/13/19 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Christian Lukes

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

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

Wednesday, October 23, 2019

Hearing Room 301

1:30 PM

1:17-10830 ColorFX, Inc.

Chapter 11

Adv#: 1:19-01033 Post Confirmation Committee of Unsecured Creditors v. American Express

#18.00 Pre trial conference re: complaint to avoid and recover preferential transfers and to disallow claims

fr. 5/22/19

Stip for dismissal filed 8/7/19

Docket 1

*** VACATED *** REASON: Order of dismissal entered 9/1/3/19. [Dkt.15]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau
Daren M Schlecter

Defendant(s):

American Express Travel Related

Pro Se

Plaintiff(s):

Post Confirmation Committee of

Represented By
Ronald Clifford

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

Wednesday, October 23, 2019

Hearing Room 301

1:30 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

Adv#: 1:18-01113 VitaVet Labs, Inc. v. Gashtili

- #19.00** Pre-trial 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)

fr, 12/19/18; 9/18/19

Docket 4

***** VACATED *** REASON: Order entered 9/11/19 continuing hearing to 1/22/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

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, October 23, 2019

Hearing Room 301

1:30 PM

1:19-10537 Lynn Patricia Wolcott

Chapter 7

Adv#: 1:19-01067 Charles Hanne, an individual et al v. Wolcott

#20.00 Status conference re: complaint for non-discharge of debt

fr. 8/7/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on November 13, 2019**, to be held with the hearing on the plaintiffs' motion for default judgment [doc. 14].

Plaintiffs' appearance on October 23, 2019 is excused.

Party Information

Defendant(s):

Lynn Patricia Wolcott

Pro Se

Plaintiff(s):

Lou Rosenberg, an individual

Represented By
Reilly D Wilkinson
Reilly D Wilkinson

Charles Hanne, an individual

Represented By
Reilly D Wilkinson

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

Wednesday, October 23, 2019

Hearing Room 301

2:30 PM

1:10-17214 Darin Davis

Chapter 7

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

#21.00 Defendant Darin Davis' Motion for Attorney's Fees Against Asphalt Professionals, Inc. to Recover Fees Incurred to Defend the Appeal of the 11 U.S.C. Section 523(a)(2)(A) Attorney Fee Award

Docket 290

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

A. *The Adversary Judgment and the Prior Award of Attorneys' Fees and Costs*

On June 15, 2010, Darin Davis ("Defendant") filed a voluntary chapter 7 petition. On August 16, 2010, Asphalt Professionals, Inc. ("API") 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 API's claims under 11 U.S.C. § 727. On December 23, 2014, the Court entered judgment in favor of Defendant on API's claims under 11 U.S.C. § 727 (the "727 Judgment") [doc. 113].

On April 23 and 24, 2018, the Court held trial on API's claim under § 523(a)(2)(A). On June 13, 2018, the Court issued a ruling after trial, holding that API did not meet its burden of proof under § 523(a)(2)(A) [doc. 219]. On June 18, 2018, the Court entered judgment in favor of Defendant (together with the 727 Judgment, the "Dischargeability Judgment") [doc. 221]. API filed an appeal of the Dischargeability Judgment with the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"). On January 31, 2019, the BAP issued an opinion affirming this Court in full (the "BAP Dischargeability Decision"). *In re Davis*, 2019 WL 406680 (B.A.P. 9th Cir. Jan. 31, 2019). API did not appeal the BAP Dischargeability Decision.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, October 23, 2019

Hearing Room 301

2:30 PM

CONT...

Darin Davis

Chapter 7

On June 29, 2018, Defendant filed a motion requesting attorneys' fees and costs as the prevailing party under California law (the "Motion for Fees") [doc. 228]. API opposed the Motion for Fees [doc. 238]. The Court held several hearings on the Motion for Fees and issued multiple rulings, including a published opinion (collectively, the "Fee Decisions") [docs. 248, 254, 270]. For the reasons stated in the Fee Decisions, the Court held that Defendant was entitled to an award of attorneys' fees and costs. The Court also assessed the reasonableness of the fees and costs requested by Defendant. In connection with this assessment, the Court held that Defendant's counsel's hourly rate was reasonable.

On December 3, 2018, the Court entered an order granting in part and denying in part the Motion for Fees (the "Fees Order") [doc. 260]. API appealed the Fees Order. On July 3, 2019, the BAP issued a decision affirming the Fees Order (the "BAP Fee Decision") [doc. 288]. On July 16, 2019, API appealed the BAP Fee Decision to the Ninth Circuit Court of Appeals [doc. 292]. The appeal before the Court of Appeals remains pending.

B. Defendant's Current Request for Attorneys' Fees and Costs

On February 14, 2019, Defendant filed a motion requesting attorneys' fees incurred defending the appeal of the Dischargeability Judgment (the "First Appeal Fees Motion") [doc. 275]. On June 4, 2019, API filed an opposition to the First Appeal Fees Motion (the "Opposition") [doc. 282]. In the Opposition, API's primary argument is that the Court erred in awarding fees and costs to Defendant. As noted above, these arguments are currently on appeal before the Ninth Circuit Court of Appeals. API also asserts that First Appeal Fees Motion was not timely filed under Federal Rule of Bankruptcy Procedure ("FRBP") 8021 and that Defendant's request is excessive and unreasonable. Finally, API argues that Defendant did not properly separate fees incurred defending the appeal of the 727 Judgment from the appeal of the issues related to API's 11 U.S.C. § 523 claims.

On August 21, 2019, API filed a supplemental opposition to the First Appeal Fees Motion [doc. 298], attaching API's statement of issues to be presented on appeal before the Ninth Circuit Court of Appeals. On August 28, 2019, Defendant filed a reply to the Opposition [doc. 300].

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2:30 PM

CONT... **Darin Davis**

Chapter 7

On July 16, 2019, Defendant filed a motion requesting attorneys' fees incurred defending the appeal of the Fees Order (the "Second Appeal Fees Motion") [doc. 290]. API has not opposed the Second Appeal Fees Motion; however, on October 8, 2019, API filed a "supplement" to which API attaches its opening brief before the Ninth Circuit Court of Appeals [doc. 303]. API does not otherwise provide argument in this supplement.

II. ANALYSIS

A. Appellate Jurisdiction over Merits of API's Arguments

"The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 402, 74 L.Ed.2d 225 (1982). "The timely filing of a notice of appeal to either a district court or bankruptcy appellate panel will typically divest a bankruptcy court of jurisdiction 'over those aspects of the case involved in the appeal.'" *In re Sherman*, 491 F.3d 948, 967 (9th Cir. 2007) (quoting *In re Padilla*, 222 F.3d 1184, 1190 (9th Cir. 2000)). "The bankruptcy court retains jurisdiction over all other matters that it must undertake 'to implement or enforce the judgment or order,' although it 'may not alter or expand upon the judgment.'" *Id.* (quoting *Padilla*, 222 F.3d at 1190).

This Court addressed the merits of the parties' arguments in the Fee Rulings. The BAP affirmed the Fee Rulings, and API has appealed the BAP Fee Opinion to the Ninth Circuit Court of Appeals. Given the pending appeal before the Court of Appeals, this Court does not have jurisdiction to rule on API's substantive arguments; those arguments will be addressed by the Court of Appeals. As such, the Court's ruling is limited to a decision on the reasonableness of the fees and costs requested by Defendant.

B. Timing of Motions

API also asserts that the First Motion for Fees should be denied because Defendant did not timely file a bill of costs within 14 days of the BAP Dischargeability Decision, on February 14, 2019. However, Defendant timely filed and served the First Motion

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CONT...

Darin Davis

Chapter 7

for Fees by February 14, 2019. To the extent API is arguing that the Court should deny the First Motion for Fees because Defendant did not separately file and serve a bill of costs in accordance with FRBP 8021, Defendant is not requesting the type of costs listed in FRBP 8021. As such, FRBP 8021 is inapplicable, and Defendant properly filed and served the First Motion for Fees within 14 days of entry of the BAP Dischargeability Decision.

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 representation and the results obtained." *PSM Holding*, 2015 WL 11652518 at *4.

As noted above, the Court already has decided that Defendant's counsel's hourly rate of \$425 is reasonable. The Court will not revisit this issue. As to the First Appeal Fees Motion, API also argues that Defendant inappropriately seeks attorneys' fees incurred defending the appeal of the 727 Judgment, for which claims the Court already has held Defendant is not entitled to an award of attorneys' fees. The Court will not allow the following charges as related to the appeal of the 727 Judgment:

Statement	Date	Description	Time	Fee
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CONT...

Darin Davis

Chapter 7

21948	7/30/18	Perform research re standard of review for §727 action for law, facts and mixed facts and law. (1.20) Prepare the draft appeal. (.90)	2.10	\$892.50
21972	8/23/18	Perform research re court of appeal review of a §727(a)(2)(A) claim. Perform research re court of appeal review of a §727(a)(2)(B) claim. Perform research re court of appeal review of a §727(a)(4) claim.	2.30	\$977.50
22135	Undated	Prepare for oral argument as to the 727(a) claim on appeal.	2.50	\$1,062.50

Defendant's counsel also billed a total of 30.4 hours, or \$12,920, for preparation of Defendant's appellate brief. Given that the brief involves issues related to both 11 U.S.C. §§ 523 and 727, the Court will allow half of the fees incurred preparing the brief for a total of \$6,466.

The Court also will disallow the following requests:

Statement	Date	Description	Time	Fee	Reason
21915	Undated	Correspond to [redacted] re notice of appeal. Correspond to client re notice of appeal. (.10)	0.10	\$42.50	Redactions do not provide enough information, such as rate, date or amount of charge.

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CONT...

Darin Davis

Chapter 7

21915	6/25/18	[Completely redacted.]	0.10	\$42.50	Redacted.
21948	7/31/18	Perform research re possible sanctions against Asphalt and Bowen for raising 86 appealable issues. (1.10)	1.10	\$467.50	Unclear from record if motion for sanctions ever filed, and raising a large number of issues on appeal is not necessarily sanctionable.

Otherwise, the fees requested by Defendant are reasonable. Although API contends that Defendant's First Appeal Fees Motion should be denied in its entirety because *all* the requests include some work on the appeal of the 727 Judgment, "[a]ttorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed." *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129–30 (1979); *see also Bell v. Vista Unified Sch. Dist.*, 82 Cal.App.4th 672, 687 (Ct. App. 2000) ("Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units."). Given that the remaining billing requests arose from work on the appeal that would be impossible to apportion, the Court will award Defendant the balance of fees in the amount of \$16,144, plus \$1,912.50 incurred preparing the First Appeal Fees Motion and \$3,400 as the estimated fees to prepare the reply and attend the hearing, for a total of **\$21,456.50**.

As to the Second Appeal Fees Motion, the requested fees and costs itemized in the invoices are reasonable, especially in light of the novel and lengthy issues presented on the appeal of the Fees Order. On the other hand, as concerns the estimated attorneys' fees, API did not file a separate opposition to the Second Appeal Fees Motion, and the Court held a consolidated hearing on both the First Appeal Fees Motion and the Second Appeal Fees Motion. Because Defendant did not file a separate reply regarding the Second Appeal Fees Motion, and the Court already is

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CONT...

Darin Davis

Chapter 7

compensating Defendant for his counsel's travel and appearance time in connection with the First Appeal Fees Motion, the Court will not award Defendant an additional \$3,400 in estimated fees, as requested in the Second Appeal Fees Motion. Consequently, the Court will award Defendant a total of \$34,214.75 for fees incurred defending the appeal from the Fees Order.

III. CONCLUSION

The Court will grant in part and deny in part the First Appeal Fees Motion and the Second Appeal Fees Motion.

Defendant must submit the orders within seven (7) days.

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
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Wednesday, October 23, 2019

Hearing Room 301

2:30 PM

1:10-17214 Darin Davis

Chapter 7

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

#22.00 Darin Davis' Motion for attorney's fees

fr. 6/19/19; 9/4/19

Docket 275

Tentative Ruling:

See calendar no. 21.

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, October 23, 2019

Hearing Room 301

2:30 PM

1:15-10763 Howard Irving Napolske

Chapter 7

Adv#: 1:15-01093 Hana Financial, Inc., a California corporation v. Napolske

#23.00 Motion to reopen adversary proceeding to file stipulation for judgment and order for judgment after default of settlement by defendant Howard Napolske

Docket 36

***** VACATED *** REASON: Oder entered 10/8/19 [doc. 46].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Howard Irving Napolske

Represented By
Heidi Hohler

Defendant(s):

Howard I. Napolske

Represented By
Bryan Diaz

Plaintiff(s):

Hana Financial, Inc., a California

Represented By
Michael W Davis
Talin Keshishian

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 23, 2019

Hearing Room 301

2:30 PM

1:18-10982 Gabriel Medina

Chapter 13

Adv#: 1:18-01126 Medina v. Strunzo Development Corp., a California Corporatio

#24.00 Motion to modify amended scheduling order

Docket 25

Tentative Ruling:

Deny, except to extend the deadline for the parties to file a joint pretrial stipulation and to continue the date for the parties' pretrial conference.

I. BACKGROUND

On April 19, 2018, Gabriel Medina ("Plaintiff") filed a chapter 13 petition. On December 10, 2018, Plaintiff filed a complaint against Strunzo Development Corp. ("Defendant"), requesting cancellation of a deed of trust against Plaintiff's real property and in favor of Defendant and declaratory relief that Plaintiff owns the subject property free and clear of Defendant's lien.

On February 13, 2019, the Court entered a scheduling order [doc. 6] setting the following deadlines: (A) May 17, 2019 to complete discovery; (B) May 31, 2019 to complete mediation; (C) June 14, 2019 to file pretrial motions; (D) July 3, 2019 to file a joint pretrial stipulation; and (E) July 17, 2019 to appear at a pretrial conference.

On May 6, 2019, Plaintiff and Defendant entered into a stipulation to extend the deadlines from the original scheduling order [doc. 12]. On May 9, 2019, the Court entered an order approving the stipulation (the "Amended Scheduling Order") [doc. 14] and setting the following extended deadlines: (A) July 16, 2019 to complete discovery; (B) July 30, 2019 to complete mediation; (C) August 13, 2019 to file pretrial motions; (D) September 1, 2019 to file a joint pretrial stipulation; and (E) September 18, 2019 to appear at a pretrial conference.

On July 16, 2019, Defendant filed an emergency motion to modify the amended scheduling order ("Defendant's Motion to Modify") [doc. 16]. In Defendant's Motion to Modify, Defendant stated that, on May 30, 2019, Plaintiff appeared for his deposition but was unable to provide any answers because of his health. Defendant

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CONT... Gabriel Medina

Chapter 13

also noted that, since that deposition, Plaintiff's counsel informed Defendant that Plaintiff continued to have medical issues and could not sit for a deposition. As such, Defendant requested an extension of the discovery cutoff date *only* as to Defendant.

On July 30, 2019, the Court entered an order granting Defendant's Motion to Modify (the "Second Amended Scheduling Order") [doc. 18] and setting the following extended deadlines: (A) September 1, 2019 for Defendant to complete discovery; (B) September 30, 2019 for either party to file pretrial motions; (C) October 23, 2019 for the parties to file a joint pretrial stipulation; and (D) November 6, 2019 to attend the pretrial conference.

On September 25, 2019, Plaintiff filed a motion for appointment of Plaintiff's spouse as Plaintiff's guardian ad litem (the "GAL Motion") [doc. 20]. On September 27, 2019, Plaintiff filed a motion to extend the deadlines in the Second Amended Scheduling Order (the "Extend Deadlines Motion") [doc. 25]. In the Extend Deadlines Motion, Plaintiff contends that he has been hospitalized and unable to respond to discovery because of his medical condition. Plaintiff contends that an order continuing the deadlines from the Second Amended Scheduling Order "would allow the motions for the appointment of a guardian ad litem to be heard...." Extend Deadlines Motion, p. 3.

On October 9, 2019, Defendant filed an opposition to the Extend Deadlines Motion (the "Opposition") [doc. 33]. Plaintiff has not timely filed a reply to the Opposition.

II. ANALYSIS

Pursuant to Federal Rule of Civil Procedure 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).

Here, Plaintiff has not provided good cause to extend deadlines. In the Extend Deadlines Motion, Plaintiff states only that he needs an extension of deadlines for the Court to hear the GAL Motion. However, Plaintiff filed the GAL Motion prior to the expiration of the deadline to file pretrial motions; in any event, a motion to appoint a

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CONT... **Gabriel Medina**

Chapter 13

guardian based on Plaintiff's incompetency may be filed at any time. Given that Plaintiff has not asserted that he intends to conduct additional discovery or file any other pretrial motions, there is no "good cause" to amend the Second Amended Scheduling Order, in order to extend those deadlines.

III. CONCLUSION

Except to continue the deadline for the parties to file a joint pretrial stipulation, the Court will deny the Extend Deadlines Motion. The Court withheld setting the MSJ for hearing pending resolution of the Extend Deadlines Motion and the GAL Motion. In light of the above, the Court will set the MSJ for hearing at **2:30 p.m. on December 18, 2019.**

To assess whether the MSJ partially or fully resolves the issues for trial, the Court will continue the pretrial conference to **1:30 p.m. on January 22, 2020.** The Court will continue the deadline for the parties to file a joint pretrial stipulation to **January 8, 2020.**

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

Party Information

Debtor(s):

Gabriel Medina

Represented By
Anthony Obehi Egbase
Sedoo Manu

Defendant(s):

Strunzo Development Corp., a

Represented By
Julian K Bach
Susan C Stevenson

Does 1-50 Inclusive

Pro Se

Plaintiff(s):

Gabriel Medina

Represented By
Anthony Obehi Egbase

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CONT... Gabriel Medina

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, October 23, 2019

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2:30 PM

1:18-10982 Gabriel Medina

Chapter 13

Adv#: 1:18-01126 Medina v. Strunzo Development Corp., a California Corporatio

#25.00 Motion for appointment of debtor's spouse Maria De Los Angeles Medina as guardian ad litem for debtor

Docket 20

Tentative Ruling:

Grant.

I. BACKGROUND

On April 19, 2018, Gabriel Medina ("Plaintiff") filed a chapter 13 petition. On December 10, 2018, Plaintiff filed a complaint against Strunzo Development Corp. ("Defendant"), requesting cancellation of a deed of trust against Plaintiff's real property and in favor of Defendant and declaratory relief that Plaintiff owns the subject property free and clear of Defendant's lien.

On July 16, 2019, Defendant filed an emergency motion to modify the operative scheduling order ("Defendant's Motion to Modify") [doc. 16]. In Defendant's Motion to Modify, Defendant stated that, on May 30, 2019, Plaintiff appeared for his deposition but was unable to provide any answers because of his health. Defendant also noted that, since that deposition, Plaintiff's counsel informed Defendant that Plaintiff continued to have medical issues and could not sit for a deposition. As such, Defendant requested an extension of the discovery cutoff date *only* as to Defendant.

On July 30, 2019, the Court entered an order granting Defendant's Motion to Modify (the "Second Amended Scheduling Order") [doc. 18] and setting the following extended deadlines: (A) September 1, 2019 for Defendant to complete discovery; (B) September 30, 2019 for either party to file pretrial motions; (C) October 23, 2019 for the parties to file a joint pretrial stipulation; and (D) November 6, 2019 to attend the pretrial conference.

On September 25, 2019, Plaintiff filed a motion to appoint a guardian ad litem (the "Motion") [doc. 20]. Through the Motion, Plaintiff requests appointment of his wife,

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CONT... Gabriel Medina

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Maria de Los Angeles Medina, as guardian ad litem. On September 27, 2019, Plaintiff filed a motion to extend the deadlines set forth in the Second Amended Scheduling Order (the "Motion to Extend") [doc. 25]. On September 30, 2019, Defendant filed a motion for summary judgment (the "MSJ") [doc. 27].

On October 9, 2019, Defendant filed an opposition to the Motion (the "Opposition") [doc. 33]. In the Opposition, Defendant notes that it does not oppose the appointment of Ms. Medina as guardian ad litem. However, Defendant opposes Plaintiff's request to have Ms. Medina respond to discovery, attend a deposition on behalf of Plaintiff or provide trial testimony. Defendant contends that Ms. Medina does not have personal knowledge of the pertinent facts of the case, and was not listed as a witness in Plaintiff's initial disclosures. On October 16, 2019, Plaintiff filed a reply to the Opposition [doc. 34], asserting that Plaintiff intends to provide Defendant with supplemental disclosures listing Ms. Medina as a witness. Plaintiff also argues that Defendant is attempting to limit Ms. Medina's powers as a guardian ad litem, and that Ms. Medina is competent to testify about Plaintiff's financial affairs.

II. ANALYSIS

Defendant does not oppose the appointment of Ms. Medina as Plaintiff's guardian ad litem. Instead, Defendant primarily disputes Ms. Medina's ability to provide testimony and/or discovery.

Defendant argues that Ms. Medina cannot provide testimony on behalf of Plaintiff because Ms. Medina was not a percipient witness to the transactions at issue in Plaintiff's complaint. Prior to knowing the subject of her testimony, the Court cannot assess whether Ms. Medina's testimony is objectionable. As Plaintiff's spouse, Ms. Medina *may* have personal knowledge regarding certain facts at issue in this adversary proceeding.

At this time, objections to the scope of Ms. Medina's testimony are premature. Defendant may object to Ms. Medina's testimony at the time Ms. Medina testifies.

III. CONCLUSION

The Court will appoint Ms. Medina as Plaintiff's guardian ad litem. Appointing Ms.

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CONT... Gabriel Medina

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Medina as guardian ad litem will not prevent Defendant from objecting to Ms. Medina's testimony, based on her lack of personal knowledge or other relevant bases, in the future.

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

Party Information

Debtor(s):

Gabriel Medina

Represented By
Anthony Obehi Egbase
Sedoo Manu

Defendant(s):

Strunzo Development Corp., a

Represented By
Julian K Bach
Susan C Stevenson

Does 1-50 Inclusive

Pro Se

Plaintiff(s):

Gabriel Medina

Represented By
Anthony Obehi Egbase

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:18-12689 Mary Ann Irvine

Chapter 13

#1.00 Motion for relief from stay [RP]

CITIBANK, NA
VS
DEBTOR

fr. 11/6/19

Docket 30

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):

Mary Ann Irvine

Represented By
Nathan A Berneman

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CONT... Mary Ann Irvine

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Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:19-10795 Jeffrey Charles Yellin

Chapter 13

#2.00 Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING, LLC
VS
DEBTOR

fr. 10/16/19

Docket 38

Tentative Ruling:

Grant.

I. BACKGROUND

On April 3, 2019, Jeffrey C. Yellin ("Debtor") filed a voluntary chapter 13 petition. In his schedule A/B [doc. 1], Debtor listed an interest in real property located at 6603 Smoke Tree Avenue, Oak Park, California 91377 (the "Property"). In his schedule D [doc. 1], Debtor indicated that "Lakeview Loan Servicing, LLC" holds a claim secured by the Property in the amount of \$489,021.92.

On June 11, 2019, Lakeview Loan Servicing, LLC ("Movant") filed claim 8-1 (the "Claim"). In the Claim, Movant indicates that it holds a claim secured by the Property in the amount of \$491,934.87.

On September 5, 2019, the Court entered an order confirming Debtor's fourth amended chapter 13 plan [docs. 26 and 35]. Debtor's confirmed chapter 13 plan provides for payment of \$47,934.87 in arrears to "Lakeview Loan Servicing, LLC/Flagstar Bank, FSB."

On September 25, 2019, Movant filed a motion for relief from the automatic stay regarding the Property (the "Motion") [doc. 38]. In the Declaration of Jamie Troester filed with the Motion (the "Declaration"), Movant represents that Debtor owes \$12,478.80 in postpetition arrears and that Debtor's last postpetition payment was received in May 2019.

Also in the Declaration, Movant represents that it has physical possession of the

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Chapter 13

promissory note ("Note") dated February 12, 2016 between DLJ Financial, Inc. ("DLJ") and Debtor, which is attached as an Exhibit [Exh. 1]. Attached to the Note is a blank indorsement stating "PAY TO THE ORDER OF" with the recipient left blank, signed by an individual named Melinda McNeal (the "Blank Indorsement"). The Blank Indorsement is not dated. In relevant part, the Note states that "the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the 'Note Holder.'" Note, p. 1.

Also attached to the Motion, and discussed in the Declaration, is a deed of trust (the "DOT"), recorded February 19, 2016 and signed by Debtor [Exh. 2]. The DOT listed DLJ as the lender. Debtor signed the last page of the DOT. In relevant part, the DOT reads—

"Lender" is DLJ Financial, Inc.

...

"MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary und this Security Instrument.

...

"Note" means the promissory note signed by [Debtor] and dated February 12, 2016.

...

TRANSFER OF RIGHTS IN PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. ... [Debtor] understands and agrees that MERS holds only legal title to the interests granted by [Debtor] in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property....

DOT, pp. 2-3. In addition, the DOT states that the Note "can be sold one or more times without prior notice to [Debtor]." DOT, p. 10.

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CONT... **Jeffrey Charles Yellin**

Chapter 13

The Declaration also discusses an Assignment of Deed of Trust (the "Assignment") [Exh. 3], which is attached to the Motion. Through the Assignment, dated August 23, 2018 and recorded on August 23, 2018, MERS, as nominee for DLJ, transferred "all rights, title and interest" in the DOT.

On October 24, 2019, Debtor belatedly filed an opposition to the Motion (the "Opposition") [doc. 44]. In the Opposition, Debtor does not dispute that he has not made the identified postpetition deed of trust payments, nor does he dispute the amount of postpetition arrears. Instead, Debtor argues, among other things, that Movant does not have standing to seek relief from the automatic stay. Debtor also challenges the Assignment and alleges that the Assignment is void.

In the Opposition, Debtor also indicates that he intends to file an objection to the Claim. As of November 1, 2019, no such objection to the Claim has been filed.

II. DISCUSSION

A. Movant's Standing to Bring the Motion

Under the California Commercial Code, the "person entitled to enforce" an instrument means: (a) the holder of the instrument, (b) a non-holder in possession of the instrument who has the rights of a holder, or (c) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to sections 3309 or 3418(d). Cal. Com. Code § 3301; *In re Lee*, 408 B.R. 893, 899 (Bankr. C.D. Cal. 2009); *In re Vargas*, 396 B.R. 511 (Bankr. C.D. Cal. 2008). A person or entity in possession of an instrument is the holder of the instrument if the instrument is payable to that person or entity, or payable to the bearer. Cal. Com. Code § 1201(b)(21). An instrument is payable to the bearer if it does not state a payee or it is "indorsed in blank." Cal. Com. Code §§ 3109(a)(2), 3109(c), 3201(b) & 3205(b).

Here, to the Motion, Movant attached the Note with the Blank Indorsement. As a holder of an instrument payable to the bearer, as defined above, Movant is a "person entitled to enforce" the Note, and the Note need not be specifically indorsed to Movant. Accordingly, Movant has standing to bring the Motion.

B. Borrower Standing to Challenge Assignments

"[B]oth the Supreme Court and [the Ninth Circuit Court of Appeals] have held that

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whether or not the parties raise the issue, ‘federal courts are *required* sua sponte to examine jurisdictional issues such as standing.’” *D’Lil v. Best W. Encina Lodge & Suites*, 538 F.3d 1031, 1035 (9th Cir. 2008) (quoting *Bernhardt v. County of Los Angeles*, 279 F.3d 862, 868 (9th Cir. 2001) (emphasis in *D’Lil*); see also *United States v. Hays*, 515 U.S. 737, 742, 115 S.Ct. 2431, 132 L.Ed.2d 635 (1995).

Under California law—

[A] borrower can generally raise no objection to assignment of the note and deed of trust. A promissory note is a negotiable instrument the lender may sell without notice to the borrower. (*Creative Ventures, LLC v. Jim Ward & Associates* (2011) 195 Cal.App.4th 1430, 1445–1446, 126 Cal.Rptr.3d 564.) The deed of trust, moreover, is inseparable from the note it secures, and follows it even without a separate assignment.

Yvanova v. New Century Mortg. Corp., 62 Cal.4th 919, 927 (2016). In *Yvanova*, the California Supreme Court carved out a narrow exception to the general rule that a borrower does not have standing to challenge an assignment of a note and deed of trust. *Id.*, at 924. The *Yvanova* court held that a borrower does not lack standing to challenge an assignment “if (1) the trustee’s sale has completed and (2) the borrower properly alleges that the assignment is void, not merely voidable.” *Kaurlo v. U.S. Bank, N.A.* (2016 WL 6808117, at *3) (C.D. Cal. Nov. 17, 2016) (citing *Yvanova*, 62 Cal.4th at 924).

Here, Debtor alleges that Movant commenced foreclosure proceedings prepetition. However, a foreclosure sale did not take place.

Courts are split regarding whether borrowers have standing before a foreclosure occurs. Nevertheless, a vast majority of courts appear to agree that borrowers do not have standing before a completed foreclosure sale. After *Yvanova*, a California appellate court decided *Saterbak v. JPMorgan Chase Bank, N.A.*, 245 Cal.App.4th 808 (Ct. App. 2016). In *Saterbak*, the deed of trust named MERS as the beneficiary “solely as nominee for Lender and Lender’s successors and assigns.” *Saterbak*, 245 Cal.App.4th at 811. The deed of trust stated that MERS had the right “to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the” subject real property. *Id.* Subsequently, MERS executed an assignment of the deed of trust to Citibank, N.A. (“Citibank”). The plaintiff defaulted on her mortgage

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payments, and Citibank substituted and appointed National Default Servicing Corporation ("NDS") as trustee under the deed of trust. *Id.*, at 812. NDS recorded a notice of default followed by a notice of trustee's sale, scheduling a foreclosure sale. *Id.*

The plaintiff then filed a lawsuit alleging that the assignment from MERS to Citibank was invalid, including an allegation that the signature on the assignment was robo-signed. *Id.* The trial court dismissed the plaintiff's complaint, and the plaintiff appealed. *Id.* On appeal, the court held that California courts do not allow lawsuits to halt foreclosures "because they 'would result in the impermissible interjection of the courts into a nonjudicial scheme enacted by the California Legislature.'" *Id.*, at 814 (quoting *Jenkins v. JP Morgan Chase Bank, N.A.*, 216 Cal.App.4th 497, 513 (Ct. App. 2013)). In assessing the impact of *Yvanova* on this law, the *Saterbak* court stated that "*Yvanova*'s ruling is expressly limited to the post-foreclosure context." *Id.*, at 815. Because the foreclosure had not yet occurred in *Saterbak*, the court held that the plaintiff did not have standing to challenge the assignment of the deed of trust. *Id.*

"With the exception of four decisions, every decision by our court of appeals and district courts in our circuit has declined to extend *Yvanova* to pre-foreclosure challenges, thereby adopting *Saterbak* and its progeny." *Wyman v. First Am. Title Ins. Co.*, 2017 WL 512869, at *3 (N.D. Cal. Feb. 8, 2017) (aggregating cases). Of particular note, although unpublished, the only decisions by the Ninth Circuit Court of Appeals addressing this issue after *Yvanova* have held that *Yvanova* does not confer standing on borrowers to challenge assignments before a foreclosure sale has occurred. *See, e.g. Wasjutin v. Bank of Am., N.A.*, 732 F. App'x 513, 517 (9th Cir. 2018) ("Nothing about *Yvanova* suggests that, contrary to longstanding precedent on this point, California now allows an action for wrongful foreclosure before a foreclosure takes place."); *Yagman v. Nationstar Mortgage, LLC*, 699 F. App'x 635 (9th Cir. 2017) ("*Yvanova* provides no assistance to [the borrower]; his property has not been subject to a nonjudicial foreclosure. As we have in the past, we join the majority of courts that have declined to extend *Yvanova*.") (citing, *inter alia*, *Saterbak*, 245 Cal.App.4th 808). California courts appear to be in agreement. *See Shetty v. ARLP Securitization Tr. Series 2014-2*, 2017 WL 8220702, at *9 (C.D. Cal. Jan. 19, 2017) (aggregating California cases). Consequently, *pre-foreclosure*, Debtor does not have standing to challenge the Assignment.

C. The Motion

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"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." *In re Cini*, 2012 WL 2374224, at *9 (Bankr. D. Mont. June 22, 2012); *see also Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985).

In this case, there is cause to grant relief from stay; Debtor has failed to make all required postpetition payments due under the Note. In the Motion and the Declaration, Movant represents that Debtor owes \$12,478.80 in postpetition arrears. Debtor does not contest his failure to make these postpetition payments. Accordingly, the Court will grant the Motion.

III. CONCLUSION

In accordance with 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 foreclose upon and obtain possession of the property.

Upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, 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):

Jeffrey Charles Yellin

Represented By
Jeffrey J Hagen

Movant(s):

Lakeview Loan Servicing, LLC

Represented By
Cassandra J Richey

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Darlene C Vigil

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:19-12093 Tony Jesus Almeida

Chapter 13

#3.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 9/18/19

Docket 15

***** VACATED *** REASON: Debtor dismissed on 10/9/19 [doc. 31]. The motion is moot.**

Tentative Ruling:

Party Information

Debtor(s):

Tony Jesus Almeida

Represented By
William J Smyth
Stephen S Smyth

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:19-12282 Erick Chicas

Chapter 13

#4.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 10/2/19

Docket 9

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):

Erick Chicas

Represented By
Eric Bensamochan

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#5.00 Order to show cause why Samuel Hopper and Daniel Jett should not be held in civil contempt for violation of the automatic stay

fr. 5/15/19; 7/17/19

Docket 64

Tentative Ruling:

The parties should be prepared to apprise the Court of the status of the appeal.

May 15, 2019 Ruling

The Court will grant the motion in part and continue this hearing to **July 17, 2019 at 9:30 a.m.**

I. BACKGROUND

On November 7, 2018, Samuel Hopper filed a complaint in the Superior Court of the State of California, County of Los Angeles against My Private Practice, Inc. ("My Private Practice") and Kenneth C. Scott (the "Debtor") for damages and injunctive relief based on alleged violations of California employment laws (the "State Court Action") [doc. 36, Exh. 1].

On December 18, 2018, the Debtor filed a voluntary chapter 13 petition. In his schedule A/B, the Debtor listed a 100% ownership interest in My Private Practice [doc. 1]. On December 18, 2018, the Debtor served Mr. Hopper, care of his attorney, Daniel Jett, with notice of his bankruptcy petition and other supporting documents [doc. 25].

On January 2, 2019, the Debtor's attorney sent an email to Mr. Jett inquiring whether Mr. Jett received the notice of bankruptcy and other documents and reiterating that the State Court Action was stayed [doc. 36, Exh. 3]. On January 4, 2019, Mr. Jett responded to that email, confirming his receipt of the notice of bankruptcy and other documents. *Id.* at Exh. 4. Mr. Jett stated in the email that Mr. Hopper intended to

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pursue the corporate entity, My Private Practice, in the State Court Action without obtaining relief from the automatic stay.

On February 21, 2019, Mr. Hopper filed a first amended complaint in the State Court Action [doc. 36, Exh. 5]. The proof of service attached to the first amended complaint indicates that Mr. Jett served the Debtor with the first amended complaint by United States mail on February 20, 2019. In an email dated March 7, 2019, Mr. Jett wrote: "This afternoon, we effectuated personal service of the First Amended Complaint (FAC) in the Los Angeles Superior Court action on Dr. Scott **as an individual**. . . . (emphasis added). The email continues: "Dr. Hopper still intends to seek relief from the automatic stay. . . ." [doc. 36, Exh. 6].

Mr. Hopper contends that, "[t]he FAC as it pertains to adding a Fourteenth Cause of Action for annulment of a transfer in fraud of creditors does not violate the scope of the automatic stay under Section 362 because none of the allegations pertaining to Debtor's pre-petition obligations to Dr. Hopper was [*sic*] revised or amended. Any debt or legal obligation arising on or before December 18, 2018, remains subject to the stay as to the Debtor. However, once Debtor acted to thwart Dr. Hopper's interests by creating a new corporate entity and looting MPPI of its assets, new legal liability arose that is beyond the scope of the automatic stay." [doc. 41, p. 9].

The fourteenth cause of action in the first amended complaint alleges (the "FAC") [doc. 36, Exh. 5], in relevant part, that,

157. On or about December 18, 2018, MPPI was the owner and in possession and control of checking and savings accounts holding at least \$17,274.00. On or about December 19, 2018, and thereafter, MPPI transferred the full amount of those accounts to SCOTT and/or KSP for no consideration, proof of which will be offered at the trial herein. Thus, MPPI did not receive reasonably equivalent value in exchange for the cash in its bank accounts.

158. Although on the respective dates of the aforementioned transfer no part of Plaintiff's claims HAd [*sic*] been reduced to judgment, Plaintiff is informed and believes, and thereon alleges, that the transfer was made with actual knowledge of Plaintiff's claim and with the actual intent to hinder, delay or defraud MPPI's present and future creditors, *including Plaintiff, in the*

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collection of their claims. (emphasis added).

...

161. Plaintiff is further informed and believes, and thereon alleges, that the cash assets in MPPI's bank accounts was received by SCOTT with knowledge of Plaintiff's claims and knowledge that MPPI intended to hinder, delay and defraud *the collection of Plaintiff's claims* and the claims of all then and future creditors of MPPI. SCOTT had knowledge of Plaintiff's claims by virtue of his position as the CEO and sole shareholder of MPPI, which was a party to this action at the time of the transfer. (emphasis added).

On March 11, 2019, the Debtor filed a *Motion for an OSC re Contempt Against Samuel Hopper and Daniel Jett, Jointly and Severally and Sanctions in the Amount of \$4,025.00* (the "Motion") [doc. 36]. On March 18, 2019, Mr. Hopper filed an opposition to the Motion [doc. 41]. On April 3, 2019, the Debtor filed a reply to that opposition [doc. 59].

On March 13, 2019, Mr. Hopper filed a motion for relief from the automatic stay in a non-bankruptcy forum (the "RFS Motion") [doc. 38]. The hearing on the RFS Motion is set to be heard contemporaneously with this *Order to Show Cause Why Samuel Hopper and Daniel Jett Should Not Be Held in Civil Contempt for Violation of the Automatic Stay* (the "OSC") [doc. 64].

On April 12, 2019, the Court issued the OSC. On April 30, 2019, Mr. Hopper and Mr. Jett filed a response to the OSC (the "Response") [doc. 76]. In the Response, Mr. Jett states: "On March 7, 2019, service of process was effected on Debtor individually as a Defendant in the FAC. I made the decision to direct the process server to effect service of process as to the FAC on Debtor; Dr. Hopper was not involved in that decision at all." Declaration of Daniel Parker Jett ("Jett Decl."), ¶ 11. Mr. Jett further explains that "[t]he FAC was intended to remedy Debtor's post-petition fraudulent conduct in creating a new, successor corporation to MPPI and in looting the assets of MPPI to prevent Dr. Hopper from *collecting his wages and expenses.*" *Id.* at ¶ 9 (emphasis added). On May 7, 2019, the Debtor filed a reply to the Response (the "Reply") [doc. 88].

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II. ANALYSIS

A. Violation of Stay

11 U.S.C. § 362(a) provides in pertinent 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;

...

- (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)). Because such actions are void, they have no force or effect—it is not up to the Debtor to undo the act. *Schwartz*, 202 F.3d at 571. However, 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.

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

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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)).

Mr. Hopper and Mr. Jett argue that they should be not subject to contempt because the FAC pertains to the Debtor's post-petition fraudulent conduct and non-debtor, third party entities. Mr. Hopper and Mr. Jett are correct that the automatic stay under 11 U.S.C. § 362(a) does not apply to post-petition claims and non-debtor parties.

The automatic stay protects against any act or continuation of a proceeding to recover a claim against the debtor that arose before the commencement of the case. Mr. Jett states that the fourteenth cause of action in the FAC only alleged post-petition conduct, and therefore, is not subject to the stay. However, Mr. Jett and Mr. Hopper alleged the fourteenth cause of action in order to recover on a pre-petition claim. Mr. Jett admits that "[t]he FAC was intended to remedy Debtor's post-petition fraudulent conduct in creating a new, successor corporation to MPPI and in looting the assets of MPPI to prevent Dr. Hopper from *collecting his wages and expenses*." at ¶ 9 (emphasis added). Mr. Hopper's alleged unpaid wages and expenses is a claim that arose pre-petition. Although the Debtor's alleged actions were post-petition, the claim that Mr. Hopper and Mr. Jett are trying to recover arose pre-petition. As such, continuing the state court litigation by filing and serving the FAC was a violation of the automatic stay.

B. Damages under 362(k)

11 U.S.C. § 362(k) provides the following:

- (1) 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."

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Judge Victoria Kaufman, Presiding
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Wednesday, November 6, 2019

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9:30 AM

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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. *Fernandez v. GE Capital Mortgage Servs., Inc. (In re Fernandez)*, 227 B.R. 174, 181 (9th Cir. BAP 1998).

i. Willful Violation of Stay

A willful violation of the automatic stay does not require specific intent to violate the automatic stay. *In re Abrams*, 127 B.R. 239, 243 (9th Cir. BAP 1991). "A violation of the automatic stay is 'willful' if 1) the creditor knew of the stay and 2) the creditor's actions, which violated the automatic stay, were intentional." *Eskanos & Adler, P.C. v. Roman (In re Roman)*, 283 B.R. 1, 8 (9th Cir. BAP 2002). Moreover, a recent Ninth Circuit case emphasized an affirmative duty to comply with the automatic stay and to remedy any automatic stay violation. *Sternberg v. Johnston*, 595 F.3d 937, 944-45 (9th Cir. 2010). Also, the case noted that the alleged violator "needed neither to make some collection effort nor to know that his actions were unlawful for his violation to be willful." *Id.* at 945.

Here, Mr. Jett committed a willful violation of the automatic stay. Mr. Jett acknowledged that he received notice of the Debtor's bankruptcy filing and was aware of the automatic stay [doc. 36, Exh. 4]. Further, Mr. Jett admitted filing the FAC and employing a process server to serve the Debtor in his individual capacity were intentional. Jett Decl., ¶¶ 9 and 11. So although Mr. Jett may have believed in good faith that his actions were not a violation of the automatic stay, the test for willfulness does not require a specific intent. Mr. Jett committed a willful violation of the automatic stay.

Regarding Mr. Hopper, it does not appear that Mr. Hopper committed a willful violation of the automatic stay. It does appear that Mr. Hopper knew of the stay. However, it does not appear that Mr. Hopper's actions were intentional. Although Mr. Hopper has not submitted a declaration, Mr. Jett stated that Mr. Hopper was not involved in the decision to serve the Debtor with the FAC. Jett Decl., ¶ 11. The Debtor has not presented conflicting evidence.

ii. Damages

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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*, 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).

With regard to punitive damages, they are provided for under 11 U.S.C. § 362(k). However, courts have "traditionally been reluctant to grant punitive damages absent some showing of reckless or callous disregard for the law or rights of others." *In re Bloom*, 875 F.2d 224, 228 (9th Cir. 1989) (citing *Protectus Alpha Navigation Co. v. North Pacific Grain Growers, Inc.*, 767 F.2d 1379, 1385 (9th Cir. 1985)). "[P]unitive damages are appropriate where an arrogant defiance of federal law is demonstrated." *In re Novak*, 223 B.R. 363, 368 (Bankr. M.D. Fla. 1997) (citing *Matter of Mullarkey*, 81 B.R. 280, 284 (Bankr. D. N.J. 1987) (quoting *In re Tel-A-Communications, Inc.*, 50 B.R. 250, 255 (Bankr. D. Conn. 1985))).

As set forth above, victims of willful stay violations are entitled to actual damages, including attorney's fees and costs. The Debtor does not provide a breakdown of the actual costs. In the Motion, the Debtor requests \$4,025, consisting of 4.5 hours for the Debtor's attorney to draft the Motion, and an estimated 2.5 hours for the Debtor's attorney to review an opposition and draft reply papers and an estimated 4.5 hours to drive to court. In the Reply, the Debtor requests an additional \$2,100. The Debtor did not provide a breakdown for the additional damage request. While, the Debtor is entitled to actual damages under § 362(k), the Debtor must provide a breakdown of fees for actual work done (not estimated) or actual damages incurred in connection with the automatic stay violations to award these damages properly.

Regarding punitive damages requested by the Debtor in the Motion, it does not appear that punitive damages are appropriate in this case. It does not appear that Mr. Jett was acting with reckless or callous disregard for the law or the rights of the Debtor. It appears that Mr. Jett acted under a good faith belief that his actions were not a violation of the stay.

III. CONCLUSION

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CONT... Kenneth C. Scott

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For the reasons discussed above, the Court finds that Mr. Jett willfully violated the automatic stay. The Debtor is entitled to actual damages in connection with the violation. **By no later than May 29, 2019**, the Debtor's attorney must file and serve on Mr. Jett a declaration with a breakdown of the Debtor's attorney's actual fees and costs associated with remedying the violation of stay. **By no later than July 3, 2019**, Mr. Jett may file and serve any opposition to that declaration. **Any reply must be filed and served no later than July 10, 2019.**

The Court will continue this hearing to **9:30 a.m. on July 17, 2019**, in order to assess the Debtor's damages in connection with the violation of stay.

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

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, November 6, 2019

Hearing Room 301

9:30 AM

1:19-12502 Raymond Sarvarian

Chapter 7

#6.00 Motion for relief from stay [AN]

CATHERINE NICOLE AND YAACOV GALIL
VS
DEBTOR

Docket 9

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 and/or an adversary complaint under 11 U.S.C. § 523 in the debtor's bankruptcy case.

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Raymond Sarvarian

Represented By
Raj T Wadhvani

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

9:30 AM

1:19-12060 Roman Ciro Caballero

Chapter 7

#7.00 Motion for relief from stay [PP]

NISSAN MOTOR ACCEPTANCE CORPORATION
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.

Party Information

Debtor(s):

Roman Ciro Caballero

Represented By
Alla Tenina

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, November 6, 2019

Hearing Room 301

9:30 AM

1:19-12135 Sara E Bustos

Chapter 7

#8.00 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.

Party Information

Debtor(s):

Sara E Bustos

Represented By
A Mina Tran

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:19-12082 Robert M. Gerstein

Chapter 7

#9.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Stip to continue filed 11/5/19

Docket 44

***** VACATED *** REASON: Order approving stip entered 11/5/19.
Hearing continued to 12/18/19 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Trustee(s):

Amy L Goldman (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
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Wednesday, November 6, 2019

Hearing Room 301

9:30 AM

1:19-12375 Renaissance Investment Group, LLC

Chapter 7

#10.00 Motion for relief from stay [RP]

ANCHOR FUND, LLC
VS
DEBTOR

Docket 7

Tentative Ruling:

The movant did not serve notice of the hearing on lienholder Araz Jerahian as required under Local Bankruptcy Rule ("LBR") 4001-1(c)(1)(C) and Fed. R. Bankr. P. 4001(a)(1).

Party Information

Debtor(s):

Renaissance Investment Group, LLC

Represented By
David S Hagen

Trustee(s):

Amy Goldman

Pro Se

**United States Bankruptcy Court
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Wednesday, November 6, 2019

Hearing Room 301

9:30 AM

1:19-12471 James Wilson

Chapter 13

#11.00 Motion for relief from stay [UD]

MORGAN PICKS TWO, LLC
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.

Party Information

Debtor(s):

James Wilson

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 6, 2019

Hearing Room 301

9:30 AM

1:19-12558 Francisco Lopez

Chapter 13

#12.00 Motion for relief from stay [UD]

AMLI MANAGEMENT COMPANY
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 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.

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):

Francisco Lopez

Pro Se

**United States Bankruptcy Court
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9:30 AM

CONT... Francisco Lopez

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 6, 2019

Hearing Room 301

9:30 AM

1:19-12594 Omar Martinez

Chapter 13

#13.00 Amended motion for relief from stay [UD]

MICHAEL RIBONS
VS
DEBTOR

Docket 15

***** VACATED *** REASON: Motion not in compliance with LBR 9013-1
(d)(2). Movant filed and served the motion 20 days before the hearing.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Omar Martinez Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR) Pro Se

United States Bankruptcy Court
Central District of California
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Wednesday, November 6, 2019

Hearing Room 301

9:30 AM

1:18-10562 Jesus Torres and Esperanza Torres

Chapter 13

#14.00 Motion for relief from stay [PP]

CAPITAL ONE AUTO FINANCE
VS
DEBTOR

Stip for adequate protection filed 11/4/19

Docket 53

*** VACATED *** REASON: Order approving stipulation entered
11/4/19.

Tentative Ruling:

Party Information

Debtor(s):

Jesus Torres

Represented By
Susan Jill Wolf

Joint Debtor(s):

Esperanza Torres

Represented By
Susan Jill Wolf

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 6, 2019

Hearing Room 301

9:30 AM

1:18-12405 Jeanie Morgan Galvin

Chapter 13

#15.00 Motion for relief from stay [PP]

ACAR LEASING LTD
VS
DEBTOR

Docket 39

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):

Jeanie Morgan Galvin

Represented By
Steven A Alpert

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

9:30 AM

1:17-11883 Roger Valencia, II

Chapter 13

#16.00 Motion for relief from stay [RP]

WILMINGTON TRUST NATIONAL ASSOCIATION
VS
DEBTOR

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roger Valencia II

Represented By
Eric A Jimenez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, November 6, 2019

Hearing Room 301

9:30 AM

1:19-11897 Diana G Corpus

Chapter 13

#17.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 22

Tentative Ruling:

The debtor's prior chapter 13 bankruptcy case (case no. 18-bk-12821, filed on November 20, 2018) was pending and dismissed within a year prior to the commencement of this case, and the debtor did not move for an extension or continuation of the stay within 30 days of the petition date under 11 U.S.C. § 362(c) (3)(B). To the extent that the automatic stay has not terminated, 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.

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9:30 AM

CONT... Diana G Corpus

Chapter 13

Party Information

Debtor(s):

Diana G Corpus

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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9:30 AM

1:19-12354 Orna Shaposhnik

Chapter 13

#18.00 Motion for relief from stay [RP]

U.S.BANK NA
VS
DEBTOR

Docket 15

Tentative Ruling:

The debtor's prior chapter 13 bankruptcy case was pending and dismissed within a year prior to the commencement of this case, and the debtor did not move for an extension or continuation of the stay within 30 days of the petition date under 11 U.S.C. § 362(c)(3)(B). To the extent that the automatic stay has not terminated, 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.

Any other request for relief is denied.

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

Party Information

Debtor(s):

Orna Shaposhnik Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR) Pro Se

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:19-12419 Hermina Gazmararian

Chapter 13

#19.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Case dismissed 10/15/2019

Docket 7

***** VACATED *** REASON: No chambers copy of motion provided.
Motion is off calendar.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermina Gazmararian

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

1:30 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

Adv#: 1:17-01017 Weil v. Cazares et al

- #20.00** 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;
3/14/18; 1/23/19; 2/20/19 (stip); 5/8/19 (stip); 08/21/19 (stip);

Docket 78

Tentative Ruling:

On September 23, 2019, the Court approved the parties' stipulation extending the discovery cutoff and the deadline to file pretrial motions to December 6, 2019. In accordance with the parties' joint status report [doc. 112], the Court will set the following deadlines:

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 2/19/20.

Pretrial: 1:30 p.m. on 3/4/20.

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
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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
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Trustee(s):

Diane Weil (TR)	Represented By C John M Melissinos
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**United States Bankruptcy Court
Central District of California
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Wednesday, November 6, 2019

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01072 Adri v. Adri

#21.00 Status conference re: complaint to deny debtor's discharge

fr. 8/21/19; 10/2/19

Docket 1

Tentative Ruling:

See calendar no. 22.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub

Defendant(s):

Deborah Adri

Pro Se

Plaintiff(s):

Moshe Adri

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01088 Elissa D. Miler, chapter 7 trustee for the estate v. Adri

#22.00 Status conference re: complaint to deny discharge

fr. 10/2/19

Docket 1

Tentative Ruling:

The parties may appear telephonically for this continued status conference.

What is the status of including Robert Yaspan in the parties' mediation?

The plaintiff/chapter 7 trustee must lodge an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediation using Form 702.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Deborah Lois Adri

Pro Se

Plaintiff(s):

Elissa D. Miler, chapter 7 trustee for

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta
Larry W Gabriel

**United States Bankruptcy Court
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Hearing Room 301

1:30 PM

1:18-10982 Gabriel Medina

Chapter 13

Adv#: 1:18-01126 Medina v. Strunzo Development Corp., a California Corporatio

#23.00 Pretrial conference re complaint for equitable relief:

1. Cancellation of instrument/deed of trust;
2. Declaratory relief

fr. 2/6/19; 7/17/19(stip); 9/18/19;

Docket 1

***** VACATED *** REASON: Continued to 1:30 p.m. on 1/22/20 per
Court's 10/23/19 ruling [doc. 37].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Medina

Represented By
Anthony Obehi Egbase
Sedoo Manu

Defendant(s):

Strunzo Development Corp., a

Pro Se

Does 1-50 Inclusive

Pro Se

Plaintiff(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
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Wednesday, November 6, 2019

Hearing Room 301

1:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01081 Albini et al v. Zuckerman

#24.00 Pretrial conference re first amended complaint based upon fraud to determine nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A)

fr. 10/3/18; 10/17/18, 11/7/18; 1/9/2019; 2/6/19; 3/20/19

Docket 24

*** VACATED *** **REASON: Order granting MSJ entered 7/31/19 [doc. 99].**

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

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

Wednesday, November 6, 2019

Hearing Room 301

1:30 PM

CONT... Robert Edward Zuckerman

Chapter 11

	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 Spiridonoff	Represented By Edward McCutchan
Greg Vernon	Represented By Edward McCutchan
Carmen Violin	Represented By Edward McCutchan

**United States Bankruptcy Court
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1:30 PM

CONT... Robert Edward Zuckerman

Chapter 11

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

Henry P Crigler

Represented By

**United States Bankruptcy Court
Central District of California
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Wednesday, November 6, 2019

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CONT... Robert Edward Zuckerman

Chapter 11

	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
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Wednesday, November 6, 2019

Hearing Room 301

1:30 PM

1:19-10790 Nelson Sargsyan

Chapter 7

Adv#: 1:19-01080 Radium2 Capital Inc. v. Sargsyan

#25.00 Plaintiff's motion for default judgment

fr. 10/2/19

Docket 12

***** VACATED *** REASON: Order of dismissal entered 10/8/19 [Dkt.22]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nelson Sargsyan

Represented By
Thomas B Ure

Defendant(s):

Nelson Sargsyan

Pro Se

Plaintiff(s):

Radium2 Capital Inc.

Represented By
Jennifer Witherell Crastz

Trustee(s):

Diane C Weil (TR)

Pro Se

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Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mor et al

- #26.00** Status conference re: complaint for:
1. Fraud and intentional deceit;
 2. Breach of contract;
 3. Breach of the covenant of good faith and fair dealing;
 4. Breach of fiduciary duty;
 5. Vicarious liability-ostensible agent;
 6. Negligent supervision or training of an employee and/or agent;
 7. Financial elder abuse

fr. 10/2/19

Stip to continue filed 10/4/19

Docket 1

***** VACATED *** REASON: Order approving stip entered 10/4/19
continuing hearing to 12/4/19 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharon Mizrahi

Represented By
Shai S Oved

Defendant(s):

Ido Mor

Pro Se

Sharon Mizrahi, an Individual

Pro Se

Sharon Mizrahi dba Divine Builders

Pro Se

Divine Builders

Pro Se

GHR Divine Remodeling

Pro Se

Does 1 Through 10, Inclusive

Pro Se

**United States Bankruptcy Court
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Wednesday, November 6, 2019

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1:30 PM

CONT... Sharon Mizrahi

Chapter 13

Plaintiff(s):

Michael Frias

Represented By
Ezedrick S Johnson III

Patricia Bartlett

Represented By
E. Samuel Johnson

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, November 6, 2019

Hearing Room 301

2:30 PM

1:18-10329 Ali P Dargah

Chapter 13

Adv#: 1:19-01091 Dargah v. DIVERSIFIED ACCEPTANCE CORPORATION, a California c

#27.00 Plaintiff's motion for default judgment under LBR 7055-1

Docket 51

***** VACATED *** REASON: Continued to 11/20/19 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ali P Dargah

Represented By
Matthew D. Resnik

Defendant(s):

DIVERSIFIED ACCEPTANCE	Pro Se
USB LEASING LT, a Delaware	Pro Se
BEGL CONSTRUCTION CO.,	Pro Se
MARTIN SERRAF, an individual;	Pro Se
MARYAM OLOOMI, 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

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court
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Wednesday, November 6, 2019

Hearing Room 301

2:30 PM

1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01116 Bars v. Sheikh

#28.00 Motion for approval of stipulation for judgment between plaintiff and defendants

Docket 17

Tentative Ruling:

At this time, the Court will not dismiss this adversary proceeding and will not approve the stipulation between the parties [doc. 17].

Pursuant to Fed. R. Bankr. P. 7041, a complaint objecting to the debtor's discharge under 11 U.S.C. § 727 *shall not be dismissed at the plaintiff's instance* without notice to the chapter 7 trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.

