

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

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

1:18-11560 Elizabeth Roberts

Chapter 13

#1.00 Motion for relief from stay [RP]

BANK OF AMERICA NATIONAL ASSOCIATION
VS
DEBTOR

fr. 10/23/19; 12/4/19

Stip for adequate protection filed 1/3/20

Docket 76

*** VACATED *** REASON: Order entered on 1/6/20 [doc. 83].

Tentative Ruling:

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, January 8, 2020

Hearing Room 301

9:30 AM

1:18-12689 Mary Ann Irvine

Chapter 13

#2.00 Motion for relief from stay [RP]

CITIBANK, NA
VS
DEBTOR

fr. 11/6/19; 11/6/19; 12/4/19

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, January 8, 2020

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, January 8, 2020

Hearing Room 301

9:30 AM

1:19-11127 Mary Ann Noto

Chapter 13

#3.00 Motion for relief from stay [RP]

CITIMORTGAGE, INC.
VS
DEBTOR

fr. 12/4/19

Docket 32

***** VACATED *** REASON: Order entered on 12/12/19 [doc. 38].**

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

1:19-12738 Mildred Robles

Chapter 7

#4.00 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):

Mildred Robles

Represented By
Elena Steers

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

1:19-12990 Fernando Arroyo

Chapter 7

#5.00 Motion for relief from stay [PP]

LBS FINANCIAL CREDIT UNION
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):

Fernando Arroyo

Represented By
Barry E Borowitz

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 8, 2020

Hearing Room 301

9:30 AM

1:18-10849 David Perez and Cynthia Margarita Perez

Chapter 13

#6.00 Motion for relief from stay [PP]

JPMORGAN CHASE BANK, N.A.
VS
DEBTOR

Docket 55

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Perez

Represented By
Todd J Roberts

Joint Debtor(s):

Cynthia Margarita Perez

Represented By
Todd J Roberts

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

1:18-10849 David Perez and Cynthia Margarita Perez

Chapter 13

#7.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC
VS
DEBTOR

Stip for adequate protection filed 1/6/20

Docket 57

*** VACATED *** REASON: Order entered on 1/6/20 [doc. 63].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Perez

Represented By
Todd J Roberts

Joint Debtor(s):

Cynthia Margarita Perez

Represented By
Todd J Roberts

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

1:18-12467 Colin Basil MacLean

Chapter 13

#8.00 Motion for relief from stay [PP]

AMERICAN HONDA FIANCE CORPORATION
VS
DEBTOR

Docket 77

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):

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**

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

1:19-12419 Hermina Gazmararian

Chapter 13

#9.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Docket 7

Tentative Ruling:

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

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

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

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 8, 2020

Hearing Room 301

9:30 AM

CONT... Hermina Gazmararian

Chapter 13

Party Information

Debtor(s):

Hermina Gazmararian	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 8, 2020

Hearing Room 301

9:30 AM

1:17-13161 Gerald J. Mathews

Chapter 13

#10.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 27

Tentative Ruling:

On January 3, 2020, the debtor filed an untimely opposition [doc. 31].

Party Information

Debtor(s):

Gerald J. Mathews

Represented By
James G. Beirne

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

1:19-11783 Chris Scott Miller

Chapter 13

#11.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

Docket 25

***** VACATED *** REASON: Case dismissed on 12/11/19. The motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chris Scott Miller

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, January 8, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#12.00 Motion for relief from stay [RP]

BAYVIEW LOAN SERVICING, LLC
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):

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**

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

1:19-12845 Ezequiel A Pacheco

Chapter 13

#13.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Case dismissed 12/2/19

Docket 8

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, January 8, 2020

Hearing Room 301

9:30 AM

CONT... Ezequiel A Pacheco

Chapter 13

Party Information

Debtor(s):

Ezequiel A Pacheco

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 8, 2020

Hearing Room 301

9:30 AM

1:18-11799 Farahnaz Alvand

Chapter 13

#14.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

Docket 88

Tentative Ruling:

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

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

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

Deny movant's request for relief from the co-debtor stay under 11 U.S.C. § 1301(a). There does not appear to be a co-debtor on the property. In addition, the movant did not serve any such co-debtor with the motion and notice of hearing as required by Local Bankruptcy Rule 4001-1(1)(C)(iii).