A motion for approval of the proposed settlement of the parties' adversary proceeding must be set for hearing in accordance with Local Bankruptcy Rule 9013-1. In addition to the motion, the parties must file written notice of the motion and the other pleadings and evidence identified in Local Bankruptcy Rule 9013-1. Written notice of the proposed settlement *and the hearing thereon*, in accordance with Local Bankruptcy Rule 9013-1, must be provided to the chapter 7 trustee, the Office of the U.S. Trustee and all defendants' creditors. Although the plaintiff served the motion to approve compromise [doc. 14] and the stipulation between the parties on the defendants' creditors, the plaintiff did not provide notice of the deadline for any party in interest to object.

In addition, the plaintiff's motion does not include a pertinent discussion regarding settlement of a claim **under 11 U.S.C. § 727**. As such, the plaintiff should file and serve an amended motion to approve the compromise between the parties. In connection with the motion, the Court will evaluate the proposed settlement in light of such cases as *In re Babb*, 346 B.R. 774 (Bankr. E.D. Tenn. 2006), *In re Levine*, 287 B.R. 683 (Bankr. E.D. Mich. 2002) and *In re Armond*, 240 B.R. 51 (Bankr. C.D. Cal. 1999), and such other relevant authorities as the parties may bring to the Court's

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2:30 PM

CONT... **Atif Sheikh**

Chapter 7

attention in their motion for approval of the proposed settlement.

The Court will set a hearing on the amended motion at **2:30 p.m. on January 22, 2020**. No later than **December 18, 2019**, the plaintiff must file and serve an amended motion discussing the authorities above. By the same date, the plaintiff must file and serve proper notice of the amended motion with the hearing date provided by the Court and the deadline for any parties in interest to object to the motion, 14 days prior to the hearing date.

Party Information

Debtor(s):

Atif Sheikh

Represented By
Steven M Gluck

Defendant(s):

Atif Sheikh

Represented By
Steven M Gluck

Joint Debtor(s):

Naureen Sheikh

Represented By
Steven M Gluck

Plaintiff(s):

Candace Marie Bars

Represented By
David C Bernstein
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**

Thursday, November 7, 2019

Hearing Room 301

10:30 AM

1:10-17214 Darin Davis

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Danning Gill Diamond & Kollitz LLP, general counsel to Chapter 7 Trustee

SLBiggs, Accountant to Chapter 7 Trustee

fr. 9/19/19; 10/17/19

Docket 320

Tentative Ruling:

The Court will continue this hearing to **10:30 a.m. on December 5, 2019.**

Appearances on November 7, 2019 are excused.

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

**United States Bankruptcy Court
Central District of California
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Thursday, November 7, 2019

Hearing Room 301

10:30 AM

CONT...

Darin Davis

Michael G D'Alba
Richard K Diamond

Chapter 7

**United States Bankruptcy Court
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Thursday, November 7, 2019

Hearing Room 301

10:30 AM

1:16-10024 Paulette Vonetta Moses

Chapter 7

#2.00 Trustee's final report and applications for compensation

Amy Goldman, Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith LLP, Attorneys for Trustee

SLBiggs, A Division of SingerLewak, Accountants for Trustee

Dishbak Law Firm, Former Attorney for Debtor

Docket 418

Tentative Ruling:

The Court will continue this hearing to **December 5, 2019 at 10:30 a.m.**

In the notice of the chapter 7 trustee's final report [doc. 418], the chapter 7 trustee (the "Trustee") represents that there are three chapter 11 administrative expenses: (1) \$42,613.10 asserted by the Dishbak Law Firm (counsel to the debtor and debtor in possession during the administration of the chapter 11 case); (2) \$68,718.00 in favor of the Internal Revenue Service (the "IRS"); (3) \$13,829.00 in favor of the State of California Franchise Tax Board (the "FTB"). The Trustee proposes to distribute \$2,500.00 to the Dishbak Law Firm and \$0 to the IRS and the FTB.

The Trustee has not served the United States (for matters involving the IRS) and the FTB in accordance with Local Bankruptcy Rule 2002-2(c) and Fed. R. Bankr. P. 5003(e) and used 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, under "Rules & Procedures." In accordance with the foregoing, by **November 14, 2019**, the IRS and the FTB must be served with the notice of continued hearing, notice of the Trustee's final report and the deadline to file a written response at each of the following addresses:

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10:30 AM

CONT... Paulette Vonetta Moses

Chapter 7

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

Franchise Tax Board Bankruptcy Section, MS: A-340
P. O. Box 2952
Sacramento, CA 95812-2952

Regarding the Dishbak Law Firm's First and Final Application for Compensation and Reimbursement of Expenses (the "Dishbak Application"), Ms. Dishbak and the Trustee entered into a stipulation (the "Dishbak Stipulation") [doc. 408], which provides the following:

4. Ms. Dishbak and the Dishbak Law firm shall be allowed a chapter 11 administrative claim in the case . . . for services rendered in the chapter 11 case. Ms. Dishbak and the Dishbak Law Firm shall be paid from the Retainer fees and costs up to \$2,500.00 of their allowed chapter 11 administrative claim so long as such allowed claim is equal to or exceeds \$2,500.00 as determined by the bankruptcy court. . . .
5. If additional funds are available to pay chapter 11 administrative claims ("Chapter 11 Fund"), all chapter 11 claimants shall share *pro rata* up to the allowed amount of their chapter 11 claims.
6. Such Chapter 11 Fund shall be paid:
 - a. First to the chapter 11 administrative claimants other than Ms.

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10:30 AM

CONT...

Paulette Vonetta Moses

Chapter 7

Dishbak and the Dishbak Law Firm . . . until such Other Chapter 11
Claims receive their *pro rata* equivalent of Ms. Dishbak and the
Dishbak Law Firm's percentage share equal to \$2,500. . . .

If the IRS and the FTB (the other chapter 11 administrative claimants) are not receiving a distribution, does Ms. Dishbak agree to cap her administrative expense for fees and costs at \$2,500.00? The Court already has allowed a chapter 11 administrative expense in that amount to the Dishbak Law Firm. If not, in connection with the continued hearing, the Court will rule on the allowance of the balance of the Dishbak Law Firm's requested fees and expenses, as set forth in the Dishbak Application.

Party Information

Debtor(s):

Paulette Vonetta Moses

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By
Lovee D Sarenas
Annie Verdries

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Thursday, November 7, 2019

Hearing Room 301

10:30 AM

1:16-13380 Sheree Gaynelle Solieman

Chapter 7

#3.00 Trustee's final report and applications for compensation

Amy Goldman, Chapter 7 Trustee

Pena & Soma, APC, Attorneys for Chapter 7 Trustee

SLBiggs, A Division of SingerLewak, Accountants for Trustee

CBIZ Valuation Group, LLC, Financial Advisors and Consultants for Trustee

Docket 80

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee – approve fees of \$7,750.00 and reimbursement of expenses of \$38.80, pursuant to 11 U.S.C. § 330, on a final basis.

Peña & Soma, APC by Leonard Peña, counsel to chapter 7 trustee – approve fees of \$27,825.00 and reimbursement of expenses of \$544.84, pursuant to 11 U.S.C. § 330, on a final basis.

SLBiggs, A Division of SingerLewak, accountant to chapter 7 trustee – approve fees of \$13,597.50 and reimbursement of expenses of \$193.42, pursuant to 11 U.S.C. § 330, on a final basis.

CBIZ Valuation Group, LLC, consultant to chapter 7 trustee – approve fees of \$18,000.00 and reimbursement of expenses of \$350.00, 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 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

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10:30 AM

CONT... Sheree Gaynelle Solieman

Chapter 7

is required and the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Sheree Gaynelle Solieman

Represented By
Michael S Goergen
Leonard Pena

Trustee(s):

Amy L Goldman (TR)

Represented By
Leonard Pena
Jeffrey L Sumpter

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#4.00 First Interim Application by Resnik Hayes Moradi LLP, General Bankruptcy Counsel for the Debtor, for Allowance of Fees and Reimbursement of Costs for the Period November 29, 2016 Through July 20, 2019

Docket 214

Tentative Ruling:

Resnik Hayes Moradi, LLP ("Applicant"), counsel to debtor and debtor-in-possession – pursuant to the stipulation between the United States Trustee and Applicant, approve fees in the amount of \$154,498.00 and reimbursement of expenses in the amount of \$2,470.69, pursuant to 11 U.S.C. § 331, for the period covering November 29, 2016 through July 20, 2019, on an interim basis. Applicant may collect 80% of the approved fees and 100% of the approved reimbursement of expenses at this time.

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):

Christopher Sabin Nassif

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

**United States Bankruptcy Court
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10:30 AM

1:18-10469 Porter Ranch Integrative Medical Clinic, P.C.

Chapter 7

#5.00 First Interim Fee Application of Chapter 7 Trustee for Approval of Compensation and Reimbursement of Expenses

Docket 63

Tentative Ruling:

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$10,058.19 and reimbursement of expenses of \$1,462.83 for the period covering February 21, 2018 through September 30, 2019, pursuant to 11 U.S.C. § 331, on an interim basis. Such fees have been reduced from the requested fees of \$10,462.19, based on the reduced interim amounts disbursed to professionals. Applicant 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):

Porter Ranch Integrative Medical

Represented By
Michael D Luppi

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan
Montserrat Morales

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10:30 AM

1:18-10469 Porter Ranch Integrative Medical Clinic, P.C.

Chapter 7

#6.00 First interim application for payment of fees and reimbursement of expenses of Margulies Faith, LLP, attorneys for Trustee

Docket 66

Tentative Ruling:

Margulies Faith, LLP (“Applicant”), counsel to chapter 7 trustee – pursuant to the stipulation entered into between Applicant and the United States Trustee [doc. 71], approve fees of \$65,679.50 and reimbursement of expenses of \$3,613.34 for the period covering March 30, 2018 through September 30, 2019, 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 trustee 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):

Porter Ranch Integrative Medical

Represented By
Michael D Luppi

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan
Montserrat Morales

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10:30 AM

1:18-10469 Porter Ranch Integrative Medical Clinic, P.C.

Chapter 7

#7.00 First Interim Application for Compensation and Reimbursement of Expenses of Grobstein Teeple LLP as Accountants for the Chapter 7 Trustee

Docket 61

Tentative Ruling:

Grobstein Teeple, LLP (“Applicant”), accountant to chapter 7 trustee – pursuant to the stipulation entered into between Applicant and the United States Trustee [doc. 72], approve fees of \$73,477.00 and reimbursement of expenses of \$217.92 for the period covering March 30, 2018 through September 30, 2019, 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 trustee 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):

Porter Ranch Integrative Medical

Represented By
Michael D Luppi

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan
Montserrat Morales

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10:30 AM

1:18-10469 Porter Ranch Integrative Medical Clinic, P.C.

Chapter 7

#8.00 First Interim Application for Fees and Reimbursement of Costs
of Terzian Law Group, A Professional Corporation, Patient Care Ombudsman

Docket 62

Tentative Ruling:

Terzian Law Group ("Applicant"), patient care ombudsman to chapter 7 trustee – pursuant to the stipulation entered into between Applicant and the United States Trustee [doc. 68], approve fees of \$6,100.00 for the period covering April 3, 2018 through September 30, 2019, 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 trustee 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):

Porter Ranch Integrative Medical

Represented By
Michael D Luppi

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan
Montserrat Morales

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Hearing Room 301

10:30 AM

1:18-11488 Christopher Anderson

Chapter 7

#9.00 Chapter 7 Trustee's First Interim Application for Compensation and Reimbursement of Expenses

Docket 156

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$16,438.53 and reimbursement of expenses of \$27.01 for the period covering June 12, 2018 through September 30, 2019, pursuant to 11 U.S.C. § 331, on an interim basis. Such fees have been reduced from the requested fees of \$18,839.99, based on the 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):

Christopher Anderson

Represented By
Daniel King

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

**United States Bankruptcy Court
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Hearing Room 303

10:30 AM

1:18-11488 Christopher Anderson

Chapter 7

#10.00 Receiver Lindsay F. Nielson's Application for allowance of administrative fee claim pursuant to 11 U.S.C. 503(b)(3)(E)

Docket 152

Tentative Ruling:

Grant pursuant to the *Addendum to Lindsay F. Nielson's Request for Fees* [doc. 154]. Pursuant to 11 U.S.C. § 503(b)(3)(E), Mr. Nielson shall have an allowed administrative claim for \$11,445.00.

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 Anderson

Represented By
Daniel King

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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10:30 AM

1:18-11488 Christopher Anderson

Chapter 7

#11.00 First Interim Application of Ervin Cohen & Jessup LLP, Counsel for David K. Gottlieb, Chapter 7 Trustee, for Allowance of Fees and Reimbursement of Expenses for the Period November 14, 2018 Through and Including September 30, 2019

Docket 159

Tentative Ruling:

Ervin Cohen & Jessup LLP ("Applicant"), counsel to chapter 7 trustee – approve fees of \$166,015.25 and reimbursement of expenses of \$6,963.36 for the period covering November 14, 2018 through September 30, 2019, 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 \$14,826.25 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).

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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: review schedules; conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents, such as bank 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	Time	Fee	Description
Case Administration	11/15/18	PAD	0.30	\$178.50	Prepare notice of stay for filing in debtor's divorce case
Asset Analysis and Recovery	11/15/18	PAD	0.20	\$119.00	Revise letter to debtor's counsel for info and docs
Asset Analysis and Recovery	11/16/18	PAD	0.40	\$238.00	Review debtor's tax returns
Asset Analysis and Recovery	11/20/18	PAD	0.50	\$297.50	Review Catco and Sharp tax returns
Asset Analysis and Recovery	11/21/18	PAD	0.40	\$238.00	Review preliminary title report
Asset Analysis and Recovery	11/21/18	PAD	0.40	\$238.00	Telephone call with Fridman re preliminary title report and fact a number of liens are preferences and questions re liens not on report

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Asset Analysis and Recovery	11/21/18	PAD	0.30	\$178.50	Review other lien documents and abstracts from title
Asset Analysis and Recovery	11/26/18	PAD	0.10	\$59.50	Write debtor's counsel re insurance info and policy
Asset Analysis and Recovery	11/27/18	PAD	0.10	\$59.50	Review judgment obtained by Catco
Asset Analysis and Recovery	11/29/18	PAD	1.20	\$714.00	Quick review of debtor's bank statements and checks from wife's counsel
Asset Analysis and Recovery	11/30/18	PAD	0.50	\$297.50	Highlight debtor's 2004 exam for questions to ask at 341(a)
Asset Analysis and Recovery	11/30/18	PAD	0.90	\$535.50	Start detailed review of debtor's checks and bank statement and copy item of interest to ask about
Asset Analysis and Recovery	12/1/18	PAD	0.80	\$476.00	Review debtor's bank statements and checks and prepare questions for 341(a)
Asset Analysis and Recovery	12/4/18	PAD	2.30	\$1,368.50	Prepare for debtor's 341(a)
Asset Analysis and Recovery	12/6/18	PAD	0.40	\$238.00	Final prep for 341(a) and draft additional questions and doc's needed
Asset Analysis and Recovery	12/7/18	PAD	5.20	\$3,094.00	Attend continued 341(a) and question debtor and conference with trustee after
Asset Analysis and Recovery	12/7/18	PAD	0.20	\$119.00	Write Houghton re status on turnover of art and documents to Trustee
Asset Analysis and Recovery	12/12/18	PAD	0.20	\$119.00	Write Houghton again for turnover of art
Asset Analysis and Recovery	12/14/18	PAD	0.10	\$59.50	Write Houghton on status of turnover of art and info
Asset Analysis and Recovery	2/6/19	PAD	0.10	\$62.00	Write Houghton re Spear to pick up the art
Asset Analysis and Recovery	2/6/19	PAD	0.10	\$62.00	Write Spear and Trustee re picking up the art
Asset Analysis and Recovery	2/6/19	PAD	0.10	\$62.00	Review email from Spear re picking up the art
Asset Analysis and Recovery	2/14/19	PAD	0.10	\$62.00	Write Houghton re status of turning over art
Asset Analysis and Recovery	2/21/19	PAD	0.10	\$62.00	Correspond with Spear re picking up the art
Asset Analysis and Recovery	2/22/19	PAD	0.10	\$62.00	Review email from Spear re picking up art and response
Asset Disposition	2/21/19	PAD	0.10	\$62.00	Write Spear re status on picking up the art
Fee/Employment Application	12/4/18	PAD	0.20	\$119.00	Prepare declaration re no opposition to ECJ employment
Fee/Employment Application	12/4/18	PAD	0.20	\$119.00	Prepare order approving ECJ employment
Fee/Employment Application	12/14/18	PAD	0.10	\$59.50	Review notice and application to employ brokers and write trustee re wrong judge listed

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Fee/Employment Application	12/14/18	PAD	0.10	\$59.50	Respond to trustee re how to correct broker employment app with wrong judge listed
Fee/Employment Application	7/9/19	HIC	0.80	\$440.00	Finalize auctioneer application and notice; arrange for filing
Claims Administration and Objections	1/16/19	PAD	0.10	\$62.00	Review notice of claim bar date and check claims register
Claims Administration and Objections	2/15/19	PAD	0.10	\$62.00	Review proof of claim filed by Plummer Group

Further, in light of the fact that conducting the 11 U.S.C. § 341(a) meeting of creditors is primarily a trustee duty, the Court will reduce the following fees for the service identified below by 50% because it is excessive.

Category	Date	Timekeeper	Time	Description	Fee	Reduced Fee
Asset Analysis and Recovery	11/27/18	PAD	2.10	Prepare questions for continued 341a of debtor	\$1,249.50	\$624.75

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

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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	Time	Fee	Description
Case Administration	11/15/18	PAD	0.20	\$119.00	Prepare exhibits for notice of stay and have it filed and served
Case Administration	1/29/19	TMC	0.30	\$70.50	Preparation and transmittal of hearing disk for transportation
Asset Analysis and Recovery	11/19/18	TMC	0.40	\$94.00	Retrieval of documents in family law and civil actions
Asset Analysis and Recovery	11/26/18	PAD	0.10	\$59.50	Have stipulation to turnover property and proposed order filed and served
Asset Analysis and Recovery	11/27/18	TMC	1.70	\$399.50	Research and retrieval of pleadings in various pending matter; retrieval of case dockets; preparation and transmittal of document requests to court
Asset Analysis and Recovery	11/29/18	PAD	0.10	\$59.50	Send updated title report to trustee
Asset Analysis and Recovery	11/30/18	PAD	0.10	\$59.50	Send debtor's 2004 exam to trustee
Asset Analysis and Recovery	11/30/18	PAD	0.20	\$119.00	Send schedule of debtor's art and receipts to trustee
Asset Analysis and Recovery	12/4/18	PAD	0.20	\$119.00	Pull Hancock docket and have Kelli Anderson motion pulled
Asset Analysis and Recovery	12/4/18	TMC	0.40	\$94.00	Retrieval of documents from court cases
Asset Analysis and Recovery	1/28/19	PAD	0.80	\$496.00	Locate and review and download pleadings from Bryco case against FTB to use in trustee's case against FTB
Asset Analysis and Recovery	1/31/19	PAD	0.10	\$62.00	Send trustee debtor's phone number and email
Asset Analysis and Recovery	1/31/19	PAD	0.10	\$62.00	Send Goch Kelli new address and ask for 2004 transcript
Asset Analysis and Recovery	1/31/19	TMC	0.40	\$94.00	Research and retrieval of pleadings from OCSC re Flores action against Anderson
Asset Analysis and Recovery	5/20/19	PAD	0.10	\$62.00	File and serve motion to approve compromise with Kelli

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Asset Disposition	11/26/18	PAD	0.30	\$178.50	Print out preliminary title report and numerous liens and title documents
Asset Disposition	4/26/19	PAD	0.10	\$62.00	Finalize and filed notice of sale for clerk's office
Asset Disposition	4/26/19	PAD	0.10	\$62.00	Send broker copy of sale motion
Asset Disposition	5/3/19	PAD	0.30	\$186.00	Have amended notice of sale filed and served
Asset Disposition	5/24/19	PAD	0.10	\$62.00	Have order approving sale uploaded
Asset Disposition	6/3/19	PAD	0.10	\$62.00	Send entered sale order to broker
Asset Disposition	6/3/19	PAD	0.10	\$62.00	Have certified copy of order sent to escrow
Claims Administration and Objections	6/28/19	PAD	0.30	\$186.00	Locate and print pages from arbitration transcript for claim objection
Relief from Stay/Adeq. Prot. Proceedings	12/18/18	TMC	0.50	\$117.50	Preparation of amended notice of hearing for filing and service
Meetings/Communications with Creditors	2/12/19	PAD	0.10	\$62.00	Send Goch 341(a) transcript
Meetings/Communications with Creditors	9/24/19	PAD	0.10	\$62.00	Send Houghton copy of notary's deposition and exhibits
Other Contested Matters	12/5/18	TMC	0.40	\$94.00	Retrieval of documents from Ventura Court
Other Contested Matters	5/3/19	TMC	0.80	\$188.00	Preparation of dismissal of complaint for filing and service
Gottlieb v. Plummer Group LLC	12/20/18	PAD	0.10	\$59.50	Have stipulation revised and filed
Gottlieb v. Kelli Anderson	3/6/19	PAD	0.20	\$124.00	Finalize Kelli lawsuit and have filed
Gottlieb v. Kelli Anderson	6/11/19	PAD	0.20	\$124.00	Arrange for filing of stipulation for judgment and judgment per settlement
Gottlieb v. Denise A. Houghton	4/17/19	PAD	0.20	\$124.00	Finalize and filed adv. v. Houghton
Gottlieb v. Denise A. Houghton	5/29/19	PAD	0.10	\$62.00	Finalize and file default requests for Houghton and law firm
Gottlieb v. Denise A. Houghton	6/10/19	PAD	0.10	\$62.00	Have stipulation for judgment and judgment filed
Gottlieb v. Jerome & Susan Biddle	4/17/19	PAD	0.20	\$124.00	Finalize and file adv. v. Biddles
Gottlieb v. Jerome & Susan Biddle	8/30/19	PAD	0.10	\$62.00	Arrange for service of subpoena on FHL for deposition and serve Coe

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Juan Scsi Flores	3/26/19	PAD	0.10	\$62.00	Send Flores signed copy of settlement agreement
Juan Scsi Flores	3/28/19	PAD	0.10	\$62.00	Send Flores signed settlement agreement

The trustee 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):

Christopher Anderson

Represented By
Daniel King

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#12.00 Application for payment of interim fees and/or expenses
second interim application for A.O.E. Law & Associates APC,
Debtor's Attorney

fr. 10/17/19

Docket 104

Tentative Ruling:

A.O.E. Law & Associates, APC ("Applicant"), counsel to the debtor and the debtor in possession – approve fees in the amount of \$13,895 and reimbursement of expenses in the amount of \$103.10, pursuant to 11 U.S.C. § 331, for the period between March 21, 2019 through September 13, 2019, on an interim basis.

On October 2, 2019, lender Ajax Mortgage Loan Trust 2019-A ("Ajax Mortgage") filed a limited opposition to the application inquiring about the source of the funds to be used to satisfy the requested fees and expenses. On October 15, 2019, Latrice Allen, a managing member of the debtor, filed a declaration in support of the application [doc. 111], noting that Ms. Allen and her brother intend to contribute to the payment of fees and expenses. However, Ms. Allen does not specify how much she and/or her brother intend to contribute.

As such, Applicant may collect up to 100% of the expenses and 85% of the approved fees at this time, in accordance with the debtor and debtor in possession's ability to pay those expenses and approved fees from sources that are not cash collateral.

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

Party Information

Debtor(s):

Elas, LLC dba Calnopoly, LLC

Represented By
Anthony Obehi Egbase

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1:19-10785 Attilio E Armeni

Chapter 11

#13.00 Application for payment of interim fees and/or expenses for
AOE Law & Associates, Debtor's Attorney

fr. 10/3/19

Docket 69

Tentative Ruling:

A.O.E. Law & Associates, APC ("Applicant"), counsel to debtor and debtor-in-possession – approve fees in the amount of \$13,310.00 and reimbursement of expenses in the amount of \$230.10, pursuant to 11 U.S.C. § 331, for the period covering April 4, 2019 through August 23, 2019, on an interim basis.

On November 5, 2019, the debtor filed a supplemental declaration [doc. 89]. In that supplemental declaration, the debtor represents that as of November 6, 2019, he will have sufficient funds in his DIP account to pay the approved fees and reimbursement of expenses. Accordingly, Applicant may collect 80% of the approved fees and 100% of the approved reimbursement of expenses at this time.

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):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

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1:18-11181 Rowena Benito Macedo

Chapter 11

#14.00 Debtor's Motion For Final Decree and Order Closing Case

Docket 105

Tentative Ruling:

On October 7, 2019, the Court entered an order requiring the debtor to file and serve a status report, supported by evidence, no later than October 24, 2019 and to include the information required by Local Bankruptcy Rule ("LBR") 3020-1(b).

On October 30, 2019, the debtor filed a declaration [doc. 115]. However, the declaration does not include information required by LBR 30201-(b), such as: (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; and (3) projections as to the reorganized debtor's continuing ability to comply with the terms of the plan.

To satisfy LBR 3020-1(b)(1), the debtor must include an *itemized schedule* of all distributions made under the plan in the form of a chart. For instance, the debtor may use the following chart as a guide:

Creditor	Amount Required to be Paid under the Plan	Amount Required to be Paid as of Date of Report	Amount Actually Paid as of Date of Report	Deficiency
Name	\$	\$	\$	\$

In the declaration, the debtor refers to "Section A 'Summary of Distributions Pursuant to the Chapter 11 Confirmed Plan.'" However, it is unclear which document contains

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CONT... Rowena Benito Macedo

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this section; there is no such section in the debtor's motion for a final decree. As such, the debtor's reference to this section also does not satisfy the Court's and the LBR's requirements.

The Court will not grant the motion for final decree unless and until the debtor files and serves an appropriate declaration including the information above.

Party Information

Debtor(s):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

Movant(s):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

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1:18-11181 Rowena Benito Macedo

Chapter 11

#15.00 Post-confirmation status conference

fr. 6/21/18; 10/18/18; 11/1/18; 12/13/18; 2/7/19; 4/4/19; 10/3/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

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1:18-11580 Kaliston Jose Nader

Chapter 11

#16.00 Status conference re: chapter 11 case

fr. 8/2/18; 1/17/19; 2/21/19; 4/25/19; 6/20/19;7/18/19;
9/5/19

Docket 1

***** VACATED *** REASON: Case dismissed [doc. 125].**

Tentative Ruling:

Party Information

Debtor(s):

Kaliston Jose Nader

Represented By
Onyinye N Anyama

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1:19-12113 Alexy Krochinsky Pitt

Chapter 7

#17.00 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 11

***** VACATED *** REASON: Voluntary dismissal of motion filed on 11/6/19 [doc. 14].**

Tentative Ruling:

Party Information

Debtor(s):

Alexy Krochinsky Pitt

Represented By
Dominic Afzali

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:19-12216 Cheryl Placencia

Chapter 11

#18.00 U.S. Trustee Motion to dismiss or convert case

Docket 24

Tentative Ruling:

Grant.

I. BACKGROUND

On September 4, 2019, Cheryl Placencia ("Debtor") filed a voluntary chapter 11 petition. Previously, Debtor filed the following seven 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
18-10459	11	Dismissed on 12/17/18 with 180-day bar to refile on OSC re Failure to Comply with Court's Orders

A. The Fifth Bankruptcy Case

On September 9, 2016, Debtor filed a chapter 11 petition, commencing case no. 1:16-bk-12629-VK (the "Fifth Bankruptcy Case"). In her schedules I and J, Debtor listed her monthly income as \$11,050.00 and her monthly expenses as \$5,685.00, leaving a

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net monthly income of \$5,365.00. Debtor stated that she was employed as a registered nurse for *three weeks*. She did not give a name or address for her employer [Fifth Bankruptcy Case, doc. 19].

On December 2, 2016, the U.S. Trustee (the "UST") filed a motion under 11 U.S.C. § 1112(b) to dismiss or convert the Fifth Bankruptcy Case (the "December 2016 Motion to Dismiss") [Fifth Bankruptcy Case, doc. 37]. The UST alleged that Debtor had not properly prepared her monthly operating reports and attached required bank statements, and that Debtor paid fees incurred by professionals without prior approval by the Court. Debtor did not oppose the December 2016 Motion to Dismiss. On January 19, 2017, the Court entered an order granting the December 2016 Motion to Dismiss and dismissing the Fifth Bankruptcy Case [Fifth Bankruptcy Case, doc. 46].

B. The Sixth Bankruptcy Case

On July 12, 2017, Debtor filed a chapter 11 petition, commencing case no. 1:17-bk-11847-VK (the "Sixth Bankruptcy Case"). Debtor was represented by attorney Dana M. Douglas. In her schedules I and J, 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. Debtor indicated that she was employed as a registered nurse for Senior Hospice Care for *two years* [Sixth Bankruptcy Case, doc. 10].

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 "November 2017 Motion to Dismiss") [Sixth Bankruptcy Case, doc. 48]. The UST alleged that 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 November 2017 Motion to Dismiss and dismissing the Sixth Bankruptcy Case [Sixth Bankruptcy Case, doc. 57].

C. The Seventh Bankruptcy Case

On February 21, 2018, Debtor filed a chapter 11 petition, commencing case no. 1:18-bk-10459-VK (the "Seventh Bankruptcy Case"). Debtor was again represented by Ms. Douglas. In her schedules I and J, Debtor listed her monthly income as \$7,350.00 and monthly expenses as \$5,825.00, leaving net monthly income of \$1,525.00.

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Debtor indicated that she was self-employed as a registered nurse for *ten years* [Seventh Bankruptcy Case, doc. 1].

On March 9, 2018, Debtor filed a motion to continue the automatic stay (the "March 2018 Motion to Continue Stay") [Seventh Bankruptcy Case, doc. 14]. In the March 2018 Motion to Continue Stay, Debtor alleged that she could not meet the UST's requirement during the Sixth Bankruptcy Case because she fell ill and lost 90% of her income. However, Debtor noted that, during the Seventh Bankruptcy Case, Debtor: (A) was substantially compliant with the UST's requirements; (B) had "arranged backup" in the form of family contributions to remain compliant; (C) Debtor's income had increased and stabilized; and (D) Debtor was willing to provide monthly adequate protection payments to her secured lender.

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 [Seventh Bankruptcy Case, 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") [Seventh Bankruptcy Case, doc. 50]. In a status report filed concurrently with the Motion to Extend [Seventh Bankruptcy Case, doc. 49], Debtor stated that she was attempting to obtain a consensual loan modification with her mortgage lender.

On June 28, 2018, Debtor's mortgage lender filed claim 5-1, asserting a claim in the amount of \$1,459,019.51, secured by Debtor's real property. In that claim, the mortgage lender stated that Debtor owed \$308,829.31 in prepetition arrears.

On September 26, 2018, the Court entered an order granting the Motion to Extend and extending the deadline for Debtor to file a proposed chapter 11 plan and related disclosure statement to October 17, 2018 [Seventh Bankruptcy Case, 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 did 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, prior to the continued status conference, Debtor did not file a chapter 11

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case status conference report.

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"). In the ruling, the Court stated that, if Debtor did not timely comply with LMM procedure or, in the alternative, file a proposed chapter 11 plan and related disclosure statement, the Court would dismiss the Seventh Bankruptcy Case.

On November 6, 2018, the Court issued an *Order to Show Cause Why this Case Should Not Be Dismissed with a 180-Day Bar for Failure to Comply with Court's Orders* (the "OSC") [Seventh Bankruptcy Case, 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 LMM, that Debtor was required to file a proposed chapter 11 plan and related disclosure statement no later than December 6, 2018.

Debtor did not timely file a Motion to Commence LMM, a status report or a proposed chapter 11 plan and related disclosure statement. In addition, Debtor did not timely file a monthly operating report for October 2018. On December 13, 2018, the Court held a hearing on the OSC. On December 17, 2018, the Court entered an order dismissing the Seventh Bankruptcy Case with a 180-day bar to refile [Seventh Bankruptcy Case, doc. 61].

D. The Pending Bankruptcy Case

On September 4, 2019, Debtor filed the pending chapter 11 case. Debtor is again represented by Ms. Douglas. Upon filing her petition, Debtor was informed that her schedules and statements were due on September 18, 2019. Debtor did not timely file her schedules and statements.

On September 19, 2019, Debtor filed an *Ex-Parte Request/Motion for Relief from Possible Order of Dismissal for Failure to Timely File Deficient Documents and/or Deem Documents Filed Timely* (the "Ex Parte Motion") [doc. 10]. On September 19, 2019, Debtor filed her missing schedules and statements [doc. 12]. On September 23,

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2019, the Court entered an order granting the Ex Parte Motion [doc. 19].

In her schedule A/B, Debtor listed an interest in real property with a fair market value of \$200,000.00. In her schedule D, Debtor indicated that Nationstar Mortgage holds a claim in the amount of \$1,450,000.00 secured by Debtor's real property. In her schedules I and J, Debtor lists her monthly income as \$10,500.00 and her monthly expenses as \$9,200.00, leaving net monthly income of \$1,300.00. Debtor indicates that she is self-employed as a registered nurse and has been for ten years.

On September 20, 2019, Debtor filed a motion to continue the automatic stay (the "September 2019 Motion to Continue Stay") [doc. 13]. In the September 2019 Motion to Continue Stay, Debtor alleged that she could not meet the UST's requirements during the Seventh Bankruptcy Case because of her continued illness. Debtor further stated that she: (A) has taken steps to ensure that she remains compliant with the Court's and UST's requirements; (B) "arranged backup" to remain compliant; (C) has the benefit of an increased and stabilized income; (D) attempted to reach a prepetition agreement with her secured lender regarding the mortgage on her real property, but was unable to reach such an agreement; and (E) vacated her real property and plans to repair and rent the real property to generate mortgage payments and fund a chapter 11 plan.

On October 2, 2019, the Court held a hearing and issued a ruling on the September 2019 Motion to Continue Stay [doc. 32]. In relevant part, the Court stated:

In the September 2019 Motion to Continue Stay, the debtor states that her income has increased and stabilized since the dismissal of the Seventh Bankruptcy Case. In the Seventh Bankruptcy Case, the debtor's schedules showed monthly income of \$7,350.00 and monthly expenses of \$5,825.00, leaving net monthly income of \$1,525.00. In her pending case, the debtor's alleged monthly income is \$10,500.00 and her monthly expenses are \$9,200.00, leaving net monthly income of \$1,300.00. In addition, the debtor states that she is compliant with UST requirements and has "arranged backup" to ensure compliance. However, because the debtor is not in compliance with UST requirements, the UST has filed [a motion to dismiss].

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CONT...

Cheryl Placencia

Chapter 11

Notwithstanding the debtor's assertions in the September 2019 Motion to Continue Stay, the debtor has not provided 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.

This is the debtor's eighth bankruptcy case. Despite three prior chapter 11 filings, the debtor has yet to confirm a chapter 11 plan. The debtor has continued to be delinquent on her deed of trust payments.

Further, the debtor's financial affairs have not improved since the Seventh Bankruptcy Case. The debtor states that, in order to generate mortgage payments and fund a chapter 11 plan, she will repair and lease her real property. However, the debtor has provided no evidence of her financial ability to make any repairs to the real property and no evidence regarding the rental income which the property reasonably could generate, once repaired.

The debtor states that the fair market value of the real property is \$200,000.00; the mortgage lender holds a claim for \$1,450,000.00. The debtor has not demonstrated how she will generate sufficient rental income to pay the secured claim and have sufficient funds remaining to fund a chapter 11 plan.

The debtor's assertions that she will repair and lease the property to generate income to fund a chapter 11 plan are speculative. Moreover, the debtor has not filed an application to employ a broker to find a tenant for the property, nor has the debtor filed a motion to approve a proposed lease agreement.

Because the debtor has not met her burden of proving that she filed this case in good faith, the Court will deny the September 2019 Motion to Continue.

Pursuant to this ruling, on October 2, 2019, the Court entered an order denying the September 2019 Motion to Continue Stay [doc. 33].

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CONT... Cheryl Placencia

Chapter 11

On September 23, 2019, the Court entered an amended order setting a status conference and requiring a status report (the "Status Conference Order") [doc. 15]. In the Status Conference Order, the Court instructed Debtor to file and serve a status report, supported by evidence, no later than October 24, 2019. The Court set the status conference for 1:00 p.m. on November 7, 2019.

On September 27, 2019, the UST filed a motion under 11 U.S.C. § 1112(b) to dismiss or convert the pending case (the "Current Motion to Dismiss") [doc. 24]. In the Current Motion to Dismiss, the UST states that Debtor has not: (A) filed a Statement of Related Cases; (B) provided sufficient evidence of closing all prepetition bank accounts; (C) provided sufficient evidence of maintenance of debtor-in-possession bank accounts; (D) provided evidence that the UST has been added to receive notice regarding insurance policy; or (E) filed the September 2019 monthly operating report ("MOR").

On October 1, 2019, Debtor filed a Statement of Related Cases [doc. 28]. However, Debtor has not timely filed a response to the Current Motion to Dismiss and has not timely filed evidence that Debtor has cured the other deficiencies outlined in the Current Motion to Dismiss. Debtor also has not timely filed a status report as required by the Status Conference Order.

II. ANALYSIS

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. . . .

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Chapter 11

(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 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 . . .

...

(B) gross mismanagement of the estate;

...

(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;

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...

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

11 U.S.C. § 1112(b).

"'Cause' is defined in § 1112(b)(4), but the list contained in § 1112(b)(4) is illustrative, not exhaustive." *In re Mense*, 509 B.R. 269 (Bankr. C.D. Cal. 2014). 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. 671, 675 (B.A.P. 9th Cir. 2006).

Given Debtor's conflicting information about her income, lack of other assets with which to fund a plan, historical inability to confirm a chapter 11 plan, several dismissals of her prior cases, consistent failure to meet the requirements of a chapter 11 debtor and lack of a timely response to the UST's Current Motion to Dismiss or the Court's Status Conference Order, there is ample cause to dismiss or convert this case.

As to whether conversion or dismissal is in the best interest of creditors, Debtor's schedules reflect that she does not have any significant assets that are not encumbered or exempt. In addition, the Court denied the September 2019 Motion to Continue Stay. Consequently, dismissal is in the best interest of creditors. In light of Debtor's filing history above, the Court will dismiss this case with a 180-day bar to refiling.

III. CONCLUSION

The Court will grant the Current Motion to Dismiss.

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Chapter 11

The UST must submit an order within seven (7) days.

Party Information

Debtor(s):

Cheryl Placencia

Represented By
Dana M Douglas

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1:19-12216 Cheryl Placencia

Chapter 11

#19.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cheryl Placencia

Represented By
Dana M Douglas

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1:19-12274 **RDFORD PROPERTIES, INC.**

Chapter 11

#20.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

On October 1, 2019, the Court entered an *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* (the "Order") [doc. 35]. The Order required the debtor to file a case status conference report and serve that status report on the United States Trustee, all secured creditors and the twenty largest unsecured creditors by no later than October 24, 2019.

Following a hearing held on October 16, 2019, on October 28, 2019, the Court entered an *Amended Order Granting Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362* (the "Relief From Stay Order"), with respect to the real property located at 128-130 South Harper Avenue, Los Angeles, CA 90048 (the "Real Property") [doc. 59]. The Court granted the related motion for relief from the automatic stay [doc. 40], filed by Redwood BPL Holdings, Inc. ("Redwood"), under 11 U.S.C. §§ 362(d)(1) and (d)(4).

The Real Property is the debtor's **only** asset identified in the debtor's amended schedule A/B, filed on September 25, 2019 [doc. 32]. Pursuant to a grant deed that was recorded on September 10, 2019, the debtor received a 45% interest in the Real Property. That same day, the debtor filed its chapter 11 petition. The only nonpriority unsecured creditor identified in the debtor's amended schedule E/F is a foreclosure trustee.

On November 3, 2019, the debtor belatedly filed a status conference report (the "Status Report") [doc. 64]. Contrary to the Order, the Status Report does not include a proof of service. The debtor also has not filed a monthly operating report for September 2019. In the Status Report, the debtor acknowledges that "dismissal of this case may now be in the best interest of the Debtor and all of its creditors because Redwood has seemingly elected to sell the [Real Property] via public foreclosure sale. . . ."

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CONT... RDFORD PROPERTIES, INC.

Chapter 11

Pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1112(b)(1) and (4)(E) and (F), this case will be dismissed with 180-day bar to the debtor's filing of another petition under any chapter of the Bankruptcy Code. Based upon the Court's review of the debtor's amended schedules and statement of financial affairs, and the entry of the Relief From Stay Order, the Court concludes that it is in the best interest of creditors and the estate to dismiss this case.

The Court will prepare the order.

Party Information

Debtor(s):

RDFORD PROPERTIES, INC.

Represented By
Matthew Abbasi

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1:00 PM

1:19-12280 Kasra Parivar

Chapter 7

#21.00 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. §§ 109(g) and 105(a)

Docket 11

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):

Kasra Parivar

Pro Se

Trustee(s):

Amy L Goldman (TR)

Pro Se

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2:00 PM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#22.00 Trustee's motion to approve the amended escrow instructions which provides a \$15,000 credit to the buyer at closing re sale of property of the estate (real property located at 22401 Summitridge Circle, Chatsworth, CA 91311)

Docket 283

*** VACATED *** REASON: Order resolving motion entered 10/29/19 -
jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

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

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1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#23.00 Trustee's motion pursuant to Bankruptcy Rule 9019(a) for an order approving settlement between David Gottlieb, Chapter 7 Trustee and debtor Tisha Michelle Martin

Docket 273

Tentative Ruling:

Grant.

I. BACKGROUND

On January 7, 2016, Duane Daniel Martin and Tisha Campbell Martin ("Debtors") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

On August 16, 2018, the Trustee filed a motion to approve a compromise between the Trustee and Ms. Campbell (the "2018 Settlement") [doc. 181]. Pursuant to the 2018 Settlement, Ms. Campbell settled a dispute with the Trustee by agreeing to pay the bankruptcy estate \$70,000. The parties agreed that, should the Trustee recover funds from Duane Martin ("Duane"), the Trustee would credit Ms. Campbell's payment to reduce her liability to the estate. The Court approved the 2018 Settlement [doc. 200].

Subsequently, the Trustee filed a complaint against Duane, requesting revocation of Duane's discharge [1:18-ap-01122-VK], and a complaint against Roxe, LLC ("Roxe") and Michael Martin ("Michael"), over a dispute over the estate's ownership of real property [1:18-ap-01106-VK]. Roxe and Michael were represented by Epps & Coulson, LLP ("Epps & Coulson").

On August 12, 2019, the Trustee filed a motion to approve a compromise between the Trustee, on the one hand, and Duane, Michael and Roxe (together, the "Martin Parties"), on the other hand (the "Martin Parties Compromise") [doc. 219]. In the Martin Parties Compromise, the Trustee and the Martin Parties agreed that the estate would receive 74% of the net proceeds from the sale of real property, and Michael would receive 26% of the net proceeds. Ms. Campbell opposed the Martin Parties

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Compromise [doc. 246]. In relevant part, Ms. Campbell asserted that, in accordance with the 2018 Settlement, Ms. Campbell should be given a credit from any recovery by the estate from the sale of the real property. On September 18, 2019, the Court entered an order approving the Martin Parties Compromise [doc. 265].

On August 9, 2019, Epps & Coulson filed a motion to withdraw as counsel for Michael and Roxe [1:18-ap-01106-VK, doc. 89], on the basis that a conflict of interest arose between Epps & Coulson and its clients. Specifically, Epps & Coulson asserted it holds a lien against Michael's share of the distribution. At a hearing on August 21, 2019, the Court granted Epps & Coulson's request to withdraw as counsel for Michael and Roxe.

On October 3, 2019, the Trustee filed a motion to approve a compromise with Ms. Campbell (the "Campbell Compromise Motion") [doc. 273]. Through the Campbell Compromise Motion, the Trustee requests approval of a settlement through which the Trustee agrees to waive the remaining \$10,000 owed by Ms. Campbell pursuant to the 2018 Settlement and to pay Ms. Campbell \$20,000 from the Trustee's share of the net proceeds.

On October 16, 2019, Epps & Coulson filed a limited objection to the Campbell Compromise Motion (the "Objection") [doc. 282]. In the Objection, Epps & Coulson objects solely on the basis that the compromise with Ms. Campbell does not include a waiver under California Civil Code § 1542. On October 30, 2019, the Trustee filed a reply to the Objection [doc. 294], asserting that Epps & Coulson does not have standing to oppose the Campbell Compromise Motion.

II. ANALYSIS

A. Standing

"Only persons who are directly or adversely affected pecuniarily by the compromise have standing to object." *In re Douglas J. Roger, M.D., Inc., APC*, 393 F. Supp. 3d 940, 968 (C.D. Cal. 2019) (quoting *In re Ingram*, 2008 WL 8444806, at *3 (B.A.P. 9th Cir. Mar. 14, 2008)). For instance, in *Ingram*, the Bankruptcy Appellate Panel of the Ninth Circuit affirmed the bankruptcy court's order holding that a debtor's daughter and sister lacked standing to object to a motion to approve a compromise

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because they were not creditors of the estate and the compromise "did not have any adverse effect" on them. *Engram*, 2008 WL 8444806 at *3.

Here, Epps & Coulson is not a creditor of the estate and, to the extent Michael or Roxe qualify as parties in interest, no longer represents those parties. In addition, the agreement between the Trustee and Ms. Campbell does not have any impact on any interest Epps & Coulson may assert in the sale proceeds. In their agreement, the Trustee and Ms. Campbell agree that Ms. Campbell will be paid from the Trustee's share of proceeds, not from Michael's distribution; Epps & Coulson does not have an interest in the Trustee's share of proceeds and has asserted an interest only in Michael's distribution, which is not impacted by this settlement agreement. Consequently, Epps & Coulson does not have standing to oppose the Campbell Compromise Motion.

B. Standard for Approval of Compromise

Federal Rule of Bankruptcy Procedure 9019(a) provides the following: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." In deciding whether to approve a compromise, courts must determine whether it is fair and equitable, and whether it is reasonable under the particular circumstances of the case. *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986).

Although "[t]he law favors compromise and not litigation for its own sake," the law requires "more than a mere good faith negotiation of a settlement by the trustee in order for the bankruptcy court to affirm a compromise agreement." *Id.* "[A]s long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed." *Id.* In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider:

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- (d) the paramount interest of the creditors and a proper deference to their reasonable

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CONT... **Duane Daniel Martin and Tisha Michelle Martin**
views in the premises.

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Id. (citations omitted). It is the movant's burden to establish that the settlement is reasonable and should be approved. *Id.* Courts have recognized that the court should not substitute its own judgment for that of the trustee, but rather should ensure that the trustee has exercised proper business judgment and the settlement "falls above the lowest possible point in the range of reasonableness." *In re Rake*, 363 B.R. 146, 152 (Bankr. D. Idaho 2007) (internal quotation omitted).

Notwithstanding the fact that Epps & Coulson does not have standing to oppose the Campbell Compromise Motion, Epps & Coulson has not provided any authority that the exclusion of a waiver under California Civil Code § 1542 mandates denial of a motion to approve a compromise. To the extent Epps & Coulson questions the Trustee's business judgment, the Trustee has shown that the factors set forth in *A & C Properties* favor approval of the compromise between the parties.

First, it is not immediately clear that the Trustee would succeed in litigation against Ms. Campbell. Such litigation would involve extensive disputes over interpretation of language from the 2018 Settlement. In addition, a dispute between the Trustee and Ms. Campbell would delay distribution of the sale proceeds to creditors and deplete estate resources. Given the long history of litigation, a speedy resolution to the remaining issues is in the paramount interest of creditors of the estate. As such, the Court will approve the settlement agreement between the Trustee and Ms. Campbell.

III. CONCLUSION

The Court will grant the Campbell Compromise Motion.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Joint Debtor(s):

Tisha Michelle Martin

Represented By

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Duane Daniel Martin and Tisha Michelle Martin

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Alan W Forsley

Joseph R Dunn

Trustee(s):

David Keith Gottlieb (TR)

Represented By

Monica Y Kim

Jeffrey S Kwong

Beth Ann R Young

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2:00 PM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#24.00 Trustee's motion pursuant to Bankruptcy Rule 9019(a) for an order approving settlement between David Gottlieb, Chapter 7 Trustee and the TB Parties

Docket 278

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
Stella A Havkin

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

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2:00 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

#25.00 Debtor's Motion that the Court set a date by which the Trustee must sell or abandon assets

fr. 8/22/19

Stip to continue filed 10/10/19

Docket 131

***** VACATED *** REASON: Order approving stip entered 10/17/19.
Hearing continued to 11/21/19 at 2:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean Albert Maury Cazares

Represented By
Andrew Edward Smyth
Stephen S Smyth

Movant(s):

Dean Albert Maury Cazares

Represented By
Andrew Edward Smyth
Andrew Edward Smyth
Stephen S Smyth
Stephen S Smyth

Trustee(s):

Diane C Weil (TR)

Represented By
C John M Melissinos

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2:00 PM

1:19-11696 Peter M. Seltzer

Chapter 11

#26.00 Motion Authorizing Fed. R. Bankr. P. 2004 Oral Examination of Debtor by Darren Kessler and Production of Documents by Debtor Pursuant to Fed. R. Bankr. P. 2004 and 9016

fr. 10/3/19

Stipulation filed 10/24/19

Docket 36

Tentative Ruling:

In light of the debtor's pending motion to dismiss this case [doc. 59], scheduled for hearing on December 5, 2019, the Court intends to continue this matter to be decided (if appropriate) following the hearing on the motion to dismiss.

Dismissing the case would render this motion moot.

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

**United States Bankruptcy Court
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Tuesday, November 12, 2019

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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 -

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Tuesday, November 12, 2019

Hearing Room 301

10:30 AM

1:14-12143 Almayvonne Dixon

Chapter 13

#31.00 Trustee's motion to dismiss case for failure to submit all tax returns

fr. 09/10/19

Docket 51

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Almayvonne Dixon

Represented By
Michael F Chekian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:14-14009 Michele Amy Schneider

Chapter 13

#32.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

Docket 80

***** VACATED *** REASON: Voluntary dismissal of motion filed 11/7/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michele Amy Schneider

Represented By
Joshua L Sternberg

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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10:30 AM

1:14-14532 Juan Jose Medrano

Chapter 13

#33.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

Docket 159

***** VACATED *** REASON: Withdrawal of motion filed 10/9/19 [Dkt. 165]**

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

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Hearing Room 301

10:30 AM

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

Chapter 13

#34.00 Trustee'sm Motion to Dismiss Case for Failure to Make Plan Payments

Docket 65

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
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Hearing Room 301

10:30 AM

1:15-10157 Roy Guzman and Barbara J Jankovich

Chapter 13

#35.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

fr. 10/8/19

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roy Guzman

Represented By
Julie J Villalobos

Joint Debtor(s):

Barbara J Jankovich

Represented By
Julie J Villalobos

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 12, 2019

Hearing Room 301

10:30 AM

1:15-13109 Artashes Yenokyan

Chapter 13

#36.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

Docket 69

***** VACATED *** REASON: Voluntary dismissal of motion filed 11/7/19**

Tentative Ruling:

- NONE LISTED -

Party Information

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, November 12, 2019

Hearing Room 301

10:30 AM

1:15-13479 Brian Jeffrey Bolokofsky and Sara Joanne Bolokofsky

Chapter 13

#37.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

fr. 10/8/19

Docket 65

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Jeffrey Bolokofsky

Represented By
Allan S Williams

Joint Debtor(s):

Sara Joanne Bolokofsky

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, November 12, 2019

Hearing Room 301

10:30 AM

1:15-14192 Maria Trinidad De Anda

Chapter 13

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

Docket 43

Tentative Ruling:

- NONE LISTED -

Party Information

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**

Tuesday, November 12, 2019

Hearing Room 301

10:30 AM

1:16-10126 Angela Cordero Britton

Chapter 13

#39.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

Docket 73

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**

Tuesday, November 12, 2019

Hearing Room 301

10:30 AM

1:16-10314 Gil Loera

Chapter 13

#40.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

fr. 10/8/19

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gil Loera

Represented By
Daniel King

Trustee(s):

Elizabeth (SV) 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 12, 2019

Hearing Room 301

10:30 AM

1:16-10495 Indira LaRoda

Chapter 13

#41.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

Docket 98

*** VACATED *** REASON: Withdrawal of motion filed 10/30/19.
[Dkt.100]

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, November 12, 2019

Hearing Room 301

10:30 AM

1:16-10666 Paula Trickey

Chapter 13

#42.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 93

Tentative Ruling:

- NONE LISTED -

Party Information

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, November 12, 2019

Hearing Room 301

10:30 AM

1:16-10666 Paula Trickey

Chapter 13

#43.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Returns

Docket 90

***** VACATED *** REASON: Motion withdrawn 10/7/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

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, November 12, 2019

Hearing Room 301

10:30 AM

1:16-10925 Josue Soncuya Villanueva

Chapter 13

#44.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

Docket 99

***** VACATED *** REASON: Withdrawal of motion filed 10/30/19. [Dkt. 102]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Josue Soncuya Villanueva

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 12, 2019

Hearing Room 301

10:30 AM

1:16-11316 Sergio Luquin and Lorena Palacios Luquin

Chapter 13

#45.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

Docket 43

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sergio Luquin

Represented By
Gregory M Shanfeld

Joint Debtor(s):

Lorena Palacios Luquin

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, November 12, 2019

Hearing Room 301

10:30 AM

1:16-13171 Regla Vera

Chapter 13

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

fr. 09/10/19

Docket 129

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Regla Vera

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 12, 2019

Hearing Room 301

10:30 AM

1:16-13519 Shakeh Mintandjian

Chapter 13

#47.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

Docket 39

*** VACATED *** REASON: Withdrawal of motion filed 10/30/19.
[Dkt.41]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shakeh Mintandjian

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, November 12, 2019

Hearing Room 301

10:30 AM

1:17-10038 Oganesh Pashayan and Anahit Pashayan

Chapter 13

#48.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 56

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**

Tuesday, November 12, 2019

Hearing Room 301

10:30 AM

1:17-11135 Jose Orcia Ramirez

Chapter 13

#49.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

Docket 40

Tentative Ruling:

- NONE LISTED -

Party Information

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 12, 2019

Hearing Room 301

10:30 AM

1:17-11488 Dana Anthony Bambo and Carla Lombardo Bambo

Chapter 13

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

fr. 7/2/19; 9/10/19;

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dana Anthony Bambo

Represented By
William G Cort

Joint Debtor(s):

Carla Lombardo Bambo

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, November 12, 2019

Hearing Room 301

10:30 AM

1:17-13039 Benjawan Rachapaetayakom

Chapter 13

#51.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 112

Tentative Ruling:

- NONE LISTED -

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, November 12, 2019

Hearing Room 301

10:30 AM

1:17-13189 Ulysses Juarez

Chapter 13

#52.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ulysses Juarez

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, November 12, 2019

Hearing Room 301

10:30 AM

1:17-13192 Stephanie Marie Wilson

Chapter 13

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

fr. 09/10/19;

Docket 52

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephanie Marie Wilson

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 12, 2019

Hearing Room 301

10:30 AM

1:18-10264 Joe Lopez, Jr.

Chapter 13

#54.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 53

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 12, 2019

Hearing Room 301

10:30 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

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

fr. 4/9/19; 6/11/19; 8/13/19; 10/8/19

Docket 90

Tentative Ruling:

- NONE LISTED -

Party Information

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, November 12, 2019

Hearing Room 301

10:30 AM

1:18-10780 Anna Rosa Alvarado

Chapter 13

#56.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 09/10/19;

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna Rosa Alvarado

Represented By
Barry E Borowitz

Trustee(s):

Elizabeth (SV) 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 12, 2019

Hearing Room 301

10:30 AM

1:18-12662 Brian Jeffrey Minor

Chapter 13

#57.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Jeffrey Minor

Represented By
Eric Ridley

Trustee(s):

Elizabeth (SV) 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 12, 2019

Hearing Room 301

10:30 AM

1:18-12027 Yuma Vanessa Perez

Chapter 13

#57.10 Trustee's Motion to dismiss case for failure to make plan payments

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yuma Vanessa Perez

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, November 12, 2019

Hearing Room 301

10:30 AM

1:16-12941 Allison Maxene Frome

Chapter 13

#57.20 Trustee's Motion to dismiss case for failure to make plan payments

Docket 71

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allison Maxene Frome

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, November 12, 2019

Hearing Room 301

11:00 AM

1:14-15148 Mehdi Hamedani and Mina Hamedani Elya

Chapter 13

#58.00 U.S. Trustee's motion for account reconciliation Statement including waiver and/or refund of unnoticed mortgage payment changes in response to Wells Fargo Bank N.A.'s failure to timely file notices of mortgage payment change

fr. 9/10/19

Docket 81

***** VACATED *** REASON: Stip resolving motion entered 10/29/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mehdi Hamedani

Represented By
Joshua L Sternberg

Joint Debtor(s):

Mina Hamedani Elya

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 12, 2019

Hearing Room 301

11:00 AM

1:15-13479 Brian Jeffrey Bolokofsky and Sara Joanne Bolokofsky

Chapter 13

#59.00 Debtor's motion under LBR 3015-(n) and (w) to modify plan or suspend plan payments

Docket 67

Tentative Ruling:

The Court will continue this hearing to **December 10, 2019 at 11:00 a.m.**

On October 19, 2015, Brian Jeffrey Bolokofsky and Sara Joanne Bolokofsky (the "Debtors") filed the above-captioned chapter 13 case. On March 18, 2016, the Court entered an order confirming the Debtors' chapter 13 plan (the "Plan") [doc. 37].

On September 18, 2019, the Debtors filed a *Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments* (the "First Motion") [doc. 67]. On October 8, 2019, the chapter 13 trustee filed *Trustee's Comments or Objection* to the Motion (the "Comment") [doc. 70]. In the Comment, the chapter 13 trustee indicates approval of the First Motion upon certain conditions, including that: (1) the Debtors provide a copy of their 2018 tax return no later than October 15, 2019 and contribute any 2018 tax refund to their plan; and (2) the Debtors file an updated budget to reflect their current income and expenses. On October 21, 2019, the Court entered an order requiring the Debtors to file evidence demonstrating that they have complied with the conditions in the Comment by November 5, 2019.

On November 4, 2019, the Debtors filed a second *Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments* (the "Second Motion") [doc. 75]. In the Second Motion, the Debtors propose modification of the Plan to suspend contributing their 2018 tax refund to the Plan. Any opposition to the Second Motion will be due on November 25, 2019.

On November 5, 2019, the Debtors filed evidence demonstrating that on October 17, 2019, they submitted a copy of their 2018 tax return to the chapter 13 trustee [doc. 78]. On November 5, 2019, the Debtors also filed amended schedules I and J [doc. 77].

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

Tuesday, November 12, 2019

Hearing Room 301

11:00 AM

CONT... Brian Jeffrey Bolokofsky and Sara Joanne Bolokofsky Chapter 13

Given that the Debtors have not contributed their 2018 tax refund to the Plan, one of the conditions in the Comment, the Court will continue this hearing to December 10, 2019, in order to assess the outcome of the Second Motion.

Appearances on November 12, 2019 are excused.

Party Information

Debtor(s):

Brian Jeffrey Bolokofsky

Represented By
Allan S Williams

Joint Debtor(s):

Sara Joanne Bolokofsky

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, November 12, 2019

Hearing Room 301

11:00 AM

1:18-10982 Gabriel Medina

Chapter 13

#60.00 Debtor's Motion for appointment of debtor's spouse
Maria De Los Angeles Medina as guardian ad litem for debtor

Docket 101

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):

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**

Tuesday, November 12, 2019

Hearing Room 301

11:00 AM

1:18-10983 Daniele C Kenney

Chapter 13

#61.00 Debtor's Motion to vacate dismissal

Docket 51

Tentative Ruling:

Grant.

The order must state that no automatic stay was in effect in the debtor's case from October 9, 2019 to the date of the entry of the order vacating the dismissal of the debtor's case.

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):

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, November 12, 2019

Hearing Room 301

11:00 AM

1:19-11097 Patrick Alfred Fugate, JR

Chapter 13

#62.00 Debtor's objection to claim number 7-1 by claimant Internal Revenue Service
fr. 9/10/19;

Docket 18

***** VACATED *** REASON: Motion withdrawn 10/28/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patrick Alfred Fugate JR

Represented By
David H Chung

Trustee(s):

Elizabeth (SV) 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 12, 2019

Hearing Room 301

11:00 AM

1:19-11223 Noe Moises Cumatz

Chapter 13

#63.00 Debtor's amended motion to disallow claim #1 of LVNV Funding, LLC its successors and assigns as assignee of Resurgent Capital Services

Docket 24

Tentative Ruling:

The Court will continue this hearing to **January 14, 2020 at 11:00 a.m.** The debtor served the claimant at the address listed on claim 1. However, the debtor did not address it to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process as required by Fed. R. Bankr. Proc. 7004(b)(3) and Local Bankruptcy Rule 3007-1(b)(2). By **December 13, 2019**, the debtor must properly serve the claimant with the motion and notice of the continued hearing in accordance with Fed. R. Bankr. Proc. 7004(b)(3).

Appearances on November 12, 2019 are excused.

Party Information

Debtor(s):

Noe Moises Cumatz

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**

Tuesday, November 12, 2019

Hearing Room 301

11:00 AM

1:19-11897 Diana G Corpus

Chapter 13

#64.00 U.S. Trustee's Motion to Dismiss Case Pursuant to 11 U.S.C. § 1307(c) with a Two-Year Bar from Refiling Pursuant to 11 U.S.C. §§ 349(a) and 105(a)

Docket 17

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):

Diana G Corpus

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, November 12, 2019

Hearing Room 301

11:00 AM

1:19-12354 Orna Shaposhnik

Chapter 13

#65.00 Debtor's objection to claim number 1 by Claimant Calvary SPV I LLC.

Docket 12

Tentative Ruling:

The Court will continue this hearing to **January 14, 2020 at 11:00 a.m.** The debtor served the claimant at the address listed on claim 1. However, the debtor did not address it to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process as required by Fed. R. Bankr. Proc. 7004(b)(3) and Local Bankruptcy Rule 3007-1(b)(2). By **December 13, 2019**, the debtor must properly serve the claimant with the motion and notice of the continued hearing in accordance with Fed. R. Bankr. Proc. 7004(b)(3).

Appearances on November 12, 2019 are excused.

Party Information

Debtor(s):

Orna Shaposhnik	Pro Se
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Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 13, 2019

Hearing Room 301

9:30 AM

1:16-10630 Gerald E Klein and Norma L Klein

Chapter 13

#1.00 Motion for relief from stay [RP]

MUFG UNION BANK, N.A.
VS
DEBTOR

fr. 9/11/19

Docket 58

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

Movant(s):

MUFG Union Bank, N.A, fka Union

Represented By
Drew A Callahan
Justin S Moyer
Pietro Vella
Jonathan C Cahill
Gilbert R Yabes
Joseph C Delmotte

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Wednesday, November 13, 2019

Hearing Room 302

9:30 AM

1:18-10033 Mildred Annett Barajas

Chapter 13

#2.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY, FSB
VS
DEBTOR

fr. 10/16/19

Docket 49

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mildred Annett Barajas

Represented By
Steven A Wolvek

Movant(s):

WILMINGTON SAVINGS FUND

Represented By
Kelsey X Luu

Trustee(s):

Elizabeth (SV) 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 13, 2019

Hearing Room 301

9:30 AM

1:18-12349 Chinweike Okonkwo

Chapter 13

#3.00 Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING, LLC
VS
DEBTOR

fr. 10/16/19

Docket 59

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

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

Wednesday, November 13, 2019

Hearing Room 301

9:30 AM

CONT... Chinweike Okonkwo

Chapter 13

Debtor(s):

Chinweike Okonkwo

Represented By
Laleh Ensafi

Movant(s):

Lakeview Loan Servicing, LLC

Represented By
Darlene C Vigil
Cassandra J Richey

Trustee(s):

Elizabeth (SV) 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 13, 2019

Hearing Room 301

9:30 AM

1:18-12939 Arianne Beth Pachter

Chapter 13

#4.00 Motion for relief from stay [RP]

19350 SHERMAN WAY HOMEOWNERS ASSOCIATION
VS
DEBTOR

fr. 10/16/19

Docket 29

Tentative Ruling:

Because the debtor is not current postpetition, and has paid movant postpetition with checks that were returned for "Non-Sufficient Funds," 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 Court will not waive the 14-day stay prescribed by FRBP 4001(a)(3).

Any other request for relief is denied.

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

Party Information

Debtor(s):

Arianne Beth Pachter

Represented By
William G Cort

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

Wednesday, November 13, 2019

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9:30 AM

CONT... Arianne Beth Pachter

Chapter 13

Movant(s):

19350 Sherman Way Homeowners

Represented By
Alyssa B Klausner

Trustee(s):

Elizabeth (SV) 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 13, 2019

Hearing Room 301

9:30 AM

1:19-12225 Jose Eduardo Lizarraga

Chapter 7

#5.00 Motion for relief from stay [AN]

JOSEPH SHERRETT
VS
DEBTOR

Docket 12

Tentative Ruling:

The Court will continue this hearing to **December 11, 2019 at 9:30 a.m.** The movant did not serve the debtor. Pursuant to Local Bankruptcy Rule 4001-1(c)(1)(C)(i), movant is required to serve the debtor with the motion, notice of hearing, and all supporting documents. **No later than November 20, 2019**, the movant must serve the debtor with the motion, notice of the continued hearing, and all supporting documents.

Appearances on November 13, 2019 are excused.

Party Information

Debtor(s):

Jose Eduardo Lizarraga

Represented By
John D Sarai

Movant(s):

DANIEL WILLIAM DUNBAR

Represented By
Daniel W Dunbar

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 13, 2019

Hearing Room 301

9:30 AM

1:15-12563 Reza Fateh Manesh

Chapter 7

#6.00 Motion for relief from stay [AN]

REZA POUR
VS
FEZA FATEHMANESH

Docket 133

Tentative Ruling:

Deny. At this time, the debtor 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.

In the motion, the debtor requests relief from the automatic stay to proceed in state court to challenge a judgment in favor of Reza Pour as satisfied. The debtor also requests that the chapter 7 trustee (the "Trustee") abandon this claim. On February 10, 2016, Mr. Pour filed claim 2-1, asserting a secured claim in the amount of \$213,306.34. In claim 2-1, Mr. Pour represents that the basis of his claim is a judgment.

Pursuant to 11 U.S.C. § 704(a)(5), one of the Trustee's duties is to examine proofs of claims and object to the allowance of any claim that is improper. *See also In re BCD Corp.*, 119 F3d 852, 859 (10th Cir. 1997) (stating that the chapter 7 trustee is obligated to contest claims against the estate as to which defenses exist). On October 30, 2019, the Trustee filed an opposition to the motion [doc. 135]. In that opposition, the Trustee states that, as a result of other litigation that took place in this Court, and related, recently resolved appeals, he has not yet begun claims analysis. Consequently, in order to allow the Trustee sufficient time to evaluate whether or not to object to the claim, the Court will deny the motion.

The Trustee must submit the order within seven (7) days.

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Wednesday, November 13, 2019

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9:30 AM

CONT... Reza Fateh Manesh

Chapter 7

Party Information

Debtor(s):

Reza Fateh Manesh

Represented By
Lee W Harwell

Movant(s):

Reza Fateh Manesh

Represented By
Lee W Harwell

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Reed Bernet
Jessica L Bagdanov

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

Wednesday, November 13, 2019

Hearing Room 301

9:30 AM

1:19-11774 **Mona Kaddoura**

Chapter 7

#7.00 Motion for relief from stay [PP]

VW CREDIT, INC.
VS
DEBTOR

Docket 22

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):

Mona Kaddoura

Represented By
Eileen Keusseyan

Movant(s):

VW Credit, Inc.

Represented By
Stephen T Hicklin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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9:30 AM

CONT... Mona Kaddoura

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 13, 2019

Hearing Room 301

9:30 AM

1:19-12498 Nancy Curiel Alvarado

Chapter 7

#8.00 Motion for relief from stay [RP]

PEGGY CHRISTENSEN TRUSTEE, PEGGY CHRISTENSEN LIVING TRUST
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.

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

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CONT... Nancy Curiel Alvarado

Chapter 7

Debtor(s):

Nancy Curiel Alvarado Pro Se

Movant(s):

Peggy Christensen Represented By
Eric A Mitnick

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 13, 2019

Hearing Room 301

9:30 AM

1:18-12467 Colin Basil MacLean

Chapter 13

#9.00 Motion for relief from stay [RP]

JP MORGAN CHASE BANK, NATIONAL ASSOCIATION
VS
DEBTOR

Docket 73

Tentative Ruling:

On October 30, 2019, the debtor filed a response to the motion for relief from the automatic stay [doc. 75]. The debtor did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

Party Information

Debtor(s):

Colin Basil MacLean

Represented By
William E. Winfield

Movant(s):

JPMorgan Chase Bank, 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
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Wednesday, November 13, 2019

Hearing Room 301

9:30 AM

1:19-11902 John Christian Lukes

Chapter 11

#10.00 Motion for relief from stay [RP]

WELLS VARGO BANK, N.A.
VS
DEBTOR

fr. 10/23/19(stip)

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Christian Lukes

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

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

Wednesday, November 13, 2019

Hearing Room 301

9:30 AM

1:19-12644 Carlos Velapatio

Chapter 13

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

Docket 11

Tentative Ruling:

The Court will grant the motion on an interim basis and continue the hearing to **December 11, 2019 at 9:30 a.m.**

Movant has not served the motion and provided notice of the hearing thereon and the deadline to file a response in accordance with Judge Kaufman's self-calendar procedure for motions that are set for hearing on shortened time. The notice of the motion fails to indicate that a written response must be filed and served at least two days before the hearing.

By November 20, 2019, movant must file and serve notice of the continued hearing and the deadline to file a written response (14 days prior to the continued hearing) on all creditors in accordance with Fed. R. Bankr. P. 7004(b)(3) and (H).

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

Appearances on November 13, 2019 are excused.

Party Information

Debtor(s):

Carlos Velapatio

Represented By
Lionel E Giron

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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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

- #12.00** Pretrial conference re: amended complaint to:
1. Quiet title of real property located at 22401 Summitridge Circle, Chatsworth, CA 91311; and
 2. Avoidance and recovery of fraudulent transfer pursuant to California Civil Code 3439.04
 3. Turnover of Property of the estate pursuant to 11 U.S.C. sec 542
 4. Imposition of constructive trust

fr. 11/7/18(stip); 12/5/18; 12/12/18; 1/9/2019; 3/13/19; 3/20/19; 5/8/19; 6/5/19

Docket 48

Tentative Ruling:

Pursuant to the plaintiff's *Request for Dismissal of Adversary Proceeding, with Prejudice* [doc. 104], the Court will dismiss this adversary proceeding with prejudice.

The plaintiff must submit an order within seven (7) days.

Appearances on November 13, 2019 are excused.

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

**United States Bankruptcy Court
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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
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1:16-10045 Duane Daniel Martin

Chapter 7

Adv#: 1:18-01122 David K. Gottlieb, Chapter 7 Trustee v. Martin

#13.00 Pretrial conference re: complaint for:
(1) Revocation of discharge pursuant to 11 U.S.C. sec 727(d)(2)
and (3) and sec 727(e)(2) and
(2) Recovery of property of the estate

fr. 2/6/19; 3/20/19; 6/5/19

COUNTERCLAIM

Duane Daniel Martin, Counter-claimant
v
David K. Gottlieb, Ch. 7 Trustee, Counter-defendant

Docket 1

*** VACATED *** REASON: Order dismissing adversary entered
11/12/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Defendant(s):

Duane Daniel Martin

Pro Se

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley
Joseph R Dunn

**United States Bankruptcy Court
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CONT... Duane Daniel Martin

Chapter 7

Plaintiff(s):

David K. Gottlieb, Chapter 7 Trustee

Represented By
Monica Y Kim
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
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Hearing Room 301

1:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 7

Adv#: 1:18-01086 Abel v. Zuckerman et al

- #14.00** Order to show cause why this court has subject matter jurisdiction over plaintiff's claims against Sunderland/McCutchan, Inc., Sunderland/McCutchan LLP and B. Edward McCutchan, Jr. and why this court should not abstain from adjudicating those claims; and (B) Requiring appearance, in person, of all remaining parties to this adversary proceeding

Docket 141

Tentative Ruling:

I. BACKGROUND

On May 4, 2018, Robert Edward Zuckerman ("Debtor") filed a voluntary chapter 11 petition. On August 2, 2018, Richard Abel filed a complaint against Sunderland/McCutchan, Inc., Sunderland/McCutchan LLP and B. Edward McCutchan, Jr. (together, the "McCutchan Parties") and Debtor, among others.

On March 18, 2019, the Court converted Debtor's case to a chapter 7 case. Diane Weil was appointed the chapter 7 trustee (the "Trustee").

On March 27, 2019, Plaintiff filed a second amended complaint (the "SAC") [doc. 75] against the McCutchan Parties and Debtor, among others. As to the McCutchan Defendants, Plaintiff requested turnover of certain funds allegedly held by the McCutchan Defendants pursuant to 11 U.S.C. § 542, permission to recover the funds as preferential transfers under 11 U.S.C. § 547 and declaratory relief regarding whether an assignment order and judgment lien in favor of Plaintiff attached to the funds held by the McCutchan Defendants.

On April 22, 2019, the McCutchan Defendants filed a motion to dismiss the SAC (the "Motion to Dismiss") [docs. 82, 83]. On June 5, 2019 and September 11, 2019, the Court held hearings on the Motion to Dismiss. In its ruling on the Motion to Dismiss [doc. 135], the Court dismissed Plaintiff's requests for turnover and avoidance of preferential transfers, on the basis that the Trustee, and not Plaintiff, has standing to pursue these claims on behalf of the estate. The Court denied the Motion to Dismiss

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CONT... Robert Edward Zuckerman

Chapter 7

as to Plaintiff's claims of declaratory relief regarding whether the assignment order and judgment lien attached to the subject funds held by the McCutchan Defendants.

During a status conference held on the same day, the Court questioned whether it has subject matter jurisdiction over the remaining disputes between Plaintiff and the McCutchan Defendants, namely, whether the disputed funds belong to Plaintiff or the McCutchan Defendants. Given the dismissal of Plaintiff's claims which may have brought the funds into the estate, and the fact that the remaining dispute is about ownership of non-estate funds between two nondebtor parties, the Court issued the OSC [doc. 141]. In the OSC, the Court instructed the parties to file briefs regarding subject matter jurisdiction and/or abstention no later than October 30, 2019.

On September 23, 2019, the McCutchan Defendants filed their brief in response to the OSC (the "McCutchan Brief") [doc. 138]. In the McCutchan Brief, the McCutchan Defendants assert that the Court does not have jurisdiction over the remaining claims against the McCutchan Defendants because the remaining claims request a judgment that the funds belong to Plaintiff, not the estate.

On October 24, 2019, Plaintiff filed his brief in response to the OSC ("Plaintiff's Brief") [doc. 145]. In Plaintiff's Brief, Plaintiff argues that this Court has subject matter jurisdiction because the Court has not yet determined if the subject funds are property of the estate. Specifically, Plaintiff believes that if the assignment order and judgment lien did not attach to the subject funds, the Trustee would be able to recover the funds for the benefit of the estate. Plaintiff also notes that he is concerned that an attempt to litigate the dispute in a non-bankruptcy forum may result in a violation of the automatic stay.

On November 6, 2019, Plaintiff filed a response to the McCutchan Brief [doc. 146], reiterating his arguments and asserting that the McCutchan Defendants have consented to the bankruptcy court's authority to enter final judgment. On November 7, 2019, the McCutchan Defendants filed a response to Plaintiff's Brief [doc. 148], again asserting that the Court lacks subject matter jurisdiction over their dispute with Plaintiff. To date, neither party has responded to the Court's inquiry about abstention.

II. ANALYSIS

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CONT... Robert Edward Zuckerman

Chapter 7

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 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

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Robert Edward Zuckerman

Chapter 7

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 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

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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]elated 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)).

The sole remaining claims in the SAC against the McCutchan Defendants are for declaratory relief regarding whether an assignment order and judgment lien in favor of Plaintiff attached to the funds held by the McCutchan Defendants. In other words, the dispute boils down to whether the funds belong to the McCutchan Defendants, nondebtor entities, or Plaintiff, another nondebtor entity. Because such declaratory relief does not arise under the Bankruptcy Code and does not depend on the existence of a bankruptcy case, this Court does not have "arising under" or "arising in" jurisdiction over this dispute.

In addition, Plaintiff has not adequately articulated a basis for "related to" jurisdiction over this matter. First, as noted above, parties cannot consent to subject matter jurisdiction; thus, although Plaintiff is correct that the McCutchan Defendants consented to entry of a final judgment, such consent does not and cannot amount to a consent of *jurisdiction*.

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CONT... Robert Edward Zuckerman

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Plaintiff also asserts that the Court has not yet decided whether the subject funds are property of the estate. However, at this time, there are no outstanding claims that would bring the funds into the estate. Plaintiff's declaratory relief claims seek a declaration that the funds belong to Plaintiff. To the extent the facts support an action for avoidance of the transfer of the funds to the McCutchan Defendants, the Trustee has elected not to file an action to recover the funds for the benefit of the estate. As such, the sole dispute at this time is whether the funds are properly held by the McCutchan Defendants or if the funds belong to Plaintiff by operation of the assignment order and/or judgment lien. Given that this dispute is "so tangential to [Debtor's] case or... would have so little impact on the administration of" Debtor's case, the Court does not have subject matter jurisdiction over this dispute. *See Wisdom*, 2015 WL 2128830 at *10.

B. Abstention

Title 28, United States Code, § 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." Courts consider the following twelve factors under 28 U.S.C. § 1334(c)(1):

- (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

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presence in the proceeding of nondebtor parties.

In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990).

Here, even if the Court has subject matter jurisdiction, the Court will abstain from adjudicating this dispute. The dispute will not have any notable impact on the efficient administration of Debtor's case and is remotely related to this case, if at all. In addition, the dispute involves exclusively state law and there is no jurisdictional basis, if any, other than 28 U.S.C. § 1334. Moreover, if the Court has jurisdiction over this matter at all, the matter is not "core."

Further, severing the dispute between Plaintiff and the McCutchan Defendants from the dispute between Plaintiff and Debtor is feasible and straightforward. Finally, both the McCutchan Defendants and Plaintiff are nondebtor parties. Consequently, a majority of the factors abstaining from this matter.

Given that there is no basis to deem the subject funds property of the estate, Plaintiff does not need relief from the automatic stay to litigate against the McCutchan Defendants in a nonbankruptcy forum.

III. CONCLUSION

To the extent the Court has subject matter jurisdiction over the remaining dispute between Plaintiff and the McCutchan Defendants, the Court will abstain from adjudicating the dispute.

The Court will prepare the order.

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

Diane C Weil, in her capacity as the

Pro Se

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Chapter 7

B. Edward McCutchan Jr. an
Represented By
Edward McCutchan

Sunderland/McCutchan LLP, a
Represented By
Edward McCutchan

Phoenix HoldingsFund LLC, a
Pro Se

DOES 1-20
Pro Se

Nickki B Allen, an individual
Pro Se

Sunderland/McCutchan, Inc., a
Represented By
Edward McCutchan

Maravilla Center, LLC, a California
Pro Se

Rezinate San Jacinto, LLC, a
Pro Se

San Jacinto Z, LLC, a California
Pro Se

Contiental San Jacinto, LLC, a
Pro Se

Zuckerman Building Company, a
Pro Se

Valley Circle Estates Realty Co., a
Pro Se

Continental Communities, LLC, a
Pro Se

Robert Edward Zuckerman
Represented By
Sandford L. Frey

Plaintiff(s):

Richard Abel
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, November 13, 2019

Hearing Room 301

1:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01086 Abel v. Zuckerman et al

- #15.00** Status conference re: second amended complaint for:
- 1) Declaratory relief re: determination of validity, priority or extent of interest in property
 - 2) Declaratory 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) Nondischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)(A)
 - 5) Nondischargeability of debt pursuant to 11 U.S.C. 523(a)(2)(B)
- [28 U.S.C. sec 157(b)(2); FRBP., R. 7001]

fr. 11/14/18 (stip); 1/9/2019; 2/20/19; 3/13/19; 5/8/19; 6/5/19;
8/28/19; 9/4/19; 9/11/19

Docket 75

Tentative Ruling:

In a status report filed on November 8, 2019 [doc. 149], the plaintiff and the debtor note that they have not met and conferred in compliance with Local Bankruptcy Rule 7026-1.

Parties should be prepared to discuss the following:

Deadline to comply with FRBP 7026 and FRCP 26(a)(1), (f) and (g): 11/27/19.

Deadline to submit joint status report: 12/4/19.

Continued status conference 12/11/19 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).

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CONT... Robert Edward Zuckerman

Chapter 11

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

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
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Wednesday, November 13, 2019

Hearing Room 301

1:30 PM

1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01116 Bars v. Sheikh

#16.00 Pretrial conference re complaint to determine dischargeability
and in objection to discharge [11 U.S.C. §§727(a)(4)(A)' 523(a) (2)

fr. 1/9/2019; 6/12/19; 8/7/19; 10/2/19

Docket 1

Tentative Ruling:

The Court will continue this pretrial conference to **2:30 p.m. on January 22, 2020**, to be held in connection with the hearing on the plaintiff's amended motion to approve the parties' stipulation.

Appearances on November 13, 2019 are excused.

Party Information

Debtor(s):

Atif Sheikh

Represented By
Steven M Gluck

Defendant(s):

Atif Sheikh

Pro Se

Joint Debtor(s):

Naureen Sheikh

Represented By
Steven M Gluck

Plaintiff(s):

Candace Marie Bars

Represented By
David C Bernstein

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 13, 2019

Hearing Room 301

1:30 PM

1:19-10981 Mehdi Zemrani

Chapter 7

Adv#: 1:19-01093 First National Bank Of Omaha v. Zemrani

#17.00 Status conference re: complaint seeking exception to discharge pursuant to 11 U.S.C. sec. 523(a)(2)(A)

fr. 10/2/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on December 11, 2019**, to be held in connection with the hearing on the plaintiff's motion for default judgment [doc. 17].

Appearances on November 13, 2019 are excused.

Party Information

Debtor(s):

Mehdi Zemrani

Represented By
Donald E Iwuchuku

Defendant(s):

Mehdi Zemrani

Pro Se

Plaintiff(s):

First National Bank Of Omaha

Represented By
Cory J Rooney

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, November 13, 2019

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#18.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper.
fr. 5/14/19; 10/16/19

Docket 55

Tentative Ruling:

On March 26, 2019, H. Samuel Hopper filed an amended claim 3-2, asserting a nonpriority unsecured claim in the amount of \$260,975.25 (the "Claim"). On March 28, 2019, the debtor filed an objection to the Claim (the "Objection") [doc. 55]. In the Objection, among other things, the debtor argues that some of the causes of action in the Claim are beyond the statute of limitations period.

On April 30, 2019, H. Samuel Hopper filed an opposition to the Objection (the "Opposition") [doc. 78]. In the Opposition, Mr. Hopper indicates that he agrees to amend the Claim to reflect his revised calculation of the Claim, as stated in the Response—\$190,880.65. This reduction appears to resolve the statute of limitations issues raised by the debtor in the Objection. The Court discusses this more fully in calendar no. 20.

When will Mr. Hopper file a second amended proof of claim?

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, November 13, 2019

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2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#19.00 Status conference re: creditor H. Samuel Hopper's motion to dismiss debtor Kenneth C. Scott's chapter 13 petition

fr. 7/17/19; 9/4/19; 10/2/19; 10/16/19

Docket 70

Tentative Ruling:

The Court having assessed, among other things, the first amended complaint in the related adversary proceeding, the defendants' motion to dismiss the first amended complaint, the objection to movant's claim, the validity of debtor's exemption claims (to which the movant objected) and the progress in the debtor's bankruptcy case, including the status of the debtor's proposed amended chapter 13 plan, the Court intends to deny the motion, based on the analysis set forth in the Court's earlier tentative ruling.

What further evidence, if any, does the movant intend to submit, and when?

Tentative Ruling from May 14, 2019

For the reasons discussed below, the Court will deny the motion.

I. BACKGROUND

On December 18, 2018, Kenneth C. Scott (the "Debtor") filed a voluntary chapter 13 petition. The Debtor has no prior bankruptcy filings.

Prior to the Debtor filing his petition, on November 7, 2018, Samuel Hopper filed a complaint in the California Superior Court, County of Los Angeles against the Debtor for, among other things, various wage claims, civil penalties, statutory penalties, interest and attorneys' fees and costs (the "State Court Action") [doc. 70, Exh. 1]. On December 11, 2018, the Debtor was apparently served with the summons and the complaint in the State Court Action [doc. 20, Exh. 2].

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CONT... Kenneth C. Scott

Chapter 13

In his schedule A/B [doc. 1], the Debtor did not list an interest in any real property. The Debtor listed an interest in personal property with an aggregate value of \$126,817.28. In his amended schedule C [doc. 35], the Debtor claimed exemptions in \$126,817.28 of that personal property.

In his schedule D [doc. 1], the Debtor did not list any secured creditors. In his schedule E/F [doc. 1], the Debtor listed nonpriority unsecured claims totaling \$123,841.73. Those nonpriority unsecured claims consisted of: (1) a \$9,069.00 claim in favor of Bank of America for a revolving credit account; (2) a \$30,000.00 claim in favor of Mr. Hopper for the State Court Action; (3) a \$35,600.00 claim in favor of JoAnn Scott, who is the Debtor's mother; and (4) a \$49,172.73 claim in favor of Johanna Scott for an obligation arising out of a separation agreement. In his statement of financial affairs ("SOFA") [doc. 1], the Debtor indicated that he was married.

As of May 9, 2019, five creditors have filed claims in the Debtor's case. American Honda Finance Corporation filed claim 1, which indicates that it holds a secured claim in the amount of \$19,469.73 based on a lease. Bank of America, N.A. filed claim 2, which indicated that it holds a nonpriority unsecured claim in the amount of \$8,944.00 based on a consumer credit card. Mr. Hopper filed claim 3-2, which indicates that he holds a nonpriority unsecured claim in the amount of \$206,975.25. The Debtor has filed an objection to Mr. Hopper's claim. JoAnn Scott filed claim 4, which indicates that she holds a nonpriority unsecured claim in the amount of \$35,600.00 based on a contract. Johanna Scott filed claim 5, which indicates that she holds a nonpriority unsecured claim in the amount of \$49,172.00 based on a marital separation agreement.

In his petition [doc. 1], the Debtor indicated that he rents his residence. In his schedule G [doc. 1], the Debtor listed two unexpired leases: a vehicle lease with American Honda Finance and a residential lease with Decon Corp.

In his schedules I and J [doc. 1], the Debtor represented that his monthly income is \$4,255.87 and his monthly expenses are \$3,983.05, leaving net monthly income of \$272.82. The Debtor indicated that he is employed as a therapist at My Private Practice. In his schedule A/B, the Debtor indicated that he owns a 100% interest in

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CONT... **Kenneth C. Scott**
My Private Practice.

Chapter 13

On March 6, 2019, the Debtor filed an amended SOFA [doc. 34]. In the amended SOFA, the Debtor indicates that he has an interest in My Private Practice and Kenneth Scott-Psy'd, Inc. The Debtor represents that Kenneth Scott-Psy'd, Inc. is the same as My Private Practice.

On December 18, 2018, the Debtor filed a chapter 13 plan [doc. 2]. The chapter 13 trustee and Mr. Hopper filed objections to that plan [docs. 27 and 28]. On March 6, 2019, the Debtor filed an amended chapter 13 plan (the "Plan") [doc. 31]. In the Plan, the Debtor proposes to make plan payments in the amount of \$272.82 per month (all of the Debtor's net monthly income, according to his schedule J) for 60 months. The Plan is a 5.52% plan. As of May 9, 2019, the chapter 13 trustee has not objected to confirmation of the Plan. However, Mr. Hopper has [doc. 77].

On April 19, 2019, Mr. Hopper filed the Motion [doc. 70]. Mr. Hopper did not serve the debtor and all creditors as required by Local Bankruptcy Rule 3015-1(q)(3). In the Motion, Mr. Hopper argues that the Court should dismiss the case based on the Debtor's bad faith.

On April 30, 2019, the Debtor filed an opposition to the Motion (the "Opposition") [doc. 73]. On May 7, 2019, Mr. Hopper filed a reply to the Opposition (the "Reply") [doc. 84].

II. ANALYSIS

Pursuant to 11 U.S.C. § 1307(c):

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

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CONT...

Kenneth C. Scott

Chapter 13

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States trustee, failure of the debtor 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(a);
- (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
- (11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

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CONT... Kenneth C. Scott

Chapter 13

11 U.S.C. § 1307(c). In deciding whether a chapter 13 case should be dismissed or converted, courts apply 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.'" *Nelson v Meyer (In re Nelson)*, 343 B.R. 671, 675 (9th Cir. B.A.P. 2006).

Here, Mr. Hopper does not argue for dismissal based on any of the enumerated causes listed in § 1307(c). Rather, Mr. Hopper argues that bad faith is additional cause for dismissal. A chapter 13 case filed in bad faith may be dismissed for cause under 11 U.S.C. § 1307(c). *In re Leavitt*, 171 F.3d 1219, 1224–25 (9th Cir. 1999); *In re Eisen*, 14 F3d 469, 470 (9th Cir. 1994). Bad faith is determined by evaluating the totality of circumstances, including the following factors: (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his chapter 13 petition or plan in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor only intended to defeat state court litigation; (4) whether egregious behavior is present. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999). Mr. Hopper's main arguments are that: (1) the Debtor filed his petition to avoid litigating the State Court Action; and (2) the Debtor filed false or incomplete schedules.

Regarding Mr. Hopper's first argument, "[w]hile a debtor's resort to bankruptcy to improve his or her position in pending litigation is relevant to the analysis, that single factor is not determinative in resolving the good faith issue." *In re King*, No. BAP/AZ-07-1317-PAJUK, 2008 WL 8444814, at *5 (B.A.P. 9th Cir. Mar. 12, 2008) (citing *In re Powers*, 135 B.R. 980, 992 (Bankr.C.D.Cal.1991)).

Here, it does not appear that the Debtor has filed his petition for an improper purpose. Although the Debtor filed his petition shortly after being served with the complaint in the State Court Action, it does not appear that the Debtor filed this case only to defeat the State Court Action. After being implicated in litigation, many debtors file bankruptcy petitions to address their debts, including those that are disputed and not yet liquidated.

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CONT...

Kenneth C. Scott

Chapter 13

Regarding Mr. Hopper's second argument, the evidence does not show significant inaccuracies in the Debtor's schedules. Mr. Hopper argues that the scheduled claims in favor of the Debtor's mother and estranged wife are possibly fraudulent. Mr. Hopper contends, among other things, that at the time of filing the Motion, neither the Debtor's mother nor his estranged wife had filed claims. A scheduled creditor not filing a proof of claim does not necessarily indicate fraud. Further, at this point, the Debtor's mother and his estranged wife have filed proofs of claim. Mr. Hopper also argues that the Debtor has not listed Kenneth Scott-Psy'd, Inc. on any of the Debtor's schedules, either as an asset or as his employer. However, the Debtor did list Kenneth Scott-Psy'd, Inc. in his amended SOFA. Mr. Hopper also argues that the Debtor has claimed improper exemptions in his personal property. Mr. Hopper has filed an objection to the Debtor's exemptions which is set for hearing on June 11, 2019. At that time, the Court will address Mr. Hopper's arguments regarding the Debtor's claims of exemption.

The Debtor does not have a prior history of any bankruptcy proceedings. Mr. Hopper has not shown that the Debtor has unfairly manipulated the Bankruptcy Code. Further, the Debtor does not appear to have engaged in egregious behavior. Accordingly, the Court will deny the Motion.

III. CONCLUSION

Deny.

The Debtor must submit the order within seven (7) days.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

The Debtor's Objection to the Declaration of Daniel Jett [doc. 74]

paras. 2, 3, 4, 6, 7, 8: overruled

para. 15: sustained

Exhs. 1, 2, 4, 5, 6, 7: overruled

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CONT... Kenneth C. Scott

Chapter 13

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#20.00 Defendants' motion to dismiss

fr. 10/2/19; 10/16/19

Docket 12

Tentative Ruling:

For the reasons discussed below, the Court will grant in part and deny in part the motion.

I. BACKGROUND

A. Debtor's Bankruptcy Case

On December 18, 2018, Kenneth C. Scott ("Debtor") filed a voluntary chapter 13 petition, initiating case 1:18-bk-13024-VK. In his schedule A/B, Debtor scheduled a 100% interest in My Private Practice, Inc. ("MPPI") and valued his interest at \$0.00. Debtor also scheduled an interest in "monies in business account," valued at \$17,274.00 (the "Funds"). In Debtor's latest-amended schedule C [Bankruptcy Case, doc. 35], Debtor claimed an exemption in the Funds pursuant to California Code of Civil Procedure ("CCP") § 703.140(b)(5). In his schedule E/F, Debtor listed a pending lawsuit commenced by H. Samuel Hopper ("Plaintiff") in state court (the "State Court Action").

On February 20, 2019, Debtor attended his initial § 341(a) meeting of creditors (the "Meeting of Creditors") [doc. 20]. At the Meeting of Creditors, Debtor testified that: (A) MPPI was no longer operating and Debtor had organized a new corporate entity, Scott Psy.D; (B) he listed the Funds in his schedules as business-related property; (C) the Funds were in one of the corporate bank accounts; (D) Debtor was the sole shareholder of that corporation; and (E) after the petition date, Debtor paid the Funds, which amounted to the full balance of MPPI's corporate account, to himself. *Id.* at pp. 8-11.

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CONT... Kenneth C. Scott

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On March 18, 2019, Plaintiff filed an objection to Debtor's claim of an exemption in the Funds (the "Objection to Exemption") [Bankruptcy Case, doc. 42]. In the Objection to Exemption, Plaintiff contended that: (A) Debtor does not qualify for a homestead exemption under CCP § 703.140(b)(1); (B) the Funds were property of MPPI and do not qualify as property of the estate that Debtor may exempt; and (C) Debtor has provided no evidence that he was entitled to a distribution of \$17,274 from MPPI. On July 17, 2019, the Court entered an order overruling the Objection to Exemption (the "Exemption Order") [Bankruptcy Case, doc. 160]. In the Court's ruling [Bankruptcy Case, doc. 150], the Court noted, in relevant part:

Here, the Scott Declaration establishes that, as of the petition date, Debtor was the 100% shareholder of a subchapter S corporation, MPPI. As such, all the shares of MPPI became property of the estate as of the petition date. Under § 541(a)(6) and (a)(7), any proceeds or profits arising from those shares also constitute property of the estate.

In the Scott Declaration, Debtor states that, postpetition, Debtor received a distribution based on his interest in the shares. Rather than claim an exemption in the shares, Debtor claimed an exemption in this distribution, *i.e.*, the Funds. . . . [F]or two reasons, Debtor properly claimed an exemption in the Funds. First, MPPI is a subchapter S corporation. . . . In the Scott Declaration, Debtor testified that he receives a yearly dividend based on profits generated by MPPI. Because MPPI is a subchapter S corporation, all of MPPI's profits flow through to Debtor as the sole shareholder.

Second, even if Debtor could not claim an exemption in the Funds directly, Debtor could have claimed a \$17,274 exemption in the shares of MPPI under CCP § 703.140(b)(5). Such an exemption would have excluded \$17,274 of the value of the shares from the estate. Consequently, whether Debtor claimed an exemption in the Funds or the shares is a distinction without a difference; either way, Debtor would have been entitled to exempt value in the amount of \$17,274.

. . .

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CONT...

Kenneth C. Scott

Chapter 13

Because Debtor has established, through the Scott Declaration, that he receives a yearly distribution based on MPPI's profits, and there being no contradictory evidence, Debtor has met his burden of proving that he is entitled to an exemption in the Funds.

On March 13, 2019, Plaintiff filed a motion for relief from stay to proceed with the State Court Action (the "RFS Motion") [Bankruptcy Case, doc. 38]. On May 29, 2019, the Court entered an order denying the RFS Motion [Bankruptcy Case, doc. 121].

On March 26, 2019, Plaintiff filed an amended proof of claim for a nonpriority unsecured claim in the amount of \$260,975.25 (the "Claim") [Claim 3-2]. On March 28, 2019, Debtor filed an objection to the Claim (the "Objection to Claim") [doc. 55]. On April 30, 2019, Plaintiff filed a response to the Objection to Claim (the "Response") [doc. 78]. In the Response, Plaintiff indicates that he agrees to amend the Claim to reflect his revised calculation of the Claim, as stated in the Response—\$190,880.65. On May 14, 2019, the Court held a hearing on the Objection to Claim. At that hearing, the Court ruled that it would adjudicate the disputes regarding the Claim in connection with this adversary proceeding.

On August 28, 2019, Debtor filed an amended chapter 13 plan (the "Plan") [doc. 166]. In the Plan, Debtor proposes to pay \$493.61 per month for 60 months, totaling \$29,616.00. If confirmed, the Plan provides for the payment of 19.5% of nonpriority unsecured claims.

B. The Adversary Proceeding

On April 19, 2019, Plaintiff filed a complaint against Debtor and MPPI initiating this adversary proceeding (the "Complaint") [doc. 1]. On July 3, 2019, Plaintiff filed an amended complaint (the "FAC") [doc. 8] against Debtor, MPPI and Kenneth Scott, Psy.D, A Psychological Corporation ("Scott Psy.D.," collectively, "Defendants"). In the FAC, Plaintiff alleges, in relevant part [emphasis added]:

From April 2013 through June 2017, Defendants employed Plaintiff as a Psychological Assistant ("PA") subject to the California Labor Code. Because Plaintiff was not a licensed psychologist, he was not exempt

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CONT...

Kenneth C. Scott

Chapter 13

from California's overtime and minimum wage laws.

In October 2014, Plaintiff and Defendants entered into a written employment agreement (the "Agreement"), which outlined a compensation scheme based on a graduated scale of percentages of the gross revenue Plaintiff generated for Defendants in each calendar month. However, throughout the course of his employment, Plaintiff was not compensated according to a "*bona fide* payroll program" and was unable to determine if he was being paid according to the Agreement because the statements Defendants provided him were insufficient. The pay statements provided to Plaintiff were rudimentary and incomplete. Additionally, between April 2013 and June 2017, Defendants failed to reimburse Plaintiff for business expenses, and between August 2015 and June 2017, Defendants failed to reimburse Plaintiff for work-related travel expenses.

Defendants also deducted payroll taxes in amounts not authorized by law without an itemized calculation of each type of payroll tax and not according to any W-4. On at least three instances, the entirety of Plaintiff's paycheck for a given period was deducted. Defendants also unlawfully underreported Plaintiff's gross income to state and federal tax authorities.

On multiple instances between April 2013 and June 2017, in retaliation against Plaintiff's assertion of his rights to be paid lawfully and in accordance with the Agreement, Debtor either gave Plaintiff knowingly false assurances that all his employment and payroll practices were lawful and honest, or occasionally threatened to terminate Plaintiff. Between April 2013 and June 2017, Plaintiff reasonably relied on Debtor's assurances that Defendants' employment and payroll practices were routine and lawful in all respects and forbore seeking alternative comparable employment. Throughout his employment at MPPI, Plaintiff was never paid overtime as required by law.

On multiple occasions, Plaintiff complained to Debtor that he should be treated as a regular employee and not as an independent contractor.

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CONT...

Kenneth C. Scott

Chapter 13

In response, Debtor either gave Plaintiff false assurances, or threatened to terminate Plaintiff based on what Debtor alleged was Plaintiff's breach of the Agreement.

On June 17, 2017, Plaintiff resigned from MPPI. In July 2017, Plaintiff secured alternative but lower paid employment as a PA with another employer. Plaintiff has suffered emotional distress as a result of his employment at and constructive termination from MPPI and has consequently sought psychological treatment.

On October 8, 2018, Plaintiff, Debtor and MPPI entered into a tolling agreement (the "Tolling Agreement"), tolling applicable statute of limitations through November 16, 2018. In the Tolling Agreement, the parties agreed that "any statute of limitations or statute of repose that had expired prior to October 8, 2018 shall not be resurrected or tolled by" the Tolling Agreement. On November 7, 2018, Plaintiff filed the State Court Action.

On February 20, 2019, at the 341(a) meeting of creditors, Debtor testified that he transferred the Funds from MPPI's business accounts to his personal use after the petition date. Debtor additionally testified that MPPI was no longer doing business and that he had formed a new corporation in January 2019, Scott Psy.D. Plaintiff believes Debtor transferred the Funds out of MPPI to frustrate Plaintiff's efforts to collect his unpaid wages from Defendants.

Based on these allegations, Plaintiff asserts the following claims in the FAC: (1) declaratory relief regarding nondischargeability of civil penalties pursuant to 11 U.S.C. § 523(a)(7); (2) declaratory relief re nondischargeability of fraud damages pursuant to 11 U.S.C. § 523(a)(2) and (4); (3) declaratory relief re ownership of \$17,247 in business account; (4) annulment of transfer in fraud of creditors; (5) fraud and deceit pursuant to Cal. Civ. Code §§ 1572, 1573, 1709, and 1710; (6) unlawful retaliation pursuant to Cal. Lab. Code § 98.6; (7) unlawful retaliation pursuant to Cal. Lab. Code § 1102.5; (8) failure to maintain and timely produce personnel records pursuant to Cal. Lab. Code § 1198.5(k); (9) failure to maintain and timely produce wage and hour records pursuant to Cal. Lab. Code § 226(f); (10) wrongful termination in violation of public policy; (11) unlawful deductions from wages pursuant to Cal.

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Lab. Code §§ 216 and 221; (12) breach of written contract; (13) conversion; (14) reimbursement of business expenses pursuant to Cal. Lab. Code § 2805; (15) failure to provide accurate wage statements pursuant to Cal. Lab. Code § 226; (16) waiting time penalties pursuant to Cal. Lab. Code § 203; and (17) unfair business practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.*

On July 23, 2019, Defendants filed a *Motion to Dismiss Pursuant to Rules 8, 9, and 12* (the "Motion") [doc. 12]. In the Motion, Defendants argue: (1) the FAC is untimely; (2) the FAC does not meet the requirements of Fed. R. Civ. P. ("FRCP") 8 and Fed. R. Bankr. P. ("FRBP") 7008; (3) claims three through seventeen are not core proceedings and are not related to a claim under title 11; (4) 11 U.S.C. § 523(a)(7) cannot be a basis for relief because Plaintiff is not a governmental agency; (5) Plaintiff's fraud claims do not meet the requirements of FRCP 9; (6) Plaintiff did not articulate the grounds for relief for annulment of transfer in fraud of creditors; (7) Plaintiff has no standing to pursue a conversion claim; and (8) some of the claims in the FAC are outside the applicable statute of limitations.

On September 18, 2019, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 19] and a request for judicial notice [doc. 20]. On September 26, 2019, Defendants filed a reply to the Opposition [doc. 22].

II. DISCUSSION

The Court will first address Defendants' procedural objections to the FAC, then Plaintiff's claims for monetary relief and lastly, Plaintiff's other claims that are potentially nondischargeable or otherwise request equitable relief.

A. Procedural Objections to the FAC

1. Subject Matter Jurisdiction over Claims Three Through Seventeen

In the Motion, Defendants argue that causes of action three through seventeen are not "core" proceedings and they do not otherwise relate to a claim under title 11; thus, the Court should dismiss these causes of action. Defendants contend that bankruptcy courts are not courts of general jurisdiction, and that although bankruptcy courts may hear matters involving debtors, the causes of action must involve some rights under title 11.

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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.").

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 automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to

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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.

"[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 has "arising under" jurisdiction over claim three because the matter involves statutory provisions of the Bankruptcy Code. In claim three, Plaintiff requests that the Court enter an order declaring the true ownership of the Funds, and whether the Funds are part of Debtor's bankruptcy estate. This Court has jurisdiction to determine whether the Funds are property of Debtor's bankruptcy estate pursuant to 11 U.S.C. § 541.

The Court does not have "arising under" or "arising in" jurisdiction over causes of

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action four through seventeen. There is no "arising under" jurisdiction because the matters do not involve any statutory provisions of the Bankruptcy Code. These matters also do not "arise in" the bankruptcy case because they can independently exist outside of bankruptcy and be brought in another forum. None of these causes of action alleged in the FAC are dependent or intertwined with the existence of Debtor's bankruptcy case or any issue therein.

However, the Court does have "related to" jurisdiction over these causes of action because litigation of the FAC will impact Debtor's bankruptcy estate. A judgment in favor of Plaintiff will affect Debtor's chapter 13 plan, including the percentage of nonpriority unsecured claims paid through that plan. Further, a determination that a debt was incurred through fraud is directly related to determining the dischargeability of that debt. As such, the Court will not dismiss the third through seventeenth causes of action in the FAC for lack of subject matter jurisdiction.

2. Federal Rule of Civil Procedure 15

In the Motion, Defendants argue that the FAC should be dismissed because it is untimely under FRCP 15(a)(1). Pursuant to FRCP 15(a), applicable to this adversary proceeding through FRBP 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.

Here, Plaintiff filed the Complaint on April 19, 2019 and the FAC on July 3, 2019. Defendants filed a motion to dismiss the Complaint under FRCP 12(b) on May 31,

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2019 [doc. 5]. Accordingly, in order for the FAC to be timely under FRCP 15(a)(1), Plaintiff must have filed the FAC by June 21, 2019. Because Plaintiff did not file the FAC until July 3, 2019, it is untimely.

However, 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 [FRCP] 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).

Plaintiff missed the deadline to amend the Complaint as a matter of course by twelve days. The untimely filing of the FAC has not caused undue delay in this adversary proceeding. Further, Defendants do not appear to have suffered any prejudice. Additionally, the amendments that Plaintiff made to the Complaint are not futile. As such, pursuant to FRCP 15(a)(2), the Court will retroactively grant Plaintiff leave of court to file the FAC.

3. Federal Rule of Civil Procedure 8

In the Motion, Defendants argue that the FAC should be dismissed because Plaintiff failed to comply with FRCP 8 and FRBP 7008. Pursuant to FRCP 8(a)—

- (a) Claim for Relief. A pleading that states a claim for relief must contain:
 - (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

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(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Pursuant to FRBP 7008—

[FRCP 8] applies in adversary proceedings. The allegation of jurisdiction required by [FRCP] 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy court, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.

Failure to satisfy the requirements of FRBP 7008 and FRCP 8(a) "is not fatal, especially when...the [c]ourt is able to determine its jurisdiction and the core nature of the claims asserted based upon the face of the [complaint]." *In re Ward*, No. 14-32939-BJH, 2017 WL 377947, at *6 (Bankr. N.D. Tex. Jan. 26, 2017), *aff'd sub nom. In re Ward*, 585 B.R. 806 (N.D. Tex. 2018).

Additionally, "the rules governing the form of pleading should be liberally construed, and motions to dismiss complaints based on pleading errors are to be disfavored. Courts adopting this view ignore the deficient format of the pleadings and instead focus on the substance of the document in determining whether the pleading substantially complies with the required elements of [FRCP] 8...." *In re Bey*, 2014 WL 4071042, at *3 (Bankr. C.D. Cal. Aug. 14, 2014) (citations omitted).

In the FAC, Plaintiff substantially complied with the required elements of FRCP 8(a) and FRBP 7008. Plaintiff indicated the name, number and chapter of Debtor's bankruptcy case. Plaintiff indicated that he consented to this Court's entry of final judgments on claims one and two. Plaintiff also indicated that those claims were "core" proceedings and that claims four through seventeen were "non-core" proceedings within the meaning of the Bankruptcy Code. Each of the claims in the

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FAC contain a short and plain statement showing why Plaintiff believes he is entitled to relief. Further, the FAC contains a prayer for relief.

Contrary to FRBP 7008, Plaintiff did not indicate whether he does or does not consent to the entry of final judgment by this Court on all claims in the FAC. However, based on the face of the FAC, the Court is able to determine its jurisdiction and the nature of Plaintiff's claims. As such, the Court will disregard the deficient format of the FAC and focus on the substance of the pleading.

B. Application of Federal Rule of Civil Procedure 12(b)(6)

A motion to dismiss [pursuant to [FRCP] 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 FRCP 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

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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); *see also 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.").

Here, Plaintiff requests that the Court take judicial notice of a certified copy of the transcript of Debtor's § 341(a) meeting of creditors on February 20, 2019 and a certified copy of the transcript of the hearing on the RFS Motion on May 15, 2019 [doc. 20]. The Court may properly take judicial notice of these documents.

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. Plaintiff's Causes of Action for Monetary Relief

1. Statute of Limitations

In the Motion, Defendants argue that many claims asserted in the FAC are barred by the applicable statute of limitations.

Regarding Plaintiff's claims for violations of the California Labor Code ("CLC"), generally, the statute of limitations for an action upon a liability created by statute, other than a penalty or forfeiture, is three years. Cal. Civ. Proc. ("CCP") § 338(a). However, violations of the CLC may also be actionable under California's Unfair Competition Law ("UCL"). Cal. Bus. & Prof. Code § 17200 et seq.

"A UCL action is an equitable action by means of which a plaintiff may recover

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money or property obtained from the plaintiff or persons represented by the plaintiff through unfair or unlawful business practices." *Cortez v. Purolator Air Filtration Prod. Co.*, 23 Cal. 4th 163, 173 (2000). Under the UCL, an employee's recovery of unlawfully withheld wages and expenses and unlawful deductions to wages are proper restitutionary remedies. *Cortez*, 23 Cal. 4th at 168; *Espejo v. The Copley Press, Inc.*, 13 Cal. App. 5th 329, 367–68 (Ct. App. 2017); *Ordonez v. Radio Shack*, No. CV 10-7060 CAS MANX, 2011 WL 499279, at *6 (C.D. Cal. Feb. 7, 2011) ("The Court further concludes that the UCL claim may be maintained to the extent it is predicated on plaintiff's claim under Sections 221 and 2802.").

Claims under the UCL are subject to a four-year statute of limitations. Cal. Bus. & Prof. Code § 17208; *see also Cortez*, 23 Cal. 4th at 178. The UCL's four-year statute "admits of no exceptions" and therefore applies even when the action is based on violation of a statute with a shorter limitations period. *Cortez*, 23 Cal. 4th at 178-79.

In the FAC, Plaintiff has asserted a UCL claim for, among other things, unpaid wages, unpaid business and travel expenses and unlawfully deducted general overhead expenses and payroll taxes. These claims are governed by the UCL's four-year statute of limitations, rather than the typical three-year statute of limitations for actions upon a liability created by statute. As discussed above, the Tolling Agreement, executed on October 8, 2018, extended deadlines that *had not already expired*. Consequently, Plaintiff's claims for unfair business practices that accrued prior to October 8, 2014 are barred. In the FAC, Plaintiff has not asserted claims for these causes of action prior to October 8, 2014. As such, these claims are not barred by the applicable statute of limitations.

Regarding Plaintiff's claims for reimbursement of lost wages and waiting time penalties, those claims are governed by the three-year statute of limitations for actions upon a liability created by statute. CCP § 338(a); *Pineda v. Bank of Am., N.A.*, 50 Cal. 4th 1389, 1398 (2010) ("[A] single, three year limitations period govern[s] all actions for section 203 penalties"). Consequently, Plaintiff's claims for damages that accrued prior to October 8, 2015 are barred by the applicable statute of limitations. In the FAC, Plaintiff has not asserted claims for these causes of action prior to October 8, 2015. As such, these claims are not barred by the applicable statute of limitations.

Regarding Plaintiff's claims for penalties, in his individual capacity, under CLC §§

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1102.5(f), 98.6(b)(3), 1198.5(k) and 226(e) and (f), the statute of limitations for an action upon a statute for a penalty or forfeiture, if the action is given to an individual, or to an individual and the state, is one year. CCP § 340(a); *Robles v. Agreserves, Inc.*, 158 F. Supp. 3d 952, 1004 (E.D. Cal. 2016) ("If a plaintiff attempts to obtain the statutory penalties provided by Labor Code § 226(e), then the one year statute of limitations of California Civil Code § 340(a) applies."). Plaintiff ceased employment with MPPI on June 17, 2017. Accordingly, the one-year statute of limitations expired on June 17, 2018. As discussed above, the Tolling Agreement, executed on October 8, 2018, extended deadlines that *had not already expired*. Consequently, the one-year statute of limitations was not tolled by the Tolling Agreement. As such, Plaintiff's claims for penalties under the CLC are barred, and the Court will dismiss these claims.

Regarding Plaintiff's claims for breach of contract (twelfth cause of action), claims based on oral agreements are subject to a two-year statute of limitations, and claims based on written agreements are subject to a four-year statute of limitations. CCP §§ 339 and 337. In the FAC, Plaintiff alleges that Defendants breached a written agreement. Consequently, Plaintiff's claims for breach of contract that accrued prior to October 8, 2014 are barred. In the FAC, Plaintiff does not specify the period he uses to calculate his damages. As such, Plaintiff must amend his breach of contract claim to include only damages from the applicable statute of limitations period.

Regarding Plaintiff's claim for wrongful termination in violation of public policy, this claim is subject to a two-year statute of limitations. CCP § 335.1; *Prue v. Brady Co./San Diego*, 242 Cal. App. 4th 1367, 1382 (2015). In the FAC, Plaintiff requests damages in the amount of back pay that he would have received had he remained employed with Defendants from June 18, 2017 through August 21, 2018. This period is within the two-year statute of limitations. As such, the Court will not dismiss this claim.

2. Application of Federal Rule of Civil Procedure 12(a)(4)

In the Motion, Defendants argue that Plaintiff is asserting claims that are partially outside of the applicable statute of limitations. Defendants contend that Plaintiff should provide a more definite statement under FRCP 12(a)(4) to enable Defendants to answer the allegations in the FAC.

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Rule 12(e) states in relevant part that "[a] party may move for a more definite statement of a pleading . . . which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired."