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

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

Party Information

Debtor(s):

Farahnaz Alvand

Represented By
Armen Shaghzo

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

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

CONT... Farahnaz Alvand

Edmond Richard McGuire

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 8, 2020

Hearing Room 301

9:30 AM

1:18-11534 Alex Vallin

Chapter 13

#15.00 Motion for relief from stay [RP]

THE MONEY SOURCE INC
VS
DEBTOR

Docket 52

*** VACATED *** REASON: Ordered entered on 1/7/2020 [doc. 60].

Tentative Ruling:

Party Information

Debtor(s):

Alex Vallin

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**

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

1:17-12919 Margot Ortiz

Chapter 13

#16.00 Motion for relief from stay [RP]

AJAX MORTGAGE LOAN TRUST 2018-G
VS
DEBTOR

Docket 47

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
William G Cort

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

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

CONT... Margot Ortiz

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 8, 2020

Hearing Room 301

9:30 AM

1:18-12555 Francisco Javier Miranda

Chapter 13

#17.00 Motion for relief from stay [RP]

U.S.BANK, N.A.
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 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):

Francisco Javier Miranda

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

CONT... Francisco Javier Miranda

Chapter 13

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

Wednesday, January 8, 2020

Hearing Room 301

9:30 AM

1:18-11685 Maksym Tokarev

Chapter 13

#18.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
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 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):

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, January 8, 2020

Hearing Room 301

1:30 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

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

- #19.00** 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); 11/6/19

Docket 78

Tentative Ruling:

Given that this adversary proceeding has been pending since February 22, 2017, the parties should be prepared to discuss why the parties require a continuance *beyond* February 19, 2020 to prepare a joint pretrial stipulation.

Based only on ongoing settlement discussions, the Court is unlikely to grant such a continuance.

Appearances at 1:30 p.m. on January 8, 2020 **ARE REQUIRED**.

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

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

Wednesday, January 8, 2020

Hearing Room 301

1:30 PM

CONT... Dean Albert Maury Cazares

Chapter 7

Scott Koenig Pro Se

Fear Campaign, Inc. Pro Se

Oxidizer, Inc. Pro Se

Stanley Vincent Pro Se

Plaintiff(s):

Diane C. Weil

Represented By
C John M Melissinos

Trustee(s):

Diane Weil (TR)

Represented By
C John M Melissinos

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

Wednesday, January 8, 2020

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

#20.00 Status conference re: Complaint for:
1. Quiet Title;
2. Slander of title;
3. Declaratory relief

fr. 10/2/19; 11/20/19

Docket 1

Tentative Ruling:

On January 7, 2020, the plaintiff filed a notice of dismissal of the remaining defendant, Martin Serraf [doc. 76]. Although Mr. Serraf's answer references an address in Carlsbad, California, the plaintiff served Mr. Serraf, *the day before this status conference*, with the notice of dismissal at a Beverly Hills, California address and a West Hills, California address. Plaintiff may not have otherwise notified Mr. Serraf of his intent to dismiss Mr. Serraf or that this status conference may be vacated upon that dismissal.

The Court will dismiss Mr. Serraf as a defendant - without prejudice to Mr. Serraf moving for recovery of any fees and costs he incurred, e.g., in connection with attending the status conferences arising from this adversary proceeding.

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

Wednesday, January 8, 2020

Hearing Room 301

1:30 PM

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

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

Wednesday, January 8, 2020

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01128 Miller, Chapter 7 Trustee v. Yaspan

#21.00 Status conference re: complaint for breach of fiduciary duty

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on March 4, 2020**, to be held in connection with the hearing on the defendant's motion to dismiss [doc. 14]. No later than **February 19, 2020**, the parties must submit an updated joint status report.

Appearances on January 8, 2020 are excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Larry W Gabriel

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, January 8, 2020

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

#22.00 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; 1/9/2019; 6/19/19; 11/26/19

Stip for dismissal filed 1/7/20

Docket 8

***** VACATED *** REASON: Order dismissing adversary entered 1/7/20 [doc. 48].**

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

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

Wednesday, January 8, 2020

Hearing Room 301

1:30 PM

CONT... Jeff Davani

Chapter 7

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, January 8, 2020

Hearing Room 301

2:30 PM

1:19-11034 John Bicz

Chapter 7

Adv#: 1:19-01125 Peterson v. Bicz

#23.00 Defendant's motion to vacate default pursuant to F.R.C.P. 60(b)

Docket 18

***** VACATED *** REASON: continued to 2/5/20 at 1:30 p.m. per order
entered on 12/19/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Bicz

Represented By
M. Jonathan Hayes

Defendant(s):

John Bicz

Represented By
M. Jonathan Hayes

Plaintiff(s):

Ben Peterson

Represented By
Shai S Oved

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Thursday, January 9, 2020

Hearing Room 301

1:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#1.00 Motion for order approving individual debtor's disclosure statement in support of debtor's plan of reorganization

Docket 125

Tentative Ruling:

Deny.