A court may grant a Rule 12(e) motion when the pleading is "so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith or without prejudice to himself." *Hicks v. Arthur*, 843 F.Supp. 949, 959 (E.D. Pa. 1994) (quoting 5A Charles A. Wright and Arthur R. Miller, *Federal Practice & Procedure, Civil 2d*, § 1376 (1990)). "[Rule 12(e)] is concerned with defects in the complaint . . . Any inconsistency with other papers or lack of detail can be explored during the pretrial discovery phase of the litigation." *Stanton v. Manufacturers Hanover Trust Co.*, 388 F.Supp. 1171, 1174 (S.D.N.Y. 1975).

"Rule 12(e) is designed to strike at unintelligibility rather than want of detail." *Resolution Trust Corp. v. Dean*, 854 F.Supp. 626, 649 (D. Ariz. 1994); *Cox v. Maine Maritime Academy*, 122 F.R.D. 115, 116 (D. Me. 1988); *Woods v. Reno Commodities, Inc.*, 600 F.Supp. 574 (D.Nev. 1984). "Therefore, a rule 12(e) motion properly is granted only when a party is unable to determine the issues he must meet." *Cox*, 122 F.R.D. at 116 (citing *Innovative Digital Equipment*, 597 F.Supp. 983, 989 (N.D. Oh. 1984); and *Usery v. Local 886, International Brotherhood of Teamsters*, 72 F.R.D. 581, 582 (W.D.Okla. 1976)).

Here, the FAC is clear regarding the issues that Defendants must address in a responsive pleading. The FAC is not so vague, ambiguous or unintelligible such that Defendants cannot prepare a responsive pleading. Other than the statute of limitation issues discussed in this ruling, in the FAC, Plaintiff has not stated claims outside the applicable statute of limitation. Accordingly, the Court will not order a more definite statement under FRCP 12(a)(4).

3. Wrongful Termination in Violation of Public Policy (Tenth Cause of Action)

In the Motion, Defendants argue that Plaintiff has not stated a claim for relief for wrongful constructive termination because, in the FAC, Plaintiff admits that he resigned his position.

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Under California law, "[c]onstructive discharge occurs when the employer's conduct effectively forces an employee to resign." *Turner v. Anheuser-Busch, Inc.*, 7 Cal. 4th 1238, 1244–45 (1994). "Although the employee may say, 'I quit,' the employment relationship is actually severed involuntarily by the employer's acts, against the employee's will." *Id.* "As a result, a constructive discharge is legally regarded as a firing rather than a resignation." *Id.*

"In order to establish a constructive discharge, an employee must plead and prove, by the usual preponderance of the evidence standard, that the employer either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would be compelled to resign." *Id.* at 1251.

In the FAC, Plaintiff alleges that throughout his employment at MPPI (from 2013 through 2017), Debtor and MPPI illegally withheld earned wages, illegally failed to reimburse business and travel expenses and illegally deducted general overhead expenses and payroll taxes. Plaintiff further alleges that on multiple occasions he made complaints to Defendants regarding these alleged violations of the CLC. On a FRCP 12(b)(6) motion, the Court must accept factual allegations as true. As such, in the context of ruling on the Motion, Plaintiff has alleged sufficient facts in the FAC to allege constructive discharge.

"Even after establishing *constructive* discharge, an employee must independently prove a breach of contract or tort in connection with employment termination in order to obtain damages for *wrongful* discharge." *Id.* (emphasis in original). "Apart from the terms of an express or implied employment contract, an employer has no right to terminate employment for a reason that contravenes fundamental public policy as expressed in a constitutional or statutory provision." *Id.* at 1252. "An actual or constructive discharge in violation of fundamental public policy gives rise to a tort action in favor of the terminated employee." *Id.*

Tort claims for wrongful discharge typically arise when an employer retaliates against an employee for: (1) refusing to violate a statute; (2) performing a statutory obligation; (3) exercising a statutory right or privilege; and (4) reporting an alleged violation of a statute of public importance. *Id.* at 1256.

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In the FAC, Plaintiff asserts a cause of action for breach of contract. Additionally, Plaintiff asserts a cause of action for unlawful retaliation. Under his unlawful retaliation cause of action, Plaintiff alleges, among other things, that he was constructively terminated because of his complaints to Debtor and MPPI regarding their violations of the CLC. As such, in the context of ruling on the Motion, Plaintiff has alleged sufficient facts in the FAC to allege wrongful discharge.

4. Dischargeability of Claims

In the Motion, Defendants also argue that the tenth through twelfth and fourteenth through seventeenth causes of action should be dismissed with prejudice because the claims are dischargeable under 11 U.S.C. § 523. These causes of action are for violations of various sections of the CLC, breach of contract and unfair business practices.

As to Debtor, these claims appear to be dischargeable. However, that is not a reason for the Court to dismiss these causes of action on a FRCP 12(b)(6) motion. Further, these claims are not dischargeable by the non-debtor entities, MPPI and Scott Psy.D. *See* 11 U.S.C. § 524(e). [FN1] As stated above, the Court has subject matter jurisdiction over these causes of action. Also, Plaintiff has met his burden to allege enough facts in the FAC to state a claim that is plausible on its face for each of those causes of action. Moreover, Debtor filed the Objection to Claim, so the Court must adjudicate the validity and amount of the Claim, whether dischargeable or not. Accordingly, the Court will not dismiss those causes of action.

D. Dischargeability of Civil Penalties (First Cause of Action)

1. Impact of 11 U.S.C. § 1328

In the first cause of action, Plaintiff requests that the Court enter a declaratory judgment stating that any civil penalties owed to Plaintiff as a result of Debtor's violations of CLC §§ 98.6, 226(f), 1102.5 and 1198.5 are not dischargeable. [FN2] Defendants argue that 11 U.S.C. § 523(a)(7) cannot be a basis for determining that any civil penalties owed by Debtor to Plaintiff are nondischargeable, because Plaintiff is not a governmental unit.

Pursuant to 11 U.S.C. § 523(a)(7), a debt may be made nondischargeable in a

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bankruptcy action "to the extent such debt is for a fine, penalty, or forfeiture payable *to and for the benefit of a governmental unit*, and is not compensation for actual pecuniary loss, other than a tax penalty." (emphasis added). In 11 U.S.C. § 101(27), the Bankruptcy Code defines a "governmental unit" as the:

United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

Section 523(a)(7) encompasses traditional government fines. While it also may encompass criminal judgments ordering restitution to the debtor's victims, these judgments still are paid directly to a government agency. These judgments are considered "for the benefit of a government unit." *Kelly v. Robinson*, 479 US 36 (2004). "[T]he limitation of § 523(a)(7) to fines assessed 'for the benefit of a governmental unit' was intended to prevent application of that subsection *to wholly private penalties* such as punitive damages." *Kelly*, 479 U.S. at 51 n.13, 107 S.Ct. 353 (emphasis added); *see also In re Warfel*, 268 B.R. 205, 211 (B.A.P. 9th Cir. 2001).

However, in a chapter 13 case, when a confirmed chapter 13 plan is completed, a debt under § 523(a)(7) is dischargeable. 11 U.S.C. § 1328. Through § 1328, "Congress secured a broader discharge for debtors under Chapter 13 than Chapter 7 by extending to Chapter 13 proceedings some, but not all, of § 523(a)'s exceptions to discharge." *In re Ryan*, 389 B.R. 710, 714 (B.A.P. 9th Cir. 2008). The broader discharge afforded to chapter 13 debtors reflects a policy determination that it is preferable to have debtors commit to a plan to pay their creditors over a number of years rather than through a liquidation. *Id.* at 713. Section 1328(a) sets forth a list of debts that may be made nondischargeable in a chapter 13 proceeding. Section 523(a)(7) is not included. Having been omitted from that list, section 523(a)(7) does not make penalties nondischargeable *in a chapter 13 case*. *In re Kozlowki*, 547 B.R. 222, 231 (Bankr. E.D. Mich. 2016). Debtor filed his petition under chapter 13. As a result, if Debtor successfully confirms and completes the Plan, any civil penalties owed by Debtor, which are within the scope of § 523(a)(7), are dischargeable.

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2. *The Scope of 11 U.S.C. § 523(a)(7)*

Even if Debtor does not confirm and complete the Plan, under § 523(a)(7), Plaintiff has not stated a claim for relief that is plausible on its face. Plaintiff does not allege that any civil penalties, payable by Debtor, are due to and for the benefit of a governmental unit. Instead, he alleges that "[Plaintiff] is entitled to recover civil penalties from [Defendants]" for violations of the California Labor Code and that "a debtor may not discharge civil penalties which may be collected by a victim of certain statutory wrongs as defined by the legislature." FAC, ¶¶ 46-50.

Plaintiff is not a "governmental unit," as defined in § 101(27). As a result, any penalties owed directly to Plaintiff are not within the scope § 523(a)(7).

E. Claims under California's Private Attorney General Act of 2004

1. Application of 11 U.S.C. § 523(a)(7)

In the Opposition, Plaintiff argues that "California Labor Code's provisions effectively deputize Plaintiff to sue and collect civil penalties on behalf of the State of California, rendering Plaintiff an agent of the State of California. As a state agent, Plaintiff is eligible to recover civil penalties that are non-dischargeable under [§] 523(a)(7)." Opposition, p. 9. In support of his position, Plaintiff cites to *Medina v. Vander Poel*, 523 B.R. 820 (E.D. Cal. 2015).

In *Medina*, the bankruptcy court held that the creditor's claims under California's Private Attorneys General Act of 2004 ("PAGA"), CLC § 2699, *et seq.*, against a chapter 7 debtor were discharged under 11 U.S.C. § 727. The creditor appealed to the district court. In relevant part, the district court held that civil penalties under PAGA fall within the exception to discharge set forth in § 523(a)(7). Plaintiff's reliance on *Medina* is misplaced. Unlike the creditor's relevant claims in *Medina*, the FAC does not appear to be a PAGA action.

Pursuant to CLC § 2699(a), "any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and

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other current or former employees pursuant to the procedures specified in Section 2699.3."

"The purpose of the PAGA is not to recover damages or restitution, but to create a means of 'deputizing' citizens as private attorneys general to enforce the Labor Code." *Brown v. Ralphs Grocery Co.*, 197 Cal. App. 4th 489, 501 (2011), *as modified* (July 20, 2011). "The relief provided by the statute is designed to benefit the general public, not the party bringing the action." *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 756 (Ct. App. 2018), *reh'g denied* (June 13, 2018), *review denied* (Aug. 8, 2018). "PAGA 'does not create property rights or any other substantive rights' for private parties; statutory penalties imposed under the PAGA are paid mostly to the state. *Medina*, 523 B.R. 826-27; *see also* CLC § 2699(i) (75% distributed to the Labor and Workforce Development Agency, and the remaining 25% to aggrieved employees). Under PAGA, "[t]he plaintiff is not even the real party in interest in the action—the government is." *Huff*, 23 Cal. App. 5th at 757.

There are no separate individual claims in a PAGA action; the individual must bring a PAGA claim as a representative action on behalf of himself or herself and other aggrieved employees. *Reyes v. Macy's, Inc.*, 202 Cal. App. 4th 1119, 1123–24 (2011) ("The PAGA statute does not enable a single aggrieved employee to litigate his or her claims, but requires an aggrieved employee 'on behalf of herself or himself *and* other current or former employees' to enforce violations of the Labor Code by their employers."). "The penalties that can be recovered in the action are those that can be recovered by state enforcement agencies under the Labor Code; they are separate from the statutory damages that can be recovered by an employee pursuing an individual claim for a Labor Code violation." *Huff*, 23 Cal. App. 5th at 756.

2. Required Exhaustion of Administrative Procedures

"Any plaintiff bringing a PAGA action must first exhaust the administrative procedures set forth in Cal. Labor Code section 2699.3." *Estate of Harrington v. Marten Transp., Ltd.*, No. CV 15-1419-MWF (ASX), 2017 WL 5513635, at *3 (C.D. Cal. Nov. 6, 2017). "Among those procedures is the requirement that the aggrieved employee give notice to the Labor and Workforce Development Agency ("LWDA") and the employer of the specific provisions of the labor code alleged to have been violated." *Id.* "An aggrieved employee may only commence a civil action after he

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receives notice from the LWDA that it does not intend to investigate the violations, or, if no notice is provided, after 60 calendar days of the postmark date of his notice to the LWDA." *Id.* "At that time, the aggrieved employee may commence a civil action pursuant to Section 2699." *Id.* (internal quotations omitted).

Courts may dismiss PAGA causes of action for failure to exhaust the required administrative remedies. *Id.* (collecting cases). To plead compliance with the exhaustion requirements, a plaintiff should first list: (1) when the plaintiff notified the LWDA about the violations, (2) what, if any, response the plaintiff received from the LWDA, or (3) how long the plaintiff waited before commencing an action. *Id.*

Here, Plaintiff does not plead that he has complied with the procedural requirements in CLC § 2699.3. In the FAC, Plaintiff does not state: (1) when he notified LWDA about the alleged violations; (2) what, if any response he was given from LWDA; and (3) how long he waited before commencing this adversary proceeding. Moreover, Plaintiff did not bring the FAC on behalf of any other employees. [FN4]

3. Statute of Limitations

Even if Plaintiff complied with the procedural requirements in CLC § 2699.3, PAGA claims are restricted by a one-year statute of limitations. CCP § 340(a). An employee must provide notice to LWDA and the employer within one year of when the employee ceases working for the employer. CLC §§ 2699.3(a)(2) and (d); *Crosby v. Wells Fargo Bank, N.A.*, 42 F. Supp. 3d 1343, 1346 (C.D. Cal. 2014). The "statute of limitations may be tolled up to 60 days (previously 33 days) to account for the period between when LWDA receives a PAGA complaint letter and when it provides notice to the aggrieved employee whether it grants permission for the aggrieved employee to initiate a civil action." *Crosby*, 42 F. Supp. 3d at 1346.

Accordingly, Plaintiff would have had to provide notice to LWDA by June 17, 2018. The statute of limitations then would be tolled, for 60 days, to August 16, 2018. As discussed above, the Tolling Agreement, executed on October 8, 2018, extended deadlines that *had not already expired*. At the latest, it appears that the statute of limitations period for any PAGA claims would have expired by August 16, 2018, and the Tolling Agreement would not have extended this statute of limitations period. Consequently, any claims under PAGA are barred.

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For the reasons stated above, Plaintiff's entitlement to civil penalties (if any) is not within the parameters of § 523(a)(7). Consequently, for the first cause of action, Plaintiff has not stated a claim for relief under FRCP 12(b)(6), and the Court will dismiss that cause of action.

***F. Declaratory Relief Concerning Nondischargeability of Fraud Damages
(Second Cause of Action)***

In the second cause of action, Plaintiff seeks declaratory relief determining that a judgment entered in the State Court Action based on a finding of fraud would be nondischargeable under 11 U.S.C. §§ 523(a)(2) and/or (a)(4) "to the extent that [Debtor] is determined to have been acting in a fiduciary capacity when he fraudulently withheld incorrect amounts of payroll taxes from Plaintiff's paychecks, or to the extent that the court in the [State Court Action] determines that [Debtor] embezzled or stole those funds from Plaintiff's paychecks." [FN3] In the Motion, Defendants argue that it is unclear what Plaintiff is requesting, because this Court denied the RFS Motion. In the Opposition, Plaintiff reiterates that the second cause of action is not a cause of action under 11 U.S.C. §§ 523(a)(2) and/or (a)(4), but a request for declaratory relief.

For purposes of determining dischargeability, claims successfully reduced to judgments in state court may be given collateral estoppel effect in a bankruptcy court. *Grogan v. Garner*, 498 US 279, 284-85, 290 (1991). However, in order for collateral estoppel to apply, certain requirements must be met. *See In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001). Without the Court being able to review the judgment and the state court's findings, the Court cannot determine whether those requirements have been satisfied. Accordingly, the Court will dismiss the second cause of action.

G. Declaratory Relief Concerning Ownership of the Funds (Third Cause of Action)

In the third cause of action, Plaintiff requests that the Court enter an order declaring the true ownership of the Funds, and whether the Funds are part of Debtor's bankruptcy estate. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides in pertinent part:

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In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

"Declaratory relief is appropriate '(1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.'" *Flores v. EMC Mortg. Co.*, 997 F. Supp. 2d 1088, 1111 (E.D. Cal. 2014) (quoting *Bilbrey by Bilbrey v. Brown*, 738 F.2d 1462, 1470 (9th Cir.1984)).

"As an equitable remedy, declaratory relief is 'dependent upon a substantive basis for liability' and has 'no separate viability' if all other causes of action are barred." *Flores*, 997 F. Supp. 2d at 1111 (quoting *Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal. App. 4th 1018, 1023, n. 3 (2000)). "[D]eclaratory relief does not serve to 'furnish a litigant with a second cause of action for the determination of identical issues.'" *Gayduchik v. Countrywide Home Loans, Inc.*, 2010 WL 1737109, at *4 (E.D. Cal. 2010) (quoting *General of Am. Ins. Co. v. Lilly*, 258 Cal. App. 2d 465, 470 (1968)).

After Plaintiff filed the Objection to Exemption, the Court determined that, because MPPI is a subchapter S corporation, all of MPPI's profits flow through to Debtor as the sole shareholder, that Debtor was entitled to an exemption in the Funds and that the Funds are property of Debtor's bankruptcy estate. Plaintiff did not file a motion for reconsideration of the Exemption Order or a notice of appeal. Because the Court already has determined issues identical to the third cause of action, the Court will dismiss the third cause of action, without leave to amend.

H. Annulment of Transfers in Fraud of Creditors (Fourth Cause of Action)

In the fourth cause of action, Plaintiff requests that the Court "annul" MPPI's alleged fraudulent transfer of the Funds to Debtor. In the Motion, Defendants argue that Plaintiff does not articulate his grounds for relief for the fourth cause of action. Although Plaintiff did not articulate his ground for relief in the FAC, in the Opposition, Plaintiff indicates that he is moving under California's Uniform Voidable

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Transaction Act ("CUVTA"), Cal. Civ. Code ("CCC") §§ 3439, *et seq.*

Pursuant to CCC § 3439.05—

- (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

- (b) A creditor making a claim for relief under subdivision (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

"A plaintiff must make an affirmative showing that it was injured by a transfer in order to have statutory standing to pursue a fraudulent transfer claim under CUFTA." *In re Blanchard*, 547 B.R. 347, 353 (Bankr. C.D. Cal. 2016); *see also Fid. Nat. Title Ins. Co. v. Schroeder*, 179 Cal. App. 4th 834, 845 (Ct. App. 2009) ("A creditor has not been injured unless the transfer puts beyond reach property the creditor *could subject to payment of his or her debt.*") (emphasis in original).

In the FAC, Plaintiff alleges that before MPPI transferred the Funds to Debtor and/or Scott Psy.D, he held a claim against MPPI for various CLC violations. Plaintiff contends that MPPI transferred the Funds for no consideration; thus, it did not receive reasonably equivalent value in exchange for the Funds. Plaintiff asserts that MPPI had knowledge of Plaintiff's claim and transferred the Funds with actual intent to hinder, delay or defraud MPPI's creditors, including Plaintiff. Plaintiff also asserts that MPPI has incurred extensive indebtedness, and as a result of the transfer of the Funds, MPPI rendered itself insolvent. Plaintiff further alleges that Debtor received the Funds from MPPI, and that as CEO and sole shareholder of MPPI, Debtor had knowledge of Plaintiff's claims at the time of the transfer.

If Plaintiff is moving under CUVTA, as he indicated in the Opposition, he could state a claim for relief under FRCP 12(b)(6). Plaintiff must amend the FAC to include the statutory basis for the Funds to be repaid to MPPI.

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I. Fraud and Deceit Under Cal. Civ. Code §§ 1572-73 and 1709-10 (Fifth Cause of Action)

1. Application of Federal Rule of Civil Procedure 9(b)

In the Motion, Defendants argue that the fifth cause of action for fraud and deceit under California law is wholly devoid of the facts and particularities that are required pursuant to FRCP 9(b) and FRCP 12(b)(6). Specifically, Defendants argue that the allegations are missing the "who, what, when, where, and how."

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).

In the FAC, Plaintiff alleges that Debtor and MPPI fraudulently promised to pay Plaintiff according to an agreed-upon employment compensation scheme, without any intent of doing so. Plaintiff specifically alleges that the parties entered into the Agreement. Plaintiff further alleges that Debtor and MPPI knew that Plaintiff would not be paid according to the terms of the Agreement, and that Debtor and MPPI "intentionally withheld or suppressed that information from Plaintiff that would have better informed his decision whether to accept or decline the offer of employment in the PA position." Plaintiff alleges that by making these misrepresentations to Plaintiff, Debtor was able to keep more profit for himself.

Further, Plaintiff alleges he justifiably relied on Debtor's promises to pay Plaintiff according to the agreed-upon pay-scale by accepting employment as a PA with Debtor and MPPI and foregoing alternative employment. Plaintiff alleges that he suffered damages in the form of "rightfully earned wages," "business expenses Plaintiff incurred on behalf of Defendants but was never reimbursed," "the amount of income he would have earned had he refused the PA position with Defendants, and obtained employment as a PA elsewhere" and "substantial emotional distress" that were

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proximately caused by his reliance.

Plaintiff alleges that Defendants' misconduct occurred between April 11, 2013 through June 17, 2017. Plaintiff additionally alleges that that Defendants were able to perpetrate the fraud by concealing material information through false and misleading earning statements and Debtor falsely assuring Plaintiff that he was being paid lawfully.

Thus, Plaintiff alleges with particularity the circumstances constituting fraud and alleges generally the conditions of Debtor's state of mind so as to satisfy the heightened pleading standard imposed by FRCP 9(b).

2. Application of Statute of Limitations

In the Motion, Defendants also argue that Plaintiff's claims for fraud are time barred. Under California law, "[a]n action for relief on the grounds of fraud or mistake must be commenced within three years." *Kline v. Turner*, 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 CCP § 338(d)). "[C]ourts 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.*

In the FAC, Plaintiff alleges that Defendants concealed deductions and withholdings from Plaintiff's paychecks in the "earning statements" presented to Plaintiff on a monthly basis, which prevented Plaintiff from discovering Defendants' fraud earlier. On a FRCP 12(b)(6) motion, the Court must take all factual allegations as true. Consequently, at this time, the Court must accept as true that Plaintiff did not discover Defendants' alleged fraud until he resigned in June 2017, and Plaintiff's claims for fraud under California law may not be time barred. Because Plaintiff has stated a claim for relief that is plausible on its face under FRCP 12(b)(6), the Court will not dismiss the fifth cause of action.

J. Conversion (Thirteenth Cause of Action)

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In the thirteenth cause of action, Plaintiff makes two different allegations for conversion against Defendants. The first is that Defendants interfered with Plaintiff's earned wages by deducting specific amounts from Plaintiff's paycheck, to which Defendants were not entitled or which exceeded amounts that could be legally deducted. The second allegation is that Debtor and/or Scott Psy.D converted the Funds (the entire amount in MPPI's bank account) to Debtor's use; Plaintiff contends that he was damaged because the Funds otherwise would have been paid to Plaintiff, to satisfy his claims.

"Conversion is the wrongful exercise of dominion over the property of another." *Farmers Insurance Exchange v. Zerin*, 53 Cal. App. 4th 445, 451 (Ct. App. 1997). Under California law the elements of conversion are plaintiff's ownership or right to possession of property at the time of the conversion, defendant's wrongful act or disposition of his property right, and consequent damages. *Ehrle*, 189 B.R. 771, 776 (B.A.P. 9th Cir. 2002) (citing *In re Saylor*, 178 B.R. 209, 214 (B.A.P. 9th Cir. 1995)).

Plaintiff's first allegation meets the requirements under FRCP 12(b)(6). Plaintiff has alleged that Defendants wrongfully exercised dominion over his property by deducting specific amounts from Plaintiff's paycheck; *i.e.*, amounts Plaintiff earned and was entitled to receive. See *Voris v. Lampert*, 7 Cal. 5th 1141, 446 P.3d 284 (2019).

However, Plaintiff's second allegation does not state a claim for relief under FRCP 12(b)(6). The Funds could have included monies received from clients of MPPI, which Plaintiff did not own or have a right to possess, at that time. As such, Plaintiff has not plausibly alleged that Defendants exercised dominion over *his* property. Consequently, the Court will dismiss the second allegation, with leave to amend.

K. Injunctive Relief

In the sixth, eighth, ninth and seventeenth causes of action, pursuant to various sections of the California Labor Code and California Business and Professions Code, Plaintiff requests injunctive relief.

1. Unlawful Retaliation Under Cal. Lab. Code § 98.6 (Sixth Cause of Action)

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Regarding the sixth cause of action, Plaintiff alleges that, pursuant to CLC § 98.6(b) (1), because of Defendants' unlawful retaliation against Plaintiff, Plaintiff is entitled to injunctive relief in the form of an order reinstating him to employment with Defendants. CLC § 1102.5(b) states,

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

Here, Plaintiff alleges that on multiple occasions he made complaints to Defendants regarding Defendants alleged violations of the CLC. Plaintiff alleges that Defendants retaliated against Plaintiff by threatening to terminate his employment. Plaintiff also alleges that he was constructively terminated on June 17, 2017 because of his complaints to Debtor and MPPI regarding CLC violations. As such, Plaintiff has alleged enough facts in the FAC to overcome a FRCP 12(b)(6) motion, and the Court will not dismiss this claim.

2. *Failure to Maintain and Timely Produce Personnel Records Under Cal. Lab. Code. § 1198.5(k) (Eighth Cause of Action)*

Regarding the eighth cause of action, Plaintiff alleges that on August 6, 2018, Plaintiff submitted to Debtor a written demand that Defendants produce a copy of Plaintiff's complete personnel file within 30 days pursuant to CLC § 1198.5. Plaintiff alleges that Debtor produced only a small portion of Plaintiff's personnel records. CLC § 1198.5 affords every current and former employee the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. CLC § 1198.5(a). An employer is required to make these records available within 30 calendar days from the

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date the employer receives a written request unless agreed otherwise. *Id.* at § 1198.5(b). A current or former employee may also bring an action for injunctive relief to obtain compliance with this section. *Id.* at § 1198.5(l).

Here, Plaintiff has stated a claim for injunctive relief under CLC § 1198.5(l). On August 6, 2018, Plaintiff alleges that he requested his personnel files from Debtor. Plaintiff states that, at the time of filing the FAC, Defendants had not provided him complete records. Consequently, the Court will not dismiss this claim.

**3. Failure to Maintain and Timely Produce Wage and Hour Records
Under Cal. Lab. Code. § 226(f) (Ninth Cause of Action)**

Regarding the ninth cause of action, Plaintiff alleges that on August 6, 2018, Plaintiff submitted to Defendants a written demand to produce a copy of Plaintiff's complete payroll and time records within 21 days pursuant to CLC § 226. Plaintiff alleges that Debtor produced some of Plaintiff's records, but some were missing, and the records produced were incomplete and inaccurate. CLC § 226(b) requires employers to keep the information required by subdivision (a) and affords current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. An employer who receives a reasonable request shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. *Id.* at § 226(c). The failure to comply within this timeframe entitles the current or former employee to bring an action for injunctive relief to ensure compliance with this section. *Id.* at § 226(h).

Here, Plaintiff has stated a claim for injunctive relief under CLC § 226(h). On August 6, 2018, Plaintiff alleges that he requested his payroll and time records. Plaintiff states that, at the time of filing the FAC, Defendants had not provided him complete records. As such, the Court will not dismiss this claim.

**4. Unfair Business Practices Under Cal. Bus. & Prof. Code §§ 17200, et
seq. (Seventeenth Cause of Action)**

Regarding the seventeenth cause of action, Plaintiff requests, pursuant to California Business and Professions Code ("CBPC") § 17203, an injunction requiring Defendants to: "(1) produce Plaintiff's complete personnel file; (2) produce all records relating to Plaintiff's earnings for all periods he worked as a PA at Defendants'

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facilities. . . ; (3) account for all amounts owed to Plaintiff under the Agreement; (3) [*sic*] cease and desist in their use and conversion of corporate assets; (4) annul and reverse all MPPI transfers of MPPI's corporate assets to [Debtor] and/or [Scott Psy.D.]; (5) turnover all MPPI corporate assets or former assets to Plaintiff in partial satisfaction of MPPI's obligations to Plaintiff." FAC, ¶ 191. Plaintiff also seeks an accounting of all assets of MPPI that may have transferred to insiders and successors of MPPI and to family members of insiders of MPPI.

CBPC § 17203 provides, in relevant part, that,

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

"To have standing to bring a claim under the UCL, a private plaintiff must show that it has suffered injury in fact and has lost money or property as a result of unfair competition. *Pom Wonderful LLC v. Coca-Cola Co.*, 679 F.3d 1170, 1178 (9th Cir. 2012), *rev'd on other grounds*, 573 U.S. 102, 134 S. Ct. 2228 (2014); CBPC § 17204. However, regarding injunctive relief under the UCL, in federal court, a plaintiff also must meet the requirements for standing under Article III. *Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1021–22 (9th Cir. 2004). "Article III standing requires an injury that is actual or imminent, not conjectural or hypothetical." *Id.* "In the context of injunctive relief, the plaintiff must demonstrate a real or immediate threat of an irreparable injury." *Id.*

Here, it does not appear that Plaintiff meets the standing requirements for Article III standing in the context of injunctive relief. Plaintiff has not alleged a real or immediate threat of an irreparable injury. Plaintiff is a former employee of Defendants. As a former employee Plaintiff is not threatened personally by Defendants alleged CLC violations. *See Richards v. Ernst & Young LLP*, C08–4988 JF (HRL), 2010 WL 682314 (N.D. Cal. Feb. 24, 2010) (finding the plaintiff "lacks

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standing to seek such relief because she no longer works for E & Y and therefore is not threatened personally by the alleged labor code violations"); *Delodder v. Aerotek, Inc.*, 2009 WL 3770670, *2 (C.D. Cal. Nov. 9, 2009) ("The Court finds that plaintiffs lack standing to seek prospective relief under the UCL because plaintiffs do not dispute that they are no longer employees of defendant, and thus, they cannot demonstrate a 'real or immediate threat of irreparable injury' by defendants' employment practices."). Because Plaintiff has not alleged enough facts to meet the requirements for Article III standing, the Court will dismiss Plaintiff's request for injunctive relief in the seventeenth cause of action with leave to amend.

III. CONCLUSION

For reasons discussed above, the Court will grant the Motion in part and deny the Motion in part. The Court will grant the Motion as to the first, second, third, fourth and twelfth causes of action, Plaintiff's requests for penalties under CLC §§ 1102.5(f), 98.6(b)(3), 1198.5(k) and 226(e) and (f), Plaintiff's second allegation in the thirteenth cause of action and Plaintiff's request for injunctive relief in the seventeenth cause of action.

Defendants must submit the order within seven (7) days. Plaintiff must file and serve any amended complaint within 14 days following the entry of the order.

FOOTNOTES

1. In connection with the RFS Motion, the Court denied relief from stay for Plaintiff to proceed against non-debtor entities because, in the State Court Action complaint, Plaintiff alleged alter ego liability.
2. This cause of action is only against Debtor, as non-debtor entities are not entitled to a discharge under the Bankruptcy Code. *See* 11 U.S.C. § 524(e).
3. This cause of action is only against Debtor, as non-debtor entities are not entitled to a discharge under the Bankruptcy Code. *See* 11 U.S.C. § 524(e).
4. On April 30, 2019, Plaintiff filed a declaration in support of his response to the Objection to Claim. In that declaration, Plaintiff states that in 2018

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CONT...

Kenneth C. Scott

Chapter 13

he filed a complaint with the California Board of Psychology against Debtor [Bankruptcy Case, doc. 79, ¶ 19]. Plaintiff states that he was informed that the California Board of Psychology conducted an investigation into the allegations in his complaint and referred the matter to the California Attorney General's office. *Id.* Plaintiff further states that he is informed that the case is still pending. *Id.* None of this information is plead in the FAC. Moreover, it does not comply with the administrative procedures set forth in the CLC to bring a PAGA action.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Defendant(s):

Kenneth C. Scott

Represented By
Arash Shirdel

My Private Practice, Inc. a

Represented By
Arash Shirdel

Kenneth Scott, PSY.D. a California

Represented By
Arash Shirdel

Plaintiff(s):

H. Samuel Hopper

Represented By
Daniel Parker Jett

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #21.00** Status conference re amended complaint for:
1. Declaratory relief re nondischargeability of Civil Penalties [11 U.S.C. sec.523(a)(7)]
 3. Declaratory relief re nondischargeability of fraud damages [11 U.S.C. sec. 523(a)(2), (4)]
 3. Declaratory relief re ownership of \$17,247 in business account
 4. Annulment of transfer in fraud of creditors
 5. Fraud and deceit [Cal.Civ. Code, secs. 1572-1573, 1709-1710]
 6. Unlawful retaliation [Cal. Lab. Code, sec. 98.6]
 7. Unlawful retaliation [Cal. Lab. Code, sec. 1102.5]
 8. Failure to maintain and timely produce personnel records [Cal. Lab. Code, sec. 1198.5(k)]

fr. 9/4/19; 10/2/19; 10/16/19

Docket 8

Tentative Ruling:

The parties should be prepared to discuss an appropriate continued date for this status conference.

What is the status of choosing a mediator and an alternate mediator and securing a mediation date?

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Defendant(s):

Kenneth C. Scott

Represented By
Arash Shirdel

My Private Practice, Inc. a

Represented By

**United States Bankruptcy Court
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CONT...

Kenneth C. Scott

Chapter 13

Arash Shirdel

Kenneth Scott, PSY.D. a California

Represented By
Arash Shirdel

Plaintiff(s):

H. Samuel Hopper

Represented By
Daniel Parker Jett

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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1:19-10537 Lynn Patricia Wolcott

Chapter 7

Adv#: 1:19-01067 Charles Hanne, an individual et al v. Wolcott

#22.00 Plaintiff's motion for default judgment under LBR 7055-1

Docket 14

Tentative Ruling:

Grant motion for default judgment pursuant to 11 U.S.C. § 523(a)(4) based on embezzlement.

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT.PRIOR within seven (7) days.

Appearances on November 13, 2019 are excused.

Party Information

Defendant(s):

Lynn Patricia Wolcott

Pro Se

Plaintiff(s):

Charles Hanne, an individual

Represented By
Reilly D Wilkinson

Lou Rosenberg, an individual

Represented By
Reilly D Wilkinson
Reilly D Wilkinson

**United States Bankruptcy Court
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2:30 PM

1:19-10537 Lynn Patricia Wolcott

Chapter 7

Adv#: 1:19-01067 Charles Hanne, an individual et al v. Wolcott

#23.00 Status conference re: complaint for non-discharge of debt

fr. 8/7/19; 10/23/19

Docket 1

Tentative Ruling:

See calendar no. 22.

Party Information

Defendant(s):

Lynn Patricia Wolcott

Pro Se

Plaintiff(s):

Charles Hanne, an individual

Represented By
Reilly D Wilkinson

Lou Rosenberg, an individual

Represented By
Reilly D Wilkinson
Reilly D Wilkinson

**United States Bankruptcy Court
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Hearing Room 301

1:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#1.00 Status conference re chapter 11 case

fr. 8/16/18; 1/10/19; 3/14/19; 5/23/19;7/18/19; 8/8/19; 9/12/19

Docket 1

Tentative Ruling:

Contrary to the Court's ruling at the prior status conference on September 12, 2019, the debtor did not timely file a status report. On the other hand, on November 1, 2019, the debtor filed his declaration in support of his proposed disclosure statement, which provides relevant information [doc. 117].

Nonetheless, the debtor has not timely filed his September 2019 monthly operating report. Additionally, contrary to the *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* [doc. 8], the debtor has not filed his 2018 tax return with the Court.

On November 1, 2019, the debtor timely filed a chapter 11 plan of reorganization and related disclosure statement [docs. 117 and 118]. **If the debtor cures the deficient filings prior to the status conference on November 13, 2019**, the Court intends to set a hearing on the adequacy of the debtor's proposed disclosure statement on **January 9, 2020 at 1:00 p.m.** In accordance with Local Bankruptcy Rule 3017-1, **no later than November 28, 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.

If the debtor does not cure the deficient filings prior to the status conference, pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1), (4)(E) and (F), the Court will issue an order to show cause why this case should not be converted to chapter 7 or dismissed.

Party Information

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CONT... Richard Philip Dages

Chapter 11

Debtor(s):

Richard Philip Dages

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
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Hearing Room 301

1:00 PM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#2.00 First Amended Disclosure statement hearing in support of first amended chapter 11 plan of reorganization

fr. 8/22/19

Docket 114

Tentative Ruling:

At the hearing on the adequacy of the debtor's original disclosure statement, held on August 22, 2109, the Court instructed the debtor to discuss why the debtor did not include treatment of the scheduled, unsecured claims of the Los Angeles Department of Water and Power and State Farm General Insurance Company in its original proposed chapter 11 plan. However, in its amended chapter 11 plan and the related disclosure statement, the debtor has not discussed the omission of these scheduled claims.

In addition, although the debtor includes certain terms from its alleged stipulation with Ajax Mortgage Loan Trust 2019-A, Mortgage Backed Securities, Series 2019-A, by U.S. Bank National Association, as Indenture Trustee (the "Lender"), the debtor has not attached any such stipulation and has not included information about the amount of monthly payments to be made to the Lender. In the projections attached as Exhibit D, the debtor indicates that it will pay \$3,067 per month to the Lender, which is the same amount the debtor had proposed in its original chapter 11 plan. In accordance with the parties' stipulation and under the terms of the amended chapter 11 plan, is this the accurate amount to be paid to the Lender?

Further, the amended chapter 11 plan includes an estimated payment of \$24,000 to be paid to the debtor's counsel on the effective date. However, in its projections attached as Exhibit D, the debtor has not included this payment as an expense. The debtor also has not included quarterly payments to the U.S. Trustee in its projections.

The attached declaration by the debtor's members, executed on July 23, 2019, appears to reference the original chapter 11 plan and disclosure statement. The debtor has not provided a declaration by its members regarding the current, amended chapter 11 plan

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CONT... **Elas, LLC dba Calnopoly, LLC**
and related disclosure statement.

Chapter 11

If the debtor's members are going to pay the debtor's chapter 11 administrative expenses or claims against the estate, then the disclosure statement must provide documentation reflecting their ability to do so, such as bank statements that reflect their cash balances, recent pay stubs and their recent income tax returns.

8/22/2019 Ruling Re Debtor's Disclosure Statement in Support of Plan of Reorganization [doc. 73]:

Deny.

Unclear income projections. In the projections attached to the disclosure statement [doc. 73], the debtor indicates it receives \$5,430 in rental income from the real property located on Vernon Avenue (the "Vernon Property") and \$4,150 in rental income from the real property located on Presidio Drive (the "Presidio Property"). However, in footnotes, the debtor contends that it anticipates receiving an "additional" \$3,500 in rental income from the Vernon Property and an "additional" \$1,200 in rental income from the Presidio Property.

On July 24, 2019, the debtor filed a declaration by Latrice Allen and Ernest Allen, Jr. (the "Declaration") [doc. 86]. In the Declaration, the Allens state that they will be receiving an additional \$1,200 from the Presidio Property beginning in August 2019, bringing the *total* to \$4,150. As such, it appears the amounts listed in the debtor's projections attached to the disclosure statement are inaccurate; the numbers the debtor used are *anticipated* rental amounts, not current figures as stated in the disclosure statement.

The debtor should file an amended disclosure statement attaching all relevant rental agreements and clarify whether the projections are based on current figures or anticipated rental income. Although it appears from the Declaration that the debtor is now receiving the full \$4,150 projected as to the Presidio Property, it is unclear if the debtor is already receiving the increased rental income from the Vernon Property. If the debtor does not receive the additional \$3,500 anticipated by the debtor, the debtor will have \$1,930 in rental income from the Presidio Property, resulting in potential feasibility issues for the debtor.

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Thursday, November 14, 2019

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1:00 PM

CONT... **Elas, LLC dba Calnopoly, LLC**

Chapter 11

Inconsistent information in schedules. Moreover, in its schedule E/F, the debtor lists two unsecured creditors: (A) the Los Angeles Department of Water and Power, with a claim in the amount of \$423.89; and (B) State Farm General Insurance Company, with a claim in the amount of \$25.65. The debtor does not list these claims as disputed, contingent or unliquidated. In its chapter 11 plan and the disclosure statement, the debtor asserts that it does not have any unsecured creditors. Why is there a discrepancy between the debtor's schedules, which have never been amended, and the debtor's chapter 11 plan and disclosure statement?

Missing information. As noted by objecting lender Ajax Mortgage Loan Trust 2019-A, Mortgage-Backed Securities, Series 2019-A, by U.S. Bank National Association, as Indenture Trustee (the "Lender"), the debtor has not provided a cash flow statement outlining current income and expenses related to the business.

Moreover, the debtor has not provided a declaration by its members in which the members: (A) state that all facts and representations from the disclosure statement are true and correct; (B) state that no material facts have been omitted; (C) provide the source of information used to draft the disclosure statement; (D) identify the party responsible for providing the financial information; and (E) noting the accounting method used. The disclosure statement also does not include information about nonbankruptcy litigation likely to arise, tax consequences of the plan or whether the debtor intends to recover any avoidable transfers.

Postpetition arrears. The Lender contends that the debtor has not provided for treatment of postpetition arrears. The debtor must address treatment of postpetition arrears in an amended chapter 11 plan and disclosure statement.

Incorrect use of form for individual debtors. The debtor used the forms for *individual* debtors' chapter 11 plan and disclosure statement. The debtor is a corporate debtor. As such, the debtor should not use these forms for the debtor's amended disclosure statement and amended chapter 11 plan.

The Court will prepare the order.

Party Information

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1:00 PM

CONT... Elas, LLC dba Calnopoly, LLC

Chapter 11

Debtor(s):

Elas, LLC dba Calnopoly, LLC

Represented By
Anthony Obehi Egbase

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Hearing Room 301

1:00 PM

1:18-12494 Elas, LLC dba Calnopoly, LLC

Chapter 11

#3.00 Status conference re chapter 11 case

fr. 12/6/18; 6/20/19; 8/22/19

Docket 1

Tentative Ruling:

Is the debtor current with its payment of United States Trustee fees? Has the debtor filed its income tax returns for 2018? If the debtor's 2018 income tax returns were filed after the debtor commenced this case, did an accountant assist the debtor in preparing those returns?

Party Information

Debtor(s):

Elas, LLC dba Calnopoly, LLC

Represented By
Anthony Obehi Egbase

**United States Bankruptcy Court
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Thursday, November 14, 2019

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#4.00 Status conference re: chapter 11 case

fr. 5/23/19; 9/19/19

Docket 1

Tentative Ruling:

Despite 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 2018 tax return with the Court. Did the debtor file that tax return before he commenced this chapter 11 case? If the debtor filed it *after* he commenced this case, did an accountant assist the debtor to prepare his 2018 tax returns?

Having briefly reviewed the proposed chapter 11 plan filed by the debtor, it appears that the debtor has not taken into account the nonpriority unsecured claim of the Internal Revenue Service, as reflected in its amended proof of claim, 5-3, filed on September 20, 2019.

The Court will set a hearing on the adequacy of the disclosure statement filed by the debtor [doc. 87] at **1:00 p.m. on January 16, 2020**. No later than **December 5, 2019**, the debtor must file and serve notice of the hearing and the deadline to file and serve any objections to the disclosure statement.

Party Information

Debtor(s):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

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Hearing Room 301

2:00 PM

1:17-13142 Amir Elosseini

Chapter 11

#5.00 Status conference re: chapter 11 case

fr. 2/8/18; 8/16/18; 11/15/18, 1/24/19; 3/14/19; 4/25/19;
5/16/19; 8/8/19

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline for debtor(s) and/or debtor(s) in possession to file proposed amended plan and related disclosure statement: **January 13, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on February 6, 2020.**

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):

Amir Elosseini

Represented By
Kevin Tang

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Hearing Room 301

2:00 PM

1:19-11034 John Bicz

Chapter 7

#6.00 Amended Motion to extend time in which to file a complaint under § 727

Docket 27

Tentative Ruling:

Deny.

On April 27, 2019, the debtor filed a voluntary chapter 7 petition. After holding a meeting of creditors under 11 U.S.C. § 341, on June 12, 2019, the chapter 7 trustee filed a no-asset report. On October 20, 2019, under 11 U.S.C. § 523(a)(2), movant filed a complaint against debtor alleging nondischargeability of a debt.

On July 31, 2019, the Court approved an extension of the original deadline to file a complaint under 11 U.S.C. § 727 from August 6, 2019 to October 21, 2019. Despite the extended amount of time to determine whether movant should file such a complaint, movant did not file a motion for an examination of the debtor under Federal Rule of Bankruptcy Procedure ("Rule") 2004 until five days prior to the expiration of that extended deadline.

Contrary to Local Bankruptcy Rule 2004-1, movant did not demonstrate that he attempted to meet and confer with the debtor, regarding the production of documents and scheduling the debtor's Rule 2004 examination, prior to filing the motion under Rule 2004. Although movant now states, in his reply [doc. 36], that he has been unable to meet and confer with the debtor, movant did not mention this issue in his motion under Rule 2004.

Movant has the burden of proof to demonstrate cause for an extension of time to file a complaint to preclude receipt of a discharge under 11 U.S.C. § 727. Fed. R. Bankr. P. 4004(b)(1); *see also In re Bomarito*, 448 B.R. 242, 248 (Bankr. E.D. Cal. 2011). However, movant has not shown reasonable due diligence in utilizing tools available to investigate the issues raised concerning the debtor's rights to a discharge. *Bomarito*, 448 B.R. at 248 ("The power to extend the 60-day deadlines prescribed in the Rules rests entirely within the discretion of the bankruptcy judge and should not be granted

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CONT...

John Bicz

Chapter 7

without a showing of good cause, and without proof that the creditor acted diligently to obtain facts within the bar date... but was unable to do so.") (internal quotation omitted).

Because the Court already granted an extension of time for movant to investigate whether he should file a complaint under 11 U.S.C. § 727, and movant did not timely take the required steps for any such investigation, movant has not shown due diligence warranting an additional extension of the deadline to object to the debtor's receipt of a discharge. As such, the Court will deny the motion.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

John Bicz

Represented By
John Asuncion

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

2:00 PM

1:19-11902 John Christian Lukes

Chapter 11

#7.00 Motion in Individual Ch 11 Case for Order Employing Professional
Noble R. Tucker as Real Estate Appraiser

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.

Party Information

Debtor(s):

John Christian Lukes

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
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Tuesday, November 19, 2019

Hearing Room 301

8:30 AM

1:19-11894 Felipe Vazquez

Chapter 7

#1.00 Reaffirmation agreement with 21st Mortgage Corporation

Docket 15

Party Information

Debtor(s):

Felipe Vazquez

Represented By
David M Slater

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, November 19, 2019

Hearing Room 301

8:30 AM

1:19-11907 Georgina Christina Hernandez

Chapter 7

#2.00 Reaffirmation agreement with CarMax Auto Finance

Docket 8

Party Information

Debtor(s):

Georgina Christina Hernandez

Represented By
Leon D Bayer

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, November 19, 2019

Hearing Room 301

8:30 AM

1:19-12038 Marion Noemi Verdejo Parra

Chapter 7

#3.00 Reaffirmation agreement with Hyundai Capital America dba Hyundai Motor Finance

Docket 14

Party Information

Debtor(s):

Marion Noemi Verdejo Parra Pro Se

Trustee(s):

Nancy J Zamora (TR) Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, November 19, 2019

Hearing Room 301

8:30 AM

1:19-12047 Ramon Mesta and Brandi Rae Mesta

Chapter 7

#4.00 Reaffirmation agreement with Hyundai Capital America dba Hyundai Motor Finance

Docket 13

Party Information

Debtor(s):

Ramon Mesta

Represented By
Omar Zambrano

Joint Debtor(s):

Brandi Rae Mesta

Represented By
Omar Zambrano

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, November 19, 2019

Hearing Room 301

8:30 AM

1:19-12218 Dwayne Walker and Jeneane Walker

Chapter 7

#5.00 Reaffirmation agreement with Logix Federal Credit Union

Docket 11

Party Information

Debtor(s):

Dwayne Walker

Represented By
David S Hagen

Joint Debtor(s):

Jeneane Walker

Represented By
David S Hagen

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, November 19, 2019

Hearing Room 301

8:30 AM

1:19-12227 Laura Rios

Chapter 7

#6.00 Reaffirmation agreement with Broker Solutions, Inc., dba New American Funding

Docket 9

Party Information

Debtor(s):

Laura Rios

Represented By
Danny K Agai

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 20, 2019

Hearing Room 301

9:30 AM

1:19-12195 Glenn Burt Flores Herrera and Lorena Narcisa Anchundia

Chapter 7

#1.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

fr. 10/23/19

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):

Glenn Burt Flores Herrera

Represented By

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Wednesday, November 20, 2019

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9:30 AM

CONT... **Glenn Burt Flores Herrera and Lorena Narcisa Anchundia**
Juan Castillo-Onofre

Chapter 7

Joint Debtor(s):

Lorena Narcisa Anchundia Bajana

Represented By
Juan Castillo-Onofre

Movant(s):

Toyota Motor Credit Corporation

Represented By
Kirsten Martinez

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 20, 2019

Hearing Room 301

9:30 AM

1:19-12082 Robert M. Gerstein

Chapter 7

#2.00 Motion for relief from stay [RP]

WILMINGTON TRUST, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 10/23/19

Docket 36

Tentative Ruling:

In light of the chapter 7 trustee's status report [doc. 77] and the stipulation with the Internal Revenue Service [doc. 65], does the movant agree to continue this hearing to **December 18, 2019 at 9:30 a.m.**, to be held in connection with a motion for relief from stay filed by the holder of the second deed of trust against the property?

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Movant(s):

Wilmington Trust, National

Represented By
Darlene C Vigil

Trustee(s):

Amy L Goldman (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
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Wednesday, November 20, 2019

Hearing Room 301

9:30 AM

1:16-12236 Gloria Solis

Chapter 13

#3.00 Motion for relief from stay [RP]

BANC OF CALIFORNIA, N.A.
VS
DEBTOR

fr. 10/2/19; 10/23/19

Docket 46

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gloria Solis

Represented By
Matthew D. Resnik

Movant(s):

Banc of California, National

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 20, 2019

Hearing Room 301

9:30 AM

1:19-12557 Judy A Scott

Chapter 7

#4.00 Motion for relief from stay [UD]

SHAPELL INDUSTRIES LLC
VS
DEBTOR

Docket 8

*** VACATED *** REASON: Set in error.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Judy A Scott

Represented By
James G. Beirne

Movant(s):

Shapell Industries, LLC

Represented By
Agop G Arakelian

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 20, 2019

Hearing Room 301

9:30 AM

1:19-12436 Roya Azimzadeh Sadraee

Chapter 7

#5.00 Motion for relief from stay [UD]

WARNER CENTER SUMMIT LTD, LP
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 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):

Roya Azimzadeh Sadraee

Pro Se

Movant(s):

Warner Center Summit LTD , LP

Represented By
Agop G Arakelian

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

Wednesday, November 20, 2019

Hearing Room 301

9:30 AM

CONT... Roy A Azimzadeh Sadraee

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 20, 2019

Hearing Room 301

9:30 AM

1:19-12464 Alberto Miranda, Jr.

Chapter 7

#6.00 Motion for relief from stay [PP]

LBS FINANCIAL CREDIT UNION
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.

Party Information

Debtor(s):

Alberto Miranda Jr.

Represented By
R Grace Rodriguez

Movant(s):

LBS Financial Credit Union

Represented By
Karel G Rocha

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

Wednesday, November 20, 2019

Hearing Room 301

9:30 AM

CONT... Alberto Miranda, Jr.

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, November 20, 2019

Hearing Room 301

9:30 AM

1:19-12403 Reyna Idalia Anzueto

Chapter 7

#7.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA
VS
DEBTOR

Docket 14

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):

Reyna Idalia Anzueto

Represented By
Daniela P Romero

Movant(s):

BMW Bank of North America

Represented By
Cheryl A Skigin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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9:30 AM

CONT... Reyna Idalia Anzueto

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, November 20, 2019

Hearing Room 301

9:30 AM

1:19-11843 14554 Friar, LLC

Chapter 11

#8.00 Motion for relief from stay [RP]

EASY FINANCIAL LLC
VS
DEBTOR

Docket 32

Tentative Ruling:

Unless the debtor commences making monthly payments to the movant that are in an amount equal to interest at the applicable nondefault contract rate of interest on the value of the movant's interest in the subject real property, the Court will grant relief from stay pursuant to 11 U.S.C. § 362(d)(3).

On July 22, 2019, the debtor filed its chapter 11 petition [doc. 1]. In its petition, the debtor indicated that this is a single asset real estate case, as that term is defined in 11 U.S.C. § 101(51B).

In the Declaration of Leonid Kamenetsy ("Kametsky Decl.") [doc. 35], Mr. Kamenetsky testifies that the real property at issue is a commercial office building, consisting of six newly renovated units. Kamenetsky Decl., ¶ 2. Mr. Kamenetsky also testifies that the debtor "plans to create a legal professional office for individual rental of the units, with a common reception, conference and administrative components, or a 'Fegen Suite.'" Kamenetsky Decl., ¶ 3.

On October 4, 2019, the Court entered an order setting January 31, 2020 as the deadline for the debtor to file a proposed chapter 11 plan and related disclosure statement (the "Order") [doc. 29]. The Order is a deadline for the debtor to file its chapter 11 plan and related disclosure statement or the Court may dismiss or convert this case. The Order did not extend the debtor's period of time, in accordance with 11 U.S.C. § 362(d)(3), to file a chapter 11 plan that has a reasonable possibility of being confirmed within a reasonable time or to commence making interest payments to movant.

To date, the debtor has not filed a chapter 11 plan or commenced making post-petition

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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Wednesday, November 20, 2019

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9:30 AM

CONT... 14554 Friar, LLC

Chapter 11

interest payments to the movant. On the other hand, even if the Court adopts the appraised value submitted by the movant (rather than the debtor's opinion of value), the movant has a substantial equity cushion regarding its debt secured by the property.

On November 13, the debtor filed an untimely opposition (the "Opposition") to the motion for relief from the automatic stay [doc. 34]. In the Opposition, the debtor argues that 11 U.S.C. § 362(d)(3) cannot serve as a basis for relief, because the Court has not made a determination that this is a single asset real estate case.

Pursuant to 11 U.S.C. § 362(d)(3) -

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 . . .*

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 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.

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CONT... 14554 Friar, LLC

Chapter 11

(Emphasis added).

The Bankruptcy Code defines "single asset real estate" as "real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto." 11 U.S.C. § 101(51B).

According to Mr. Kamenetsky's testimony, and as acknowledged in the debtor's petition, the real property is a "single asset real estate" as defined in 11 U.S.C. § 101(51B). The real property is a commercial building, the debtor intends to rent the units to generate substantially all of the debtor's gross income and the debtor is not conducting other substantial business at the real property, other than the business of operating the real property and activities incidental thereto.

In its chapter 11 petition, the debtor acknowledged that this case constitutes a single asset real estate case; consequently, the Court need not separately make that determination, for the 90-day time period set forth in 11 U.S.C. § 362(d)(3) to be applicable, at this time. *See In re Dorado*, No. 16-00283 (MCF), 2016 WL 6809068 (Bankr. D.P.R. Nov. 17, 2016).

In light of the equity cushion protecting the movant's interest in the real property, the Court will not waive the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3).

Any other request for relief is denied.

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

Party Information

Debtor(s):

14554 Friar, LLC

Represented By
Donna Bullock

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Central District of California
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Courtroom 301 Calendar**

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9:30 AM

CONT... 14554 Friar, LLC

Chapter 11

Movant(s):

Easy Financial LLC

Represented By
David I Brownstein

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

Wednesday, November 20, 2019

Hearing Room 301

9:30 AM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#9.00 Motion for relief from stay [RP]

KEYSTONE REAL ESTATE LENDING FUND LP
VS
DEBTOR

Docket 114

Tentative Ruling:

Deny.

In the motion, movant requests relief pursuant to 11 U.S.C. § 362(d)(3), which provides:

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 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

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CONT... Coast to Coast Holdings, LLC

Chapter 11

interest in the real estate.

(emphasis added).

The Bankruptcy Code defines "single asset real estate" as "real property constituting a single property or project, *other than residential real property with fewer than 4 residential units*, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto." 11 U.S.C. § 101(51B) (emphasis added).

Although the debtor represented in its petition [doc. 1] that this case is a single asset real estate, the property at issue is not "single asset real estate" as defined in 11 U.S.C. § 101(51B). In the declaration of Heston Nielson, which is attached to the motion, movant testifies that the real property located at 1140 Henry Ridge Motorway, Topanga, CA 90290 (the "Property") is *residential property*. In the declaration of Oscar Torres [doc. 119, ¶ 4], attached to the debtor's opposition, Mr. Torres testifies that the Property is a four-bedroom, five-bathroom, single family home. Also, movant represents in its memorandum of points and authorities in support of the motion [doc. 115, ¶ 2], that the debtor's "primary asset is a *single family residence*."

11 U.S.C. § 101(51B) excludes from the definition of single asset real estate, residential real property with fewer than 4 residential units. The Property is a residential single family home, which means it is excluded from the definition of single asset real estate as defined in § 101(51B). Consequently, 11 U.S.C. § 362(d)(3) cannot serve as grounds for relief in this case.

In addition, the movant failed to serve the motion and notice of the hearing and the deadline to file a written response on all creditors included on the list filed under Fed. R. Bankr. P. 1007(d). *See* doc. 1.

The debtor must file the order within seven (7) days.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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9:30 AM

CONT... Coast to Coast Holdings, LLC

Chapter 11

David B Golubchik
Jeffrey S Kwong

Movant(s):

Keystone Real Estate Lending Fund,

Represented By
Hamid R Rafatjoo

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

Wednesday, November 20, 2019

Hearing Room 301

9:30 AM

1:19-12734 Scott Edward Winslow

Chapter 13

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

Docket 8

Tentative Ruling:

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **January 22, 2020 at 9:30 a.m. No later than December 2, 2019** 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).

In addition, the debtor must timely pay: (1) his deed of trust payments in the amount of \$3,259.00 (as stated in his current Schedule J) as to the real property located at 10426 Independence Avenue, Chatsworth, California 91311; and (2) his December 2019 and January 2020 plan payments in the amount of \$1,500.00 as stated in the debtor's proposed chapter 13 plan [doc. 2]. **No later than January 20, 2020**, the debtor must file a declaration to demonstrate that he timely made his required post-petition deed of trust and chapter 13 plan payments.

The debtor must submit the order within seven (7) days.

Appearances on November 20, 2019 are excused.

Party Information

Debtor(s):

Scott Edward Winslow

Represented By
Anil Bhartia

Movant(s):

Scott Edward Winslow

Represented By
Anil Bhartia

**United States Bankruptcy Court
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9:30 AM

CONT... Scott Edward Winslow

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 20, 2019

Hearing Room 301

1:30 PM

1:15-10763 Howard Irving Napolske

Chapter 7

Adv#: 1:15-01093 Hana Financial, Inc., a California corporation v. Napolske

#11.00 Status conference re: parties' dispute concerning settlement

Docket 1

Tentative Ruling:

On June 5, 2015, Hana Financial, Inc. ("Plaintiff") filed a complaint against Howard Irving Napolske ("Debtor"), requesting nondischargeability of the debt owed to it pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(2)(B) and (a)(6) (the "Complaint"). On October 27, 2016, Plaintiff and Debtor entered into a stipulation for settlement and dismissal of this adversary proceeding (the "Stipulation") [doc. 31]. Through the Stipulation, the agreed that, upon default, Plaintiff would file a *Stipulation for Entry of Judgment* (the "Judgment Stipulation") and have the Court enter a judgment of nondischargeability under § 523(a)(2)(A), (a)(2)(B) and (a)(6). Debtor and his attorney signed the Stipulation. On November 7, 2016, the Court entered an order approving the Stipulation (the "Stipulation Order") [doc. 33].

On September 18, 2019, Plaintiff filed a motion to reopen this adversary proceeding (the "Motion to Reopen") [doc. 36], noting that Debtor defaulted on the Stipulation. Plaintiff also filed the Judgment Stipulation [doc. 38].

Through the Judgment Stipulation, which is signed by Debtor and notarized, Debtor provided that he does not dispute any of the material facts, claims for relief or prayers for relief set forth in the Complaint. In relevant part, Debtor also waived, released and relinquished any legal and/or procedural rights he may have against Plaintiff, including the right to defend against any nondischargeability action brought by Plaintiff. Debtor also "expressly waive[d] all rights he possesses to request a new trial, seek to vacate any judgment entered pursuant to this Stipulation, and to appeal from any judgment pursuant to this Stipulation or in any other fashion to seek review of or to set aside such judgment." Judgment Stipulation, p. 4. Finally, Debtor represented in the Judgment Stipulation that he consulted with counsel prior to signing the Stipulation.

On September 20, 2019, Debtor filed an objection to the Motion to Reopen (the

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CONT... Howard Irving Napolske

Chapter 7

"Objection") [doc. 41]. In the Objection, Debtor stated that he intends to move to vacate the Stipulation Order on the basis that, at the time he signed the Stipulation, Debtor was unaware that Plaintiff had intercepted a check in the amount of \$355,000 payable to Debtor's company, Newco International, Inc. ("Newco"). Debtor stated that he believes Plaintiff's failure to disclose its receipt of these funds constitutes grounds to vacate the Stipulation Order under Federal Rule of Civil Procedure ("Rule") 60(b)(3).

On October 8, 2019, the Court entered an order reopening the adversary proceeding and setting a status conference regarding the parties' dispute concerning the Stipulation [doc. 46]. On November 6, 2019, Plaintiff filed a motion for sanctions against Debtor under Rule 11 (the "Sanctions Motion") [doc. 49], on the basis that Debtor made false statements in the Objection. Specifically, Plaintiff contends that Debtor *did* know about the intercepted payment and that Debtor previously testified he was not a shareholder of Newco at the time he filed his petition. Plaintiff self-calendared the Sanctions Motion for hearing at 2:30 p.m. on December 4, 2019.

On November 6, 2019, Plaintiff filed a status report [doc. 51]. To the status report, Plaintiff attached a declaration by Debtor executed and notarized in October 2016 (the "Admission Declaration"), at the time of settlement, and a deposition transcript, dated prior to settlement (from February 2016), in which Debtor admitted to knowing about Plaintiff's interception of the check payable to Newco. Status Report, Exhibits 1 and 2. The Admission Declaration includes detailed admissions by Debtor substantiating the allegations in the Complaint. Status Report, Exhibit 1.

To date, Debtor has not filed a motion under Rule 60(b)(3). In addition, Debtor's stated basis for a motion under Rule 60(b)(3) appears to be unfounded; the deposition transcript provided by Plaintiff indicates that Debtor was aware of the transfer of the check to Newco. Moreover, the language in the Judgment Stipulation and the Admission Declaration appear to preclude Debtor from disputing entry of a judgment against Debtor. Further, given that Debtor has testified in the Admission Declaration that he defrauded Plaintiff, it is unclear how Debtor would be able to defend himself at trial even if the Court vacated the Stipulation Order.

In any event, any motion under Rule 60(b)(3) is untimely. Pursuant to Rule 60(c)(1), "[a] motion under Rule 60(b) must be made within a reasonable time—and for

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CONT... Howard Irving Napolske Chapter 7

reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Here, the Court entered the Stipulation Order on November 7, 2016. As such, the deadline to file a motion under Rule 60(b)(3) expired on November 7, 2017.

Consequently, the Court will enter a judgment against Debtor in accordance with the Judgment Stipulation. However, the Court will continue the hearing on the Sanctions Motion to **2:30 p.m. on January 15, 2020.**

Party Information

Debtor(s):

Howard Irving Napolske

Represented By
Heidi Hohler

Defendant(s):

Howard I. Napolske

Represented By
Bryan Diaz

Plaintiff(s):

Hana Financial, Inc., a California

Represented By
Michael W Davis
Talin Keshishian

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 20, 2019

Hearing Room 301

1:30 PM

1:18-10329 Ali P Dargah

Chapter 13

Adv#: 1:19-01091 Dargah v. DIVERSIFIED ACCEPTANCE CORPORATION, a California c

#12.00 Plaintiff's motion for default judgment under LBR 7055-1

fr. 11/6/19

Docket 51

Tentative Ruling:

Grant motion for default judgment as to defendants BEGL Construction Co., Inc. and Maryam Oloomi. Given that defendant Martin Serraf timely filed an answer [doc. 61] to the Another Summons issued on October 3, 2019, the Court will not grant the motion for default judgment as to Mr. Serraf.

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT within seven (7) days.

Party Information

Debtor(s):

Ali P Dargah

Represented By
Matthew D. Resnik

Defendant(s):

DIVERSIFIED ACCEPTANCE	Pro Se
USB LEASING LT, a Delaware	Pro Se
BEGL CONSTRUCTION CO.,	Pro Se
MARTIN SERRAF, an individual;	Pro Se
MARYAM OLOOMI, an individual;	Pro Se
All Persons Or Entities Unknown	Pro Se
Does 1 to 10, Inclusive	Pro Se

**United States Bankruptcy Court
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Courtroom 301 Calendar**

Wednesday, November 20, 2019

Hearing Room 301

1:30 PM

CONT... Ali P Dargah

Chapter 13

Plaintiff(s):

Ali P Dargah

Represented By
Matthew D. Resnik

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

1:30 PM

1:18-10329 Ali P Dargah

Chapter 13

Adv#: 1:19-01091 Dargah v. DIVERSIFIED ACCEPTANCE CORPORATION, a California c

- #13.00** Status conference re: Complaint for:
1. Quiet Title;
2. Slander of title;
3. Declaratory relief

fr. 10/2/19

Docket 1

Tentative Ruling:

At this time, it appears the sole remaining defendant is Martin Serraf. The plaintiff and Mr. Serraf should be prepared to discuss the following:

Deadline to comply with FRBP 7026 and FRCP 26(a)(1), (f) and (g): 11/27/19.

Deadline to submit joint status report: 12/4/2019.

Continued status conference: 12/18/19 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):

Ali P Dargah

Represented By
Matthew D Resnik

Defendant(s):

DIVERSIFIED ACCEPTANCE

Pro Se

USB LEASING LT, a Delaware

Pro Se

**United States Bankruptcy Court
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CONT... Ali P Dargah Chapter 13

B EGL CONSTRUCTION CO.,	Pro Se
MARTIN SERRAF, an individual;	Pro Se
MARYAM OLOOMI, 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

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Wednesday, November 20, 2019

Hearing Room 301

1:30 PM

1:18-11620 Antoine R Chamoun

Chapter 7

Adv#: 1:19-01105 Seror, Chapter 7 Trustee v. Chamoun et al

#14.00 Status Conference re: Complaint to Avoid Fraudulent Transfers

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: 3/31/20.

Deadline to complete one day of mediation: 4/15/20.

Deadline to file pretrial motions: 5/15/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 6/3/20.

Pretrial: 1:30 p.m. on 6/17/20.

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

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1:30 PM

CONT... Antoine R Chamoun

Chapter 7

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Defendant(s):

Walid R. Chamoun

Pro Se

Patricia Chamoun

Pro Se

Plaintiff(s):

David Seror, Chapter 7 Trustee

Represented By
Richard Burstein

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan

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

Wednesday, November 20, 2019

Hearing Room 301

1:30 PM

1:19-11643 Larry M Halpern

Chapter 7

Adv#: 1:19-01108 Business Funding Source v. Halpern

#15.00 Status Conference re: Complaint to Determine
Dischargeability of Debt

Docket 1

***** VACATED *** REASON: Amended complaint filed 10/15/19. Status
conference reset for 12/11/19 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Larry M Halpern

Represented By
David S Hagen

Defendant(s):

Larry M Halpern

Pro Se

Plaintiff(s):

Business Funding Source

Represented By
Richard Warren Shuben

Trustee(s):

David Seror (TR)

Represented By
David Seror

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Wednesday, November 20, 2019

Hearing Room 301

1:30 PM

1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:19-01009 Goldman v. Pavehzadeh et al

- #16.00** Status conference re complaint:
(1) for declaratory relief;
(2) Injunctive relief;
(3) An accounting;
(4) Constructive trust; and
(5) Turnover of property of the estate

fr. 4/10/19; 5/22/19

CROSS CLAIM

Shahnam Ebrahimi
vs
Houshang Pavehzadeh

FIRST AMENDED COUNTER-CLAIM

Shahnam Ebrahimi
vs
Amy Goldman

Docket 1

***** VACATED *** REASON: Order entered continuing to 1/22/20 at 1:30 p.m. [doc. 28].**

Tentative Ruling:

- NONE LISTED -

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, November 20, 2019

Hearing Room 301

1:30 PM

CONT... Maryam Hadizadeh

Chapter 7

Defendant(s):

Houshang Pavehzadeh Pro Se

Shahnam Ebrahimi Pro Se

Plaintiff(s):

Amy Goldman Represented By
Anthony A Friedman

Trustee(s):

Amy L Goldman (TR) Represented By
Todd A Frealy
Anthony A Friedman

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

Wednesday, November 20, 2019

Hearing Room 301

1:30 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 11

Adv#: 1:19-01010 Strategic Funding Source, Inc. v. Armand Zaharian et al

#17.00 Status conference re: complaint to determine nondischargeability of debt

fr. 4/24/19 (stip); 6/12/19(stip); 8/7/19(stip); 9/18/19 (stip)

Order appr stip to cont ent 11/12/19

Docket 1

***** VACATED *** REASON: Continued to 01/22/20 per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

Defendant(s):

Armand Zaharian

Pro Se

Elizabeth Y. Zaharian

Pro Se

Plaintiff(s):

Strategic Funding Source, Inc.

Represented By
Brian T Harvey

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

Thursday, November 21, 2019

Hearing Room 301

10:30 AM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#1.00 Chapter 7 Trustee's third interim application for compensation and reimbursement of expenses

Docket 293

Tentative Ruling:

David K. Gottlieb (“Applicant”), chapter 7 trustee – approve fees of \$39,547.31 and reimbursement of expenses of \$188.84 for the period covering August 1, 2018 through October 15, 2019, pursuant to 11 U.S.C. § 331, on an interim basis. Applicant may collect 100% of the approved fees and 100% of the approved expenses at this time.

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):

Duane Daniel Martin

Represented By
Stella A Havkin

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, November 21, 2019

Hearing Room 301

10:30 AM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#2.00 Application for payment of interim fees and/or expenses for
Levene, Neale, Bender, Yoo & Brill L.L.P., Trustee's Attorneys

Docket 296

Tentative Ruling:

Levene, Neale, Bender, Yoo & Brill, L.L.P. (“Levene Neale”) general counsel to David K. Gottlieb, chapter 7 trustee – approve fees of \$866,440.00 and reimbursement of expenses of \$44,644.91 for the period covering August 1, 2018 through October 30, 2019, pursuant to 11 U.S.C. § 331, on an interim basis. In its application, Levene Neale represents, that barring any material changes in the case, it agrees to accept payment of \$594,521.00 in full satisfaction of its fees and expenses during the covered period. Because Levene Neale has voluntarily agreed to a \$316,563.91 reduction in its request for collection of fees, Levene Neale is authorized to collect \$594,521.00 of the approved fees and reimbursement of expenses.

The chapter 7 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
Stella A Havkin

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley
Joseph R Dunn

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

Thursday, November 21, 2019

Hearing Room 301

10:30 AM

CONT... Duane Daniel Martin and Tisha Michelle 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**

Thursday, November 21, 2019

Hearing Room 301

10:30 AM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#3.00 Third interim application of Levene, Neale, Bender, Yoo & Brill L.L.P for approval of fees and reimbursement of expenses incurred during chapter 7 case

Docket 297

***** VACATED *** REASON: Duplicate - see calendar #2**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

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, November 21, 2019

Hearing Room 301

10:30 AM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

**#3.10 Application for payment of interm fees and/or expenses
for Berkeley Research Group, LLC, Accountant for Trustee**

Docket 280

Tentative Ruling:

Berkeley Research Group, LLC ("BRG"), accountant to chapter 7 trustee – approve fees of \$9,047.50 and reimbursement of expenses of \$49.11, pursuant to 11 U.S.C. § 331, on an interim basis. BRG may collect 80% of the approved fees and 100% of the approved reimbursement of expenses at this time.

The chapter 7 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
Stella A Havkin

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, November 21, 2019

Hearing Room 301

1:00 PM

1:19-11421 Papanicolaou Enterprises

Chapter 11

#4.00 Status conference re: chapter 11 case

fr. 7/18/19

Docket 1

***** VACATED *** REASON: Case dismissed on 8/12/19 [doc. 93].**

Tentative Ruling:

Party Information

Debtor(s):

Papanicolaou Enterprises

Represented By
Eric Bensamochan

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

Thursday, November 21, 2019

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#5.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **February 14, 2020.**

Deadline to mail notice of Bar Date: **December 2, 2019.**

The debtors 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 debtors and/or debtors in possession to file proposed plan and related disclosure statement: **March 18, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on April 9, 2020.**

The debtors in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtors' 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 debtors and/or debtors in possession to file a proposed plan and related disclosure statement.

The debtors 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):

Melida Jimenez

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 21, 2019

Hearing Room 301

1:00 PM

CONT... Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

Joint Debtor(s):

Jose Luis Jimenez Escobar

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 21, 2019

Hearing Room 301

1:00 PM

1:19-12216 Cheryl Placencia

Chapter 11

#6.00 U.S. Trustee Motion to dismiss or convert case

fr. 11/7/19

Docket 24

***** VACATED *** REASON: Motion of voluntary dismissal filed 11/19/20**

Tentative Ruling:

- NONE LISTED -

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 21, 2019

Hearing Room 301

1:00 PM

1:19-12216 Cheryl Placencia

Chapter 11

#7.00 Status conference re: chapter 11 case
fr. 11/7/19

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **February 14, 2020.**
Deadline to mail notice of Bar Date: **December 2, 2019.**

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: **March 20, 2020.**
Continued chapter 11 case status conference to be held at **1:00 p.m. on April 9, 2020.**

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):

Cheryl Placencia

Represented By

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

Thursday, November 21, 2019

Hearing Room 301

1:00 PM

CONT...

Cheryl Placencia

Dana M Douglas

Chapter 11

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

Thursday, November 21, 2019

Hearing Room 301

1:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#7.10 Status conference re chapter 11 case

fr. 8/16/18; 1/10/19; 3/14/19; 5/23/19;7/18/19; 8/8/19; 9/12/19; 11/14/19

Docket 1

Tentative Ruling:

The debtor's monthly operating report ("MOR") for September 2019, filed on November 17, 2019 [doc. 121], does not include bank statements for the debtor's general DIP account ending in 2524. The debtor's MOR for October 2019, filed on November 17, 2019 [doc. 122], indicates that the debtor has not paid the United States Trustee quarterly fees for the third quarter of 2019 in the amount of \$650.00.

Tentative Ruling from 11/14/19

Contrary to the Court's ruling at the prior status conference on September 12, 2019, the debtor did not timely file a status report. On the other hand, on November 1, 2019, the debtor filed his declaration in support of his proposed disclosure statement, which provides relevant information [doc. 117].

Nonetheless, the debtor has not timely filed his September 2019 monthly operating report. Additionally, contrary to the *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* [doc. 8], the debtor has not filed his 2018 tax return with the Court.

On November 1, 2019, the debtor timely filed a chapter 11 plan of reorganization and related disclosure statement [docs. 117 and 118]. **If the debtor cures the deficient filings prior to the status conference on November 13, 2019**, the Court intends to set a hearing on the adequacy of the debtor's proposed disclosure statement on **January 9, 2020 at 1:00 p.m.** In accordance with Local Bankruptcy Rule 3017-1, **no later than November 28, 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.

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

Thursday, November 21, 2019

Hearing Room 301

1:00 PM

CONT... Richard Philip Dages

Chapter 11

If the debtor does not cure the deficient filings prior to the status conference, pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1), (4)(E) and (F), the Court will issue an order to show cause why this case should not be converted to chapter 7 or dismissed.

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**

Thursday, November 21, 2019

Hearing Room 301

2:00 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

- #8.00** Chapter 7 Trustee's motion for order:
1. Approving sale of debtor's composition/royalty rights pursuant to 11 U.S.C. § 363b;
 2. Approving proposed bidding procedures;
 3. Authorizing payment of sales agent's commissions and other costs of sale at closing; and
 4. Finding that buyer is good faith purchaser pursuant to 11 U.S.C. § 363m

Docket 139

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Dean Albert Maury Cazares

Represented By
Andrew Edward Smyth
Stephen S Smyth

Trustee(s):

Diane C Weil (TR)

Represented By
C John M Melissinos
Jeffrey A Krieger
Keith Patrick Banner

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

Thursday, November 21, 2019

Hearing Room 301

2:00 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

#9.00 Debtor's Motion that the Court set a date by which the Trustee must sell or abandon assets

fr. 8/22/19; 11/7/19

Docket 131

Tentative Ruling:

In light of the fact that the Court is granting the motion to sell the debtor's assets at issue (*see* calendar no. 8), the Court will deny the debtor's motion to abandon those assets.

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

Party Information

Debtor(s):

Dean Albert Maury Cazares

Represented By
Andrew Edward Smyth
Stephen S Smyth

Movant(s):

Dean Albert Maury Cazares

Represented By
Andrew Edward Smyth
Andrew Edward Smyth
Stephen S Smyth
Stephen S 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**

Friday, November 22, 2019

Hearing Room 301

9:30 AM

1:18-11243 Jeff Davani

Chapter 7

Adv#: 1:18-01098 Johnson v. Davani an individual, doing business as Arina Buil

#1.00 Trial 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; 12/12/18; 1/9/2019; 6/19/19

Docket 8

***** VACATED *** REASON: Amended order entered 9/11/19. Trial to begin on 11/25/19.**

Party Information

Debtor(s):

Jeff Davani

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

Defendant(s):

Jeff Davani an individual, doing

Represented By
Michael H Raichelson

Joint Debtor(s):

Nadia Davani

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

Plaintiff(s):

Yvonne Johnson

Represented By
Stephen M Sanders

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**

Monday, November 25, 2019

Hearing Room 301

9:30 AM

1:18-11243 Jeff Davani

Chapter 7

Adv#: 1:18-01098 Johnson v. Davani an individual, doing business as Arina Buil

#1.00 Trial 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; 12/12/18; 1/9/2019; 6/19/19

Docket 8

Tentative Ruling:

Tentative ruling regarding the evidentiary objections to the identified paragraphs, and portions of those paragraphs, of the Declarations set forth below:

The Defendant's Evidentiary Objections to the Declaration of Yvonne Johnson

para. 14: sustain

paras. 15, 16, 19, 25, 27, 30, 33, 35, 41, 42, 43: overrule

para. 18: sustain as to "*which I now understand was required, but which I then did not know;*" overrule as to the rest

para. 20: sustain as to any representations to the HERO program; overrule as to the rest

para. 21: sustain as to "*However, it seemed that after the HERO Program was not allowing such an outrageous price for the work*"

para. 32: sustain as to "*correcting a red tag condition from the local utility for a leaking gas line that he had defectively installed;*" overrule as to the rest

para. 39: sustain as to "*Davani perform [sic] work on the Subject Property without pulling necessary permits for the work he performed;*" overrule as to the rest

para. 44: sustain as hearsay.

para. 45: sustain as to "*as a result of the mechanics lien and the lawsuit that had been filed by Glendale Acceptance on behalf of Davani;*" overrule as to the rest

para. 48: sustain as to "*which included and confirms many of the damage areas and work that was not completed by Davani.*"

para. 50: sustain as to "*Disgorgement damages,*" "*unlicensed contracting,*" "*unlicensed public insurance adjuster,*" and "*The additional interest I have had to pay on my home mortgage as a result of my inability to refinance my mortgage due to the*

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

Monday, November 25, 2019

Hearing Room 301

9:30 AM

CONT... Jeff Davani

Chapter 7

Mechanics Lien and foreclosure lawsuit for the time period of March 2016 to September 2019, totaling \$5,280.00;" overrule as to the rest

The Court will deny the defendant's request to strike the plaintiff's declaration. The Court will assess the admissibility of exhibits at trial.

The Plaintiff's Evidentiary Objections to the Declaration of Jeff Davani

para. 5: sustain

para. 6: sustain as to "*Thereafter, Johnson did in fact receive insurance proceeds from AAA*" (unless the plaintiff told this to the defendant), and "*All monies from AAA were sent to Johnson directly*" (unless the plaintiff told this to the defendant), "*Based on communications from AAA and Johnson, it is my understanding and belief that all insurance proceeds were either forwarded directly to Johnson or forwarded to Capital One N.A.'s Loss Draft Department*" (unless the communication came directly to the defendant from the plaintiff)

para. 6: overrule as to "*she would remit the funds to me for work that was completed or about to be completed.*"

para. 9: sustain as to "*1) Johnson intended to construct a second story addition; and 2) an engineer advised Johnson that such an addition would be costly in that there were geotechnical concerns*" (unless the plaintiff told this to the defendant); overrule as to the rest

para. 10: sustain as to "*material*" [in para. 10c.], "*After receipt of the completion documents, the HERO Program administrators inspected the project and approved payment*" [in para. 10f](unless the plaintiff told this to the defendant) and "*confirming that it was completed to her satisfaction*"; overrule as to the rest

para. 11: sustain as to "*and at all times she was acting upon her own free will;*" overrule as to the rest

paras. 13 and 14: sustain

paras. 18, 19, 21: overrule

para. 20: sustain as to "*It was executed under her own free will.*"

para. 22: sustain as to "*which is standard in the industry;*" overrule as to the rest

para. 23: sustain as to "*in clear retaliation for such action*" and "*she has no personal knowledge of my interactions with the Board;*" overrule as to the rest

Party Information

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

Monday, November 25, 2019

Hearing Room 301

9:30 AM

CONT... Jeff Davani

Chapter 7

Debtor(s):

Jeff Davani

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

Defendant(s):

Jeff Davani an individual, doing

Represented By
Michael H Raichelson

Joint Debtor(s):

Nadia Davani

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

Plaintiff(s):

Yvonne Johnson

Represented By
Stephen M Sanders

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**

Tuesday, November 26, 2019

Hearing Room 301

9:30 AM

1:18-11243 Jeff Davani

Chapter 7

Adv#: 1:18-01098 Johnson v. Davani an individual, doing business as Arina Buil

#1.00 Trial 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; 12/12/18; 1/9/2019; 6/19/19

Docket 8

Party Information

Debtor(s):

Jeff Davani

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

Defendant(s):

Jeff Davani an individual, doing

Represented By
Michael H Raichelson

Joint Debtor(s):

Nadia Davani

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

Plaintiff(s):

Yvonne Johnson

Represented By
Stephen M Sanders

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, November 27, 2019

Hearing Room 301

9:30 AM

1:19-12902 Jubilio Escalera

Chapter 7

#1.00 Order to show cause re: dismissal with a 180-day bar, annulment of the automatic stay, and disgorgement

Docket 3

Tentative Ruling:

On November 19, 2019, alleged creditor Arturo Cervera filed an involuntary chapter 7 petition [doc. 1], naming Jubilio Escalera (the "Debtor") as the debtor. On November 20, 2019, the Court entered an *Order to Show Cause re: Dismissal with 180-Day Bar, Annulment of the Automatic Stay, and Disgorgement* (the "OSC") [doc. 3]. In the OSC, the Court ordered the Debtor and Mr. Cervera to file written responses to the OSC by November 26, 2019 at 3:00 p.m. Neither the Debtor nor Mr. Cervera timely filed a written response to the OSC. Accordingly, the Court will dismiss this case, as set forth in the OSC.

The Court will prepare the Order.

Party Information

Debtor(s):

Jubilio Escalera

Pro Se

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

Wednesday, November 27, 2019

Hearing Room 301

9:30 AM

1:18-11243 Jeff Davani

Chapter 7

Adv#: 1:18-01098 Johnson v. Davani an individual, doing business as Arina Buil

#2.00 Trial 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; 12/12/18; 1/9/2019; 6/19/19

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeff Davani

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

Defendant(s):

Jeff Davani an individual, doing

Represented By
Michael H Raichelson

Joint Debtor(s):

Nadia Davani

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

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, November 27, 2019

Hearing Room 301

9:30 AM

CONT...

Jeff Davani

Laila Masud

Chapter 7

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

Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

1:11-11603 Kevan Harry Gilman

Chapter 7

#1.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

fr. 10/23/19

Docket 675

Tentative Ruling:

Deny.

On September 25, 2019, U.S. Bank Trust National Association as Trustee of Chalet Series IV Trust, its successor and assigns ("Movant") filed a motion for relief from stay (the "Motion") [doc. 675] as to real property located at 6553 Varna Avenue, Los Angeles California 91401 (the "Property"). [FN1] In the Motion, Movant indicated that grounds for relief existed because: (1) Movant's interest in the Property is not adequately protected; (2) the fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline; and (3) the debtor has no equity in the Property and the Property is not necessary to an effective reorganization.

Whether the Court uses the fair market value of the Property offered by movant, Creditors or the co-debtor for the debt encumbering the Property, Kwei Shiang Y. Gilman, Movant is adequately protected based on an equity cushion. Additionally, Movant has not demonstrated that the debtor lacks equity in the Property.

In its reply, Movant improperly argued, for the first time [FN2], that cause exists for the Court to grant the Motion because Movant and its predecessors allegedly have paid property taxes and maintained insurance on the Property. In support of this position, Movant filed a supplemental declaration of Angela K. Viale [doc. 687]. In that declaration, Ms. Viale states that, according to Movant's records and those of its predecessors, advances have been made to pay property taxes in November 2013,

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

Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

CONT...

Kevan Harry Gilman

Chapter 7

March 2014 and November 2018 and advances have been made to maintain insurance on the Property in June 2012, June 2013, June 2014, May 2015, June 2016, May 2017, May 2018 and May 2019. Other than Ms. Viale's declaration, Movant did not file any evidence in support of these assertions.

Regarding the records of Movant's predecessors, Ms. Viale did not lay the proper foundation for the applicability of the business records exception to the hearsay rule. The business records exception may be applied to records received by a business from third parties, if the following conditions are met: (1) the records are kept in the regular course of that business; (2) the business relies upon those records; and (3) the business has a substantial interest in the accuracy of those records. *In re Harms*, 603 B.R. 19, 30 (B.A.P. 9th Cir. 2019); *see also MRT Const. Inc. v. Hardrives, Inc.*, 158 F.3d 478, 483 (9th Cir. 1998) (citing *United States v. Childs*, 5 F.3d 1328, 1333-34, 1334 n. 3 (9th Cir. 1993)).

In her supplemental declaration, although Ms. Viale testified that the records were kept in the regular course of business, Ms. Viale did not testify that Movant has relied upon those records and that Movant has a substantial interest in the accuracy of those records.

Further, contrary to Ms. Viale's supplemental declaration, Ms. Gilman filed evidence demonstrating that she paid the property taxes on the Property in 2014, 2015, 2016, 2017, 2018 and 2019 [doc. 691]. Ms. Gilman also filed evidence demonstrating that the Property is insured through June 2020. *Id.* [FN3]

Accordingly, at this time, Movant has not met its burden to show that cause exists to grant the Motion.

The Court will prepare the order.

Evidentiary Objections

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declaration of Angela K. Viale set forth below:

paras. 11.d.3, 11.e, 11.g, 11.i and 11.j: overrule
Exh. 4: overrule

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

CONT... Kevan Harry Gilman

Chapter 7

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Supplemental Declaration of Angela K. Viale set forth below:

paras. 3, 7 and 8 through 19: sustain

FOOTNOTES

1. When the debtor filed his chapter 7 petition, the debtor lived in the Property. On August 4, 2011, the debtor filed an amended schedule C, in which he claimed a homestead exemption in the Property [doc. 35]. Creditors Tammy Phillips and Tammy Phillips, a Professional Law Corporation ("Creditors") have asserted several objections to the debtor's entitlement to a homestead exemption, and the amount of the debtor's homestead exemption claim. The Court's most recent ruling on that issue was to sustain the debtor's claim of a \$100,000 homestead exemption [docs. 674, 692].
2. In accordance with Local Bankruptcy Rule 9013-1(g)(4), new arguments or matters raised for the first time in reply documents will not be considered.
3. In her supplemental opposition, Ms. Gilman argues that the Court should continue the hearing regarding the motion for relief from stay to allow the state court, which is handling Ms. Gilman's pending marital dissolution proceedings from the debtor, to order the sale of the Property. However, unless and until the Property is abandoned from the debtor's bankruptcy estate in accordance with 11 U.S.C. § 554, or this Court grants relief from stay for the state court to compel the sale of the Property, the state court does not have the authority to mandate the sale of the Property.

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

CONT... Kevan Harry Gilman

Chapter 7

Mark E Ellis

Movant(s):

US Bank Trust NA

Represented By
Lemuel Bryant Jaquez

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 4, 2019

Hearing Room 301

9:30 AM

1:15-10278 Laura Lee Stone

Chapter 13

#2.00 Motion for relief from stay [RP]

BANK OF AMERICA NATIONAL ASSOCIATION
VS
DEBTOR

fr. 10/23/19

Stip re adequate protection filed 12/3/19

Docket 48

*** VACATED *** REASON: Order approving stip entered 12/3/19.
[Doc.#56]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laura Lee Stone

Represented By
Kevin T Simon

Movant(s):

Bank of America National

Represented By
Kirsten Martinez

Trustee(s):

Elizabeth (SV) 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 4, 2019

Hearing Room 301

9:30 AM

1:16-10630 Gerald E Klein and Norma L Klein

Chapter 13

#3.00 Motion for relief from stay [RP]

MUFG UNION BANK, N.A.
VS
DEBTOR

fr. 9/11/19; 11/13/19

Docket 58

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

Movant(s):

MUFG Union Bank, N.A, fka Union

Represented By
Drew A Callahan
Justin S Moyer
Pietro Vella
Jonathan C Cahill
Gilbert R Yabes
Joseph C Delmotte

Trustee(s):

Elizabeth (SV) 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 4, 2019

Hearing Room 301

9:30 AM

1:17-11883 Roger Valencia, II

Chapter 13

#4.00 Motion for relief from stay [RP]

WILMINGTON TRUST NATIONAL ASSOCIATION
VS
DEBTOR

fr. 11/6/19

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roger Valencia II

Represented By
Eric A Jimenez

Movant(s):

Wilmington Trust, National

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 4, 2019

Hearing Room 301

9:30 AM

1:18-11560 Elizabeth Roberts

Chapter 13

#5.00 Motion for relief from stay [RP]

BANK OF AMERICA NATIONAL ASSOCIATION
VS
DEBTOR

fr. 10/23/19

Docket 76

Tentative Ruling:

On October 3, 2019, the debtor filed a response to the motion for relief from the automatic stay [doc. 78]. The debtor did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

Party Information

Debtor(s):

Elizabeth Roberts

Represented By
Anthony P Cara

Movant(s):

Bank of America National

Represented By
Kirsten Martinez

Trustee(s):

Elizabeth (SV) 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 4, 2019

Hearing Room 301

9:30 AM

1:18-12689 Mary Ann Irvine

Chapter 13

#6.00 Motion for relief from stay [RP]

CITIBANK, NA
VS
DEBTOR

fr. 11/6/19; 11/6/19

Docket 30

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):

Mary Ann Irvine

Represented By
Nathan A Berneman

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

Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

CONT... Mary Ann Irvine

Chapter 13

Movant(s):

Citibank, N.A.

Represented By
Randy Stacey
Aaron Hardison
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 4, 2019

Hearing Room 301

9:30 AM

1:19-12375 Renaissance Investment Group, LLC

Chapter 7

#7.00 Motion for relief from stay [RP]

ANCHOR FUND, LLC
VS
DEBTOR

fr. 11/6/19

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 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):

Renaissance Investment Group, LLC

Represented By
David S Hagen

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

9:30 AM

CONT... Renaissance Investment Group, LLC

Chapter 7

Movant(s):

Anchor Fund, LLC

Represented By
Glenn C Kelble

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

1:19-12779 Steven Alex Sosnowski

Chapter 7

#8.00 Motion for relief from stay [UD]

CHANCHAL AND JAGDISH GHAI
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 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 annulment of the automatic stay because the movant did not include a declaration signed under penalty of perjury regarding what acts were taken post-petition and their knowledge of the pending bankruptcy case before any such actions were taken.

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.

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Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

CONT... Steven Alex Sosnowski

Chapter 7

Party Information

Debtor(s):

Steven Alex Sosnowski

Represented By
Eric Bensamochan

Movant(s):

Chanchal Ghai and Jagdish Ghai

Represented By
Jasdeep S Ahluwalia

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

1:19-10062 Andrew Marc Pitsicalis

Chapter 7

#9.00 Amended motion for relief from stay [AN]

EXPERIENCE HENDRIX, LLC AND AUTHENTIC HENDRIX, LLC
VS
DEBTOR

Docket 102

Tentative Ruling:

Grant relief from the automatic 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 and 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):

Andrew Marc Pitsicalis

Pro Se

Movant(s):

Authentic Hendrix, LLC

Represented By
Jason D Strabo
Charles E Weir

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

Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

CONT... Andrew Marc Pitsicalis

Chapter 7

Experience Hendrix, LLC

Simon Aron

Represented By
Jason D Strabo
Charles E Weir
Simon Aron

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall
Michael Simon

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

1:19-10051 Rockin Artwork, LLC

Chapter 7

#10.00 Motion for relief from stay [AN]
(Purpe Haze Properties, LLC 19-10052)

WXPERIANCE HENDRIX, LLC AND AUTHENTIC HENDRIX, LLC
VS
DEBTOR

Docket 174

Tentative Ruling:

Grant relief from the automatic 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 and 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):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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9:30 AM

CONT... Rockin Artwork, LLC

Chapter 7

Movant(s):

Authentic Hendrix, LLC

Represented By
Jason D Strabo
Charles E Weir
Simon Aron

Experience Hendrix, LLC

Represented By
Jason D Strabo
Charles E Weir
Simon Aron

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall
Michael Simon

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San Fernando Valley
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9:30 AM

1:19-10051 Rockin Artwork, LLC

Chapter 7

#11.00 Motion for relief from stay [AN]

WXPERIANCE HENDRIX, LLC AND AUTHENTIC HENDRIX, LLC
VS
DEBTOR

Docket 175

Tentative Ruling:

Grant relief from the automatic 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 and 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):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

Movant(s):

Authentic Hendrix, LLC

Represented By

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CONT... Rockin Artwork, LLC

Chapter 7

Jason D Strabo
Charles E Weir
Simon Aron

Experience Hendrix, LLC

Represented By
Jason D Strabo
Charles E Weir
Simon Aron

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall
Michael Simon

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

Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

1:19-11643 Larry M Halpern

Chapter 7

#12.00 Motion for relief from stay [PP]

GATEWAY ONE LENDING & FINANCE
VS
DEBTOR

Docket 45

*** VACATED *** REASON: Withdrawal of motion filed 11/27/19.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Larry M Halpern

Represented By
David S Hagen

Movant(s):

Gateway One Lending & Finance

Represented By
Karel G Rocha

Trustee(s):

David Seror (TR)

Represented By
David Seror

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

1:19-12474 Carey Kyungho Kim

Chapter 7

#13.00 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):

Carey Kyungho Kim

Represented By
Kelly K Chang

Movant(s):

Financial Services Vehicle Trust

Represented By
Cheryl A Skigin

**United States Bankruptcy Court
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9:30 AM

CONT... Carey Kyungho Kim

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
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Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

1:19-12467 Melchor Dychioco

Chapter 7

#14.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 11

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
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9:30 AM

CONT... Melchor Dychioco

Chapter 7

Debtor(s):

Melchor Dychioco

Pro Se

Movant(s):

U.S. Bank National Association

Represented By
Darlene C Vigil

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

1:19-10288 Masoud A. Harandi

Chapter 13

#15.00 Motion for relief from stay [RP]

SELECT PORTFOLIO SERVICING, INC.
VS
DEBTOR

Docket 28

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):

Masoud A. Harandi

Represented By
Glenn Ward Calsada

Movant(s):

U.S. Bank NA, successor trustee to

Represented By
Raymond Jereza

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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9:30 AM

CONT... Masoud A. Harandi

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
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Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

1:19-11127 Mary Ann Noto

Chapter 13

#16.00 Motion for relief from stay [RP]

CITIMORTGAGE, INC.
VS
DEBTOR

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Ann Noto

Represented By
Jaime A Cuevas Jr.

Movant(s):

CitiMortgage, Inc.

Represented By
Robert P Zahradka

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Hearing Room 301

9:30 AM

1:19-11902 John Christian Lukes

Chapter 11

#17.00 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
VS
DEBTOR

Docket 59

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):

John Christian Lukes

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Movant(s):

Toyota Lease Trust

Represented By

**United States Bankruptcy Court
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San Fernando Valley
Judge Victoria Kaufman, Presiding
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9:30 AM

CONT...

John Christian Lukes

Austin P Nagel

Chapter 11

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

Wednesday, December 4, 2019

Hearing Room 301

9:30 AM

1:19-12810 Blanca Mohd

Chapter 11

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

Docket 19

Tentative Ruling:

The Court will deny the motion.

The First Case

On February 28, 2019, Blanca Mohd (the "Debtor") filed a voluntary chapter 13 petition, initiating case 1:19-bk-10469-VK (the "First Case"). On March 12, 2019, the Debtor filed a motion to extend the deadline to file schedules and statements [First Case, doc. 12]. The Court granted that motion and extended the deadline for the Debtor to file schedules and statements to March 28, 2019. *Id.* at doc. 13.

In the First Case, the Debtor never filed her schedules and statements, by the extended deadline, or by months later. On June 18, 2019, the Court entered an order dismissing the First Case for failure to file information. *Id.* at 20.

During the pendency of the First Case, PHH Mortgage Corporation ("PHH") filed claim 5 ("Claim 5"), representing that it holds a claim in the amount of \$583,101.23, secured by real property located at 10437 Cedros Avenue, Mission Hills, California 91345 (the "Residence"). In Claim 5, PHH represented that the prepetition arrears on the Residence were \$59,776.80.

Wells Fargo Bank, N.A. ("Wells Fargo") filed claim 9 ("Claim 9"), representing that it holds a claim in the amount of \$328,912.64, secured by real property located at 14915 Sandra Street, Mission Hills, California 91345 (the "Rental"). In Claim 9, Wells Fargo represented that the prepetition arrears on the Rental were \$84,117.72.

The Pending Case

On November 7, 2019, the Debtor filed a voluntary chapter 11 petition, initiating this case. In this case, the Debtor's schedules I and J state that she has monthly income of

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9:30 AM

CONT...

Blanca Mohd

Chapter 11

\$3,802.00 and monthly expenses of \$5,308.00, leaving net monthly income of (\$1,506.00) [doc. 12]. However, in her schedule J, the Debtor did not include any mortgage expense for the Rental; she listed a mortgage expense for the Residence only.

In her schedule I, the Debtor indicates that she is disabled. The Debtor represents that her monthly income consists of \$2,921.00 from leasing the Rental and \$881.00 from disability assistance. In contrast, the Debtor's statement of financial affairs represents that her income from "disability & rental" for January 1, 2019 through the petition date (November 7, 2019) was \$500.00, for 2018 \$10,283.00 and for 2017 \$81.00 [doc. 12]. These amounts are **far** less than the \$3,802.00 in the gross monthly income set forth in her schedule I.

In her schedule A/B [doc. 12], the Debtor represents that the fair market value of the Residence is \$451,000.00 and the fair market value of the Rental is \$550,000.00. In her schedule D [doc. 12], the Debtor indicates that PHH holds a claim secured by the Residence in the amount of \$611,015.00 and that Wells Fargo holds a claim secured by the Rental in the amount of \$353,829.00.

In her schedule G [doc. 12], the Debtor lists four unexpired leases: one for the Rental and three for the Residence. The Debtor does not set forth the monthly rent payable under each lease, and she did not submit the leases with her pending motion.

On November 27, 2019, the Debtor filed the pending motion to continue the automatic stay under 11 U.S.C. § 362 (the "Motion") [doc. 19] and an application for an order setting hearing on shortened notice (the "Application for OST") [doc. 20]. On the same day, the Court entered an order granting the Application for OST and setting a hearing on the Motion for December 4, 2019 (the "OST") [doc. 22]. Pursuant to the OST, the Debtor was to serve written notice of the hearing, a copy of the OST and the Motion on the Debtor's secured creditors and the 20 largest unsecured creditors by no later than November 27, 2019 at 5:00 p.m.

On November 27, 2019, the Debtor filed an amended notice of hearing on the Motion [doc. 25]. The amended notice of hearing, allegedly served by United States mail on November 27, 2019, does not include the deadline by which a response to the Motion must be filed and served.

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CONT...

Blanca Mohd

Chapter 11

Through the Motion, the Debtor seeks to continue the automatic stay as to all creditors. The Debtor states she will rent out all or a portion of the Residence and the Rental and that the rent collected will be used to make her deed of trust payments and to fund a chapter 11 plan of reorganization. The Debtor also states that she has a strategy to resolve the "home improvement/tax liens" on the Residence and the Rental. The Debtor does not describe her "strategy." Moreover, in her schedules, the Debtor did not list any home improvement or tax liens.

The Debtor also represents that she will begin making adequate protection payments to her secured creditors in December 2019. However, the Debtor does not propose an amount for those payments, nor has she provided any convincing evidence of her ability to make them.

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 discharge, or a confirmed chapter 11 or 13 plan that will be fully performed.

Notwithstanding the assertions in the Motion, at this time, the Debtor has not provided clear and convincing evidence that her financial affairs have improved since the dismissal of her prior chapter 13 case, such that the pending chapter 11 case will result in a confirmed plan that will be fully performed.

In her pending case, the Debtor's schedules I and J indicate negative net monthly income of (\$1,506.00). Because her schedule J does not include expenses attributable to the Rental, such as the deed of trust payment, the Debtor's net monthly income is likely even less than this amount. In addition, contrary to the assertions in her schedule I, the Debtor's statement of financial affairs indicates that the Debtor's gross monthly income is much less than the \$3,802.00 indicated in her schedule I.

Given the Debtor's negative net income, and the marked discrepancy between the

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Chapter 11

income reflected in her schedules and in her statement of financial affairs (which reflect a lack of any meaningful income, at all), at this time, the Debtor has not presented clear and convincing evidence that she can confirm a chapter 11 plan and fully perform any such plan.

Similarly, the Debtor has not provided sufficient evidence of her ability to make adequate protection payments, nor does the Motion mention the amount of the adequate protection payments that the Debtor intends to make.

In light of the foregoing, the Court will deny the Motion.

The Court will prepare the order.

Party Information

Debtor(s):

Blanca Mohd

Represented By
Dana M Douglas

**United States Bankruptcy Court
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1:18-11490 Silver Age None-Emergency Medical Transportation,

Chapter 7

#18.00 Motion to vacate order granting relief from the automatic stay under 11 U.S.C. § 362

Docket 45

Tentative Ruling:

Deny.

As an initial matter, service of the motion was not proper. The movants only served notice of the hearing on the debtor's state court attorneys. Although the chapter 7 trustee, the United States trustee and the debtor's bankruptcy counsel received notice of the motion and the motion via NEF, the debtor was not served with notice or the motion.

Additionally, the proofs of service attached to the notice of the motion and the motion are not on the mandatory form F 9013-1.1.Hearing.Notice. Moreover, although the caption of the motion indicates the correct hearing time, 9:30 a.m., the motion itself indicates that the hearing will be held at 8:30 a.m. Finally, neither the notice of the motion nor the motion include the Court's address.

I. BACKGROUND

On June 12, 2018, Silver Age None-Emergency Medical Transportation, Inc. ("Debtor") filed a voluntary chapter 7 petition. On July 11, 2018, Christopher Veklotz and Jennifer Cuff ("Movants") filed a motion for relief from the automatic stay under 11 U.S.C. § 362 as to a nonbankruptcy action against Debtor (the "RFS Motion") [doc. 5].

In the RFS Motion, Movants represented that there was cause for the Court to grant the RFS Motion because Movants were seeking recovery only from Debtor's applicable insurance, and they waived any deficiency or other claim against Debtor or property of Debtor's bankruptcy estate. On August 17, 2018, the Court entered an order granting the RFS Motion, with limitations on enforcement of judgment (the "Order") [doc. 10].

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CONT... **Silver Age None-Emergency Medical Transportation,** **Chapter 7**

Pursuant to the Order, Movants may proceed in the nonbankruptcy forum to final judgment. However, Movants are permitted to enforce their final judgment only by collecting upon any available insurance and proceeding against Debtor as to property or earnings that are not property of the bankruptcy estate.

On July 20, 2018, the chapter 7 trustee filed a no asset report. On November 30, 2018, the Court closed Debtor's case without a discharge [doc. 35].

On October 8, 2019, Movants filed a motion to reopen Debtor's chapter 7 case (the "Motion to Reopen") [doc. 41]. On October 17, 2019, the Court entered an order granting in part and denying in part the Motion to Reopen and reopened Debtor's chapter 7 case [doc. 43].

On October 25, 2019, Movants filed a *Motion to Vacate the Order Granting Relief From the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") [doc. 45]. In the Motion, Movants argue that because Debtor's case was closed and its debts were not discharged, the Court should vacate the Order so that the nonbankruptcy action may proceed without limitation. Movants cite Federal Rule of Civil Procedure ("Rule") 60(b)(6) as the basis for the relief sought. Debtor did not timely file an opposition.

II. DISCUSSION

Rule 60(b), applicable via Federal Rule of Bankruptcy Procedure 9024, provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (1) (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under [Rule 59\(b\)](#);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;

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(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

"Rule 60(b)(6) . . . permits [relief] when the movant shows 'any . . . reason justifying relief . . .' other than the more specific circumstances set out in Rules 60(b)(1)-(5)." *Gonzalez v. Crosby*, 545 U.S. 524, 528–29 (2005). "Judgments are not often set aside under Rule 60(b)(6)." *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006). "Rather, the Rule is used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *Id.* (quoting *United States v. Washington*, 394 F.3d 1152, 1157 (9th Cir. 2005)) (internal quotations omitted). "Accordingly, a party who moves for such relief 'must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with ... the action in a proper fashion.'" *Id.* (quoting *Community Dental Services v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002)).

Here, Movants have not shown extraordinary circumstances that justify vacating the Order pursuant to Rule 60(b)(6). Movants did not argue that the Order was erroneous or that it was manifestly unjust. Movants also did not explain why they waited a year after the case was closed to seek reconsideration of the Order. The only argument that Movants presented was that because Debtor's bankruptcy case was closed and its debts were not discharged, the Order should be vacated so that the nonbankruptcy action may proceed without limitation.

Pursuant to 11 U.S.C. § 362(c)—

- (1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;
- (2) the stay of any other act under subsection (a) of this section continues until the earliest of—

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Silver Age None-Emergency Medical Transportation,

Chapter 7

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied. . . .

Debtor's case was dismissed on November 30, 2018, and Debtor did not receive a discharge. Since November 30, 2018, there has been no stay under 11 U.S.C. § 362 prohibiting Movants from proceeding in the nonbankruptcy action and pursuing all remedies available, under applicable law, to enforce any resulting judgment.

At this time, there is no automatic stay under 11 U.S.C. § 362. Consequently, the Court does not need to vacate the Order.

III. CONCLUSION

The Court will deny the Motion.

Movants 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
David S Hagen

Movant(s):

Christopher Veklotz

Represented By
Danielle Lincors

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**CONT... Silver Age None-Emergency Medical Transportation,
Arash Homampour**

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

1:30 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

Adv#: 1:18-01114 Nassif et al v. THE BANK OF NEW YORK MELLON fka THE BANK OF

- #19.00** Pretrial conference re: complaint for:
1. Violation of California homeowner bill of rights;
 2. Breach of written agreement;
 3. Breach of vovenant of good faith and fair dealing;
 4. Negligence;
 5. Unlawful business practices

fr. 1/9/2019; 6/5/19(stip); 9/4/19

Docket 1

***** VACATED *** REASON: Continued by Stipulation to 2/19/20 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

Defendant(s):

THE BANK OF NEW YORK

Pro Se

Nationstar Mortgage LLC, A

Pro Se

Bank of America, N.A, a National

Pro Se

Aztec Foreclosure Corporation., a

Pro Se

Plaintiff(s):

Christopher Sabin Nassif

Represented By

Matthew D. Resnik

Robin Nassif

Represented By

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CONT...

Christopher Sabin Nassif

Matthew D. Resnik

Chapter 11

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Wednesday, December 4, 2019

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mor et al

- #20.00** Status conference re: complaint for:
1. Fraud and intentional deceit;
 2. Breach of contract;
 3. Breach of the covenant of good faith and fair dealing;
 4. Breach of fiduciary duty;
 5. Vicarious liability-ostensible agent;
 6. Negligent supervision or training of an employee and/or agent;
 7. Financial elder abuse

fr. 10/2/19; 11/6/19(stip)

Docket 1

Tentative Ruling:

Contrary to Federal Rule of Bankruptcy Procedure ("FRBP") 7004(e), the plaintiffs did not timely serve the summons and complaint within 7 days after the summons was issued.

Given that the plaintiffs may proceed against the non-debtor defendants in a different forum, do the plaintiffs intend to include the non-debtor defendants as parties to this adversary proceeding? The plaintiffs should be prepared to discuss whether they plan to prosecute *all* claims before this Court, or if this Court should adjudicate only the plaintiffs' nondischargeability claims against the debtor.

To serve a defendant properly, the plaintiffs must request Another Summons from the Court. The plaintiffs can obtain Another Summons by filing form F 7001-1.2.REQUEST.ANOTHER.SUMMONS, located on the Court's website. Upon receiving the filing of the Request that the Clerk Issue Another Summons and Notice of Status Conference, the Clerk will issue Another Summons.

The Another Summons must be served upon a defendant within 7 days of its issuance by the Court, pursuant to FRBP 7004 and Local Bankruptcy Rule ("LBR") 7004-1(b). The plaintiffs must attach to the Another Summons a copy of the complaint and a

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CONT... Sharon Mizrahi

Chapter 13

copy of Judge Kaufman's Status Conference Instructions.

To demonstrate proper service of the Another Summons and the complaint and instructions to be served with that summons, the plaintiffs must file a *signed* proof of service indicating that the Another Summons and the documents to be served with that summons were timely served on the defendants against whom relief is sought.

In addition, contrary to LBR 7016-1(a), the plaintiffs have not participated in the timely filing of a joint status report. The Court intends to continue this status conference to **1:30 p.m. on January 22, 2020**.

If the plaintiffs do not timely obtain and serve Another Summons and do not timely file a joint status report 14 days prior to the continued status conference, the Court may dismiss this adversary proceeding for failure to prosecute.

In the unilateral status report filed by the debtor [doc. 21], the debtor/defendant notes that the plaintiffs are opposed to participating in mediation. **The plaintiffs should be prepared to address why they do not want to participate in the Court's mediation program.**

On November 1, 2019, the debtor/defendant filed a motion to dismiss the complaint [doc. 14] based, in part, on the plaintiffs' failure to properly serve the summons and complaint within 90 days after the complaint is filed. Pursuant to Federal Rule of Civil Procedure ("Rule") 4(m), as incorporated into this proceeding by FRBP 7004(a) (1), "[i]f a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant *or order that service be made within a specified time.*" (emphasis added).

If the plaintiffs timely serve the Another Summons and complaint pursuant to the Court's instructions above, the Court will not dismiss this action under Rule 4(m). The plaintiffs twice stipulated to continuing the initial status conference and to extending the defendants' deadline to respond to the complaint [docs. 6, 10]. Had there been no such continuance, the Court would have instructed the plaintiffs to serve an Another Summons and the complaint properly long before expiration of the 90 day deadline under Rule 4(m).

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CONT... Sharon Mizrahi

Chapter 13

Given that Rule 4(m) explicitly allows the Court to order that service is made within a specified time, instead of dismissing an action, the Court will extend the deadline for the plaintiffs to serve the Another Summons and the complaint in accordance with the instructions above. At the status conference on January 22, 2020, the Court will assess if the plaintiffs timely obtained the Another Summons by December 20, 2019 and served that Another Summons and the complaint within seven days of the issuance of the Another Summons.

On the other hand, in the status report filed by the debtor, the debtor notes that the plaintiffs may file an amended complaint. Do the plaintiffs intend to do that? If so, the Court will give the plaintiffs leave to amend the complaint, which must be properly filed and served, **by no later than December 27, 2019**, with the Another Summons.

If the plaintiffs properly file and serve an amended complaint and an Another Summons, the Court will take the debtor's motion to dismiss off calendar.

Appearances are **not** excused and the parties **must appear in person** for the initial status conference at 1:30 p.m. on December 4, 2019.

Party Information

Debtor(s):

Sharon Mizrahi

Represented By
Shai S Oved

Defendant(s):

Ido Mor

Pro Se

Sharon Mizrahi, an Individual

Pro Se

Sharon Mizrahi dba Divine Builders

Pro Se

Divine Builders

Pro Se

GHR Divine Remodeling

Pro Se

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CONT... Sharon Mizrahi

Chapter 13

Does 1 Through 10, Inclusive

Pro Se

Plaintiff(s):

Michael Frias

Represented By

Ezedrick S Johnson III

Patricia Bartlett

Represented By

E. Samuel Johnson

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:19-01110 Banc of California, N.A. v. Sheik

#21.00 Status conference re: complaint for fraud and nondischargeability of debt [11 USC sec 523(a)(2)(A), (a)(6), (a)(4)]

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: 5/1/20.

Deadline to complete one day of mediation: 5/15/20.

Deadline to file pretrial motions: 6/1/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 6/24/20.

Pretrial: 1:30 p.m. on 7/8/20.

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

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CONT... Maryam Sheik

Chapter 11

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Maryam Sheik

Pro Se

Plaintiff(s):

Banc of California, N.A.