Taking into account the objections of the United States Trustee to the proposed disclosure statement [doc. 117] and for the reasons discussed below and in calendar no. 2, the disclosure statement does not contain adequate information.

Notice/Service. The debtor did not serve notice of the hearing on all creditors as required by Fed. R. Bankr. P. 2002(b) and 3017(a). Specifically, the debtor did not serve secured creditor Los Angeles County Treasurer and Tax Collector and the following unsecured creditors: (1) LVNV Funding, LLC; (2) Merrick Bank; (3) Franchise Tax Board; (4) Midland Funding, LLC; and (5) Synchrony Bank.

Claim 3. The debtor did not account for secured claim no. 3 filed by the Los Angeles County Treasurer and Tax Collector in the correct class of claims. The debtor appears to have classified this claim as an administrative claim, rather than a secured claim.

Financial Projections. The disclosure statement does not include a sufficient explanation for the basis of the debtor's financial projections, including the projections for business gross receipts. The debtor's last six monthly operating reports show the following income:

Month	General DIP Account	Rental Account	Total Income
Nov-19	\$7,975.00	\$3,202.03	\$11,177.03
Oct-19	\$5,714.01	\$7,902.03	\$13,616.04
Sept-19	\$4,976.09	\$2.00	\$4,978.09
Aug-19	\$14,987.06	\$3,200.01	\$18,187.07
July-19	\$1,320.00	\$3,202.00	\$4,522.00
June-19	\$1,120.00	\$3,202.00	\$4,322.00

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

Thursday, January 9, 2020

Hearing Room 301

1:00 PM

CONT... Richard Philip Dages

Chapter 11

The debtor's average income according to his last six monthly operating reports is \$9,467.04. However, the income and expense projections for the first six months of the plan (the "Projections") [doc. 117, Exh. A], indicate that the debtor will receive \$12,540.33 per month in income. This does not accurately reflect historical, post-petition income, and the debtor did not provide a sufficient explanation for the discrepancy between his actual cash flow and projected cash flow.

Additionally, the debtor did not complete subsection C of the Source(s) of Payments under the Plan [doc. 117, p. 4].

Post-Petition Taxes. The Projections do not provide for payment of the debtor's post-petition income taxes.

Wife's Contribution to the Plan. The Projections indicate that the debtor's wife will contribute \$6,140.33 per month into the chapter 11 plan. In order to disclose adequate information, any amended disclosure statement must include financial information about the ability of the debtor's wife to make such contributions.

Lease of Real Property. In the Projections, the debtor indicates that the monthly expenses on his rental property located at 16815 Parthenia Street, Northridge, California (the "Northridge Property") are \$5,201.55. This includes deed of trust payments, property taxes, property insurance and maintenance. In the debtor's proposed disclosure statement, the debtor indicates that he has leased 50% of the Northridge Property for a term of seven years for \$3,200 per month. The debtor must include the lease agreement in any amended disclosure statement. How does the debtor intend to fund the deficiency between the monthly expenses on the Northridge Property and the rental income?

Debtor's Interest in Other Real Properties. On November 14, 2019, the debtor filed his 2018 tax return with the Court [doc. 119]. That tax return indicates that, in 2018, the debtor was collecting rents from real properties located at 40536 N 171st East, Lancaster, California (the "Lancaster Property") and 13640 Norris Ave., Sylmar, California (the "Sylmar Property"). The tax return does not indicate that these properties were sold in 2018. The Lancaster Property is not listed in any of the

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

Thursday, January 9, 2020

Hearing Room 301

1:00 PM

CONT... Richard Philip Dages

Chapter 11

debtor's schedules. What is the debtor's interest in this property?

In his statement of financial affairs, the debtor lists the Sylmar Property as the address for his business, Helping Hands Homes. However, the debtor did not list the Sylmar Property in his schedule A/B or a lease for the Sylmar Property in his schedule G.

On what basis does the debtor's business occupy the Sylmar Property? Is he a tenant of that property? Or does he have an equity interest in that property? If the debtor is a tenant, what are the monthly rental payments, and when does the lease terminate?

The Court will prepare the order.

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, January 9, 2020

Hearing Room 301

1:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#2.00 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; 11/14/19; 11/21/19;

Docket 1

Tentative Ruling:

Based on, among other things, the debtor's flawed and inaccurate disclosures, which are discussed below, pursuant to 11 U.S.C. §§ 105(a) and 1104(a)(1) and/or (a)(2), the Court may appoint a chapter 11 examiner to investigate, among other things, the debtor's assets, liabilities and prepetition transfers.