Represented By

Elmira R Howard

Vanessa H Widener

**United States Bankruptcy Court
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Hearing Room 301

2:30 PM

1:15-10763 Howard Irving Napolske

Chapter 7

Adv#: 1:15-01093 Hana Financial, Inc., a California corporation v. Napolske

#22.00 Motion for rule 11 sanctions against defendant and his counsel

Docket 49

***** VACATED *** REASON: Continued to 2:30 p.m. on 1/15/2020.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Howard Irving Napolske

Represented By
Heidi Hohler

Defendant(s):

Howard I. Napolske

Represented By
Bryan Diaz

Plaintiff(s):

Hana Financial, Inc., a California

Represented By
Michael W Davis
Talin Keshishian

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, December 4, 2019

Hearing Room 301

2:30 PM

1:19-10448 Linda Moraga

Chapter 7

Adv#: 1:19-01061 The Roberts Container Corporation v. Moraga

#23.00 Motion for default judgment

Docket 16

Tentative Ruling:

Grant motion for default judgment pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6).

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT.PRIOR, within seven (7) days.

Movant's appearance on December 4, 2019 is excused.

Party Information

Debtor(s):

Linda Moraga

Represented By
Daniel King

Defendant(s):

Linda Moraga

Pro Se

Plaintiff(s):

The Roberts Container Corporation

Represented By
Michael A Wallin

Trustee(s):

Nancy J Zamora (TR)

Represented By
Anthony A Friedman

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1:19-10448 Linda Moraga

Chapter 7

Adv#: 1:19-01061 The Roberts Container Corporation v. Moraga

#24.00 Status conference re: complaint to determine nondischargeability
of debt pursuant to 11 U.S.C. §523

fr. 7/17/19; 10/16/19

Docket 1

Tentative Ruling:

See calendar no. 23.

Party Information

Debtor(s):

Linda Moraga

Represented By
Daniel King

Defendant(s):

Linda Moraga

Pro Se

Plaintiff(s):

The Roberts Container Corporation

Represented By
Michael A Wallin

Trustee(s):

Nancy J Zamora (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
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Thursday, December 5, 2019

Hearing Room 301

10:30 AM

1:10-17214 Darin Davis

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Danning Gill Diamond & Kollitz LLP, general counsel to Chapter 7 Trustee

SLBiggs, Accountant to Chapter 7 Trustee

fr. 9/19/19; 10/17/19; 11/7/19

Docket 320

Tentative Ruling:

The Court will continue this hearing to **December 19, 2019 at 10:30 a.m.**

On August 13, 2019, the chapter 7 trustee filed his final report, which represents that after payments to secured creditors, administrative expenses and payments to claimants holding priority claims, \$151,316.78 will be available for pro rata distribution to nonpriority unsecured creditors [doc. 320]. However, on September 26, 2019, the chapter 7 trustee's counsel filed a supplement to its third and final fee application requesting an additional \$26,969.28 in fees and expenses [doc. 358].

The chapter 7 trustee has not filed an amended final report indicating the amount available to nonpriority unsecured creditors if the Court were to approve all requested chapter 7 administrative expenses. **By December 9, 2019**, the chapter 7 trustee must file an amended final report.

Appearances on December 5, 2019 are excused.

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CONT... **Darin Davis**

Chapter 7

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
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10:30 AM

1:16-10024 Paulette Vonetta Moses

Chapter 7

#2.00 Trustee's final report and applications for compensation

Amy Goldman, Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith LLP, Attorneys for Trustee

SLBiggs, A Division of SingerLewak, Accountants for Trustee

Dishbak Law Firm, Former Attorney for Debtor

fr. 11/7/19

Docket 418

Tentative Ruling:

A. Standards the Court Must Apply to Assess Fee 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).

B. The Oppositions

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CONT... Paulette Vonetta Moses

Chapter 7

On October 21, 2019, the debtor filed an opposition to the chapter 7 trustee's final report and application for compensation (the "Debtor Opposition") [doc. 422]. Nonpriority unsecured creditor Roderick A. Grant also filed an opposition (the "Grant Opposition") [doc. 423]. On November 21, 2019, the debtor filed an opposition to the chapter 7 trustee's reply to the Debtor Opposition (the "Supplemental Opposition," collectively with the Debtor's Opposition and the Grant Opposition, the "Oppositions") [doc. 428]. [FN1]

In the Oppositions, the debtor and Mr. Grant do not articulate specific objections to the fee applications at issue based on the standards set forth in 11 U.S.C. § 330(a)(1) (A). Rather the debtor and Mr. Grant articulate grievances regarding the distribution of estate funds to chapter 7 administrative expenses and to secured creditor Real Time Resolutions, Inc. ("Real Time") and regarding the administration of the debtor's bankruptcy case.

C. The Debtor Opposition

In the Debtor Opposition, the debtor opposes, among other things, the payment made to Real Time. On December 14, 2017, the Trustee filed a motion for authorization to enter into a compromise (the "Real Time Settlement") with Real Time with respect to its junior lien against real property located at 451 S. Chicago St., Los Angeles, California (the "Property") [doc. 383].

Pursuant to the Real Time Settlement, Real Time would have an allowed secured claim in the amount of \$203,000.00, which was to be paid from the proceeds from the sale of the Property, and an unsecured claim in the amount of \$106,793.00. The Real Time Settlement was served on the debtor and Mr. Grant. No opposition to the Real Time Settlement was filed.

On January 1, 2018, the Court entered an order approving the Real Time Settlement (the "Real Time Order") [doc. 387]. No party filed a notice of appeal of the Real Time Order nor a motion for reconsideration of the Real Time Order. Accordingly, the Real Time Order is final and binding.

D. The Supplemental Opposition

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Thursday, December 5, 2019

Hearing Room 301

10:30 AM

CONT... Paulette Vonetta Moses

Chapter 7

In the Supplemental Opposition, the debtor argues, among other things, that her bankruptcy case should have been dismissed. During the pendency of her chapter 11 case, the debtor filed a motion to approve the sale of the Property [docs. 29 and 32]. As part of the resolution of that motion, the debtor and Real Time entered into a stipulation [docs. 41 and 44], which was approved by the Court. That stipulation provided, in part, that Real Time's lien was to attach to the proceeds from the sale of the Property until resolution of the dispute between the parties.

On March 29, 2016, the Court entered an order approving the sale of the Property (the "Sale Order") [doc. 56]. Pursuant to the Sale Order, any remaining funds after escrow closed were to be held in a debtor-in-possession interest bearing account at a United States Trustee approved bank. The debtor received \$435,739.60 in net proceeds from the sale of the Property.

On September 1, 2016, the United States Trustee filed a motion to dismiss or convert the debtor's chapter 11 case to one under chapter 7, or in the alternative to appoint a chapter 11 trustee (the "Motion to Convert") [doc. 105]. In the Motion to Convert, the United States Trustee argued that cause existed to convert the chapter 11 case to one under chapter 7 because during the months between the receipt of the sale proceeds and the Motion to Convert, the debtor dissipated a significant portion of those proceeds without consent of the lienholder(s) or the authorization of the Court.

On September 26, 2016, the Court granted the Motion to Convert and converted the debtor's case to one under chapter 7 (the "Conversion Order") [doc. 121]. In its ruling on the Motion to Convert [doc. 119], the Court stated that dismissal of the case would likely result in further dissipation of the sale proceeds from the Property, and that creditors of the estate would benefit most from conversion.

The debtor appealed the Conversion Order to the United States District Court for the Central District of California. The district court affirmed the Court's ruling [doc. 348].

E. The Grant Opposition

In the Grant Opposition, Mr. Grant argues, among other things, that he is entitled to payment from the estate for his claim. Mr. Grant filed claim 7-1, asserting a nonpriority unsecured claim in the amount of \$65,000.00 for money allegedly loaned

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Chapter 7

to the debtor (the "Claim"). The Claim was later amended to the amount of \$85,000.00.

On November 17, 2017, the Trustee filed a motion to approve compromise with the debtor and Mr. Grant (the "Grant Settlement"). Pursuant to paragraph 9 of the Grant Settlement, Mr. Grant released any and all claims, past and present against the Trustee and the estate. On December 21, 2017, the Court entered an order approving the Grant Settlement [doc. 387].

F. Approval of Administrative Expenses

Having assessed the fee applications at issue pursuant to the standards set forth in 11 U.S.C. § 330(a)(1)(A), the Court approves the payment of fees and reimbursement of expenses as set forth in the chapter 7 trustee's final report. The Court notes that, because the estate is administratively insolvent, the chapter 7 professionals have agreed to a pro rata, reduced distribution of their approved fees.

Amy L. Goldman, chapter 7 trustee – approve fees of \$25,106.61 and reimbursement of expenses of \$239.90, pursuant to 11 U.S.C. § 330, on a final basis. The chapter 7 trustee is authorized to collect a pro rata distribution of \$22,955.28 of approved fees and 100% of approved reimbursement of expenses.

Lewis Brisbois Bisgaard & Smith LLP ("Lewis Brisbois"), counsel to chapter 7 trustee – approve fees of \$204,323.00 and reimbursement of expenses of \$3,379.73, pursuant to 11 U.S.C. § 330, on a final basis. Lewis Brisbois is authorized to collect a pro rata distribution of \$186,814.88 of approved fees and 100% of approved reimbursement of expenses.

SLBiggs, A Division of SingerLewak ("SLBiggs"), accountant to chapter 7 trustee – approve fees of \$16,120.00 and reimbursement of expenses of \$340.19, pursuant to 11 U.S.C. § 330, on a final basis. SLBiggs is authorized to collect a pro rata distribution of \$14,738.70 of approved fees and 100% of approved reimbursement of expenses.

Dishbak Law Firm, former chapter 11 counsel to debtor-in-possession – pursuant to the terms of the stipulation entered into between Ms. Dishbak and the chapter 7 trustee [doc. 408], Dishbak Law Firm shall have an allowed chapter 11 administrative

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CONT... Paulette Vonetta Moses
claim of \$2,500.00.

Chapter 7

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

FOOTNOTES

1. In the Supplemental Opposition, the debtor requests that the Court consider the "special circumstances" involved in her case and allow her a discharge. By asking for such relief in a written response to a final report, the debtor has not properly put this issue before the Court. Even assuming this issue was properly before the Court, pursuant to 11 U.S.C. § 727(a)(8), the debtor is ineligible for a chapter 7 discharge.

On September 9, 2010, the debtor filed a prior chapter 7 petition, initiating case 1:10-bk-21299-VK (the "First Case"). On January 28, 2011, in the First Case, the Court entered an order granting the debtor a discharge [First Case, doc. 29]. On January 16, 2016, the debtor filed the pending petition, which was within 8 years of the commencement of the First Case. The fact that this case may have been converted from another chapter does not affect the petition date for purposes of the calculation. *In re Shockley*, 197 B.R. 677, 680 (Bankr. D. Mont. 1996). However, if the debtor were to file another chapter 7 petition, because it has been eight years since the commencement of the First Case, the debtor possibly could receive a chapter 7 discharge in that subsequent chapter 7 case.

Party Information

Debtor(s):

Paulette Vonetta Moses

Pro Se

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Chapter 7

Trustee(s):

Amy L Goldman (TR)

Represented By
Lovee D Sarenas
Annie Verdries

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1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#3.00 Disclosure statement hearing on debtor's second amended disclosure statement dated November 1, 2019

fr. 6/20/19(stip); 7/18/19; 10/17/19

Docket 190

Tentative Ruling:

The Court will continue this hearing to **March 19, 2020 at 1:00 p.m.**

On October 29, 2018, VitaVet Labs, Inc. ("VitaVet") filed a complaint against debtor asserting that the debt owed to it by the debtor is nondischargeable under 11 U.S.C. §§ 523(a)(2) and (a)(6) and objecting to the debtor's discharge under 11 U.S.C. § 727, initiating adversary proceeding 1:18-ap-01113-VK (the "Adversary Proceeding"). A pre-trial conference in the Adversary Proceeding is scheduled for March 4, 2020 [Adversary Proceeding, doc. 29].

In the debtor's second amended disclosure statement, the debtor represents that if any portion of VitaVet's claim is deemed nondischargeable, the debtor will seek to amend and/or modify his chapter 11 plan of reorganization [doc. 190, p. 14]. The debtor further states that if VitaVet is successful in objecting to the debtor's discharge, the debtor will likely withdraw his proposed chapter 11 plan because he will have no ability to reorganize. *Id.*

Accordingly, at this time, it is premature for the Court to approve the adequacy of the debtor's second amended disclosure statement and set a hearing on confirmation of the second amended plan. Depending on the outcome in the Adversary Proceeding, the proposed plan of reorganization may be withdrawn, amended or modified. The Court will continue this hearing to **March 19, 2020 at 1:00 p.m.**, to be held after the pre-trial conference in the Adversary Proceeding.

By March 5, 2020, the debtor must file and serve an updated chapter 11 status conference report **supported by evidence** in the form of declarations and supporting documents.

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CONT... Nasrollah Gashtili

Chapter 11

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

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1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#4.00 Status conference re: chapter 11 case

fr. 5/17/18; 6/7/18; 10/11/18; 10/18/18; 3/14/19; 5/16/19; 6/20/19;7/18/19;
10/17/19

Docket 1

Tentative Ruling:

The debtor has not timely filed his September 2019 and October 2019 monthly operating reports.

Party Information

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

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1:00 PM

1:18-11181 Rowena Benito Macedo

Chapter 11

#5.00 Debtor's motion for final decree and order closing case

fr. 11/7/19

Docket 105

Tentative Ruling:

The Court will continue this hearing to **2:00 p.m. on December 19, 2019**, to be heard with the debtor's motion requesting a discharge [doc. 118].

Appearances on December 5, 2019 are excused.

Party Information

Debtor(s):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

Movant(s):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

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1:18-11181 Rowena Benito Macedo

Chapter 11

#6.00 Post-confirmation status conference

fr. 6/21/18; 10/18/18; 11/1/18; 12/13/18; 2/7/19; 4/4/19;
10/3/19; 11/7/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:00 p.m. on December 19, 2019**, to be held with the debtor's motion requesting a discharge [doc. 118].

Appearances on December 5, 2019 are excused.

Party Information

Debtor(s):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

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1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#7.00 Confirmation hearing re: second amended chapter 11 plan

Docket 124

Tentative Ruling:

On November 25, 2019, the debtor filed a plan confirmation brief (the "Brief") [doc. 137] and attached ballots accepting or rejecting the debtor's proposed chapter 11 plan (the "Plan") [doc. 124]. It appears three creditors rejected the Plan: Diana's Mexican Food Products, Inc. ("Diana's"), AMEX and Payless Box. In light of these rejections, Class 4A has voted against the Plan. To avoid running afoul of 11 U.S.C. § 1129(b), the debtor states in the Brief that its members will contribute \$20,000 in new value, to be distributed pro rata among Class 4A unsecured creditors.

Although the debtor served the Brief on Diana's, the debtor did not serve the Brief on AMEX or Payless Box. Given that the debtor mentioned the new value contribution for the first time in the Brief, and that objections to confirmation had to be filed and served before the debtor proposed a new value contribution amount, the Court will require service of the Brief on AMEX and Payless Box, and notice of the deadline to object to the amount of the new value contribution on each of the three nonpriority unsecured creditors who rejected the Plan.

The Court will continue this hearing to **1:00 p.m. on January 23, 2020**. No later than **January 9, 2020**, the debtor must serve the Brief on AMEX and Payless Box and notice of the continued hearing on Diana's, AMEX and Payless Box.

In the notice of the continued hearing, the debtor must note that any objection to the proposed new value contribution must be filed and served no later than **January 16, 2020**. The debtor must file proof of service of the Brief and the notice of the continued hearing by **January 9, 2020**.

If the Court confirms the Plan at the continued hearing, pursuant to 11 U.S.C. § 1123(a)(6), in the confirmation order lodged by the debtor, the debtor must provide for the inclusion in the debtor's charter of a provision prohibiting the issuance of non-voting equity securities and, as to the several classes of securities possessing voting

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CONT... Mr. Tortilla, Inc.

Chapter 11

power, an appropriate distribution of such power among such classes.

Appearances on December 5, 2019 are excused.

Party Information

Debtor(s):

Mr. Tortilla, Inc.

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

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1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#8.00 Status conference re: chapter 11 case

fr. 10/11/18; 12/6/18; 2/21/19; 4/11/2019; 6/20/19; 8/8/19;
8/29/19; 10/10/19

Docket 1

Tentative Ruling:

See calendar no. 7.

Party Information

Debtor(s):

Mr. Tortilla, Inc.

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

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1:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#9.00 Second Amended Disclosure statement hearing re debtor's disclosure statement dated November 1 2019

fr. 6/20/19; 7/18/19; 10/17/19

Docket 196

Tentative Ruling:

Taking into account the belatedly filed objection to the proposed second amended disclosure statement [doc. 203] [FN1], it appears that the second amended disclosure statement [doc. 196] contains adequate information.

Proposed dates and deadlines regarding "Debtor's Disclosure Statement Dated November 1, 2019" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "Debtor's Disclosure Statement Dated November 1, 2019:"

Hearing on confirmation of the Plan: **February 20, 2020 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 13, 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 return completed ballots to the debtor: **January 10, 2020.**

Deadline for the debtor to file the debtor's brief and evidence, including declarations and the returned ballots, in support of confirmation: **January 17, 2020.** Among other things, the debtor's brief must address whether the requirements for confirmation set

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CONT... Integrated Dynamic Solutions, Inc.
forth in 11 U.S.C. § 1129 are satisfied.

Chapter 11

Deadline to file and serve on the debtor any objections to confirmation: **January 27, 2020.**

Deadline to file and serve a reply to any objections to confirmation: **February 6, 2020.**

FOOTNOTES

1. Because only VitaVet Labs, Inc. has filed objections to the debtor's proposed disclosure statements, and VitaVet Labs, Inc. appeared at the last hearing, the Court did not order the debtor to serve notice of the continued hearing on any creditors. At the hearing on the approval of the adequacy of the first amended disclosure statement, the Court ordered that any opposition by VitaVet Labs, Inc. must be filed by November 14, 2019 and any reply by the debtor must be filed by November 21, 2019. VitaVet Labs, Inc. filed its opposition on November 21, 2019.

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#10.00 Status conference re: chapter 11 case

fr. 10/11/18; 10/18/18; 3/14/19; 5/16/19; 6/20/19; 7/18/19;
10/17/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Dynamic Solutions, Inc.

Represented By
David A Tilem

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#11.00 Status conference re: chapter 11 case

fr. 4/4/19; 4/25/19; 8/15/19; 8/22/19; 8/29/19;
9/19/19; 10/17/19

Docket 1

Tentative Ruling:

The Court will set a hearing on the adequacy of the debtor's second amended disclosure statement [doc. 118] at **1:00 p.m. on February 6, 2020**. The debtor must file and serve notice of the hearing, and the deadline to file any objections, no later than December 26, 2019. The Court will continue this status conference to the same time and date.

Appearances on December 5, 2019 are excused.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik

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1:19-11696 Peter M. Seltzer

Chapter 11

#12.00 Status conference re: chapter 11 case

fr. 8/29/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **December 19, 2019 at 2:00 p.m.**

Appearances on December 5, 2019 are excused.

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

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1:00 PM

1:19-12265 David Dadon

Chapter 7

#13.00 Motion to dismiss case pursuant to 11 U.S.C. §§ 707(a) or 707(b)(3) with an one-year bar to refiling pursuant to 11 U.S.C. §§ 109(g) and 105(a)

Docket 13

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):

David Dadon

Pro Se

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:00 PM

1:19-12639 Tax Deed Enterprises, LLC

Chapter 11

#14.00 U.S. Trustee's Motion to Dismiss or
Convert Case Under 11 U.S.C. § 1112(b)

Docket 7

***** VACATED *** REASON: Continued by Stip to 12/12/19 1:00 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tax Deed Enterprises, LLC

Represented By
Jeffrey B Smith

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1:00 PM

1:19-12647 Amir & Leila, LLC

Chapter 11

#15.00 U.S. trustee motion to dismiss or convert case under 11 U.S.C. § 1112(b)

Docket 12

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1112(b)(1) and (b)(4)(C), (4)(F) and (4)(H), the Court will dismiss this case with a 180-day bar to the debtor's filing of another petition under any chapter of the Bankruptcy Code.

On November 4, 2019, the United States Trustee filed a motion to dismiss or convert this case to one under chapter 7 (the "Motion") [doc. 12]. In the Motion, the United States Trustee testifies that the debtor failed to comply with numerous United States Trustee Guidelines and/or Local Bankruptcy Rules. It does not appear that the debtor has cured these deficiencies. In addition, the debtor did not timely file a monthly operating report for October 2019. Accordingly, there is cause to dismiss or convert this case.

Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, filed on October 20, 2019, and the debtor's amended schedules, filed on November 21, 2019, the Court concludes that it is in the best interest of creditors and the estate to dismiss this case.

The U.S. 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

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CONT... Amir & Leila, LLC

Chapter 11

Debtor(s):

Amir & Leila, LLC

Represented By
Matthew Abbasi

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1:00 PM

1:19-12651 80 Flintlock Lane, LLC

Chapter 11

#16.00 U.S. Trustee's motion to dismiss or convert case under
11 U.S.C. § 1112(b)

Docket 10

***** VACATED *** REASON: Motion withdrawn 12/3/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

80 Flintlock Lane, LLC

Represented By
Matthew Abbasi

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2:00 PM

1:13-17502 Glenroy E Day, Jr.

Chapter 11

#17.00 Debtor's motion for discharge

Docket 297

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):

Glenroy E Day Jr.

Represented By
Thomas B Ure
David Samuel Shevitz

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2:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#18.00 Motion to approve stipulation for chapter 11 plan treatment

Docket 94

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):

Attilio E Armeni

Represented By
Anthony Obehi Egbase

Movant(s):

Wilmington Savings Fund Society,

Represented By
Kristin A Zilberstein

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2:00 PM

1:19-11696 Peter M. Seltzer

Chapter 11

#19.00 Debtor's motion for dismissal of chapter 11 bankruptcy

Docket 59

Tentative Ruling:

The Court will continue this hearing to **December 19, 2019 at 2:00 p.m.** to be held in connection with creditor Darren Kessler's motion to convert or appointment a chapter 11 trustee [doc. 78].

Appearances on December 5, 2019 are excused.

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

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2:00 PM

1:19-12082 Robert M. Gerstein

Chapter 7

#20.00 Creditor's motion for automatic dismissal of case under
11 U.S.C. sec 521(i)

Docket 78

Tentative Ruling:

The Court will continue this hearing to **2:00 p.m. on December 12, 2019.**

Appearances on December 5, 2019 are excused.

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Trustee(s):

Amy L Goldman (TR)

Represented By
Carmela Pagay

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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 -

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Hearing Room 301

10:30 AM

1:14-12143 Almayvonne Dixon

Chapter 13

#43.00 Trustee's motion to dismiss case for failure to submit all tax returns
fr. 09/10/19; 11/12/19;

Docket 51

***** VACATED *** REASON: Motion withdrawn 12/5/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Almayvonne Dixon

Represented By
Michael F Chekian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

1:15-10157 Roy Guzman and Barbara J Jankovich

Chapter 13

#44.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

fr. 10/8/19; 11/12/19;

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roy Guzman

Represented By
Julie J Villalobos

Joint Debtor(s):

Barbara J Jankovich

Represented By
Julie J Villalobos

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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10:30 AM

1:15-11547 Rodolfo Trujillo and Annette Marie Trujillo

Chapter 13

#45.00 Trustee's motion to dismiss case for failure to submit all tax returns

fr. 08/13/19;

Docket 42

***** VACATED *** REASON: Voluntary dismissal filed 09/12/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rodolfo Trujillo

Represented By
Daniel F Jimenez

Joint Debtor(s):

Annette Marie Trujillo

Represented By
Daniel F Jimenez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:15-11825 Donald M. Baarns and Lisa A. Baarns

Chapter 13

#46.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

fr. 10/8/19

Docket 44

***** VACATED *** REASON: Motion withdrawn 12/5/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald M. Baarns

Represented By
Ali R Nader

Joint Debtor(s):

Lisa A. Baarns

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 10, 2019

Hearing Room 301

10:30 AM

1:15-12076 David Bruce McBride and Brenda Sherman McBride

Chapter 13

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

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Bruce McBride

Represented By
Allan S Williams

Joint Debtor(s):

Brenda Sherman McBride

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, December 10, 2019

Hearing Room 301

10:30 AM

1:15-13062 Hector Flores and Martha Flores

Chapter 13

#48.00 Trustee's motion to dismiss case for failure to submit all tax refunds
fr. 10/8/19

Docket 82

***** VACATED *** REASON: Motion withdrawn 11/21/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Flores

Represented By
Donald E Iwuchuku

Joint Debtor(s):

Martha Flores

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 10, 2019

Hearing Room 301

10:30 AM

1:15-13159 John Charles Salvatore Vitale and Grettell Vanessa Vitale Chapter 13

#49.00 Trustee's motion to dismiss case for failure to submit all tax refunds
fr. 10/8/19

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Charles Salvatore Vitale

Represented By
Michael Poole

Joint Debtor(s):

Grettell Vanessa Vitale

Represented By
Michael Poole

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

10:30 AM

1:15-13422 Roy Glen Stout and Sherri Sue Kirby-Stout

Chapter 13

#50.00 Trustee's motion to dismiss case for failure to submit all tax refunds

fr. 10/8/19

Docket 80

Tentative Ruling:

- NONE LISTED -

Party Information

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, December 10, 2019

Hearing Room 301

10:30 AM

1:15-13479 Brian Jeffrey Bolokofsky and Sara Joanne Bolokofsky

Chapter 13

#51.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

fr. 10/8/19; 11/12/19;

Docket 65

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Jeffrey Bolokofsky

Represented By
Allan S Williams

Joint Debtor(s):

Sara Joanne Bolokofsky

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, December 10, 2019

Hearing Room 301

10:30 AM

1:16-10126 Angela Cordero Britton

Chapter 13

#52.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

fr. 11/12/19;

Docket 73

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**

Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:16-10314 Gil Loera

Chapter 13

#53.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

fr. 10/8/19; 11/12/19;

Docket 30

***** VACATED *** REASON: Motion withdrawn 12/5/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gil Loera

Represented By
Daniel King

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

10:30 AM

1:16-10473 Maya Estuani

Chapter 13

#54.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 44

***** VACATED *** REASON: Motion withdrawn 12/5/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maya Estuani

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 10, 2019

Hearing Room 301

10:30 AM

1:16-10587 Stepan Zamkochyan and Ruzanna Khachatryan

Chapter 13

#55.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 78

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stepan Zamkochyan

Represented By
Aris Artounians

Joint Debtor(s):

Ruzanna Khachatryan

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, December 10, 2019

Hearing Room 301

10:30 AM

1:16-10774 Michel A. Contreras, IV and Carmen Contreras

Chapter 13

#56.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 101

Tentative Ruling:

- NONE LISTED -

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

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

10:30 AM

1:16-10795 Luis Lugo Duenez and Maria Dolores Duenez

Chapter 13

#57.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 81

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luis Lugo Duenez

Represented By
Jaime A Cuevas Jr.

Joint Debtor(s):

Maria Dolores Duenez

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**

Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:16-10925 Josue Soncuya Villanueva

Chapter 13

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

Docket 101

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Josue Soncuya Villanueva

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 10, 2019

Hearing Room 301

10:30 AM

1:16-11663 Robert Lazar Levitan and Catherine Palmerino Levitan

Chapter 13

#59.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 64

***** VACATED *** REASON: Motion withdrawn 11/21/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Lazar Levitan

Represented By
Raj T Wadhvani
Gregory M Shanfeld

Joint Debtor(s):

Catherine Palmerino Levitan

Represented By
Raj T Wadhvani
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, December 10, 2019

Hearing Room 301

10:30 AM

1:16-13639 Jesus Jose Esquivel

Chapter 13

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

Docket 53

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Jose Esquivel

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 10, 2019

Hearing Room 301

10:30 AM

1:17-10025 Amelia Quezada Velasquez

Chapter 13

#61.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 34

***** VACATED *** REASON: Motion withdrawn 11/21/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amelia Quezada Velasquez

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 10, 2019

Hearing Room 301

10:30 AM

1:17-10244 **Julio A Estrada and Marcia D Cruz Estrada**

Chapter 13

#62.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 41

*** VACATED *** REASON: Voluntary dismissal of motion filed 11/14/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julio A Estrada

Represented By
Raymond Perez

Joint Debtor(s):

Marcia D Cruz Estrada

Represented By
Raymond Perez

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

10:30 AM

1:17-10419 Elsa Amparo Muralles

Chapter 13

#63.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 35

***** VACATED *** REASON: Motion of voluntary dismissal filed 11/6/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elsa Amparo Muralles

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 10, 2019

Hearing Room 301

10:30 AM

1:17-10463 Shawn Adam Johnson and Taniesah Evans

Chapter 13

#64.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 53

Tentative Ruling:

- NONE LISTED -

Party Information

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**

Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:17-10475 Princess Fletcher

Chapter 13

#65.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 88

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

#66.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 100

***** VACATED *** REASON: Motion withdrawn 11/21/19 - jc**

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:17-10747 Alvin Isidro

Chapter 13

#67.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 59

***** VACATED *** REASON: Voluntary dismissal of motion filed 10/30/19**

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**

Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:17-10821 Maria Guadalupe Serrano

Chapter 13

#68.00 Trustee's motion to dismiss Case for Failure to make plan payments

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Guadalupe Serrano

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-11041 Jasmine Bone

Chapter 13

#69.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jasmine Bone

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 10, 2019

Hearing Room 301

10:30 AM

1:17-11071 Jose Uribe

Chapter 13

#70.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Uribe

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 10, 2019

Hearing Room 301

10:30 AM

1:17-11135 Jose Orcia Ramirez

Chapter 13

#71.00 Trustee's motion to dismiss chapter 13 case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax returns

fr. 11/12/19;

Docket 40

Tentative Ruling:

- NONE LISTED -

Party Information

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-11368 Malihe Farahnak

Chapter 13

#72.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 36

***** VACATED *** REASON: Motion withdrawn 11/21/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Malihe Farahnak

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 10, 2019

Hearing Room 301

10:30 AM

1:17-11488 Dana Anthony Bambo and Carla Lombardo Bambo

Chapter 13

#73.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dana Anthony Bambo

Represented By
William G Cort

Joint Debtor(s):

Carla Lombardo Bambo

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-11521 Solyman Davidesfahani and Sharzad Davidesfahani

Chapter 13

#74.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 43

***** VACATED *** REASON: Motion withdrawn 11/21/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Solyman Davidesfahani

Represented By
Ali R Nader

Joint Debtor(s):

Sharzad Davidesfahani

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 10, 2019

Hearing Room 301

10:30 AM

1:17-11962 Ruth Ann Brown

Chapter 13

#75.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 30

***** VACATED *** REASON: Motion withdrawn 11/21/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ruth Ann Brown

Represented By
Michael E Clark

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

10:30 AM

1:17-12163 Cynthia Ann Donahue

Chapter 13

#76.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 46

***** VACATED *** REASON: Withdrawal of motion filed 12/5/19.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cynthia Ann Donahue

Represented By
Russ W Ercolani

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

10:30 AM

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

Chapter 13

#77.00 Trustee's motion to dismiss case for
failure to submit all tax refunds

Docket 69

*** VACATED *** REASON: Motion withdrawn 11/12/19 - jc

Tentative Ruling:

- NONE LISTED -

Party Information

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#78.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 38

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Hernandez

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 10, 2019

Hearing Room 301

10:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

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

Docket 40

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Hernandez

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 10, 2019

Hearing Room 301

10:30 AM

1:17-12779 Henry Chukwu Okonkwo

Chapter 13

#79.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Henry Chukwu Okonkwo

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 10, 2019

Hearing Room 301

10:30 AM

1:17-12779 Henry Chukwu Okonkwo

Chapter 13

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

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Henry Chukwu Okonkwo

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 10, 2019

Hearing Room 301

10:30 AM

1:17-12788 Gerardo Paz and Araceli Diane Paz

Chapter 13

#81.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 44

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**

Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:17-13028 Hector Garcia and Edelmira Avila Garcia

Chapter 13

#82.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 57

*** VACATED *** REASON: Voluntary dismissal of motion filed 11/6/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Garcia

Represented By
LeRoy Roberson

Joint Debtor(s):

Edelmira Avila Garcia

Represented By
LeRoy Roberson

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

10:30 AM

1:17-13039 Benjawan Rachapaetayakom

Chapter 13

#83.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 118

Tentative Ruling:

- NONE LISTED -

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

#84.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 25

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kathleen Moore

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-13138 John Orlanes Case and Lourdes Halili Case

Chapter 13

#85.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 51

Tentative Ruling:

- NONE LISTED -

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-13189 Ulysses Juarez

Chapter 13

#86.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

fr. 11/12/19;

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ulysses Juarez

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-13190 Seferino Carlin

Chapter 13

#87.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 31

***** VACATED *** REASON: Motion withdrawn 11/21/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Seferino Carlin

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-13192 Stephanie Marie Wilson

Chapter 13

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

fr. 09/10/19; 11/12/19;

Docket 52

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephanie Marie Wilson

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-13192 Stephanie Marie Wilson

Chapter 13

#89.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 55

***** VACATED *** REASON: Withdrawal of motion filed 11/14/19.
[Dkt.59]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephanie Marie Wilson

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, December 10, 2019

Hearing Room 301

10:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#90.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 139

***** VACATED *** REASON: Motion withdrawn 11/21/19 - jc**

Tentative Ruling:

- NONE LISTED -

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
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Courtroom 301 Calendar**

Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:18-10033 Mildred Annett Barajas

Chapter 13

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

Docket 52

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mildred Annett Barajas

Represented By
Steven A Wolvek

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

10:30 AM

1:18-10122 Orlando Velazco

Chapter 13

#92.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 61

*** VACATED *** REASON: Voluntary dismissal of motion filed 11/6/19

Tentative Ruling:

- NONE LISTED -

Party Information

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, December 10, 2019

Hearing Room 301

10:30 AM

1:18-10170 Anthony ArieH Surkin and Lili Merhavi Surkin

Chapter 13

#93.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 32

*** VACATED *** REASON: Voluntary dismissal of motion filed 11/6/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anthony ArieH Surkin

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Lili Merhavi Surkin

Represented By
Jeffrey J Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:18-10288 Adaure Chinyere Egu

Chapter 13

#94.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 64

***** VACATED *** REASON: Voluntary dismissal of motion filed 12/05/19**

Tentative Ruling:

- NONE LISTED -

Party Information

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
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Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:18-10314 Mitchell S. Cohen

Chapter 13

#95.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Case dismissed 11/12/19

Docket 127

*** VACATED *** REASON: Case dismissed on 11/12/19 [doc. 137]. The motion is moot.

Tentative Ruling:

- NONE LISTED -

Party Information

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
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Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:18-10575 Aviva Rachel Harris

Chapter 13

#96.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 59

Tentative Ruling:

- NONE LISTED -

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
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Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:18-10798 Narkell Hobbs-James

Chapter 13

#97.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narkell Hobbs-James

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:18-11941 Nathan Cohen

Chapter 13

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

Docket 81

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nathan Cohen

Represented By
Sanaz S Bereliani

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:18-12090 Michael Anthony Sarnataro and Cindi Joanna Romualdo-

Chapter 13

#99.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Anthony Sarnataro

Represented By
David H Chung

Joint Debtor(s):

Cindi Joanna Romualdo- Sarnataro

Represented By
David H Chung

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:18-12196 Margarita Fernandez Farrell

Chapter 13

#100.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 32

***** VACATED *** REASON: Motion of voluntary dismissal filed 11/6/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Margarita Fernandez Farrell

Represented By
Barry E Borowitz

Trustee(s):

Elizabeth (SV) 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 10, 2019

Hearing Room 301

10:30 AM

1:18-12232 Faun Thai

Chapter 13

#101.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 41

***** VACATED *** REASON: Withdrawal of motion filed 12/5/19.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Faun Thai

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:18-12645 David D Miller

Chapter 13

#102.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 33

***** VACATED *** REASON: Motion withdrawn 12/5/19 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David D Miller

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
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Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

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

Docket 71

Tentative Ruling:

- NONE LISTED -

Party Information

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
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Tuesday, December 10, 2019

Hearing Room 301

10:30 AM

1:19-10022 Gus Albert Bolona and Deirdre Marie Bolona

Chapter 13

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

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gus Albert Bolona

Represented By
Richard Mark Garber

Joint Debtor(s):

Deirdre Marie Bolona

Represented By
Richard Mark Garber

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

11:00 AM

1:15-13422 Roy Glen Stout and Sherri Sue Kirby-Stout

Chapter 13

#105.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w)
to modify plan or suspend plan payments

Docket 83

Tentative Ruling:

On October 7, 2019, the debtors filed a *Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments* (the "Motion") [doc. 83]. On October 15, 2019, the chapter 13 trustee (the "Trustee") filed *Trustee's Comments or Objection to the Motion* (the "Objection") [doc. 85].

In the Objection, the Trustee states that she disapproves of the Court granting the Motion because she cannot determine that the debtors are making their best effort. The Trustee represents that since the filing of the case, the debtors have moved to Texas, and as such, no longer pay state taxes. In addition, the Trustee represents that the debtors' income has increased, but they had not filed amended schedules I and J or provided evidence of their income to the Trustee.

On December 3, 2019, the debtors filed amended schedules I and J [doc. 88]. Does the Trustee still oppose the Motion?

Party Information

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
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Tuesday, December 10, 2019

Hearing Room 301

11:00 AM

1:15-13479 Brian Jeffrey Bolokofsky and Sara Joanne Bolokofsky

Chapter 13

#106.00 Debtors' motion under LBR 3015-(n) and (w) to modify plan or suspend plan payments

fr. 11/12/19

Docket 67

Tentative Ruling:

No opposition to the Second Motion was timely filed. However, as of December 4, 2019, the debtors have not filed a declaration that no party requested a hearing and they have not lodged an order. Assuming the chapter 13 trustee has no further objections to the First Motion and no objections to the Second Motion, the Court will grant the First Motion.

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

Ruling from November 12, 2019

The Court will continue this hearing to **December 10, 2019 at 11:00 a.m.**

On October 19, 2015, Brian Jeffrey Bolokofsky and Sara Joanne Bolokofsky (the "Debtors") filed the above-captioned chapter 13 case. On March 18, 2016, the Court entered an order confirming the Debtors' chapter 13 plan (the "Plan") [doc. 37].

On September 18, 2019, the Debtors filed a *Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments* (the "First Motion") [doc. 67]. On October 8, 2019, the chapter 13 trustee filed *Trustee's Comments or Objection* to the Motion (the "Comment") [doc. 70]. In the Comment, the chapter 13 trustee indicates approval of the First Motion upon certain conditions, including that: (1) the Debtors provide a copy of their 2018 tax return no later than October 15, 2019 and contribute any 2018 tax refund to their plan; and (2) the Debtors file an updated budget to reflect their current income and expenses. On October 21, 2019, the Court entered an order requiring the Debtors to file evidence demonstrating that they have complied with the conditions in the Comment by November 5, 2019.

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CONT... Brian Jeffrey Bolokofsky and Sara Joanne Bolokofsky

Chapter 13

On November 4, 2019, the Debtors filed a second *Motion Under LBR 3015-1(n) and (w) to Modify Plan or Suspend Plan Payments* (the "Second Motion") [doc. 75]. In the Second Motion, the Debtors propose modification of the Plan to suspend contributing their 2018 tax refund to the Plan. Any opposition to the Second Motion will be due on November 25, 2019.

On November 5, 2019, the Debtors filed evidence demonstrating that on October 17, 2019, they submitted a copy of their 2018 tax return to the chapter 13 trustee [doc. 78]. On November 5, 2019, the Debtors also filed amended schedules I and J [doc. 77].

Given that the Debtors have not contributed their 2018 tax refund to the Plan, one of the conditions in the Comment, the Court will continue this hearing to December 10, 2019, in order to assess the outcome of the Second Motion.

Appearances on November 12, 2019 are excused.

Party Information

Debtor(s):

Brian Jeffrey Bolokofsky

Represented By
Allan S Williams

Joint Debtor(s):

Sara Joanne Bolokofsky

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
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Hearing Room 301

11:00 AM

1:18-11680 Alba Interiano

Chapter 13

#107.00 Ex parte motion for order directing turnover of property of the estate pursuant to 11 U.S.C. sec 542(a)

fr. 10/8/19

Docket 88

Tentative Ruling:

The Court will award damages to the debtor under 11 U.S.C. § 362(k).

I. BACKGROUND

Prepetition, on September 17, 2013, the Superior Court of California entered a default judgment against Alba Interiano ("Debtor") and in favor of TX Collect, Inc. ("TX Collect") in the amount of \$20,211.71 (the "Judgment"). Declaration of Alba Interiano ("Interiano Declaration") [doc. 88], ¶ 2. On May 18, 2017, TX Collect assigned to Persolve Legal Group, LLP ("Persolve") all title, right and interest in the Judgment. Interiano Declaration, ¶ 3.

On March 29, 2018, Persolve submitted a writ of execution (the "Writ") to the Los Angeles County Sheriff's Department (the "Sheriff"). Interiano Declaration, ¶ 5. On April 24, 2018, the Sheriff served the Writ on Bank of America, N.A. ("Bank of America"). Interiano Declaration, ¶ 6.

On July 3, 2018, Debtor filed a chapter 13 petition. The petition was served on TX Collect at 9301 Corbin Avenue, Ste. 1600, Northridge, CA 91324 (the "Corbin Address"). On August 23, 2018, Persolve filed proof of claim no. 3-1 and attached the Writ as support for its claim. In the proof of claim, Persolve indicated that all notices should be sent to the Corbin Address. The proof of claim was signed by Michael H. Raichelson. On September 27, 2018, Bank of America released to the Sheriff \$58,245.25 from Debtor's account (the "Funds"). Interiano Declaration, ¶ 8.

On August 12, 2019, Debtor filed amended schedules A/B and C [doc. 83]. In the amended schedule A/B, Debtor listed an interest in the Funds held by the Sheriff. In

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her amended schedule C, Debtor claimed an exemption in \$10,000 of the Funds. Debtor served her amended schedules on Mr. Raichelson, on behalf of Persolve, at Mr. Raichelson's email address. Debtor also served Persolve at the Corbin Address.

On August 22, 2019, Debtor filed a motion for turnover of the Funds (the "Motion") [doc. 88]. Once again, Debtor served the Motion on Mr. Raichelson, on behalf of Persolve, at Mr. Raichelson's email address, and on Persolve at the Corbin Address. On September 16, 2019, Persolve opposed the Motion (the "Opposition") [doc. 96], arguing that the estate does not have an interest in the Funds. On September 19, 2019, Persolve filed an amended claim, again attaching the Writ as evidence. On September 27, 2019, Debtor filed a reply to the Opposition [doc. 100], asserting that Persolve is in violation of the automatic stay for refusing to order the release of the Funds. Again, Debtor served the reply on Mr. Raichelson, on behalf of Persolve, at Mr. Raichelson's email address. Debtor also served Persolve at the Corbin Address.

On October 8, 2019, the Court held a hearing on the Motion, ruling that the Funds are property of the estate. The Court continued the hearing to assess Debtor's request for damages under 11 U.S.C. § 362(k). On November 26, 2019, Persolve filed a supplemental opposition to the Motion (the "Supplemental Opposition") [doc. 110]. In the Supplemental Opposition, Persolve contends that the Motion is moot because Persolve notified the Sheriff to turn over the Funds to Debtor. Persolve does not specify when it returned the Funds to Debtor, noting only that it transferred the Funds in October 2019. Declaration of Michael H. Raichelson, ¶ 6. Persolve also contends that there was no willful violation of the automatic stay because the Sheriff did not notify Persolve that it was in possession of Debtor's funds. Finally, Persolve contends that its failure to act affirmatively to release the Funds did not qualify as a violation of the automatic stay.

On December 3, 2019, Debtor filed a reply to the Supplemental Opposition (the "Supplemental Reply") [doc. 112]. In the Declaration of Shana Y. Stark (the "Stark Declaration"), attached to the Supplemental Reply, Ms. Stark states that, from August 9, 2019 through August 13, 2019, the parties attempted to resolve this issue prior to Debtor filing the Motion. Stark Declaration, ¶ 16. Emails attached to the Stark Declaration demonstrate that Debtor demanded a release of the Funds starting August 7, 2019, and Persolve responded by asserting it did not have an obligation to release the Funds. Stark Declaration, ¶ 16, Exhibit C.

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Debtor also attaches an itemized statement of the alleged attorneys' fees and costs incurred prosecuting the Motion. Supplemental Reply, Exhibit D. However, Debtor has not authenticated this exhibit.

II. ANALYSIS

A. Mootness

As a preliminary matter, the Motion is not moot. The Court continued the hearing on the Motion to assess Debtor's damages under 11 U.S.C. § 362(k). Those damages, including Debtor's entitlement to attorneys' fees and costs, remain at issue whether or not Persolve has returned the Funds to Debtor.

B. Refusal to Release Garnishment as Violation of the Automatic Stay

In its prior ruling, the Court held that the Funds are property of the estate. As such, the Court will not revisit that issue and focus instead on whether Persolve's failure to order the release of the Funds promptly constitutes a 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—
...
- (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....

An affirmative duty is imposed on nondebtor 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 (9th Cir. 2003). "[A] garnishing creditor has an affirmative duty to stop garnishment proceedings when notified of the automatic stay." *In re Roberts*, 175

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B.R. 339, 343 (B.A.P. 9th Cir. 1994); *see also In re Del Mission Ltd.*, 98 F.3d 1147, 1151 (9th Cir. 1996) ("[T]he knowing retention of estate property violates the automatic stay of § 362(a)(3).").

Persolve cites a single case in support of its theory that Persolve's failure to direct the release of the Funds was not a violation of the automatic stay. *See In re Miller*, 2011 WL 6217342 (Bankr. D. Colo. Dec. 14, 2011). However, as noted by a court within this circuit—

In re Miller is similarly unpersuasive. Although that case adopts the position that a creditor's refusal to release pre-petition seized funds does not violate the automatic stay, it relies on Colorado law and out-of-circuit precedent and is therefore not binding on this Court.

In re Bayley, 2015 WL 224720, at *10 (C.D. Cal. Jan. 14, 2015), *aff'd*, 678 F. App'x 593 (9th Cir. 2017). In fact, *Bayley* provides an in-depth analysis of the applicable law within the Ninth Circuit. The facts in *Bayley* are strikingly analogous to the facts here. There, prepetition, a creditor obtained a judgment against the debtor followed by a writ of execution. *Bayley*, 2015 WL 224720 at *1. Thereafter, the Sheriff levied \$4,000 from the debtor's account. *Id.* Subsequently, the debtor filed a chapter 13 petition. *Id.*

Upon filing her petition, the debtor notified both the Sheriff and the creditor about the filing of the petition. *Id.* The debtor then sought the release of her funds from the Sheriff. *Id.*, at *2. The creditor refused to effectuate a release of the funds, compelling the debtor to file a motion for sanctions for violation of the automatic stay. *Id.*

On these facts, the bankruptcy court held that the creditor violated the automatic stay and, therefore, was liable for the debtor's attorneys' fees and costs incurred obtaining a release of the funds. *Id.* In affirming the bankruptcy court's decision, the district court held that the refusal to release the funds was a violation of both 11 U.S.C. § 362(a)(2) and (a)(3). *Id.*, at *5.

In reaching this conclusion, the district court primarily relied on three decisions. *See In re Knaus*, 889 F.2d 773 (8th Cir. 1989) (holding that, although the creditor filed the writ of execution prepetition, the creditor had an affirmative duty to order the release

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of funds in the sheriff's possession upon the debtor's filing of a bankruptcy petition); *In re Abrams*, 127 B.R. 239, 242 (B.A.P. 9th Cir. 1991) (adopting the reasoning of *Knaus* in a case where the creditor refused to return repossessed property of the estate); and *Del Mission*, 98 F.3d at 1151. After assessing these authorities, the *Bayley* court stated—

Read together, these three decisions compel the conclusion that [the creditor] violated § 362(a)(3) by failing to direct the Sheriff to release the \$4,000.... *Knaus* stands for the principles that a creditor has an affirmative duty to return estate property, that this duty arises once the debtor files for bankruptcy, and that the failure to fulfill this duty constitutes an impermissible exercise of control in violation of the automatic stay under § 362(a)(3). That a creditor does not physically possess the property does not necessarily dispel this duty. Here, [the creditor] had the authority to control the levied funds despite its lack of possession.... The factual difference between a creditor's knowing possession and retention of estate property in cases like *In re Abrams* and *In re Del Mission* and [the creditor's] knowing refusal to direct the Sheriff to release the levied funds in this case is slight. In both circumstances, it is the creditor's *exercise of control*, not mere possession, that constitutes a violation of the automatic stay. By failing to direct the Sheriff to release the funds, Appellant exercised control over property of the bankruptcy estate. Accordingly, Appellant violated § 362(a)(3).

Bayley, 2015 WL 224720 at *6 (emphasis in *Bayley*). Both in-circuit and out-of-circuit cases have reached a similar conclusion. See, e.g. *In re Hernandez*, 468 B.R. 396 (Bankr. S.D. Cal. 2012); *In re Roche*, 361 B.R. 615 (Bankr. N.D. Ga. 2005); *In re Briskey*, 258 B.R. 473 (Bankr. M.D. Ala. 2001); and *In re Carlsen*, 63 B.R. 706 (Bankr. C.D. Cal. 1986).

In light of this ample authority, Persolve's failure to order the release of the Funds from the Sheriff's possession was a violation of the automatic stay.

C. Whether the Violation was Willful and Resulting Damages

Pursuant to 11 U.S.C. § 362(k)(1), "an individual injured by any willful violation of a

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stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 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 (B.A.P. 9th Cir. 1998).

"[T]he willfulness test for automatic stay violations merely requires that: (1) the creditor know of the automatic stay; and (2) the actions that violate the stay be intentional." *Morris v. Peralta*, 317 B.R. 381, 389 (B.A.P. 9th Cir. 2004) (citing *Eskanos v. Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002)). "Once a creditor has knowledge of the bankruptcy, it is deemed to have knowledge of the automatic stay." *In re Breul*, 533 B.R. 782, 787-88 (Bankr. C.D. Cal. 2015) (citing *In re Ramirez*, 183 B.R. 583, 589 (B.A.P. 9th Cir. 1995)).

Here, at least by the time Persolve filed its first proof of claim, on August 23, 2018, Persolve had knowledge of Debtor's bankruptcy case. In addition, Persolve knew of the existence of the Writ, having attached the Writ as support for its claim. On its face, the Writ directs the Sheriff "to enforce the judgment described below with daily interest and your costs as provided by law." Writ, p. 1. Consequently, Persolve was on notice about the fact that Debtor had filed for bankruptcy protection and that the Writ would result in garnishment of Debtor's wages. At that point, Persolve had an affirmative duty to halt any efforts to enforce the Writ. Persolve did not.

Persolve contends it should be exonerated from the consequences of § 362(k) because it did not know that the Sheriff garnished and held the Funds. However, Persolve knew from the inception of this case that such garnishment was forthcoming because of Persolve's filing of the Writ. On that knowledge, Persolve had an affirmative duty to stop any such garnishment. That Persolve did not know exactly *when* the Sheriff would garnish the wages is not pertinent to Persolve's efforts to prevent the garnishment.

In any event, even if Persolve's ignorance about the Sheriff's garnishment would serve to absolve it of sanctions, which it does not, Debtor's evidence demonstrates that Persolve knew the Sheriff was holding the Funds prior to Debtor's filing of the Motion. As such, Persolve's refusal to order the release of the Funds after August 7, 2019, when Debtor's counsel requested release of the Funds, was a willful violation of the automatic stay.

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CONT... Alba Interiano

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In light of the above, Debtor is entitled to reimbursement of attorneys' fees and costs incurred obtaining the release of the Funds and prosecuting her request of damages. Because Debtor did not attach the itemized statement until filing the Supplemental Reply, Persolve has not had an opportunity to respond to the reasonableness of the requested fees and costs. In addition, Debtor did not authenticate the itemized fee and cost statement. Consequently, the Court will continue this hearing for Debtor to provide evidence of her damages, such as by authenticating Exhibit D to the Supplemental Reply in a declaration, and for Persolve to have an opportunity to respond **only** to the reasonableness of the request for damages.

III. CONCLUSION

The Court holds that Persolve's failure to order the release of the Funds in response to Debtor's post-petition demand was a willful violation of the automatic stay.

The Court will continue this hearing to **11:00 a.m. on February 11, 2020**. No later than **January 14, 2020**, Debtor must file and serve a declaration authenticating its request for attorneys' fees and costs. No later than **January 28, 2020**, Persolve must file and serve any objection on the basis of the reasonableness of the request for damages. The Court will **not** entertain any additional briefing on any issue other than the *reasonableness* of Debtor's incurred attorneys' fees and costs. Should the parties file a stipulation and lodge an order agreeing to an amount of damages, the Court will take the continued hearing off calendar.

Party Information

Debtor(s):

Alba Interiano

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, December 10, 2019

Hearing Room 301

11:00 AM

1:18-11680 Alba Interiano

Chapter 13

#108.00 Motion re: objection to claim number 3 by claimant Persolve Legal Group

Docket 108

Tentative Ruling:

Overrule.

I. BACKGROUND

On July 3, 2018, Alba Interiano ("Debtor") filed a chapter 13 petition. On September 19, 2019, Persolve Legal Group ("Persolve") filed an amended proof of claim no. 3-1 in the amount of \$59,474.22 based on a credit card debt. In the proof of claim, Persolve indicated that the claim is secured by an execution lien pursuant to California Code of Civil Procedure § 700.140(b). Persolve also noted that it levied Debtor's bank account on April 24, 2018.

To the amended proof of claim, Persolve attached a Writ of Execution, dated March 13, 2018 (the "Writ of Execution"). The Writ of Execution is based on a judgment entered on September 18, 2003 and renewed on September 17, 2013.

On November 6, 2019, Debtor filed an objection to Persolve's claim (the "Objection") [doc. 108]. The Objection is based on two arguments: (A) first, Debtor asserts that Persolve has not provided sufficient documentation of its claim against Debtor; and (B) second, Debtor states that she believes she may have been a victim of identity theft and never incurred the debt Persolve claims against the estate.

On November 26, 2019, Persolve filed an opposition to the Objection (the "Opposition") [doc. 111]. In the Opposition, Persolve contends that Debtor has ignored the notices of the judgment and the renewal of the judgment for almost 15 years; Persolve argues that Debtor is now barred from setting aside the judgment under California law. Persolve also attaches the judgment against debtor, dated September 18, 2003 (the "Judgment"), and the renewed judgment, dated September 17, 2013 (the "Renewed Judgment"). Declaration of Michael H. Raichelson, ¶¶ 5, 9, Exhibits D, H. Debtor has not timely filed a response to the Opposition.

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CONT... Alba Interiano

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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) ("Objections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).").

Here, Debtor raises two issues. The first is that Persolve did not provide sufficient documentation to support its claim. However, in order to have a claim disallowed, Debtor needs to raise a sufficient legal or factual basis for disallowance. As noted above, a claim cannot be disallowed simply because the proof of claim lacks *prima facie* validity. *See Campbell*, 336 B.R. at 436. In any event, Persolve *did* attach documentation to its proof of claim, namely, the Writ of Execution.

Debtor also states that she believes she was a victim of identity theft because she did not apply for the subject credit card. Whether or not this is true, Persolve has now supplemented the record with the Judgment and the Renewed Judgment. The Judgment, the Renewed Judgment and the Writ of Execution name Debtor as the

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CONT... Alba Interiano

Chapter 13

individual liable for the debt at issue. Pursuant to 28 U.S.C. § 1738, federal courts must give full faith and credit to judgments of state courts. *See also Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 485, 102 S.Ct. 1883, 1899, 72 L.Ed.2d 262 (1982) ("In our system of jurisprudence the usual rule is that merits of a legal claim once decided in a court of competent jurisdiction are not subject to redetermination in another forum.").

Given that the state court entered the Judgment and the Renewed Judgment, this Court does not have the power to nullify or amend the judgments. The Court makes no determination regarding the rights of the parties under state law; the parties may assert such rights before the state court. At this time, Persolve has a judgment against Debtor. As such, Debtor has not met her burden of negating Persolve's claim against the estate.

III. CONCLUSION

The Court will overrule the Objection.

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

Party Information

Debtor(s):

Alba Interiano

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
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Hearing Room 301

11:00 AM

1:19-11998 Joseph Lisi and Cynthia Lisi

Chapter 13

#109.00 Motion re: objection to claim number 4 by claimant Heriberto Perez

Docket 25

Tentative Ruling:

I. BACKGROUND

On March 20, 2018, Heriberto Perez filed a complaint in state court (the "State Court Complaint") against Joseph Lisi and Cynthia Lisi ("Debtors"), initiating state court case BC698597 (the "State Court Action"). Objection to Claim [doc. 28], Exhibit 1. Through the State Court Complaint, Mr. Perez asserts that Debtors are liable for the wrongful death of a minor based on a theory of inadequate supervision. *Id.*

On August 9, 2019, Debtors filed a chapter 13 petition. On October 8, 2019, Mr. Perez filed proof of claim no. 4-1, asserting an unsecured claim in the amount of \$2,010,000 against the estate. The proof of claim is based on Mr. Perez's claim of wrongful death against Debtors.