Exhibits to the Disclosure Statement Inconsistent with Filed Schedules

To the debtor's disclosure statement [doc. 117], the debtor attached a schedule A/B ("Exhibit B") [Exh. B] and a schedule E/F ("Exhibit C", and together with Exhibit B, the "Attachments") [Exh. C]. The Attachments are not consistent with the debtor's most recently filed schedule A/B ("Amended Schedule A/B") [doc. 28], filed on August 17, 2018, and schedule E/F ("Schedule E/F") [doc. 1], filed on July 10, 2018.

In his Amended Schedule A/B, the debtor lists an interest in real property located in North Hills, California (the "North Hills Property"), valued at \$810,000. In Exhibit B, the debtor values the North Hills Property at \$835,000. The debtor does not list an interest in any other real property.

In his Amended Schedule A/B, the debtor represents that, as of the petition date, he had \$900 in his bank account. In Exhibit B, the debtor represents that he had \$1,000.

Below is a chart listing the nonpriority unsecured creditors the debtor enumerated in his Schedule E/F, compared to Exhibit C to the proposed disclosure statement.

Schedule E/F [doc. 1]	Exhibit C [doc. 117]
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, January 9, 2020

Hearing Room 301

1:00 PM

CONT...

Richard Philip Dages

Chapter 11

<ul style="list-style-type: none"> • Capital One • Credit One Bank NA • First Premier Bank • Syncb/low • TD Auto Finance • TD Bank USA/targetcred • Thd/cbna 	<ul style="list-style-type: none"> • DCFS Trust • Franchise Tax Board • LA County Treasurer & Tax Collector • LVNV Funding • Merrick Bank c/o Resurgent Capital • Midland Funding LLC • Mr. Cooper • Synchrony Bank
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All of the creditors listed in Exhibit C have filed proofs of claim in the debtor's case. With the exception of DCFS Trust (which the debtor appears to have called TD Auto Finance in his Schedule E/F) and Mr. Cooper, none of the creditors listed in Exhibit C were listed in the debtor's master mailing list. As such, it does not appear that these creditors received notice of the debtor's chapter 11 case. The Court is concerned that there may be additional creditors that did not receive notice of this chapter 11 case.

To date, the debtor has not filed an amended master mailing list.

Undisclosed Sale of Real Property Two Months Prior to the Petition Date

On November 14, 2019, the debtor filed his 2018 federal tax return with the Court (the "2018 Tax Return") [doc. 119]. The 2018 Tax Return indicates that, in May 2018, two months prior to the debtor filing his chapter 11 petition, the debtor sold real property located at 15170 Greenrock, Lancaster, California (the "Greenrock Property") and received proceeds in the amount of \$39,660.

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

Thursday, January 9, 2020

Hearing Room 301

1:00 PM

CONT... Richard Philip Dages

Chapter 11

Item 18 of the statement of financial affairs ("SOFA") states, "[w]ithin 2 years before you filed for bankruptcy, did you sell, trade or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs?" In his original SOFA [doc. 1], filed on July 10, 2018, and his amended SOFAs [docs. 15 and 26], filed on July 25, 2018 and August 14, 2018, the debtor responded "no" to item 18.

In his Amended Schedule A/B, the debtor represents that, as of the petition date, he had \$900 in his bank account. What did the debtor do with the significant proceeds from the sale of the Greenrock Property - which he received two months prior to the petition date?

Undisclosed Interests in Real Property

As discussed in calendar no. 1, the 2018 Tax Return indicates that, in addition to the North Hills Property, the debtor was collecting rents from real properties located at 40536 N 171st East, Lancaster, California (the "Lancaster Property") and 13640 Norris Ave., Sylmar, California (the "Sylmar Property"). However, the Lancaster Property is not listed in the debtor's original schedules and statements [doc. 1] or in the debtor's numerous subsequent amendments [docs. 15, 23, 26 and 28].

In his statement of financial affairs, the debtor identifies the Sylmar Property as the address for his business, Helping Hands Homes. However, the debtor did not include an interest in the Sylmar Property in his Amended Schedule A/B or set forth a lease for the Sylmar Property in his schedule G [doc. 1].

Are there secured creditors holding liens against the Lancaster Property and/or the Sylmar Property which did not receive notice of this chapter 11 case?

On March 18, 2019, a creditor, who was not listed in the debtor's schedules or master mailing list, filed a motion for relief from stay (the "RFS Motion") based on an unlawful detainer action regarding real property located at 13350 Dyer Street, Sylmar, California (the "Dyer Street Property") [doc. 66]. In his chapter 11 petition, the debtor identified the Dyer Street Property as his residence.