On October 18, 2019, Debtors filed the Objection [doc. 25]. In the Objection, Debtors request that the Court disallow Mr. Perez's claim on the basis that Debtors did not have a legal duty to supervise. On November 25, 2019, Mr. Perez filed an opposition to the Objection (the "Opposition") [doc. 28], asserting that Debtors did have a duty of supervision and requesting that the Court overrule the Objection or set a hearing on the issue of damages. On December 3, 2019, Debtors filed a reply to the Opposition (the "Reply") [doc. 30], reiterating that Mr. Perez has not established a claim against the estate.

II. ANALYSIS

28 U.S.C. § 157 delineates the bankruptcy court's jurisdiction as follows—

(b)(1) Bankruptcy judges may hear and determine all core proceedings arising under title 11, or arising in a case under title 11, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

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CONT... **Joseph Lisi and Cynthia Lisi**

Chapter 13

(b)(2) core proceedings include, but are not limited to--

(B) allowance and disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12 or 13 of title 11 *but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11. . . .*

(emphasis added). Under 28 U.S.C. § 157(b)(5)—

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

In light of these statutes, this Court does not have the authority to liquidate Mr. Perez's wrongful death claim. To liquidate the claim, the parties may file a motion to withdraw the reference to pursue this matter before the district court, or the parties may request relief from the automatic stay to proceed with the State Court Action.

III. CONCLUSION

In accordance with 28 U.S.C. § 157(b)(2)(B) and (b)(5), this Court will not liquidate the wrongful death claim. The parties should be prepared to discuss whether they prefer pursuing this matter in district court or state court, as well as dates and deadlines by which they will either request withdrawal of the reference or seek relief from the automatic stay.

Party Information

Debtor(s):

Joseph Lisi

Represented By
David S Hagen

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CONT... Joseph Lisi and Cynthia Lisi

Chapter 13

Joint Debtor(s):

Cynthia Lisi

Represented By
David S Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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11:00 AM

1:19-12568 John Jones

Chapter 13

#110.00 Motion re: objection to claim number 1 by Cavalry SPV I, LLC

Case dismissed 10/28/19

Docket 12

***** VACATED *** REASON: Case dismissed on 10/28/19 [doc. 14]. The motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Jones

Represented By
Christopher J Langley

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

11:00 AM

1:16-10314 Gil Loera

Chapter 13

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

Docket 32

Tentative Ruling:

On August 28, 2019, the chapter 13 trustee (the "Trustee") filed a motion to dismiss Gil Loera's ("Debtor") case for failure to submit all tax returns ("Motion to Dismiss") [doc. 30]. On November 12, 2019, the Court held a hearing on the Motion to Dismiss. Debtor's counsel did not appear.

On November 12, 2019, 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. 32], 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 November 26, 2019.

On November 25, 2019, Debtor's counsel timely filed his response ("Response") [doc. 36]. In his Response, Debtor's counsel states that missing the hearing was not intentional and was a complete oversight on his part. ¶ 2. Debtor's counsel also states that he has attempted to contact Debtor regarding the Motion to Dismiss, but Debtor has not responded. ¶ 3.

If Debtor's counsel or an appearance attorney appears at the continued Motion to Dismiss hearing on December 10, 2019 at 10:30 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 consider imposing sanctions on Debtor's counsel.

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CONT... Gil Loera

Chapter 13

Party Information

Debtor(s):

Gil Loera

Represented By
Daniel King

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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11:00 AM

1:17-11135 Jose Orcia Ramirez

Chapter 13

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

Docket 43

Tentative Ruling:

On September 20, 2019, the chapter 13 trustee (the "Trustee") filed a motion to dismiss Jose Orcia Ramirez's ("Debtor") case for failure to submit all tax returns ("Motion to Dismiss") [doc. 40]. On November 12, 2019, the Court held a hearing on the Motion to Dismiss. Debtor's counsel did not appear.

On November 12, 2019, 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. 43], 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 her failure to appear and file and serve on Debtor a written response to the OSC no later than November 26, 2019.

On November 26, 2019, Debtor's counsel timely filed her response ("Response") [doc. 46]. However, Debtor's counsel served the Response at Debtor's old mailing address, rather than his current mailing address [See doc. 20, Notice of Change of Address]. In her Response, Debtor's counsel states that she has attempted to contact Debtor regarding the Motion to Dismiss, but Debtor has not responded [doc. 46 at ¶ 5]. Debtor's counsel states that she emailed the Trustee's counsel the day before the hearing to inform the Trustee that Debtor's counsel did not have payments and would be unable to address the deficiency. *Id.* at ¶ 7. Because she emailed the Trustee's counsel, Debtor's counsel states that she mistakenly thought that an appearance was not required at the hearing. *Id.* at ¶ 8.

If Debtor's counsel or an appearance attorney appears at the continued Motion to Dismiss hearing on December 10, 2019 at 10:30 a.m., then the Court may discharge the OSC. However, if no appearance is made at the continued Motion to Dismiss

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CONT... Jose Orcia Ramirez

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hearing, the Court may consider imposing sanctions on Debtor's counsel.

Party Information

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
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Hearing Room 301

11:00 AM

1:19-10332 Adan Antonio Salazar and Adriana Salazar

Chapter 13

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

Docket 45

Tentative Ruling:

On November 12, 2019, 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. 45], 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 November 26, 2019.

The debtors' counsel timely filed a response [doc. 50]. However, contrary to the OSC, the debtors' counsel did not serve his response on the debtors at the correct address. If the debtors' counsel or an appearance attorney appears at the continued confirmation hearing on December 10, 2019 at 9:30 a.m., the Court may discharge the OSC. However, if no appearance is made at the continued confirmation hearing, the Court may consider imposing sanctions on the debtors' counsel.

Party Information

Debtor(s):

Adan Antonio Salazar

Represented By
Majid Safaie

Joint Debtor(s):

Adriana Salazar

Represented By
Majid Safaie

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#114.00 Status conference re: creditor H. Samuel Hopper's motion to dismiss debtor Kenneth C. Scott's chapter 13 petition

fr. 7/17/19; 9/4/19; 10/2/19; 10/16/19; 11/13/19

Docket 70

Tentative Ruling:

On November 20, 2019, the debtor filed a motion for summary judgment on the issue of bad faith [doc. 174]. That motion is set for hearing at 2:30 p.m. on February 5, 2020.

On November 26, 2019, the debtor and Mr. Hopper filed a joint status report (the "Status Report") [doc. 181]. In the Status Report, Mr. Hopper states that he intends to take written discovery, including interrogatories, requests for admission and document requests, and depositions of the debtor, Niaz Khnai, JoAnn Scott and the person most knowledgeable at Fenton & Ross, CPA.

The debtor contends that this discovery is not appropriate because: (1) the Federal Rules of Civil Procedure ("FRCP") apply to adversaries under the Federal Rules of Bankruptcy Procedure ("FRBP"), but not the main bankruptcy case; (2) Niaz Khnai, JoAnn Scott and the person most knowledgeable at Fenton & Ross, CPA are not under the jurisdiction of the Court; and (3) the debtor will not waive any privileges.

First, pursuant to FRBP 9014, the rules governing discovery in FRCP 26 and 28 through 37, which are incorporated into FRBP 7026 and 7028 through 7037, apply to contested matters. This motion is a contested matter. As such, these discovery rules apply to this dispute.

Second, Niaz Khnai, JoAnn Scott and the person most knowledgeable at Fenton & Ross, CPA do not need to be parties to the dispute in order for them to be subject to a deposition, through an issued subpoena.

Finally, once Mr. Hopper propounds any discovery request, if the debtor or a third party believes the discovery is subject to any privilege - **following compliance with**

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Local Bankruptcy Rule 7026-1(c) - a motion for a protective order may be filed.

Tentative Ruling from November 13, 2019

The Court having assessed, among other things, the first amended complaint in the related adversary proceeding, the defendants' motion to dismiss the first amended complaint, the objection to movant's claim, the validity of debtor's exemption claims (to which the movant objected) and the progress in the debtor's bankruptcy case, including the status of the debtor's proposed amended chapter 13 plan, the Court intends to deny the motion, based on the analysis set forth in the Court's earlier tentative ruling.

What further evidence, if any, does the movant intend to submit, and when?

Tentative Ruling from May 14, 2019

For the reasons discussed below, the Court will deny the motion.

I. BACKGROUND

On December 18, 2018, Kenneth C. Scott (the "Debtor") filed a voluntary chapter 13 petition. The Debtor has no prior bankruptcy filings.

Prior to the Debtor filing his petition, on November 7, 2018, Samuel Hopper filed a complaint in the California Superior Court, County of Los Angeles against the Debtor for, among other things, various wage claims, civil penalties, statutory penalties, interest and attorneys' fees and costs (the "State Court Action") [doc. 70, Exh. 1]. On December 11, 2018, the Debtor was apparently served with the summons and the complaint in the State Court Action [doc. 20, Exh. 2].

In his schedule A/B [doc. 1], the Debtor did not list an interest in any real property. The Debtor listed an interest in personal property with an aggregate value of \$126,817.28. In his amended schedule C [doc. 35], the Debtor claimed exemptions in \$126,817.28 of that personal property.

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Chapter 13

In his schedule D [doc. 1], the Debtor did not list any secured creditors. In his schedule E/F [doc. 1], the Debtor listed nonpriority unsecured claims totaling \$123,841.73. Those nonpriority unsecured claims consisted of: (1) a \$9,069.00 claim in favor of Bank of America for a revolving credit account; (2) a \$30,000.00 claim in favor of Mr. Hopper for the State Court Action; (3) a \$35,600.00 claim in favor of JoAnn Scott, who is the Debtor's mother; and (4) a \$49,172.73 claim in favor of Johanna Scott for an obligation arising out of a separation agreement. In his statement of financial affairs ("SOFA") [doc. 1], the Debtor indicated that he was married.

As of May 9, 2019, five creditors have filed claims in the Debtor's case. American Honda Finance Corporation filed claim 1, which indicates that it holds a secured claim in the amount of \$19,469.73 based on a lease. Bank of America, N.A. filed claim 2, which indicated that it holds a nonpriority unsecured claim in the amount of \$8,944.00 based on a consumer credit card. Mr. Hopper filed claim 3-2, which indicates that he holds a nonpriority unsecured claim in the amount of \$206,975.25. The Debtor has filed an objection to Mr. Hopper's claim. JoAnn Scott filed claim 4, which indicates that she holds a nonpriority unsecured claim in the amount of \$35,600.00 based on a contract. Johanna Scott filed claim 5, which indicates that she holds a nonpriority unsecured claim in the amount of \$49,172.00 based on a marital separation agreement.

In his petition [doc. 1], the Debtor indicated that he rents his residence. In his schedule G [doc. 1], the Debtor listed two unexpired leases: a vehicle lease with American Honda Finance and a residential lease with Decon Corp.

In his schedules I and J [doc. 1], the Debtor represented that his monthly income is \$4,255.87 and his monthly expenses are \$3,983.05, leaving net monthly income of \$272.82. The Debtor indicated that he is employed as a therapist at My Private Practice. In his schedule A/B, the Debtor indicated that he owns a 100% interest in My Private Practice.

On March 6, 2019, the Debtor filed an amended SOFA [doc. 34]. In the amended SOFA, the Debtor indicates that he has an interest in My Private Practice and Kenneth Scott-Psy'd, Inc. The Debtor represents that Kenneth Scott-Psy'd, Inc. is the same as

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My Private Practice.

Chapter 13

On December 18, 2018, the Debtor filed a chapter 13 plan [doc. 2]. The chapter 13 trustee and Mr. Hopper filed objections to that plan [docs. 27 and 28]. On March 6, 2019, the Debtor filed an amended chapter 13 plan (the "Plan") [doc. 31]. In the Plan, the Debtor proposes to make plan payments in the amount of \$272.82 per month (all of the Debtor's net monthly income, according to his schedule J) for 60 months. The Plan is a 5.52% plan. As of May 9, 2019, the chapter 13 trustee has not objected to confirmation of the Plan. However, Mr. Hopper has [doc. 77].

On April 19, 2019, Mr. Hopper filed the Motion [doc. 70]. Mr. Hopper did not serve the debtor and all creditors as required by Local Bankruptcy Rule 3015-1(q)(3). In the Motion, Mr. Hopper argues that the Court should dismiss the case based on the Debtor's bad faith.

On April 30, 2019, the Debtor filed an opposition to the Motion (the "Opposition") [doc. 73]. On May 7, 2019, Mr. Hopper filed a reply to the Opposition (the "Reply") [doc. 84].

II. ANALYSIS

Pursuant to 11 U.S.C. § 1307(c):

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;

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- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States trustee, failure of the debtor 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(a);
- (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
- (11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1307(c). In deciding whether a chapter 13 case should be dismissed or converted, courts apply 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

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and the estate.'" *Nelson v Meyer (In re Nelson)*, 343 B.R. 671, 675 (9th Cir. B.A.P. 2006).

Here, Mr. Hopper does not argue for dismissal based on any of the enumerated causes listed in § 1307(c). Rather, Mr. Hopper argues that bad faith is additional cause for dismissal. A chapter 13 case filed in bad faith may be dismissed for cause under 11 U.S.C. § 1307(c). *In re Leavitt*, 171 F.3d 1219, 1224–25 (9th Cir. 1999); *In re Eisen*, 14 F3d 469, 470 (9th Cir. 1994). Bad faith is determined by evaluating the totality of circumstances, including the following factors: (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his chapter 13 petition or plan in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor only intended to defeat state court litigation; (4) whether egregious behavior is present. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999). Mr. Hopper's main arguments are that: (1) the Debtor filed his petition to avoid litigating the State Court Action; and (2) the Debtor filed false or incomplete schedules.

Regarding Mr. Hopper's first argument, "[w]hile a debtor's resort to bankruptcy to improve his or her position in pending litigation is relevant to the analysis, that single factor is not determinative in resolving the good faith issue." *In re King*, No. BAP/AZ-07-1317-PAJUK, 2008 WL 8444814, at *5 (B.A.P. 9th Cir. Mar. 12, 2008) (citing *In re Powers*, 135 B.R. 980, 992 (Bankr.C.D.Cal.1991)).

Here, it does not appear that the Debtor has filed his petition for an improper purpose. Although the Debtor filed his petition shortly after being served with the complaint in the State Court Action, it does not appear that the Debtor filed this case only to defeat the State Court Action. After being implicated in litigation, many debtors file bankruptcy petitions to address their debts, including those that are disputed and not yet liquidated.

Regarding Mr. Hopper's second argument, the evidence does not show significant inaccuracies in the Debtor's schedules. Mr. Hopper argues that the scheduled claims in favor of the Debtor's mother and estranged wife are possibly fraudulent. Mr. Hopper contends, among other things, that at the time of filing the Motion, neither the Debtor's mother nor his estranged wife had filed claims. A scheduled creditor not

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CONT... Kenneth C. Scott

Chapter 13

filing a proof of claim does not necessarily indicate fraud. Further, at this point, the Debtor's mother and his estranged wife have filed proofs of claim. Mr. Hopper also argues that the Debtor has not listed Kenneth Scott-Psy'd, Inc. on any of the Debtor's schedules, either as an asset or as his employer. However, the Debtor did list Kenneth Scott-Psy'd, Inc. in his amended SOFA. Mr. Hopper also argues that the Debtor has claimed improper exemptions in his personal property. Mr. Hopper has filed an objection to the Debtor's exemptions which is set for hearing on June 11, 2019. At that time, the Court will address Mr. Hopper's arguments regarding the Debtor's claims of exemption.

The Debtor does not have a prior history of any bankruptcy proceedings. Mr. Hopper has not shown that the Debtor has unfairly manipulated the Bankruptcy Code. Further, the Debtor does not appear to have engaged in egregious behavior. Accordingly, the Court will deny the Motion.

III. CONCLUSION

Deny.

The Debtor must submit the order within seven (7) days.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

The Debtor's Objection to the Declaration of Daniel Jett [doc. 74]

paras. 2, 3, 4, 6, 7, 8: overruled

para. 15: sustained

Exhs. 1, 2, 4, 5, 6, 7: overruled

Party Information

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

Tuesday, December 10, 2019

Hearing Room 301

11:00 AM

CONT... Kenneth C. Scott

Chapter 13

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) 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 11, 2019

Hearing Room 301

9:30 AM

1:19-12225 Jose Eduardo Lizarraga

Chapter 7

#1.00 Motion for relief from stay [AN]

JOSEPH SHERRETT
VS
DEBTOR

fr. 11/13/19

Docket 12

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.

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.

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):

Jose Eduardo Lizarraga

Represented By

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

Wednesday, December 11, 2019

Hearing Room 301

9:30 AM

CONT... Jose Eduardo Lizarraga

Chapter 7

John D Sarai

Movant(s):

DANIEL WILLIAM DUNBAR

Represented By
Daniel W Dunbar

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 11, 2019

Hearing Room 301

9:30 AM

1:19-12644 Carlos Velapatio

Chapter 13

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

fr. 12/13/19

Docket 11

***** VACATED *** REASON: On 11/20/19, the case was dismissed [doc. 25]. The motion is moot.**

Tentative Ruling:

Party Information

Debtor(s):

Carlos Velapatio

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 11, 2019

Hearing Room 301

9:30 AM

1:19-12557 Judy A Scott

Chapter 7

#3.00 Amended motion for relief from stay [UD]

SHAPELL INDUSTRIES, LLC
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.

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

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 prior to filing the unlawful detainer complaint in state court on October 17, 2019. To the motion, movant attached a declaration by its attorney testifying that it was not notified of the debtor's bankruptcy case until October 24, 2019, when the debtor's attorney called movant's counsel to inform movant of the debtor's filing.

When the debtor filed her chapter 7 petition on October 9, 2019, she did not include movant or movant's counsel in her master mailing list. The debtor also did not include movant, movant's counsel or the lease at issue in the debtor's schedules and statement of financial affairs [doc. 1]. In her schedules D and E/F, the debtor did not

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

Wednesday, December 11, 2019

Hearing Room 301

9:30 AM

CONT... Judy A Scott

Chapter 7

list any claims in favor of movant. Further, in her schedule G, the debtor did not list any unexpired leases or executory contracts.

Accordingly, movant was unaware of the bankruptcy petition. In addition, the debtor acted unreasonably and inequitably by not providing timely notice of the commencement of the case to movant or movant's counsel and omitting information concerning this lease from the debtor's schedules and statement of financial affairs. Consequently, retroactive relief from the automatic stay is appropriately granted here.

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):

Judy A Scott

Represented By
James G. Beirne

Movant(s):

Shapell Industries, LLC

Represented By
Agop G Arakelian

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 11, 2019

Hearing Room 301

9:30 AM

1:18-11150 Robert Edward Zuckerman

Chapter 7

#4.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

Docket 171

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):

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**

Wednesday, December 11, 2019

Hearing Room 301

9:30 AM

CONT... Robert Edward Zuckerman

Chapter 7

Movant(s):

Deutsche Bank National Trust

Represented By
Kelly M Kaufmann
Jennifer C Wong

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 11, 2019

Hearing Room 301

9:30 AM

1:19-12324 Jorge Amilcar Vargas

Chapter 13

#5.00 Motion for relief from stay [AN]

NANCY DAMIAN GALVEZ
VS
DEBTOR

Docket 17

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. Movant contends that her claims are nondischargeable in nature. This Court may make such a nondischargeability determination within the context of an adversary proceeding.

In the motion, movant argues that mandatory abstention applies to the parties' state court litigation. However, even if mandatory abstention applied to the parties' state court litigation, mandatory abstention alone is not sufficient grounds 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 that because mandatory abstention applied, there was cause for relief from the automatic stay. However, the Ninth Circuit Court of Appeals reversed 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

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

Wednesday, December 11, 2019

Hearing Room 301

9:30 AM

CONT...

Jorge Amilcar Vargas

Chapter 13

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. In addition, 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. Furthermore,

[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.

Here, on October 31, 2019, movant filed proof of claim 2-1 in the debtor's bankruptcy case. Thus, 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 the 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.

Notwithstanding the foregoing, movant may proceed against the non-debtor defendants in the nonbankruptcy action.

Movant may file an adversary complaint under 11 U.S.C. § 523 in the debtor's

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, December 11, 2019

Hearing Room 301

9:30 AM

CONT... **Jorge Amilcar Vargas**
bankruptcy case.

Chapter 13

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Jorge Amilcar Vargas

Represented By
Marc A Goldbach

Movant(s):

Nancy Damian Galvez

Represented By
Magdalena R Bordeaux

Trustee(s):

Elizabeth (SV) 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 11, 2019

Hearing Room 301

9:30 AM

1:15-12589 David Harrison Veitch

Chapter 13

#6.00 Motion for relief from stay [RP]

NEW REZ LLC DBA SHELLPOINT MORTGAGE SERVICING
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.

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):

David Harrison Veitch

Represented By
Ali R Nader

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

Wednesday, December 11, 2019

Hearing Room 301

9:30 AM

CONT... David Harrison Veitch

Chapter 13

Movant(s):

NewRez LLC d/b/a Shellpoint

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 11, 2019

Hearing Room 301

9:30 AM

1:17-13029 Victoria M Smith

Chapter 13

#7.00 Motion for relief from stay [RP]

HUBBARD GARDENS HOA
VS
DEBTOR

Docket 41

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):

Victoria M Smith

Represented By
Stephen Parry

Movant(s):

Hubbard Gardens HOA

Represented By
Neil B Katz

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

Wednesday, December 11, 2019

Hearing Room 301

9:30 AM

CONT... Victoria M Smith

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 11, 2019

Hearing Room 301

9:30 AM

1:18-10264 Joe Lopez, Jr.

Chapter 13

#8.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

Docket 56

Tentative Ruling:

The Court will continue this hearing to **January 15, 2020 at 9:30 a.m.**

In the motion, the movant requests relief from the codebtor stay under 11 U.S.C. § 1301. However, the movant did not serve notice of the hearing on codebtor Claudia Lopez as required under Local Bankruptcy Rule 4001-1(c)(1)(C)(iii) and Fed. R. Bankr. P. 4001(a)(1).

By December 18, 2019, the movant must file and serve notice of the continued hearing, the motion and the deadline to file an opposition (14 days prior to the continued hearing) on Ms. Lopez.

Appearances on December 11, 2019 are excused.

Party Information

Debtor(s):

Joe Lopez Jr.

Represented By
Donald E Iwuchuku

Movant(s):

US Bank Trust NA

Represented By
Lemuel Bryant Jaquez

Trustee(s):

Elizabeth (SV) 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 11, 2019

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** Pretrial conference re: amended complaint to:
1. Quiet title of real property located at 22401 Summitridge Circle, Chatsworth, CA 91311; and
 2. Avoidance and recovery of fraudulent transfer pursuant to California Civil Code 3439.04
 3. Turnover of Property of the estate pursuant to 11 U.S.C. sec 542
 4. Imposition of constructive trust

fr. 11/7/18(stip); 12/5/18; 12/12/18; 1/9/2019; 3/13/19; 3/20/19; 5/8/19; 6/5/19; 11/13/19

Docket 48

***** VACATED *** REASON: Case dismissed 11/20/19.**

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

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

Wednesday, December 11, 2019

Hearing Room 301

1:30 PM

CONT... Duane Daniel Martin

Chapter 7

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 11, 2019

Hearing Room 301

1:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01018 Gottlieb (TR) v. Anderson

#10.00 Pretrial conference re: Complaint to avoid preferential transfers and recover transfers for estate; for turnover; for conversion

fr. 5/8/19

Docket 1

***** VACATED *** REASON: Judgment entered 6/19/19. [Dkt.11]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Kelli Anderson

Pro Se

Plaintiff(s):

David K. Gottlieb (TR)

Represented By
Peter A Davidson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi

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

Wednesday, December 11, 2019

Hearing Room 301

1:30 PM

1:19-10448 Linda Moraga

Chapter 7

Adv#: 1:19-01122 Zamora, Chapter 7 Trustee v. Moraga

- #11.00** Status conference re: complaint for:
- 1) Avoidance of fraudulent transfer;
 - 2) Recovery of avoided transfers;
 - 3) For declaratory relief;
 - 4) Turnover of property; and
 - 5) Sale of interest of co-owner in property of the estate

Docket 1

Tentative Ruling:

In their joint status report [doc. 5], the parties indicate that they have agreed to settle this dispute. According to the parties, upon approval of a motion to sell real property in the debtor's bankruptcy case, set for hearing on December 19, 2019, the parties will dismiss this adversary proceeding.

The Court will continue this status conference to **1:30 p.m. on February 5, 2020**. If the parties stipulate to dismissal of this adversary proceeding prior to that date, the Court will take the status conference off calendar.

Appearances on December 11, 2019 are excused.

Party Information

Debtor(s):

Linda Moraga

Represented By
Daniel King

Defendant(s):

Mark Anthony Moraga

Pro Se

Plaintiff(s):

Nancy J Zamora, Chapter 7 Trustee

Represented By
Anthony A Friedman

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

Wednesday, December 11, 2019

Hearing Room 301

1:30 PM

CONT... Linda Moraga

Chapter 7

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, December 11, 2019

Hearing Room 301

1:30 PM

1:19-10726 Victoria Kristin Burak

Chapter 7

Adv#: 1:19-01111 Coha et al v. Burak

#12.00 Status conference re: complaint objecting to discharge of debtor based upon false pretenses, false representations, actual fraud [11 U.S.C. sec 523(a)(2)(A) and (B)]

Docket 1

Tentative Ruling:

On December 9, 2019, the Court entered an order transferring this adversary proceeding to the Hon. Maureen Tighe [doc. 8].

Appearances on December 11, 2019 are excused.

Party Information

Debtor(s):

Victoria Kristin Burak

Represented By
R Grace Rodriguez

Defendant(s):

Victoria Kristin Burak

Pro Se

Plaintiff(s):

Loretta M Coha

Represented By
James W Bates

Equity Trust Company, Custodian

Represented By
James W Bates

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 11, 2019

Hearing Room 301

1:30 PM

1:19-11643 Larry M Halpern

Chapter 7

Adv#: 1:19-01108 Business Funding Source v. Halpern

#13.00 Status conference re: amended complaint to determine dischargeability of deb

Docket 11

Tentative Ruling:

On December 4, 2019, the plaintiff's attorney, Richard Shuben, filed a motion to withdraw as counsel (the "Motion to Withdraw") [doc. 20]. Although Mr. Shuben served the Motion to Withdraw on the plaintiff, Mr. Shuben did not provide a notice of a deadline for the plaintiff to respond or include a notice that this adversary proceeding may be dismissed if the plaintiff, a limited liability company, proceeds without counsel. *See* Local Bankruptcy Rule ("LBR") 2091-1(d).

The Court will continue this status conference to **1:30 p.m. on January 22, 2020**. No later than **December 18, 2019**, Mr. Shuben must file and serve a notice with the language required by LBR 2091-1(d) and provide a deadline of 14 days for the plaintiff to respond to the Motion to Withdraw. If Mr. Shuben successfully withdraws as counsel, the Court will assess whether the plaintiff has obtained new counsel at the continued status conference on January 22, 2020. If the plaintiff has not obtained new counsel by that time, the Court may dismiss this adversary proceeding in accordance with LBR 9011-2(a).

Appearances on December 11, 2019 are excused.

Party Information

Debtor(s):

Larry M Halpern

Represented By
David S Hagen

Defendant(s):

Larry M Halpern

Pro Se

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

Wednesday, December 11, 2019

Hearing Room 301

1:30 PM

CONT... Larry M Halpern

Chapter 7

Plaintiff(s):

Business Funding Source

Represented By
Richard Warren Shuben

Trustee(s):

David Seror (TR)

Represented By
David Seror

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

Wednesday, December 11, 2019

Hearing Room 301

1:30 PM

1:19-11658 Nicolassa Mendez-Sanchez

Chapter 7

Adv#: 1:19-01117 Hernandez v. Mendez-Sanchez

#14.00 Status conference re: complaint for nondischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2), (4) and (6)

Docket 1

*** VACATED *** REASON: Notice of voluntary dismissal filed on 12/9/19 [doc. 4].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nicolassa Mendez-Sanchez

Represented By
Steven A Simons

Defendant(s):

Nicolassa Mendez-Sanchez

Pro Se

Plaintiff(s):

Berta Hernandez

Represented By
Sarah Cuellar

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 11, 2019

Hearing Room 301

1:30 PM

1:19-11703 Jose Luis Gonzalez Romero

Chapter 7

Adv#: 1:19-01121 Rossi et al v. Gonzalez Romero et al

#15.00 Status conference re: complaint for determination of dischargeability to debtor's discharge pursuant to sections 523 and 727 of the bankruptcy code

Docket 1

Tentative Ruling:

The plaintiffs have not filed proof of service of the summons or the complaint. If the plaintiffs did not timely serve the summons and the complaint on the defendant, i.e., within seven days of issuance of the summons, the plaintiffs must request Another Summons from the Court. The plaintiffs can obtain Another Summons by filing form F 7001-1.2.REQUEST.ANOTHER.SUMMONS, located on the Court's website.

Upon receiving the filing of the Request that the Clerk Issue Another Summons and Notice of Status Conference, the Clerk will issue Another Summons.

The Another Summons must be served upon the 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 plaintiffs must attach to the Another Summons a copy of the complaint and a copy of Judge Kaufman's Status Conference Instructions.

To demonstrate proper service of the Another Summons and the complaint and instructions to be served with that summons, the plaintiffs must file a signed proof of service indicating that the Another Summons and the documents to be served with that summons were timely served on the defendants. If the plaintiffs can obtain an issued Another Summons from the Court by January 15, 2020, the status conference will be continued to **1:30 p.m. on March 4, 2020.**

Party Information

Debtor(s):

Jose Luis Gonzalez Romero

Represented By
Francis Guilardi

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

Wednesday, December 11, 2019

Hearing Room 301

1:30 PM

CONT... Jose Luis Gonzalez Romero

Chapter 7

Defendant(s):

Jose Luis Gonzalez Romero Pro Se

Gabriela Cristina Martinez Trejo Pro Se

Joint Debtor(s):

Gabriela Cristina Martinez Trejo Represented By
Francis Guilardi

Plaintiff(s):

Robert Rossi Pro Se

Wrisney Tan 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 11, 2019

Hearing Room 301

2:30 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

Adv#: 1:18-01114 Nassif et al v. THE BANK OF NEW YORK MELLON fka THE BANK OF

#16.00 Motion for judgment on the pleadings

Docket 31

***** VACATED *** REASON: Continued by Stip to 1/22/20 at 2:30 p.m. -
jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

Defendant(s):

Aztec Foreclosure Corporation., a

Pro Se

Bank of America, N.A, a National

Represented By

Laura G Brys

Payam Khodadadi

Nationstar Mortgage LLC, A

Represented By

Dane W Exnowski

THE BANK OF NEW YORK

Represented By

Dane W Exnowski

Plaintiff(s):

Robin Nassif

Represented By

Matthew D. Resnik

Christopher Sabin Nassif

Represented By

Matthew D. Resnik

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

Wednesday, December 11, 2019

Hearing Room 301

2:30 PM

1:19-10981 Mehdi Zemrani

Chapter 7

Adv#: 1:19-01093 First National Bank Of Omaha v. Zemrani

#17.00 Motion for default judgment under LBR 7055-1

Docket 17

Tentative Ruling:

Grant motion for default judgment pursuant to 11 U.S.C. § 523(a)(2)(A).

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):

Mehdi Zemrani

Represented By
Donald E Iwuchuku

Defendant(s):

Mehdi Zemrani

Pro Se

Plaintiff(s):

First National Bank Of Omaha

Represented By
Cory J Rooney

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, December 11, 2019

Hearing Room 301

2:30 PM

1:19-10981 Mehdi Zemrani

Chapter 7

Adv#: 1:19-01093 First National Bank Of Omaha v. Zemrani

#18.00 Status conference re: complaint seeking exception to discharge pursuant to 11 US.C. sec. 523(a)(2)(A)

fr. 10/2/19/ 11/13/19

Docket 1

Tentative Ruling:

See calendar no. 17.

Party Information

Debtor(s):

Mehdi Zemrani

Represented By
Donald E Iwuchuku

Defendant(s):

Mehdi Zemrani

Pro Se

Plaintiff(s):

First National Bank Of Omaha

Represented By
Cory J Rooney

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 12, 2019

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; 10/4/18(stip);
11/8/18; 2/7/19(stip); 5/16/19(stip); 12/12/19 (stip)

Docket 114

Tentative Ruling:

The Court will continue this hearing to **March 5, 2020 at 1:00 p.m.** to be held after the pre-trial conference in the related adversary proceeding, which is currently set for February 19, 2020.

Appearances on December 12, 2019 are excused.

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, December 12, 2019

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; 10/4/18(stip); 11/8/18; 2/7/19(stip); 5/16/19(stip); 8/8/19(stip)

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. 23], the debtor has not filed his 2018 income tax return with the Court.

What service was provided to the debtor by Unlimited Financial Services, at a cost of \$1,577.00, on October 3, 2019?

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, December 12, 2019

Hearing Room 301

1:00 PM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#3.00 Second Amended Disclosure statement hearing in support of second amended chapter 11 plan of reorganization

fr. 8/22/19; 11/14/19

Docket 114

Tentative Ruling:

Proposed dates and deadlines regarding "Debtor's Second Amended Chapter 11 Plan of Reorganization" (the "Plan")

If, pursuant to 11 U.S.C. § 1125, the Court approves the "Debtor's Second Amended Disclosure Statement Describing Debtor's Second Amended Plan of Reorganization:"

Hearing on confirmation of the Plan: **February 6, 2020 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 20, 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 17, 2020.**

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 27, 2020.** 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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Thursday, December 12, 2019

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 12, 2019

Hearing Room 301

1:00 PM

1:18-12494 Elas, LLC dba Calnopoly, LLC

Chapter 11

#4.00 Status conference re chapter 11 case

fr. 12/6/18; 6/20/19; 8/22/19; 11/14/19

Docket 1

Tentative Ruling:

The debtor should be prepared to discuss the status of employing an accountant and filing the debtor's 2018 income tax returns.

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 12, 2019

Hearing Room 301

1:00 PM

1:19-12639 Tax Deed Enterprises, LLC

Chapter 11

#4.01 U.S. Trustee's Motion to Dismiss or Convert Case
under 11 U.S.C. § 1112(b)

fr. 12/5/19

Stip to dismiss filed 12/9/19

Docket 7

***** VACATED *** REASON: Order of dismissal entered 12/10/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tax Deed Enterprises, LLC

Represented By
Jeffrey B Smith

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

Thursday, December 12, 2019

Hearing Room 301

1:00 PM

1:19-12639 Tax Deed Enterprises, LLC

Chapter 11

#5.00 Status conference re chapter 11 case

Docket 1

***** VACATED *** REASON: Order of dismissal entered 12/10/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tax Deed Enterprises, LLC

Represented By
Jeffrey B Smith

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

Thursday, December 12, 2019

Hearing Room 301

1:00 PM

1:19-12646 Nora Los, LLC

Chapter 11

#6.00 Status conference re chapter 11 case

Docket 1

Tentative Ruling:

Given the debtor's highly inaccurate representation that its initial schedules and statement of financial affairs were true and correct, made under penalty of perjury (signed by Fahd Solimon, as "Manager"), the debtor's failure to comply with an Order of the Court, and having reviewed the information provided in the debtor's schedules, statement of financial affairs and chapter 11 case status conference report, the Court will prepare an Order to Show Cause why this case should not be dismissed, with a 180-day bar, as a bad faith filing.

On October 20, 2019, the debtor filed a voluntary chapter 11 petition. In its status report, the debtor represents that it owns residential real property located at 5021 Topeka Drive, Tarzana CA 91356 (the "Tarzana Property").

In its Summary of Assets and Liabilities for Non-Individuals, filed on October 20, 2019 [doc. 1], the debtor indicated that it had no assets and no creditors, at all.

In the debtor's schedule A/B, filed on October 20, 2019 [doc. 1], the debtor indicated that, other than the Tarzana Property, it had no assets, including any cash or cash equivalents. For the Tarzana Property, the debtor provided a value of \$0.00.

In the debtor's schedule E/F, filed on October 20, 2019 [doc. 1], the only unsecured creditor (priority and nonpriority) listed by the debtor is the IRS, with a claim in the amount of \$0.00.

In its amended schedule D, filed on November 21, 2019 [doc. 21], the debtor identifies four secured creditors. None of these secured creditors were listed in the debtor's original schedule D [doc. 1]. Instead, in its original schedule D [doc. 1], the debtor indicated that it had **no** secured creditors, at all.

In its statement of financial affairs, filed on October 20, 2019 (the "SFA") [doc. 1], the

**United States Bankruptcy Court
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Thursday, December 12, 2019

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1:00 PM

CONT... Nora Los, LLC

Chapter 11

debtor indicates that it has **no** gross revenue.

The debtor also has represented, in its SFA, that **no** accountants or bookkeepers maintained the debtor's books and records **within 2 years before filing this case**, that **no** firms or individuals were in possession of the debtor's books and records **when this case was filed**, and that the debtor has **not** issued a financial statement **within 2 years before filing this case** to any financial institutions, creditors or other parties.

In its SFA, item 28, the debtor has not listed **any** officers, directors, managing members, general partners, members in control, controlling shareholders, or other people in control of the debtor at the time of the filing of this case.

In its monthly operating reports filed for October 2019 and November 2019, the debtor has not completed Section IV - regarding payment to secured creditors, or Section V – regarding insurance coverage. In both of these monthly operating reports, the debtor has left these sections blank.

The debtor has disregarded significant requests set forth in the *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case*, entered on November 6, 2019 [doc. 13]. Contrary to that Order, the debtor has not provided: (a) 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 by month basis; or (b) a budget of the debtor's projected income, expenses and cash flow for the first six months of this case on a month by month basis.

The Court will prepare the Order to Show Cause.

Party Information

Debtor(s):

Nora Los, LLC

Represented By
Matthew Abbasi

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

Thursday, December 12, 2019

Hearing Room 301

1:00 PM

1:19-12647 Amir & Leila, LLC

Chapter 11

#6.10 U.S. trustee motion to dismiss or convert case under 11 U.S.C. § 1112(b)
fr. 12/5/19

Docket 12

***** VACATED *** REASON: Motion of voluntary dismissal filed 12/9/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amir & Leila, LLC

Represented By
Matthew Abbasi

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

Thursday, December 12, 2019

Hearing Room 301

1:00 PM

1:19-12647 Amir & Leila, LLC

Chapter 11

#7.00 Status conference re chapter 11 case

Docket 1

Tentative Ruling:

Given the debtor's obviously inaccurate representation that its initial schedules and statement of financial affairs were true and correct, made under penalty of perjury (signed by Fahd Solimon, as "Manager"), the debtor's failure to comply with an Order of the Court, and having reviewed the information provided in the debtor's schedules, statement of financial affairs and chapter 11 case status conference report, the Court will prepare an Order to Show Cause why this case should not be dismissed, with a 180-day bar, as a bad faith filing.

On October 20, 2019, the debtor filed a voluntary chapter 11 petition. In its status report, the debtor represents that it owns, and rents out: (1) commercial real property located at 958 E Holt Blvd., Ontario, CA; and (2) residential real property located at 4995 E. Cherry Hills Dr., Palm Springs CA. However, in the debtor's schedule G, filed on October 20, 2019 [doc. 1], the debtor indicates that it has **no** unexpired leases.

In its amended schedule A/B, filed on November 21, 2019, the debtor indicates that it has **no** cash or cash equivalents.

In the debtor's schedule E/F, filed on October 20, 2019 [doc. 1], the only unsecured creditor (priority and nonpriority) listed by the debtor is the IRS, with a claim in the amount of \$0.00.

In its amended schedule D, filed on November 21, 2019 [doc. 25], the debtor identifies only two secured creditors - one secured by the debtor's residential real property and one secured by the debtor's commercial real property. Neither of these secured creditors were listed in the debtor's original schedule D [doc. 1]. Instead, in its original schedule D, the debtor indicated that it had **no** secured creditors, at all.

In its responses to Part 1 in its statement of financial affairs, filed on October 20, 2019 (the "SFA") [doc. 1], the debtor indicates that it has **no** gross revenue.

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1:00 PM

CONT... Amir & Leila, LLC

Chapter 11

The debtor also has represented, in its SFA, that **no** accountants or bookkeepers maintained the debtor's books and records **within 2 years before filing this case**, that **no** firms or individuals were in possession of the debtor's books and records **when this case was filed**, and that the debtor has **not** issued a financial statement **within 2 years before filing this case** to any financial institutions, creditors or other parties.

In its SFA, item 28, the debtor has not listed **any** officers, directors, managing members, general partners, members in control, controlling shareholders, or other people in control of the debtor at the time of the filing of this case.

In its monthly operating reports filed for October 2019 and November 2019, the debtor has not completed Section IV - regarding payment to secured creditors, or Section V – regarding insurance coverage. In both of these monthly operating reports, the debtor has left these sections blank.

The debtor has disregarded significant requests set forth in the *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case*, entered on November 6, 2019 [doc. 15]. Contrary to that Order, the debtor has not provided: (a) 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 by month basis; or (b) a budget of the debtor's projected income, expenses and cash flow for the first six months of this case on a month by month basis.

The Court will prepare the Order to Show Cause.

Party Information

Debtor(s):

Amir & Leila, LLC

Represented By
Matthew Abbasi

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, December 12, 2019

Hearing Room 301

1:00 PM

1:19-12651 80 Flintlock Lane, LLC

Chapter 11

#8.00 Status conference re chapter 11 case

Docket 1

Tentative Ruling:

Given the debtor's highly inaccurate representation that its initial schedules and statement of financial affairs were true and correct, made under penalty of perjury (signed by Anthony Nowaid, as "Manager"), the debtor's failure to comply with an Order of the Court, and having reviewed the information provided in the debtor's schedules, statement of financial affairs and chapter 11 case status conference report (such as, the debtor has only one creditor of any significance - which creditor holds a lien against the debtor's sole real property), the Court will prepare an Order to Show Cause why this case should not be dismissed, with a 180-day bar, as a bad faith filing.

On October 21, 2019, the debtor filed a voluntary chapter 11 petition. In its status report, the debtor represents that it owns one real property located at 80 Flintlock Lane, Bell Canyon CA 91307 (the "Bell Canyon Property").

In its Summary of Assets and Liabilities for Non-Individuals, filed on October 21, 2019 [doc. 1], the debtor indicated that it had no assets, at all.

In the debtor's schedule A/B, filed on October 21, 2019 [doc. 1], the debtor indicated that, other than the Bell Canyon Property, it had no assets, including any cash or cash equivalents. For the Bell Canyon Property, the debtor provided a net book value of \$0.00 for the debtor's interest in the Bell Canyon Property, and stated that the current value of the debtor's interest in the Bell Canyon Property is "unknown."

In contrast, in the debtor's amended Schedule A/B, filed on November 21, 2019 [doc. 18], the debtor indicated that the current value of the debtor's interest in the Bell Canyon Property is \$500,000.00.

In its schedule D, filed on October 21, 2019 [doc. 21], the debtor identifies one secured creditor, Mr. Cooper, with a secured claim in the amount of \$766,666.00.

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CONT... 80 Flintlock Lane, LLC

Chapter 11

In the debtor's schedule E/F, filed on October 21, 2019 [doc. 1], as priority unsecured creditors, the debtor lists the Franchise Tax Board, the IRS and Ventura County Assessor's Office, each with claims in the amount of \$0.00. The only nonpriority unsecured creditor listed by the debtor is a foreclosure trustee.

In its schedule H [doc. 1], the debtor identified one codebtor, Ahmad Anthony Nowaid; the debtor did not provide his mailing address.

In its statement of financial affairs, filed on October 21, 2019 (the "SFA") [doc. 1], the debtor indicated that it has **no** revenue.

The debtor also has represented, in its SFA, that **no** accountants or bookkeepers maintained the debtor's books and records **within 2 years before filing this case**, that **no** firms or individuals were in possession of the debtor's books and records **when this case was filed**, and that the debtor has **not** issued a financial statement **within 2 years before filing this case** to any financial institutions, creditors or other parties.

In its SFA, item 28, the debtor has not listed **any** officers, directors, managing members, general partners, members in control, controlling shareholders, or other people in control of the debtor at the time of the filing of this case.

In its monthly operating reports filed for October 2019 and November 2019, the debtor has not completed Section IV - regarding payment to secured creditors, or Section V – regarding insurance coverage. In both of these monthly operating reports, the debtor has left these sections blank.

Based on a bank statement attached to its November 2019 monthly operating report, on November 4, 2019, the debtor made a deposit into its bank account in the amount of \$1,108.69. The source of that deposit is unclear.

The debtor has disregarded significant requests set forth in the *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case*, entered on November 6, 2019 [doc. 7]. Contrary to that Order, the debtor has not provided: (a) 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 by month basis; or (b) a budget of the debtor's projected income, expenses and cash flow for the first six

**United States Bankruptcy Court
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1:00 PM

CONT... 80 Flintlock Lane, LLC

Chapter 11

months of this case on a month by month basis.

The Court will prepare the Order to Show Cause.

Party Information

Debtor(s):

80 Flintlock Lane, LLC

Represented By
Matthew Abbasi

**United States Bankruptcy Court
Central District of California
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Thursday, December 12, 2019

Hearing Room 301

2:00 PM

1:14-11558 Daniel Steinberg and Pamela Steinberg

Chapter 11

#9.00 Motion by Debtors to amend final decree and order closing entered on November 18, 2019 to include provision for entry of order of discharge

Docket 267

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):

Daniel Steinberg

Represented By
Michael J Jaurigue
Nam H. Le
Elaine Le
Ryan A. Stubbe
Allan D Sarver

Joint Debtor(s):

Pamela Steinberg

Represented By
Michael J Jaurigue
Nam H. Le
Elaine Le
Ryan A. Stubbe
Allan D Sarver

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

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Hearing Room 301

2:00 PM

CONT... Daniel Steinberg and Pamela Steinberg

Chapter 11

Movant(s):

Daniel Steinberg

Represented By
Michael J Jaurigue
Nam H. Le
Elaine Le
Ryan A. Stubbe
Allan D Sarver

Pamela Steinberg

Represented By
Michael J Jaurigue
Michael J Jaurigue
Nam H. Le
Nam H. Le
Elaine Le
Elaine Le
Ryan A. Stubbe
Ryan A. Stubbe
Allan D Sarver
Allan D Sarver

**United States Bankruptcy Court
Central District of California
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Thursday, December 12, 2019

Hearing Room 301

2:00 PM

1:19-11482 Kimball West Small

Chapter 7

#10.00 Motion for order authorizing the production of documents of custodian of records of Wilbur Properties, LP and for examination of Anne Wilbur pursuant to Federal Rule of Bankruptcy Procedure 2004

Docket 33

Tentative Ruling:

Grant. The movant may select a new examination and production date on or after January 2, 2020. The movant must file and serve notice of the new examination and production date no later than 21 days before the new examination and production date.

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

Party Information

Debtor(s):

Kimball West Small

Represented By
Varand Gourjian

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, December 12, 2019

Hearing Room 301

2:00 PM

1:19-12680 Alfredo Gonzalez

Chapter 11

#11.00 Motion to Dismiss Debtor with a bar to re-filing

Case dismissed 11/20/19 without a bar

Docket 21

Tentative Ruling:

The Court will deny the motion.

On October 23, 2019, the debtor filed a chapter 11 petition, initiating this case (the "First Case"). The debtor failed to file his schedules and statements. Accordingly, on November 20, 2019, the Court dismissed this case [doc. 18]. On November 21, 2019, the movant filed a *Motion to Dismiss Debtor's Chapter 11 Bankruptcy Case with a Bar to Re-Filing* (the "Motion") [doc. 21].

On November 20, 2019, prior to the movant filing the Motion, the debtor filed a chapter 7 petition, initiating case 1:19-bk-12928-VK (the "Second Case"). On December 5, 2019, in the Second Case, the debtor filed a motion to continue the stay under 11 U.S.C. § 362 [Second Case, doc. 13]. A hearing on that motion is set for December 18, 2019.

In the Second Case, the movant is free to oppose the pending motion to continue the stay, file a motion for relief from the automatic stay including in rem relief or to file a motion to dismiss the Second Case with a bar. Because the movant may request the relief it seeks in the Second Case, the Court will deny the Motion.

The Court will prepare the order.

Party Information

Debtor(s):

Alfredo Gonzalez

Represented By
Eric Bensamochan

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

2:00 PM

1:19-12082 Robert M. Gerstein

Chapter 7

#12.00 Creditor's motion for automatic dismissal of case under
11 U.S.C. sec 521(i)

fr. 12/5/19

Docket 78

Tentative Ruling:

Deny.

I. BACKGROUND

On August 20, 2019, Robert M. Gerstein ("Debtor") filed a voluntary chapter 7 petition. On the same day, Debtor filed his schedules and statements. Amy L. Goldman was appointed the chapter 7 trustee (the "Trustee"). In Debtor's schedule A/B, Debtor listed a 50% interest in real property located at 25580 Prado de las Bellotas, Calabasas, CA 91302 (the "Calabasas Property"). Debtor valued the Calabasas Property at \$2,725,000. Debtor also listed a total of \$2,400 in personal property; Debtor claimed exemptions in \$1,700 of the personal property.

On October 31, 2019, the Trustee filed an application to employ a real estate broker (the "Application to Employ") [doc. 66] for the purpose of marketing Debtor's real property in Calabasas, California (the "Calabasas Property"). The Court granted the Application to Employ [doc. 88]. On November 6, 2019, the Trustee filed a notice of assets [doc. 76] and a status report [doc. 77], in which the Trustee stated that the Trustee intends to sell Debtor's real property for the benefit of creditors.

On November 5, 2019, Greg Himes filed a motion to dismiss Debtor's case under 11 U.S.C. § 521(i) (the "Motion") [doc. 78]. In the Motion, Mr. Himes contends that Debtor did not adequately complete his schedules and statements by: (A) not specifying the nature of nonpriority unsecured claims against the estate; (B) not including specific information about Debtor's or Debtor's spouse's employment; (C) failing to attach receipts related to Debtor's business or to describe the nature of each listed business; (D) omitting information about his spouse in his means test

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CONT...

Robert M. Gerstein

Chapter 7

calculation; (E) listing conflicting income information; and (F) failing to list creditors in his statement of intention that were listed in his schedule D.

On November 21, 2019, the Trustee filed an opposition to the Motion (the "Trustee's Opposition") [doc. 84]. The Trustee contends that dismissal is not warranted under § 521(i) because Debtor filed all required forms under § 521(a) and Mr. Himes is merely requesting more detail. The Trustee also asserts that the Court may waive dismissal even if Debtor has not fully completed his schedules, statements and/or other required forms.

On November 21, 2019, Debtor filed amended schedules and statements and an amended chapter 7 means test calculation (the "Amended Documents") [doc. 85]. In the Amended Documents, Debtor includes some of the missing information referenced by Mr. Himes. On the same day, Debtor also filed an opposition to the Motion ("Debtor's Opposition") [doc. 86], noting that Debtor has now filed the Amended Documents to include the information requested by Mr. Himes and asserting that the missing information was trivial.

On November 27, 2019, Mr. Himes filed a reply to the Trustee's Opposition and Debtor's Opposition (the "Reply") [doc. 90]. Mr. Himes reiterates that Debtor did not completely fill out the required forms and asserts that the Amended Documents are untimely. In addition, Mr. Himes concedes that the Court may waive dismissal under § 521(i), but states that waiver is "not warranted in this instance."

II. ANALYSIS

Pursuant to 11 U.S.C. § 521(a)(1), a debtor shall file—

- (A) a list of creditors; and
- (B) *unless the court orders otherwise—*
 - (i) a schedule of assets and liabilities;
 - (ii) a schedule of current income and current expenditures;

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CONT...

Robert M. Gerstein

Chapter 7

(iii) a statement of the debtor's financial affairs...

(iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition

(emphasis added). Under 11 U.S.C. § 521(i)—

- (1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.
- (2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 7 days after such request.

"[A] bankruptcy court retains discretion to waive the § 521(a)(1) filing requirement even after the forty-five day filing deadline set forth in § 521(i)(1) has passed." *In re Warren*, 568 F.3d 1113, 1117 (9th Cir. 2009). The Court of Appeals held—

When a party moves for an order dismissing an incomplete petition, the court can do one of three things: (1) dismiss the case, (2) decline to dismiss the case if an exception applies, or (3) determine, in its discretion, that the missing information is not required or that denial of dismissal is necessary to prevent a debtor from abusing and manipulating the bankruptcy system.

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CONT... Robert M. Gerstein

Chapter 7

Id., at 1118–19. "This approach 'recognizes that missing information may or may not be required, in a practical sense, depending upon what is deemed material by the court many months (or even years) after the bankruptcy petition has been filed.' *Id.*, at 1119 (quoting *In re Acosta-Rivera*, 557 F.3d 8, 14 (1st Cir. 2009)).

Here, Debtor timely filed much of the information required by 11 U.S.C. § 521(a)(1). Mr. Himes contends that dismissal is nevertheless warranted. However, in the context of this chapter 7 case, the missing information referenced by Mr. Himes is not material, and it is not required, in a practical sense. The Trustee has been able to proceed with administration of this case by marketing Debtor's apparently sole valuable asset, the Calabasas Property. The information deemed "missing" by Mr. Himes does not relate to this asset.

Moreover, the information originally included by Debtor in his schedules and statements placed the Trustee and creditors on notice of all of Debtor's assets and liabilities. The Trustee and creditors had an opportunity to obtain additional detail about these assets and liabilities at Debtor's § 341(a) meeting of creditors. And, in any event, Debtor has now amended his schedules and statements to provide additional information. Because the information which Mr. Himes has identified is not material, in the context of this chapter 7 case, and it is not necessary, as a practical matter, the Court will not dismiss this case under § 521(i).

III. CONCLUSION

The Court will deny the Motion.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Trustee(s):

Amy L Goldman (TR)

Represented By
Carmela Pagay

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8:30 AM

1:19-11663 Romulo Guerra

Chapter 7

#1.00 Reaffirmation agreement between debtor and Mechanics Bank
fr. 10/15/19

Docket 11

Party Information

Debtor(s):

Romulo Guerra

Pro Se

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 17, 2019

Hearing Room 301

8:30 AM

1:19-12271 Javier Arnulfo Hernandez

Chapter 7

#2.00 Amended reaffirmation agreement between debtor
and Bank of America, N.A.

Docket 14

Party Information

Debtor(s):

Javier Arnulfo Hernandez

Represented By
Daniel King

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 17, 2019

Hearing Room 301

8:30 AM

1:19-12346 Efrain Luis-Aguayo

Chapter 7

#3.00 Reaffirmation agreement between debtor and
American Honda Finance Corporation

Docket 9

Party Information

Debtor(s):

Efrain Luis-Aguayo

Represented By
Michael H Colmenares

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 17, 2019

Hearing Room 301

8:30 AM

1:19-12403 Reyna Idalia Anzueto

Chapter 7

#4.00 Reaffirmation agreement between debtor and Infiniti Financial Services

Docket 17

Party Information

Debtor(s):

Reyna Idalia Anzueto

Represented By
Daniela P Romero

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 17, 2019

Hearing Room 301

8:30 AM

1:19-12467 Melchor Dychioco

Chapter 7

#5.00 Reaffirmation agreement between debtor and
Gateway One Lending & Finance, LLC

Docket 8

Party Information

Debtor(s):

Melchor Dychioco

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:19-12490 Geraldine Como

Chapter 7

#6.00 Reaffirmation agreement between debtor and 21st Mortgage Corp

Docket 13

Party Information

Debtor(s):

Geraldine Como

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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8:30 AM

1:19-12544 Rodrigo Apolo Mendoza Quant, Sr

Chapter 7

#7.00 Reaffirmation agreement between debtor and Toyota Motor Credit Corp

Case dismissed 12/3/19

Docket 11

Party Information

Debtor(s):

Rodrigo Apolo Mendoza Quant Sr Pro Se

Trustee(s):

David Seror (TR) Pro Se

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8:30 AM

1:19-12572 Anita Jeannette Montantes and Johnny Montantes

Chapter 7

#8.00 Reaffirmation agreement between debtor and Ally Bank

Docket 8

Party Information

Debtor(s):

Anita Jeannette Montantes

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Johnny Montantes

Represented By
Jeffrey J Hagen

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, December 18, 2019

Hearing Room 301

9:30 AM

1:19-12082 Robert M. Gerstein

Chapter 7

#1.00 Motion for relief from stay [RP]

WILMINGTON TRUST, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 10/23/19; 11/20/19

Docket 36

Tentative Ruling:

11/20/19 Tentative Ruling

In light of the chapter 7 trustee's status report [doc. 77] and the stipulation with the Internal Revenue Service [doc. 65], does the movant agree to continue this hearing to **December 18, 2019 at 9:30 a.m.**, to be held in connection with a motion for relief from stay filed by the holder of the second deed of trust against the property?

10/23/19 Tentative Ruling

Based on the significant equity cushion, which provides the movant with adequate protection, the Court intends to continue the hearing to assess whether the property will be sold at a price that is sufficient to provide a distribution to unsecured creditors.