On March 27, 2019, the debtor filed an opposition to the RFS Motion (the "Opposition") [doc. 68]. In the Opposition, the debtor states that, prepetition, he entered into an agreement to lease the Dyer Street Property for seven years,

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

Thursday, January 9, 2020

Hearing Room 301

1:00 PM

CONT...

Richard Philip Dages

Chapter 11

commencing on June 30, 2018, *i.e.* ten days prior to filing this chapter 11 case. The debtor did not list this lease agreement in his schedule G [doc. 1] or in any of the numerous amended schedules and statements [docs. 15, 23, 26 and 28].

On June 13, 2019, the Court entered an order granting the RFS Motion [doc. 80]. Since the RFS Motion was granted, the debtor has not filed a notice of change of address. Does the debtor still reside at the Dyer Street Property, and if not, where is the debtor residing?

Incomplete Statement of Financial Affairs

Item 4 of the SOFA states, "[d]id you have any income from employment or from operating a business during this year or the two previous calendar years?" Item 4 explicitly requests that the debtor disclose his or her *gross income*.

In his original SOFA [doc. 1], filed on July 10, 2018, and his most recently filed SOFA [doc. 26], filed on August 14, 2018, the debtor responded "no" to item 4. As evidenced by his 2017 tax returns [doc. 48] and the 2018 Tax Return, the debtor's response to item 4 is clearly inaccurate.

Engagement of an Accountant without Court Approval

In his October 2019 monthly operating report [doc.122], the debtor listed a \$450.00 "personal expense" to "Farzan." According to the fee summary attached to the Tax Return [doc. 119], the debtor engaged Farzan & Farzan AAC for the preparation of his 2018 tax return and paid \$450 for this service. The debtor has not obtained Court approval for the employment of any accountant.

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, January 9, 2020

Hearing Room 301

1:00 PM

1:19-12153 Aynur Amira Atar

Chapter 7

#3.00 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 14

Tentative Ruling:

Grant.

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

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

Party Information

Debtor(s):

Aynur Amira Atar

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Thursday, January 9, 2020

Hearing Room 301

2:00 PM

1:12-16879 Elmer Barrientos and Marlene Barrientos

Chapter 7

#4.00 Motion to reopen closed bankruptcy case pursuant to
11 U.S.C. section 350(B) and Fed. R. Bankr. P. 5010

Docket 20

Tentative Ruling:

Grant. The debtors must file any motion regarding the amount of the secured claim at issue no later than **February 3, 2020**.

If the debtors do not file a motion by this deadline, the debtors' bankruptcy case will be closed promptly thereafter.

At this time, for purposes of the debtors' motion to reopen the chapter 7 case, the Court is not making any determination as to whether the Court has the jurisdiction or authority to determine the amount of a secured claim in connection with this case, in which the chapter 7 trustee has filed a no-asset report, the real property at issue was abandoned to the debtors, and the lienholder(s) have not filed a proof of claim.

Based on the allegations set forth in the motion to reopen the case, the debtors must serve any motion they file regarding the amount of the secured claim at issue on both Prospect Mortgage **AND** Cenlar FSB.

The debtors must serve Prospect Mortgage at 5343 Banks Street, San Diego, California 92110, attn: John Roemer. The debtors must serve Cenlar FSB at 818 West Seventh Street, Suite 930, Los Angeles, California 90017, attn: C T Corporation System.

The Court obtained these addresses from the website of the California Secretary of State.

The Court will prepare the order.

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

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

Thursday, January 9, 2020

Hearing Room 301

2:00 PM

CONT... Elmer Barrientos and Marlene Barrientos

Chapter 7

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

Party Information

Debtor(s):

Elmer Barrientos

Represented By
James T King

Joint Debtor(s):

Marlene Barrientos

Represented By
James T 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

Thursday, January 9, 2020

Hearing Room 301

2:00 PM

1:18-10385 Jorge Alberto Romero II

Chapter 7

#5.00 Objection by chapter 7 trustee to debtor's claimed exemption

Docket 71

*** VACATED *** REASON: continued to 1/23/20 at 2:00 p.m. per order
entered on 12/26/19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Alberto Romero II

Represented By
Stella A Havkin

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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

Thursday, January 9, 2020

Hearing Room 301

2:00 PM

1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

- #6.00** Trustee's Motion for Order:
(1) Authorizing Sale of Real property located at
20118 Via Cellini Porter Ranch, CA 91326 (A) Outside the Ordinary
Course of Business; (B) Free and Clear of Liens, Claims, and
Encumbrances; (C) Subject to Overbid; and
(D) For Determination of Good Faith Purchaser Under 11 U.S.C. Sec 363(M);
(2) Authorizing Distribution of Proceeds Arising from Sale

Docket 103

Tentative Ruling:

Grant.

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

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**

Tuesday, January 14, 2020

Hearing Room 301

9:30 AM

1:00-00000

Chapter

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

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, January 14, 2020

Hearing Room 301

9:30 AM

1:19-10332 Adan Antonio Salazar and Adriana Salazar

Chapter 13

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

fr. 12/10/19

Docket 45

***** VACATED *** REASON: Hearing rescheduled for 11:00 AM**

Tentative Ruling:

- NONE LISTED -

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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, January 14, 2020

Hearing Room 302

9:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#23.10 Hearing re: H. Samuel Hopper's objection to confirmation of debtor's third amended chapter 13 plan

Docket 166

Tentative Ruling:

I. BACKGROUND

A. Schedules and Statements

On December 18, 2018, Kenneth C. Scott (the "Debtor") filed a voluntary chapter 13 petition and his schedules and statements [doc. 1]. On December 19, 2018, the Debtor filed an amended statement of financial affairs [doc. 13].

On March 6, 2019, the Debtor filed a further amended statement of financial affairs [doc. 34] and an amended schedule C [doc. 35]. On May 17, 2019, the Debtor filed amended schedules I and J [docs. 95 and 96]. On the same day, the Debtor also filed an amended statement of current monthly income [doc. 98].

On August 28, 2019, the Debtor's counsel filed a document purporting to be an amended statement of current monthly income [doc. 165].

B. Debtor's Exemptions

In his amended schedule C [doc. 35], the Debtor claimed all of his assets exempt, including \$17,274.00 in "monies in business account" (the "Funds"). On March 18, 2019, Dr. Hopper filed an objection to the Debtor's claim of an exemption in the Funds [doc. 42]. On July 17, 2019, the Court entered an order overruling that objection [doc. 160]. Dr. Hopper did not appeal that order or file a motion for reconsideration.

C. Motion to Dismiss Chapter 13 Case

On April 19, 2019, Dr. Hopper filed a motion to dismiss this bankruptcy case, which

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, January 14, 2020

Hearing Room 302

9:30 AM

CONT...

Kenneth C. Scott

Chapter 13

was based, in part, on bad faith (the "Motion to Dismiss") [doc. 70]. Prior to the May 14, 2019 hearing on the Motion to dismiss, the Court posted a tentative ruling denying the Motion to Dismiss. However, based on Dr. Hopper's oral argument at that hearing, the Court the continued the hearing on the Motion to Dismiss in order for the parties to take discovery regarding the issue of bad faith [doc. 123].

On November 13, 2019, the Court held a continued status conference on the Motion to Dismiss. At that hearing, the Court set a continued status conference for December 10, 2019 [doc. 180]. Dr. Hopper's counsel was present at the November 13, 2019 hearing.

On November 20, 2019, the Debtor filed a motion for summary judgment on the issue of bad faith (the "MSJ") [doc. 174]. The hearing on the MSJ is set for February 5, 2020 at 2:30 p.m.

On November 26, 2019, the Debtor and Dr. Hopper filed a joint status report regarding the discovery that Dr. Hopper would take in connection with the Motion to Dismiss [doc. 181]. In that joint status report, Dr. 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.

On December 10, 2019, the Court held a continued status conference on the Motion to Dismiss. Prior to the status conference, the Court posted a tentative ruling regarding the Debtor's objections to Dr. Hopper's proposed discovery. Dr. Hopper's counsel failed to appear at that status conference. At the status conference, the Court set February 1, 2020 as the last day for discovery to be completed on the issue of bad faith [doc. 183].

D. Objection to Dr. Hopper's Claim

On February 26, 2019, Dr. Hopper filed claim 3-1, asserting a nonpriority unsecured claim in the amount of \$1,510,975.25. On March 25, 2019, the Debtor filed an objection to Dr. Hopper's claim [doc. 50].

March 26, 2019, Dr. Hopper filed an amended proof of claim, asserting a nonpriority

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, January 14, 2020

Hearing Room 302

9:30 AM

CONT...

Kenneth C. Scott

Chapter 13

unsecured claim in the amount of \$260,975.25 [Claim 3-2]. On March 28, 2019, Debtor filed an objection to the Claim (the "Objection to Claim") [doc. 55]. The Objection to Claim is currently pending. A continued hearing on the Objection to Claim is set for February 5, 2020 at 2:30 p.m.