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Movant(s):

Wilmington Trust, National

Represented By
Darlene C Vigil

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9:30 AM

CONT... Robert M. Gerstein

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Represented By
Carmela Pagay

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9:30 AM

1:19-12082 Robert M. Gerstein

Chapter 7

#2.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

fr. 11/6/19(stip)

Docket 44

Tentative Ruling:

See calendar no. 1.

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Trustee(s):

Amy L Goldman (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
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Wednesday, December 18, 2019

Hearing Room 301

9:30 AM

1:18-12467 Colin Basil MacLean

Chapter 13

#3.00 Motion for relief from stay [RP]

JP MORGAN CHASE BANK, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 11/13/19

Docket 73

Tentative Ruling:

11/13/19 Tentative Ruling

On October 30, 2019, the debtor filed a response to the motion for relief from the automatic stay [doc. 75]. The debtor did not include a declaration signed under penalty of perjury or other evidentiary support for the assertions in the response.

Party Information

Debtor(s):

Colin Basil MacLean

Represented By
William E. Winfield

Movant(s):

JPMorgan Chase Bank, National

Represented By
Jennifer C Wong

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:17-11883 Roger Valencia, II

Chapter 13

#3.10 Motion for relief from stay [RP]

WILMINGTON TRUST NATIONAL ASSOCIATION
VS
DEBTOR

fr. 11/6/19; 12/4/19

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roger Valencia II

Represented By
Eric A Jimenez

Movant(s):

Wilmington Trust, National

Represented By
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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9:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#4.00 Order to show cause why Samuel Hopper and Daniel Jett should not be held in civil contempt for violation of the automatic stay

fr. 5/15/19; 7/17/19; 11/6/19

Docket 64

Tentative Ruling:

November 6, 2019 Tentative Ruling

The parties should be prepared to apprise the Court of the status of the appeal.

May 15, 2019 Ruling

The Court will grant the motion in part and continue this hearing to **July 17, 2019 at 9:30 a.m.**

I. BACKGROUND

On November 7, 2018, Samuel Hopper filed a complaint in the Superior Court of the State of California, County of Los Angeles against My Private Practice, Inc. ("My Private Practice") and Kenneth C. Scott (the "Debtor") for damages and injunctive relief based on alleged violations of California employment laws (the "State Court Action") [doc. 36, Exh. 1].

On December 18, 2018, the Debtor filed a voluntary chapter 13 petition. In his schedule A/B, the Debtor listed a 100% ownership interest in My Private Practice [doc. 1]. On December 18, 2018, the Debtor served Mr. Hopper, care of his attorney, Daniel Jett, with notice of his bankruptcy petition and other supporting documents [doc. 25].

On January 2, 2019, the Debtor's attorney sent an email to Mr. Jett inquiring whether Mr. Jett received the notice of bankruptcy and other documents and reiterating that the State Court Action was stayed [doc. 36, Exh. 3]. On January 4, 2019, Mr. Jett

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responded to that email, confirming his receipt of the notice of bankruptcy and other documents. *Id.* at Exh. 4. Mr. Jett stated in the email that Mr. Hopper intended to pursue the corporate entity, My Private Practice, in the State Court Action without obtaining relief from the automatic stay.

On February 21, 2019, Mr. Hopper filed a first amended complaint in the State Court Action [doc. 36, Exh. 5]. The proof of service attached to the first amended complaint indicates that Mr. Jett served the Debtor with the first amended complaint by United States mail on February 20, 2019. In an email dated March 7, 2019, Mr. Jett wrote: "This afternoon, we effectuated personal service of the First Amended Complaint (FAC) in the Los Angeles Superior Court action on Dr. Scott **as an individual**. . . . (emphasis added). The email continues: "Dr. Hopper still intends to seek relief from the automatic stay. . . ." [doc. 36, Exh. 6].

Mr. Hopper contends that, "[t]he FAC as it pertains to adding a Fourteenth Cause of Action for annulment of a transfer in fraud of creditors does not violate the scope of the automatic stay under Section 362 because none of the allegations pertaining to Debtor's pre-petition obligations to Dr. Hopper was [*sic*] revised or amended. Any debt or legal obligation arising on or before December 18, 2018, remains subject to the stay as to the Debtor. However, once Debtor acted to thwart Dr. Hopper's interests by creating a new corporate entity and looting MPPI of its assets, new legal liability arose that is beyond the scope of the automatic stay." [doc. 41, p. 9].

The fourteenth cause of action in the first amended complaint alleges (the "FAC") [doc. 36, Exh. 5], in relevant part, that,

157. On or about December 18, 2018, MPPI was the owner and in possession and control of checking and savings accounts holding at least \$17,274.00. On or about December 19, 2018, and thereafter, MPPI transferred the full amount of those accounts to SCOTT and/or KSP for no consideration, proof of which will be offered at the trial herein. Thus, MPPI did not receive reasonably equivalent value in exchange for the cash in its bank accounts.

158. Although on the respective dates of the aforementioned transfer no part of Plaintiff's claims HAd [*sic*] been reduced to judgment, Plaintiff is informed and believes, and thereon alleges, that the transfer was made with actual

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knowledge of Plaintiff's claim and with the actual intent to hinder, delay or defraud MPPI's present and future creditors, *including Plaintiff, in the collection of their claims.* (emphasis added).

...

161. Plaintiff is further informed and believes, and thereon alleges, that the cash assets in MPPI's bank accounts was received by SCOTT with knowledge of Plaintiff's claims and knowledge that MPPI intended to hinder, delay and defraud *the collection of Plaintiff's claims* and the claims of all then and future creditors of MPPI. SCOTT had knowledge of Plaintiff's claims by virtue of his position as the CEO and sole shareholder of MPPI, which was a party to this action at the time of the transfer. (emphasis added).

On March 11, 2019, the Debtor filed a *Motion for an OSC re Contempt Against Samuel Hopper and Daniel Jett, Jointly and Severally and Sanctions in the Amount of \$4,025.00* (the "Motion") [doc. 36]. On March 18, 2019, Mr. Hopper filed an opposition to the Motion [doc. 41]. On April 3, 2019, the Debtor filed a reply to that opposition [doc. 59].

On March 13, 2019, Mr. Hopper filed a motion for relief from the automatic stay in a non-bankruptcy forum (the "RFS Motion") [doc. 38]. The hearing on the RFS Motion is set to be heard contemporaneously with this *Order to Show Cause Why Samuel Hopper and Daniel Jett Should Not Be Held in Civil Contempt for Violation of the Automatic Stay* (the "OSC") [doc. 64].

On April 12, 2019, the Court issued the OSC. On April 30, 2019, Mr. Hopper and Mr. Jett filed a response to the OSC (the "Response") [doc. 76]. In the Response, Mr. Jett states: "On March 7, 2019, service of process was effected on Debtor individually as a Defendant in the FAC. I made the decision to direct the process server to effect service of process as to the FAC on Debtor; Dr. Hopper was not involved in that decision at all." Declaration of Daniel Parker Jett ("Jett Decl."), ¶ 11. Mr. Jett further explains that "[t]he FAC was intended to remedy Debtor's post-petition fraudulent conduct in creating a new, successor corporation to MPPI and in looting the assets of MPPI to prevent Dr. Hopper from *collecting his wages and expenses.*" *Id.* at ¶ 9 (emphasis added). On May 7, 2019, the Debtor filed a reply to the Response (the

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"Reply") [doc. 88].

Chapter 13

II. ANALYSIS

A. Violation of Stay

11 U.S.C. § 362(a) provides in pertinent 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;
- ...
- (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)). Because such actions are void, they have no force or effect—it is not up to the Debtor to undo the act. *Schwartz*, 202 F.3d at 571. However, 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.

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).

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"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)).

Mr. Hopper and Mr. Jett argue that they should be not subject to contempt because the FAC pertains to the Debtor's post-petition fraudulent conduct and non-debtor, third party entities. Mr. Hopper and Mr. Jett are correct that the automatic stay under 11 U.S.C. § 362(a) does not apply to post-petition claims and non-debtor parties.

The automatic stay protects against any act or continuation of a proceeding to recover a claim against the debtor that arose before the commencement of the case. Mr. Jett states that the fourteenth cause of action in the FAC only alleged post-petition conduct, and therefore, is not subject to the stay. However, Mr. Jett and Mr. Hopper alleged the fourteenth cause of action in order to recover on a pre-petition claim. Mr. Jett admits that "[t]he FAC was intended to remedy Debtor's post-petition fraudulent conduct in creating a new, successor corporation to MPPI and in looting the assets of MPPI to prevent Dr. Hopper from *collecting his wages and expenses*." at ¶ 9 (emphasis added). Mr. Hopper's alleged unpaid wages and expenses is a claim that arose pre-petition. Although the Debtor's alleged actions were post-petition, the claim that Mr. Hopper and Mr. Jett are trying to recover arose pre-petition. As such, continuing the state court litigation by filing and serving the FAC was a violation of the automatic stay.

B. Damages under 362(k)

11 U.S.C. § 362(k) provides the following:

- (1) 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

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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. *Fernandez v. GE Capital Mortgage Servs., Inc. (In re Fernandez)*, 227 B.R. 174, 181 (9th Cir. BAP 1998).

i. Willful Violation of Stay

A willful violation of the automatic stay does not require specific intent to violate the automatic stay. *In re Abrams*, 127 B.R. 239, 243 (9th Cir. BAP 1991). "A violation of the automatic stay is 'willful' if 1) the creditor knew of the stay and 2) the creditor's actions, which violated the automatic stay, were intentional." *Eskanos & Adler, P.C. v. Roman (In re Roman)*, 283 B.R. 1, 8 (9th Cir. BAP 2002). Moreover, a recent Ninth Circuit case emphasized an affirmative duty to comply with the automatic stay and to remedy any automatic stay violation. *Sternberg v. Johnston*, 595 F.3d 937, 944-45 (9th Cir. 2010). Also, the case noted that the alleged violator "needed neither to make some collection effort nor to know that his actions were unlawful for his violation to be willful." *Id.* at 945.

Here, Mr. Jett committed a willful violation of the automatic stay. Mr. Jett acknowledged that he received notice of the Debtor's bankruptcy filing and was aware of the automatic stay [doc. 36, Exh. 4]. Further, Mr. Jett admitted filing the FAC and employing a process server to serve the Debtor in his individual capacity were intentional. Jett Decl., ¶¶ 9 and 11. So although Mr. Jett may have believed in good faith that his actions were not a violation of the automatic stay, the test for willfulness does not require a specific intent. Mr. Jett committed a willful violation of the automatic stay.

Regarding Mr. Hopper, it does not appear that Mr. Hopper committed a willful violation of the automatic stay. It does appear that Mr. Hopper knew of the stay. However, it does not appear that Mr. Hopper's actions were intentional. Although Mr. Hopper has not submitted a declaration, Mr. Jett stated that Mr. Hopper was not involved in the decision to serve the Debtor with the FAC. Jett Decl., ¶ 11. The Debtor has not presented conflicting evidence.

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Kenneth C. Scott
ii. Damages

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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*, 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).

With regard to punitive damages, they are provided for under 11 U.S.C. § 362(k). However, courts have "traditionally been reluctant to grant punitive damages absent some showing of reckless or callous disregard for the law or rights of others." *In re Bloom*, 875 F.2d 224, 228 (9th Cir. 1989) (citing *Protectus Alpha Navigation Co. v. North Pacific Grain Growers, Inc.*, 767 F.2d 1379, 1385 (9th Cir. 1985)). "[P]unitive damages are appropriate where an arrogant defiance of federal law is demonstrated." *In re Novak*, 223 B.R. 363, 368 (Bankr. M.D. Fla. 1997) (citing *Matter of Mullarkey*, 81 B.R. 280, 284 (Bankr. D. N.J. 1987) (quoting *In re Tel-A-Communications, Inc.*, 50 B.R. 250, 255 (Bankr. D. Conn. 1985))).

As set forth above, victims of willful stay violations are entitled to actual damages, including attorney's fees and costs. The Debtor does not provide a breakdown of the actual costs. In the Motion, the Debtor requests \$4,025, consisting of 4.5 hours for the Debtor's attorney to draft the Motion, and an estimated 2.5 hours for the Debtor's attorney to review an opposition and draft reply papers and an estimated 4.5 hours to drive to court. In the Reply, the Debtor requests an additional \$2,100. The Debtor did not provide a breakdown for the additional damage request. While, the Debtor is entitled to actual damages under § 362(k), the Debtor must provide a breakdown of fees for actual work done (not estimated) or actual damages incurred in connection with the automatic stay violations to award these damages properly.

Regarding punitive damages requested by the Debtor in the Motion, it does not appear that punitive damages are appropriate in this case. It does not appear that Mr. Jett was acting with reckless or callous disregard for the law or the rights of the Debtor. It appears that Mr. Jett acted under a good faith belief that his actions were not a violation of the stay.

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III. CONCLUSION

For the reasons discussed above, the Court finds that Mr. Jett willfully violated the automatic stay. The Debtor is entitled to actual damages in connection with the violation. **By no later than May 29, 2019**, the Debtor's attorney must file and serve on Mr. Jett a declaration with a breakdown of the Debtor's attorney's actual fees and costs associated with remedying the violation of stay. **By no later than July 3, 2019**, Mr. Jett may file and serve any opposition to that declaration. **Any reply must be filed and served no later than July 10, 2019.**

The Court will continue this hearing to **9:30 a.m. on July 17, 2019**, in order to assess the Debtor's damages in connection with the violation of stay.

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

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-12810 Blanca Mohd

Chapter 11

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

fr. 12/4/19

Docket 19

Tentative Ruling:

At the prior hearing, on December 4, 2019, the Court ordered the debtor to file the following by December 16, 2019:

1. An amended statement of financial affairs that correctly states the debtor's gross income during this year and the two previous years and any lawsuit, court action or administrative proceeding in which the debtor was a party within one year before she filed her petition.
2. An amended schedule D that lists all liens against the debtor's real properties and whether the debtor disputes those liens.
3. An amended schedule I that includes the required statement for each real property showing gross receipts, ordinary and necessary business expenses and the total monthly net income.
4. A declaration by the debtor explaining the home improvement and/or tax liens that may have attached to her real properties.
5. A declaration by the debtor discussing the amount she proposes to pay monthly in adequate protection payments and how the debtor will afford those adequate protection payments.
6. All unexpired leases listed in the debtor's schedule G.

On December 17, 2019, the debtor belatedly filed these documents [docs. 37 and 38] and a stipulation with Wells Fargo Bank, N.A. ("Wells Fargo") to continue the automatic stay with respect to the debtor's rental property (the "Stipulation") [doc. 39]. In the Stipulation, the debtor agrees to start making adequate protection payments to Wells Fargo in the amount of \$2,000 per month. The debtor also proposes making adequate protection payments to PHH Mortgage/NewRez in the amount of \$2,200 per month [doc. 38].

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Blanca Mohd

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In her amended schedule I [doc. 37], on line 8a, the debtor states that she is receiving net income of \$4,222 per month from her residence and the rental property. However, the attachment sheet indicates that she is receiving net rental income of **\$3,622** per month.

As such, it appears that debtor is earning \$4,503 per month in combined rental and disability income, leaving negative net monthly income of (\$591). Once the debtor begins making the adequate protection payments pursuant to the Stipulation, i.e., paying the lender \$2,000 per month, instead of \$1763 per month, her negative net monthly income will increase.

In her amended schedule J [doc. 37], the debtor lists payments on two vehicles in the amounts of \$782 and \$751. The Court questions why the debtor, who is unemployed, and whose spouse also is unemployed, requires two vehicles. Unless the debtor is willing to abandon one of these vehicles, the Court does not see how the debtor will have sufficient net income to fund a chapter 11 plan of reorganization.

In her supplemental declaration in support of the motion [doc. 38], the debtor states that she has entered into the written leases attached in exhibit A, which add up to \$4,600 per month, and one oral lease. The debtor does not discuss the monthly rental payment under the oral lease or explain why that lease is not in writing.

12/4/19 Tentative Ruling

The Court will deny the motion.

The First Case

On February 28, 2019, Blanca Mohd (the "Debtor") filed a voluntary chapter 13 petition, initiating case 1:19-bk-10469-VK (the "First Case"). On March 12, 2019, the Debtor filed a motion to extend the deadline to file schedules and statements [First Case, doc. 12]. The Court granted that motion and extended the deadline for the Debtor to file schedules and statements to March 28, 2019. *Id.* at doc. 13.

In the First Case, the Debtor never filed her schedules and statements, by the extended deadline, or by months later. On June 18, 2019, the Court entered an order dismissing the First Case for failure to file information. *Id.* at 20.

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During the pendency of the First Case, PHH Mortgage Corporation ("PHH") filed claim 5 ("Claim 5"), representing that it holds a claim in the amount of \$583,101.23, secured by real property located at 10437 Cedros Avenue, Mission Hills, California 91345 (the "Residence"). In Claim 5, PHH represented that the prepetition arrears on the Residence were \$59,776.80.

Wells Fargo Bank, N.A. ("Wells Fargo") filed claim 9 ("Claim 9"), representing that it holds a claim in the amount of \$328,912.64, secured by real property located at 14915 Sandra Street, Mission Hills, California 91345 (the "Rental"). In Claim 9, Wells Fargo represented that the prepetition arrears on the Rental were \$84,117.72.

The Pending Case

On November 7, 2019, the Debtor filed a voluntary chapter 11 petition, initiating this case. In this case, the Debtor's schedules I and J state that she has monthly income of \$3,802.00 and monthly expenses of \$5,308.00, leaving net monthly income of (\$1,506.00) [doc. 12]. However, in her schedule J, the Debtor did not include any mortgage expense for the Rental; she listed a mortgage expense for the Residence only.

In her schedule I, the Debtor indicates that she is disabled. The Debtor represents that her monthly income consists of \$2,921.00 from leasing the Rental and \$881.00 from disability assistance. In contrast, the Debtor's statement of financial affairs represents that her income from "disability & rental" for January 1, 2019 through the petition date (November 7, 2019) was \$500.00, for 2018 \$10,283.00 and for 2017 \$81.00 [doc. 12]. These amounts are **far** less than the \$3,802.00 in the gross monthly income set forth in her schedule I.

In her schedule A/B [doc. 12], the Debtor represents that the fair market value of the Residence is \$451,000.00 and the fair market value of the Rental is \$550,000.00. In her schedule D [doc. 12], the Debtor indicates that PHH holds a claim secured by the Residence in the amount of \$611,015.00 and that Wells Fargo holds a claim secured by the Rental in the amount of \$353,829.00.

In her schedule G [doc. 12], the Debtor lists four unexpired leases: one for the Rental and three for the Residence. The Debtor does not set forth the monthly rent payable

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under each lease, and she did not submit the leases with her pending motion.

On November 27, 2019, the Debtor filed the pending motion to continue the automatic stay under 11 U.S.C. § 362 (the "Motion") [doc. 19] and an application for an order setting hearing on shortened notice (the "Application for OST") [doc. 20]. On the same day, the Court entered an order granting the Application for OST and setting a hearing on the Motion for December 4, 2019 (the "OST") [doc. 22]. Pursuant to the OST, the Debtor was to serve written notice of the hearing, a copy of the OST and the Motion on the Debtor's secured creditors and the 20 largest unsecured creditors by no later than November 27, 2019 at 5:00 p.m.

On November 27, 2019, the Debtor filed an amended notice of hearing on the Motion [doc. 25]. The amended notice of hearing, allegedly served by United States mail on November 27, 2019, does not include the deadline by which a response to the Motion must be filed and served.

Through the Motion, the Debtor seeks to continue the automatic stay as to all creditors. The Debtor states she will rent out all or a portion of the Residence and the Rental and that the rent collected will be used to make her deed of trust payments and to fund a chapter 11 plan of reorganization. The Debtor also states that she has a strategy to resolve the "home improvement/tax liens" on the Residence and the Rental. The Debtor does not describe her "strategy." Moreover, in her schedules, the Debtor did not list any home improvement or tax liens.

The Debtor also represents that she will begin making adequate protections payments to her secured creditors in December 2019. However, the Debtor does not propose an amount for those payments, nor has she provided any convincing evidence of her ability to make them.

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

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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.

Notwithstanding the assertions in the Motion, at this time, the Debtor has not provided clear and convincing evidence that her financial affairs have improved since the dismissal of her prior chapter 13 case, such that the pending chapter 11 case will result in a confirmed plan that will be fully performed.

In her pending case, the Debtor's schedules I and J indicate negative net monthly income of (\$1,506.00). Because her schedule J does not include expenses attributable to the Rental, such as the deed of trust payment, the Debtor's net monthly income is likely even less than this amount. In addition, contrary to the assertions in her schedule I, the Debtor's statement of financial affairs indicates that the Debtor's gross monthly income is much less than the \$3,802.00 indicated in her schedule I.

Given the Debtor's negative net income, and the marked discrepancy between the income reflected in her schedules and in her statement of financial affairs (which reflect a lack of any meaningful income, at all), at this time, the Debtor has not presented clear and convincing evidence that she can confirm a chapter 11 plan and fully perform any such plan.

Similarly, the Debtor has not provided sufficient evidence of her ability to make adequate protection payments, nor does the Motion mention the amount of the adequate protection payments that the Debtor intends to make.

In light of the foregoing, the Court will deny the Motion.

The Court will prepare the order.

Party Information

Debtor(s):

Blanca Mohd

Represented By
Dana M Douglas

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1:19-12869 Antonio Jauregui

Chapter 7

#5.00 Motion for relief from stay [UD]

ASHLEY JAUREGUI
VS
DEBTOR

Docket 9

Tentative Ruling:

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

On July 28, 2019, movant served on the debtor a 60 Day Notice to Quit (“Notice to Quit”) [doc. 9, Exh. B]. On September 6, 2019, movant filed an unlawful detainer complaint in state court against the debtor (the “UD Complaint”) [doc 9, Exh. C].

On November 15, 2019, the debtor filed a chapter 7 petition. In his petition, the debtor represents that he rents his residence. In his schedule A/B, the debtor represents that he does not own any legal or equitable interest in any real property [doc. 13]. In his schedule F, the debtor identifies movant as someone to whom he owes unpaid rent. *Id.*

On November 27, 2019, movant filed and served the pending motion (the “Motion”) [doc. 9]. On December 4, 2019, the debtor filed an opposition (the “Opposition”) [doc.15].

In the Opposition, the debtor argues, among other things, that movant provided insufficient notice of the Motion. Pursuant to Local Bankruptcy Rules 4001-1(c)(1) and 9013-1(d)(2), the notice of the motion and the motion must be filed and served not later than 21 days before the hearing date designated in the notice.

Here, on November 27, 2019, movant filed and served the Motion and the proof of service [doc. 11]. November 27, 2019 is exactly 21 days before the hearing date on the notice, i.e., December 18, 2019. Accordingly, movant complied with the local rules and provided sufficient notice of the Motion to the debtor.

In the Opposition, the debtor contends, among other things, that movant is not the

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CONT...

Antonio Jaurequi

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“real” owner of the property at issue, and thus, does not have standing to bring the Motion. However, in the debtor’s declaration, the debtor states that, in a previous bankruptcy case affecting the property, movant acquired her interest in the property through a settlement with a chapter 7 trustee. To the Opposition, the debtor attached a quitclaim deed, in which the chapter 7 trustee, of case 2:12-bk38376-TD, quitclaimed to movant all of that estate’s interest in the property, in connection with a court-approved motion to approve compromise. [Opposition, Exh. A]. Accordingly, movant appears to be a legal owner of the property. As a legal owner of the property, movant is a “party in interest” who has standing to request relief from the stay. *In re Ly*, 601 F. App’x 494, 496 (9th Cir. 2015).

Pursuant to *In re Smith*, 105 B.R. 50 (Bankr. C.D. Cal. 1989), a residential lease:

is terminated under California law when the lessor affirms his election to terminate the lease as expressed in a notice to pay rent or quit which the lessor has previously served upon the lessee. This affirmation of the termination of the lease by the lessor is usually accomplished by the filing of a complaint for unlawful detainer. Thus, if the lessor properly notifies the lessee of the lessor's intention to terminate the lease, the unpaid rent is not paid within the appropriate period of notice, and the lessor affirms his intention to terminate the lease by, at least, filing a complaint for unlawful detainer, the lease is terminated and the lessee retains no property interest with regards to the leased real property, except, perhaps, for one—the right to obtain relief from forfeiture of the lease under California Code of Civil Procedure § 1179.

Id. at 53–54 (internal citations omitted).

Here, on June 28, 2019, movant served the Notice to Quit on the debtor. The termination of the 60 days was August 27, 2019. Apparently, prior to that termination date, the debtor did not quit and deliver possession of the premises to movant. On September 6, 2019, movant filed the UD Complaint. Because the conditions under California law have been met, the residential “lease” at issue appears to have been terminated, as of the filing of the UD Complaint. Subsequently, on November 15, 2019, the debtor filed his chapter 7 petition.

In the Opposition, the debtor argues, among other things, that the Notice to Quit is defective and that the debtor's brother orally conveyed a life estate interest in the

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CONT... **Antonio Jaurequi**
property to the debtor.

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To allow the parties to adjudicate these issues in state court, there is cause to grant relief from the automatic stay. The state court is a specialized tribunal that has the expertise to decide the UD Complaint and any related issues as to the debtor's interest, if any, in the real property issue.

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 her 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.

Party Information

Debtor(s):

Antonio Jaurequi	Pro Se
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Trustee(s):

David Seror (TR)	Pro Se
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1:19-12938 Lalla Aicha Haidara

Chapter 7

#6.00 Motion for relief from stay [UD]

DONALD M. STONE
VS
DEBTOR

Docket 9

Tentative Ruling:

The Court will continue this hearing to **January 22, 2020 at 9:30 a.m.**

On December 2, 2019, movant filed and served notice of the motion and the motion [doc. 9]. In the notice, movant indicated that the motion is being heard on shortened notice.

Pursuant to Judge Kaufman's Self-Calendaring Procedure, available at <http://www.cacb.uscourts.gov/judges/self-calendaring/kaufman-v>, such motions - involving residential unlawful detainer actions, in which a judgment for possession has been granted pre-petition - may be calendared on shortened notice, without prior court approval, if the movant complies with Judge Kaufman's procedures.

Here, although the movant obtained a judgment for possession prepetition, the judgment *is not against the debtor*. Accordingly, this matter is not eligible to be set on shortened time.

In addition, pursuant to Local Bankruptcy Rule 4001-1(c)(1)(A), movant must serve the motion, notice and all supporting documents on the debtor. The proof of service attached to the motion indicates that movant served only the chapter 7 trustee.

By December 24, 2019, movant must file and serve notice of the continued hearing, the motion and all supporting documents on the debtor. The notice of the continued hearing must indicate that the motion is being heard on regular notice and that an opposition is due 14 days prior to the hearing on the motion.

Appearances on December 18, 2019 are excused.

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CONT... Lalla Aicha Haidara

Chapter 7

Party Information

Debtor(s):

Lalla Aicha Haidara

Pro Se

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:19-12589 Alondra Martinez De Murcia

Chapter 7

#7.00 Motion for relief from stay [RP]

NATIONS DIRECT MORTGAGE, LLC
VS
DEBTOR

Docket 11

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.

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):

Alondra Martinez De Murcia

Represented By
Benard C Udeozor

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CONT... Alondra Martinez De Murcia

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:16-10096 Alexander Eshaghian

Chapter 13

#8.00 Motion for relief from stay [AN]

MICHELE BIDINGER
VS
DEBTOR

Docket 93

*** VACATED *** REASON: No chamber copy of motion provided.
Motion is off calendar.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alexander Eshaghian

Represented By
Richard T Baum

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:19-12523 John Jairo Barrios

Chapter 13

#9.00 Motion for relief from stay [RP]

LOS ACEVEDOS, INC.
VS
DEBTOR

Docket 25

Tentative Ruling:

Grant under 11 U.S.C. § 362(d)(1) by conditioning the automatic stay.

Pending confirmation of the debtor's proposed chapter 13 plan, and resolution of the parties' dispute regarding the required terms of the chapter 13 plan, the Court will require the chapter 13 trustee to commence making adequate protection payments, in the amount of \$954.38 per month, to movant.

By December 23, 2019, the debtor must file an amended chapter 13 plan which provides for such preconfirmation adequate protection payments to be made to movant.

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

Party Information

Debtor(s):

John Jairo Barrios

Represented By
Eric Bensamochan

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#10.00 Motion for relief from stay [RP]

KEYSTONE REAL ESTATE LENDING FUND, L.P.
VS
DEBTOR

Docket 126

Tentative Ruling:

Movant has demonstrated that the Court must grant relief from the automatic stay to movant, pursuant to 11 U.S.C. § 362(d)(2).

Using the \$2,400,000 valuation offered by movant, which the debtor has not contradicted, there is no equity in the real property at issue. In addition, given movant's decision to reject the plan, and the absence of an impaired consenting class (because the holder of the junior deed of trust is an insider), that property does not appear to be necessary to an effective reorganization.

As such, the Court will condition any continuation of the automatic stay on the debtor making significant monthly payments to movant, commencing in the immediate future, as well as maintaining sufficient insurance coverage.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Represented By
John-Patrick M Fritz
David B Golubchik
Jeffrey S Kwong

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1:19-12928 Alfredo Gonzalez

Chapter 7

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

Docket 13

Tentative Ruling:

Deny.

As an initial matter, in the *Order Granting Application and Setting Hearing on Shortened Notice* (the "OST") [doc. 16], the Court ordered the debtor to serve written notice of the hearing, the OST, the motion and all supporting documents on all creditors and the chapter 7 trustee by personal delivery, overnight mail, facsimile or email. On December 9, 2019, the debtor filed a notice of hearing, which included the OST, the motion and all supporting documents [doc. 20]. However, contrary to the OST, the proof of service indicates that the debtor served those documents on all creditors by United States mail.

In a chapter 7 case, 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 not be concluded with a chapter 7 discharge. *See In re Castaneda*, 342 B.R. 90, 94 n.5 (Bankr. S.D. Cal. 2006).

Here, the debtor has not met his burden under 11 U.S.C. § 362(c)(3)(C). This is the debtor's ninth bankruptcy petition. Listed below are the debtor's previous bankruptcy cases:

Case No.	Chapter	Disposition
10-21783	11	Dismissed on 5/11/12 with 180-day bar to refile on OSC re why the case should not be dismissed or converted
12-17748	7	Dismissed on 9/14/12 for failure to file information

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CONT... **Alfredo Gonzalez**

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12-18639	11	Dismissed on 4/23/13 with 180-day bar to refiling motion by the United States Trustee
13-17455	7	Case closed without a discharge on 2/26/14
14-11723	7	Case closed without a discharge on 11/18/14
15-11441	11	Debtor voluntarily dismissed case on 4/12/16
16-12203	11	Standard discharge on 12/26/18
19-12680	11	Dismissed on 11/20/19 for failure to file information

On October 23, 2019, the debtor filed his eighth bankruptcy petition, initiating case 1:19-bk-12680-VK (the "Eighth Case"). After the debtor defaulted under his plan of reorganization (which was confirmed in his seventh bankruptcy case, 1:16-bk-12203-VK), the debtor commenced the Eighth Case.

On November 20, 2019, after the debtor failed to file the required case commencement documents, the Court dismissed the Eighth Case [1:19-bk-12680-VK, doc. 18]. On November 20, 2019, the debtor filed his pending chapter 7 case; that is the same day on which the Court dismissed the Eighth Case.

This chapter 7 case will not be concluded with the debtor receiving a chapter 7 discharge [doc. 6]. Within eight years before he commenced this case, in his seventh bankruptcy case, the debtor received a discharge under 11 U.S.C. § 1141. 11 U.S.C. § 727(a)(8).

Given the debtor's many preceding bankruptcy cases, and his conduct in connection with his two most recent chapter 11 cases, the debtor has not provided clear and convincing evidence to overcome the presumption that he did not file this chapter 7 case in good faith. Moreover, in this case, he cannot obtain a chapter 7 discharge.

If the chapter 7 trustee determines that there may be nonexempt equity in one or more of the debtor's real properties, the Court expects that the chapter 7 trustee will take appropriate action. However, in connection with the debtor's motion for such relief, the Court will not continue the automatic stay.

The Court will prepare the order.

Party Information

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CONT... Alfredo Gonzalez

Chapter 7

Debtor(s):

Alfredo Gonzalez

Represented By
Eric Bensamochan

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:30 PM

1:19-10537 Lynn Patricia Wolcott

Chapter 7

Adv#: 1:19-01127 Hooshim v. Wolcott

- #11.00** Status conference re: complaint:
- 1) Seeking to determine dischargeability of debts pursuant to 11 U.S.C. sec 523(a)(2) and
 - 2) Seeking to determine dischargeability of debts pursuant to 11 U.S.C. sec 523(a)(4) and
 - 3) Seeking to determine dischargeability of debts pursuant to 11 U.S.C. sec 523(a)(6)
 - 4) Non dischargeability under 11 U.S.C. sec 523 (A)(3) for debt not listed in time to file timely complaint

Docket 1

Tentative Ruling:

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on March 4, 2020.**

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 **February 28, 2020.**

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 December 18, 2019 is excused.

Party Information

Debtor(s):

Lynn Patricia Wolcott

Represented By

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CONT... Lynn Patricia Wolcott

Chapter 7

Faith A Ford

Defendant(s):

Lynn Patricia Wolcott

Pro Se

Plaintiff(s):

Benjamin Hooshim

Represented By
Andrew Edward Smyth

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:19-11034 John Bicz

Chapter 7

Adv#: 1:19-01125 Peterson v. Bicz

#12.00 Status conference re: complaint to determine dischargeability of debt under 11 USC sec 523

Docket 1

Tentative Ruling:

The Court will continue the status conference to **2:30 p.m. on January 8, 2020**. At that time, the Court also will evaluate the defendant's motion to vacate the default (which has been set for hearing then).

Unless the plaintiff agrees to stipulate to vacate the default and withdraw the motion for default judgment, the Court will set the motion for default judgment for hearing. *See U.S. v. Signed Personal Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010) ("judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits").

The Court will set the plaintiff's motion for default judgment for hearing at **2:30 p.m. on February 5, 2020**. Prior to that time, the Court will assess whether, *if* the Court has granted the defendant's motion to vacate the default, plaintiff's motion for default judgment has become moot.

Party Information

Debtor(s):

John Bicz

Represented By
John Asuncion

Defendant(s):

John Bicz

Pro Se

Plaintiff(s):

Ben Peterson

Represented By
Shai S Oved

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CONT... John Biczo

Chapter 7

Trustee(s):

Diane C Weil (TR)

Pro Se

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2:30 PM

1:18-10982 Gabriel Medina

Chapter 13

Adv#: 1:18-01126 Medina v. Strunzo Development Corp., a California Corporatio

#13.00 Motion for summary judgment or, in the alternative,
summary adjudication of issues

Docket 27

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on January 29, 2020.**

Appearances on December 18, 2019 are excused.

Party Information

Debtor(s):

Gabriel Medina

Represented By
Anthony Obehi Egbase
Sedoo Manu

Defendant(s):

Strunzo Development Corp., a

Represented By
Julian K Bach
Susan C Stevenson

Does 1-50 Inclusive

Pro Se

Plaintiff(s):

Gabriel Medina

Represented By
Anthony Obehi Egbase

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:10-17214 Darin Davis

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Danning Gill Diamond & Kollitz LLP, general counsel to Chapter 7 Trustee

SLBiggs, Accountant to Chapter 7 Trustee

fr. 9/19/19; 10/17/19; 11/7/19; 12/5/19

Docket 320

Tentative Ruling:

David Seror, chapter 7 trustee – approve fees of \$39,980.00 and reimbursement of expenses of \$79.88, pursuant to 11 U.S.C. § 330, on a final basis.

SLBiggs, A Division of SingerLewak, accountant to chapter 7 trustee – approve \$4,977.50 in fees and reimbursement of \$177.89 in expenses, 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.

Danning Gill Diamond & Kollitz LLP ("Danning Gill"), counsel to chapter 7 trustee – approve fees of \$398,996.41 in fees and reimbursement of expenses of \$17,168.30, 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. Danning Gill is authorized to collect the remaining balance of \$105,820.91 in fees and \$11,948.91 in expenses. The Court will not approve fees in the amount of \$18,132.59 for the subject period 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

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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 reduce the fees billed by Danning Gill for preparing and filing their second interim, final and supplemental fee applications by 35%. Danning Gill billed a total of \$28,398.50 for preparing these fee applications [docs. 314 and 358]. It appears that the fees requested for such services are excessive. Accordingly, for these services, the Court will approve reduced fees of \$18,459.03.

The Court will also reduce the fees billed by Danning Gill for negotiating, preparing and obtaining court approval for a settlement with Heavy Duty Specialties by 25%. Danning Gill billed a total of \$5,264.50 for these services. Taking into account the complexity of the issue and the experience of the counsel providing the services, it appears that the fees requested are excessive. Accordingly, the Court will approve reduced fees of \$3,948.38.

Additionally, the Court will reduce the fees billed by Danning Gill for the following services by 50%. It appears that the fees requested are excessive in light of the complexity of the issue and the experience of the counsel providing the services.

Category	Timekeeper	Date	Description	Time	Fee	Reduced Fee
Claims Administrations and Objections	Michael G. D’Alba	12/18/18	Work on objection to proof of claims of Asphalt Professionals	2.90	\$1,479.00	\$739.50

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Claims Administrations and Objections	Michael G. D'Alba	12/19/18	Review documents re objection to proof of claims of Asphalt Professionals	2.20	\$1,122.00	\$561.00
Claims Administrations and Objections	Michael G. D'Alba	1/4/19	Prepare papers re objection to proof of claims of asphalt professionals	1.70	\$867.00	\$433.50
Claims Administrations and Objections	Michael G. D'Alba	1/4/19	Prepare papers re objection to proof of claims of asphalt professionals	0.30	\$153.00	\$76.50
Claims Administrations and Objections	Michael G. D'Alba	1/4/19	Prepare papers re objection to proof of claims of asphalt professionals	1.60	\$816.00	\$408.00
Claims Administrations and Objections	Michael G. D'Alba	1/7/19	Revise papers re objection to proof of claim of asphalt professionals inc.	2.20	\$1,122.00	\$561.00
Claims Administrations and Objections	Michael G. D'Alba	1/7/19	Review and revise papers re objection to proof of claim of asphalt professionals inc.	0.30	\$153.00	\$76.50
Claims Administrations and Objections	Michael G. D'Alba	1/7/19	Revise papers re objection to proof of claim of asphalt professionals inc.	0.20	\$102.00	\$51.00
Claims Administrations and Objections	Michael G. D'Alba	1/8/19	Prepare papers re objection to proof of claim of asphalt professional inc.	4.00	\$2,040.00	\$1,020.00
Claims Administrations and Objections	Michael G. D'Alba	1/10/19	Revise points and authorities to claim objection	3.20	\$1,632.00	\$816.00

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) (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

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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 by Danning Gill 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
Case Administration	Michael G. D’Alba	10/31/17	TEL. CONF. WITH TRUSTEE’S ADMINISTRATOR RE INVOICE FOR INSURANCE PREMIUMS	0.10	\$48.00
Case Administration	Michael G. D’Alba	10/31/17	EXCHANGE MEMOS WITH TRUSTEE ADMINISTRATOR RE INVOICE FOR INSURANCE PREMIUMS	0.80	\$384.00
Case Administration	Michael G. D’Alba	11/1/17	TEL. CONF. WITH TRUSTEE ADMINISTRATOR RE INSURANCE PREMIUMS RE SAN FERNANDO PROPERTY	0.20	\$96.00
Case Administration	Michael G. D’Alba	11/1/17	REVIEW OF INVOICE FOR INSURANCE PREMIUMS FOR SAN FERNANDO PROPERTY	0.60	\$288.00
Fee/Employment Objections	Valerie G. Radocay	9/20/17	PREPARE MEMO TO L. NUZZI RE SL BIGGS INTERIM FEE APPLICATION	0.20	\$46.00

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Fee/Emploment Objections	Michael G. D'Alba	10/19/17	RESPOND TO MEMO FROM L. NUZZI RE ACCOUNTANT FEE APPLICATION	0.10	\$48.00
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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.").

In accordance with the foregoing, the Court does not approve the fees billed by Danning Gill for the services identified below:

Category	Timekeeper	Date	Description	Time	Fee
Case Administration	Michael G. D'Alba	4/23/18	REVIEW STATUS OF NON-DISCHARGEABILITY ADVERSARY PROCEEDING	0.10	\$51.00
Case Administration	Michael G. D'Alba	9/4/19	TELE. CONF. WITH COURT STAFF RE SCHEDULING OF FINAL REPORT	0.10	\$51.00
Case Administration	Michael G. D'Alba	9/6/19	REVIEW LIST OF CREDITORS RE FILING NOTICE RE HEARING ON FINAL REPORT	0.30	\$153.00
Case Administration	Michael G. D'Alba	9/17/19	REVIEW OF STATUS OF FINAL REPORT HEARING AND TEL. CONF. WITH COURTROOM DEPUTY RE SAME	0.30	\$153.00
Claims Administration and Objections	Michael G. D'Alba	11/16/18	REVIEW NEW DATES FOR CLAIM OBJECTION HEARING	0.20	\$102.00

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Claims Administration and Objections	Michael G. D'Alba	11/19/18	RESEARCH AVAILABLE DATES FOR CLAIMS OBJECTION HEARING	0.20	\$102.00
Claims Administration and Objections	Michael G. D'Alba	12/17/18	PREPARE CALENDAR CARD ON HEARING OF OBJECTION OF PROOF OF CLAIM OF MURNECK HOLDINGS	0.10	\$51.00
Claims Administration and Objections	Michael G. D'Alba	2/21/19	PREPARE CALENDAR CARDS RE MURNECK HOLDINGS CLAIM OBJECTION	0.40	\$204.00
Claims Administration and Objections	Michael G. D'Alba	3/13/19	REVIEW STATUS OF CLAIM OBJECTION TO MURNECK HOLDINGS	0.30	\$153.00
Claims Administration and Objections	Michael G. D'Alba	4/26/19	REVIEW STATUS OF A POTENTIAL J. LEON CLAIM OBJECTION	0.30	\$153.00
Claims Administration and Objections	Michael G. D'Alba	9/4/19	TEL. CONF. WITH DEPUTY COURT CLERK RE SCHEDULING OF FINAL REPORT AND TWO MOTIONS RE UNTIMELY CLAIMS	0.10	\$51.00

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.

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Chapter 7

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

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1:17-11358 Thomas Jang Young Yoon

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

Levene, Neale, Bender, yoo & Brill LLP, Attorneys for Chapter 7 Trustee

SLBiggs, CPA, Accountant for Chapter 7 Trustee

Docket 72

Tentative Ruling:

Nancy J. Zamora, chapter 7 trustee – approve fees of \$28,250.00 and reimbursement of expenses of \$1,839.86, 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. The trustee is authorized to collect the remaining balance of \$18,461.41 in fees and \$635.46 in expenses.

Levene, Neale, Bender, Yoo & Brill L.L.P. (“Levene Neale”), counsel to chapter 7 trustee – approve fees of \$173,621.20 and reimbursement of expenses of \$2,531.20, 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. Levene Neale is authorized to collect the remaining balance of \$53,728.24 in fees and \$289.45 in expenses. Levene Neale requested that the Court approve \$15,470.50 in fees that were disallowed on the first interim application [doc. 61]. The Court will approve \$10,213.00 of those fees on a final basis.

SLBiggs, A Division of SingerLewak (“SLBiggs”), accountant to chapter 7 trustee – approve fees of \$11,750.00 and reimbursement of expenses of \$148.23, 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. SLBiggs is authorized to collect the remaining balance of \$5,786.00 in fees and \$80.60 in expenses.

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CONT... Thomas Jang Young Yoon

Chapter 7

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):

Thomas Jang Young Yoon

Represented By
Stella A Havkin

Trustee(s):

Nancy J Zamora (TR)

Represented By
Anthony A Friedman

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1:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#3.00 Post Confirmation status conference re chapter 11 case

fr. 11/8/18, 1/24/19;2/21/19; 4/4/19; 6/13/19; 7/3/19

Docket 1

Tentative Ruling:

Based on the *Debtor's First Post-Confirmation Status Report* [doc. 256], the Court will continue the post-confirmation status conference to **June 11, 2020 at 1:00 p.m.** On or before **May 28, 2020**, 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 December 19, 2019 are excused.

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim

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1:19-12810 Blanca Mohd

Chapter 11

#4.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The debtor has not timely filed her November 2019 monthly operating report.

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **February 28, 2020.**

Deadline to mail notice of Bar Date: **December 27, 2019.**

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: **June 1, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on June 18, 2020.**

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.

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CONT...

Blanca Mohd

Chapter 11

Party Information

Debtor(s):

Blanca Mohd

Represented By
Dana M Douglas

**United States Bankruptcy Court
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2:00 PM

1:18-11181 Rowena Benito Macedo

Chapter 11

#5.00 Motion for entry of discharge of chapter 11 case pursuant to 11 U.S.C. 1141(d)(5) upon completion of payments to unsecured creditors and final decree closing chapter 11 case

Docket 118

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):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

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2:00 PM

1:18-11181 Rowena Benito Macedo

Chapter 11

#6.00 Debtor's motion for final decree and order closing case

fr. 11/7/19; 12/5/19

Docket 105

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):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

Movant(s):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

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2:00 PM

1:18-11181 Rowena Benito Macedo

Chapter 11

#7.00 Post-confirmation status conference

fr. 6/21/18; 10/18/18; 11/1/18; 12/13/18; 2/7/19; 4/4/19;
10/3/19; 11/7/19; 12/5/19

Docket 1

Tentative Ruling:

See calendar nos. 5 and 6.

Party Information

Debtor(s):

Rowena Benito Macedo

Represented By
Onyinye N Anyama

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2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#8.00 Motion re: objection to claim number 27 by claimant City of Los Angeles,
Office of Finance

Docket 215

*** VACATED *** REASON: Withdrawal filed 12/6/19. [Dkt. #254]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton

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2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#9.00 Motion re: objection to claim number 28 by claimant City of Los Angeles,
Office of Finance

Docket 216

***** VACATED *** REASON: Claim withdrawn on 12/9/19 [doc. 255].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton

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1:18-12354 MidiCi Group, LLC

Chapter 11

#10.00 Motion re: objection to claim number 1 and 29 by claimant
Larimer County Treasurer

Docket 217

Tentative Ruling:

Objection sustained.

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton

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1:18-12354 MidiCi Group, LLC

Chapter 11

#11.00 Motion re: objection to claim number 2 by Claimant Department of Treasury - Internal Revenue Service

Docket 218

***** VACATED *** REASON: Withdrawal filed 12/6/19 [Dkt. 253]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton

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2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#12.00 Motion re: objection to claim number 7 by claimant David Goldberg

Docket 227

Tentative Ruling:

The Court will continue this hearing to **January 23, 2020 at 2:00 p.m.**

The proof of service attached to the motion indicates that the debtor did not serve the motion on the claimant. On November 15, 2019, the debtor filed a corrected proof of service [doc. 244]. However, the corrected proof of service indicates that the hearing date and time is "T.B.D."

By December 23, 2019, the debtor must serve notice of the continued hearing, the motion and the deadline to serve an opposition on the claimant David R. Goldberg at the address listed in proof of claim 7.

Appearances on December 19, 2019 are excused.

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton

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2:00 PM

1:19-10448 Linda Moraga

Chapter 7

- #13.00** Chapter 7 Trustee's Motion for Order:
(1) Authorizing sale of estates right, title and interest in real property free and clear of liens;
(2) Approving overbid procedure;
(3) Approving payment of real estate brokers commissions; and
(4) Finding purchaser is a good faith purchaser

Docket 50

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Linda Moraga

Represented By
Daniel King

Trustee(s):

Nancy J Zamora (TR)

Represented By
Anthony A Friedman

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2:00 PM

1:19-11696 Peter M. Seltzer

Chapter 11

#14.00 Debtor's motion for dismissal of chapter 11 bankruptcy

fr. 12/5/19

Docket 59

Tentative Ruling:

Deny.

Pursuant to 11 U.S.C. § 1112(b)—

(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.

(2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that--

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)--

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

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CONT... Peter M. Seltzer

Chapter 11

Pursuant to section 1112(b), the bankruptcy court has discretion to dismiss or convert a chapter 11 case. *See In re Consolidated Pioneer Mortg. Entities*, 264 F.3d 803, 806 (9th Cir. 2001) ("The decision to convert the [chapter 11] case to [c]hapter 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).").

"[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)).

Pursuant to 11 U.S.C. § 305(a)(1)—

- (a) 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

The pertinent issue is whether the debtor's creditors will be prejudiced if this case is dismissed. At this time, it appears that dismissal of this case would prejudice several of the debtor's creditors.

Creditors of the debtor's estate hold claims for more than \$2 million in the aggregate, including secured, priority unsecured and nonpriority unsecured claims. The debtor has not provided sufficient evidence that he can and will pay the claims of *all* creditors - including each of his nonpriority unsecured creditors. In light of the debtor's highly inaccurate schedules and statements, as initially filed (and belatedly amended), his excessive post-petition expenditures (many without sufficient explanation), and his lack of post-petition income, if the Court were to dismiss this case, it is not credible that the debtor will satisfy each of these claims.

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CONT... Peter M. Seltzer

Chapter 11

Without providing the Court with a concrete and realistic strategy on how the debtor can and will pay all creditors of the estate, in full, the debtor has not met his burden to show that dismissal will not prejudice creditors.

Contrary to the debtor's assertions, this does not appear to be a two-party dispute. Belmeko LLC, Ms. Konecne and Mr. Misle each filed a proof of claim in the debtor's case. These claims are based on a state court action (the "Nevada State Action"), which has yet to be resolved. Even if this case did constitute a two-party dispute, dismissal of the case would prejudice Mr. Kessler, whose ability to receive payment of his nonpriority unsecured claim would be prejudiced.

Further, it does not appear that there has been a sufficient change in the debtor's circumstances that would justify dismissal of this case. In his schedule I [doc. 10], the debtor represented that, as of the petition date, he earned \$0.00 per month in income. Based on the debtor's monthly operating reports, all post-petition receipts have arisen from insurance recoveries; none have arisen from family contributions or other income generated by the debtor. In addition, both the state court action between Mr. Kessler and the debtor and the Nevada State Action remain pending.

The Court also will not dismiss the case pursuant to § 305(a)(1); as noted above, the interest of creditors would not be better served by dismissal.

Mr. Kessler must submit the order within seven (7) days.

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, December 19, 2019

Hearing Room 301

2:00 PM

1:19-11696 Peter M. Seltzer

Chapter 11

#15.00 Motion to convert chapter 11 case to chapter 7, or alternatively to appoint a chapter 11 trustee pursuant to 11 U.S.C. § 1112(b)

Docket 78

Tentative Ruling:

Grant, by converting this chapter 11 case to a case under 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;

...

(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

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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 [c]hapter 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 convert the debtor's chapter 11 case to one under chapter 7. The debtor has not provided the Court with a complete or accurate picture of his assets, liabilities and transactions. Moreover, the debtor has grossly mismanaged the estate.

After filing highly inaccurate schedules and statements, the debtor did not file his amended schedule A/B and amended statement of financial affairs, until *after* Mr. Kessler filed several motions for Rule 2004 examinations. The amended schedule A/B and amended statement of financial affairs filed by the debtor appear to remain inaccurate.

During the pendency of this chapter 11 case, without having generating any income, the debtor has spent an extraordinary amount of money, often without providing a sufficient explanation. The debtor states that he is optimistic about his earning potential through business opportunities. However, the debtor has not provided any information to the Court about these business opportunities and the amount of compensation the debtor will receive.

Moreover, there appear to be potential claims that a chapter 7 trustee could pursue *i.e.* preferential transfers, fraudulent transfers, cross-claims in the debtor's pending state court litigation and malpractice claims. In addition, a chapter 7 trustee could liquidate the debtor's interests in his corporations and any other nonexempt property, including the nonexempt equity in the debtor's residence.

Finally, in accordance with 11 U.S.C. § 1112(b)(2), the debtor has not provided evidence of "unusual circumstances" which establishes that converting his case to a case under chapter 7 would not be in the best interests of the creditors and the estate.

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CONT... Peter M. Seltzer

Chapter 11

Given the debtor's conduct, his lack of income and the assets and liabilities of the estate, conversion of this case to chapter 7, and the resulting appointment of a chapter 7 trustee, is in the best interests of creditors. Because it is in the best interest of creditors and the estate to convert this case to one under chapter 7, the Court will not rule on Mr. Kessler's alternative request to appoint a chapter 11 trustee.

Mr. Kessler must submit the order within seven (7) days.

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

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1:19-11696 Peter M. Seltzer

Chapter 11

#16.00 Motion Authorizing Fed. R. Bankr. P. 2004 Oral Examination of Debtor by Darren Kessler and Production of Documents by Debtor Pursuant to Fed. R. Bankr. P. 2004 and 9016

fr. 10/3/19; 11/7/19

Docket 36

Tentative Ruling:

Tentative ruling regarding the debtor's objections to Darren Kessler's motion for production of documents:

The Debtor's Objections to the Categories of Document Production

1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 16, 17, 18, 19, 22, 23, 24, 25, 26, 30, 31, 32: overruled
14: overruled, but the Court will limit this request from January 1, 2018 through the petition date

29: overruled to the extent that the debtor has not already produced responsive documents

4: sustained as to subpart e and overruled as to the balance to the extent that responsive documents were not already produced to Mr. Kessler by a third party

11, 13, 15, 20, 21, 27, 28: sustained

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

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1:19-11696 Peter M. Seltzer

Chapter 11

#17.00 Status conference re: chapter 11 case

fr. 8/29/19; 12/5/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Thursday, December 19, 2019

Hearing Room 301

2:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#18.00 Debtors' Motion for authority to use cash collateral
(14710 Plummer Street, Panorama City, CA 91402)

Docket 52

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.

Party Information

Debtor(s):

Melida Jimenez

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Joint Debtor(s):

Jose Luis Jimenez Escobar

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**

Friday, December 20, 2019

Hearing Room 301

9:30 AM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:18-01077 The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

#1.00 Motion to reconsider entry of consent order
 [Evidentiary Hearing]

fr. 5/15/19; 10/22/19

Docket 24

***** VACATED *** REASON: Continued to 1/30/20 at 10:00 a.m. - jc**

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Defendant(s):

Duane Van Dyke Irrevocable Trust

Represented By
Kelly Warren

Helayne Muennichow

Represented By
Robert J McKennon
Gary A Kurtz

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
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9:30 AM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:18-01077 The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

#2.00 Status conference re: complaint for interpleader

fr. 9/12/18; 11/21/18; 2/20/19; 4/3/19; 5/15/19; 10/22/19;

Cross-claim

David Seror, soley in his capacity as the Chapter 7 Trustee for the bankruptcy estate of debtor Hermann Muennichow

v.

Helayne Muennichow, an individual; Duane Van Dyke Irrevocable Trust, an entity of unknown form; and John Van Duke, trustee of the Duane Van Dyke Irrevocable trust

Cross-claim

Helayne Muennichow,\

v.

Duane Van Dyke Irrevocable Trust; David Seror; and chapter 7 trustee

Docket 1

***** VACATED *** REASON: Continued to 1/30/20 at 10:00 a.m. - jc**

Party Information

Debtor(s):

Hermann Muennichow

Represented By

**United States Bankruptcy Court
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9:30 AM

CONT... Hermann Muennichow

Chapter 7

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
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Thursday, December 26, 2019

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#0.10 Status conference re: chapter 11 case
fr. 12/19/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blanca Mohd

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 26, 2019

Hearing Room 301

2:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#1.00 Motion of Mr. Tortilla, Inc. to approve settlement with Roger Vega

Docket 139

Tentative Ruling:

The debtor has not attached the subject settlement agreement to its motion to approve the compromise between the debtor and Roger Vega. Although the debtor contends Mr. Vega has requested that the settlement agreement remain confidential, the debtor has not provided any legal basis for such a request, such as a doctrine of privilege or an exception to 11 U.S.C. § 107(a). Consequently, in order for the Court to assess the merits of this motion, the debtor must file a copy of the settlement agreement.

The Court will continue this hearing to **2:00 p.m. on January 23, 2020**. No later than **January 2, 2020**, the debtor must file and serve a declaration attaching the proposed settlement agreement with Mr. Vega. Any opposition to the specific terms of the settlement agreement must be filed and served on the debtor and its counsel no later than **January 9, 2020**, and any reply thereto must be filed and served on all respondents no later than **January 16, 2020**.

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
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Thursday, December 26, 2019

Hearing Room 301

2:00 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#2.00 Defendant's Emergency motion to overrule objections and enforce subpoena

Docket 17

Tentative Ruling:

Grant. The Court will impose on David Esquibias sanctions in the amount of \$1,470, payable to the movants, which is the amount of fees billed by the movants' counsel for preparing the motion [Declaration of Lisa Anne Coe, ¶ 15].

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.

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Susan Biddle

Represented By
Michael S Robinson
Lisa A. Coe

Susan Biddle, Trustee of the Biddle

Represented By
Michael S Robinson
Lisa A. Coe

Plaintiff(s):

David K. Gottlieb

Represented By
Peter A Davidson

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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Thursday, December 26, 2019

Hearing Room 301

2:00 PM

CONT... Christopher Anderson

Howard Camhi

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Peter A Davidson
Howard Camhi