On December 16, 2019, Dr. Hopper filed a further amended proof of claim, asserting a nonpriority unsecured claim in the amount of \$169,432.60 [Claim 3-3].

E. Related Adversary Proceeding

On April 19, 2019, Dr. Hopper filed a complaint against the Debtor and the Debtor's corporation, My Private Practice, Inc. ("MPPI"), for, among other things, nondischargeability of the debt owed to Dr. Hopper, initiating adversary proceeding 1:19-ap-1046-VK.

On July 3, 2019, Dr. Hopper filed an amended complaint, adding Kenneth Scott Psy.D as a defendant and adding several causes of action [1:19-ap-1046-VK, doc. 9]. On July 23, 2019, the Debtor filed a motion to dismiss the adversary proceeding [1:19-ap-1046-VK, doc. 12]. That motion to dismiss is currently pending. A continued hearing on that motion to dismiss is set for February 5, 2020 at 2:30 p.m.

F. Chapter 13 Plans

On December 18, 2018, the Debtor filed a chapter 13 plan (the "Plan") [doc. 2]. The confirmation hearing on the First Chapter 13 Plan was set for March 12, 2019. The Plan was a 36-month plan.

On March 4, 2019, H. Samuel Hopper ("Dr. Hopper") filed an objection to the Plan [doc. 28] and a declaration in support of that objection [doc. 29]. On March 12, 2019, the Court held a confirmation hearing on the Plan. The Court continued the confirmation hearing to May 14, 2019.

On March 6, 2019, the Debtor filed an amended chapter 13 plan (the "First Amended Plan") [doc. 31]. Pursuant to the First Amended Plan, the Debtor proposed to make payments in the amount of \$272.82 per month, for 36 months. On April 30, 2019, Dr. Hopper filed an objection to the First Amended Plan [doc. 77].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, January 14, 2020

Hearing Room 302

9:30 AM

CONT... Kenneth C. Scott

Chapter 13

On May 14, 2019, the Court held a hearing on confirmation of the First Amended Plan. The Court continued the confirmation hearing to July 2, 2019.

In a declaration filed on May 17, 2019, the Debtor stated that, because he received higher than expected gross income in 2018, he would amend his chapter 13 plan to be a 60-month plan [doc. 100, ¶ 15]. On May 21, 2019, the Debtor filed his further amended chapter 13 plan (the "Second Amended Plan") [doc. 110]. Through the Second Amended Plan, the Debtor proposes to pay \$493.61 per month, for 60 months. On June 17, 2019, Dr. Hopper filed an objection to the Second Amended Plan [doc. 133].

On July 2, 2019, the Court held a hearing on confirmation of the Second Amended Plan. The Court continued the confirmation hearing to September 10, 2019.

On August 28, 2019, the Debtor filed a revised Second Amended Plan (the "Revised Second Amended Plan") [doc. 166]. The only change the Debtor made in the Revised Second Amended Plan from the Second Amended Plan was that he completed Section I.B.1.b. (apparently incorrectly) by identifying: (1) the total amount to be paid under the Revised Second Amended Plan, i.e., \$29,616.00 (rather than the distribution to be made to Class 5, i.e., \$24,155.00); and (2) an estimated percentage to be paid to claims in Class 5.

On December 30, 2019, Dr. Hopper filed an objection to the Revised Second Amended Plan [doc. 166]. Dr. Hopper objects to the Revised Second Amended Plan on four grounds: (1) the Revised Second Amended Plan does not provide for proper treatment of Dr. Hopper's claim; (2) the Revised Second Amended Plan does not allocate all of the Debtor's disposable income towards the plan payments; (3) the Revised Second Amended Plan and the Debtor's petition were filed in bad faith; and (4) the Debtor has withheld substantial, relevant information regarding his income, the status of his professional license and his ability to repay creditors.

II. DISCUSSION

Pursuant to 11 U.S.C. § 1325(a)(4), "the court shall confirm a plan . . . if the value, as of the effective date of the plan, of property to be distributed under the plan on

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, January 14, 2020

Hearing Room 302

9:30 AM

CONT...

Kenneth C. Scott

Chapter 13

account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date."

Pursuant to 11 U.S.C. § 1325(b)(1):

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

- (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;
or
- (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

A. Objection One

Dr. Hopper's first objection is based on two grounds: (1) that the Debtor has not demonstrated that holders of nonpriority unsecured claims will receive property having a value at least equal to the amount holders of such claims would receive in a chapter 7 liquidation; and (2) the Revised Second Amended Plan does not provide for payment of Dr. Hopper's potentially nondischargeable claim in full.

Regarding the first argument, the Debtor's schedules A/B [doc. 1] represent that, as of the petition date, the Debtor held assets in the amount of \$126,817.28; a retirement account constitutes \$96,892.28 of that amount. In his amended schedule C [doc. 35], the Debtor claimed all of these assets as exempt.

In his schedule A/B [doc. 1], the Debtor represented that, as of the petition date, the liquidation value of his 100% ownership interest in MPPI was \$0.00. *See Cunningham v. Masterwear Corp.*, 569 F.3d 673, 676 (7th Cir. 2009) (stating that an

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, January 14, 2020

Hearing Room 302

9:30 AM

CONT...

Kenneth C. Scott

Chapter 13

owner may offer valuation testimony either based on personal knowledge, under Fed. R. Evid. 701, or based on specialized knowledge, under Fed. R. Evid. 702).

Based on the evidence before the Court at this time, there are not any non-exempt assets for the chapter 7 trustee to liquidate for the benefit of unsecured creditors. Thus, holders of nonpriority unsecured claims, including Dr. Hopper, will receive more through the Revised Second Amended Plan, that is, \$24,155.00 in all, than the amount such creditors would receive in a hypothetical chapter 7 liquidation.

Regarding the second argument, even if Dr. Hopper's claim is found to be nondischargeable, the Revised Second Amended Plan does not need to provide for full payment of the claim. As the United States Bankruptcy Panel for the First Circuit stated, "[n]othing in the Bankruptcy Code requires that a nondischargeable debt. . . be paid in full through a Chapter 13 plan. Rather, the only consequence of nondischargeability is that, to the extent the debt is not paid through the Chapter 13 plan, it must be paid after completion of the plan, or at least from a source other than the funds devoted to the plan." *In re Bentley*, 266 B.R. 229, 235 (B.A.P. 1st Cir. 2001).

The Court will overrule this objection.

B. Objection Two

Dr. Hopper's second objection to the Revised Second Amended Plan is that the Debtor fails to distribute all his disposable income to the plan. Dr. Hopper argues that the Debtor's statement of current monthly income represents that the Debtor receives \$32,022.34 in income per month [doc. 98], and the Debtor's amended schedule J represents that the Debtor's monthly expenses are \$4,511.69, leaving net monthly income of \$27,510.65. However, the Revised Second Amended Plan provides for monthly payments of only \$493.61.

At the prior confirmation hearing on July 2, 2019, the Debtor's counsel stated that the Debtor's current monthly income, as stated in docket 98, is incorrect. The Debtor's counsel was directed to file, prior to the continued confirmation hearing, an amended statement of current monthly income.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, January 14, 2020

Hearing Room 302

9:30 AM

CONT...

Kenneth C. Scott

Chapter 13

On August 28, 2019, the Debtor's counsel filed a document purporting to be an amended statement of current monthly income [doc. 165]. However, that document is actually the Revised Second Amended Plan.

When does the Debtor intend to file an amended statement of current monthly income?

C. Objection Three

Dr. Hopper's third objection to the Revised Second Amended Plan is based on the Debtor's allegedly bad faith. The hearing on the MSJ is set for February 5, 2020 at 2:30 p.m. As such, at this time, the Court will not make a ruling with regard to the Debtor's alleged bad faith.

D. Objection Four

Dr. Hopper's fourth objection to the Revised Second Amended Plan is based, in part, on the Debtor's psychology license allegedly being subject to a disciplinary action by the California Attorney General. Dr. Hopper argues that if the Debtor's psychology license is suspended or revoked, the Debtor will have no means to make his chapter 13 plan payments.

Pursuant to § 1325(a)(6), one of the requirements for confirmation of a chapter 13 plan is that the debtor will be able to make all payments under the plan and to comply with the plan. As the bankruptcy court stated in *In re Anderson*, 18 B.R. 763 (Bankr. S.D. Ohio), *aff'd*, 28 B.R. 628 (S.D. Ohio 1982):

This Court must judge the feasibility of the debtor's proposal as the facts appear at the time of confirmation. While it may be conceded that the successful completion of the Chapter 13 proposal of this debtor is contingent upon a sale of real estate under market conditions which, in recent months, are far from ideal, this Court is reluctant to conclude at this point in time that the plan lacks the requisite feasibility required for confirmation under the test set forth in § 1325(a)(6) of the Bankruptcy Code. A debtor proposing a Chapter 13 plan need not prove that the plan is guaranteed to be successful. Virtually every plan that requires some performance in the future will be subject to a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, January 14, 2020

Hearing Room 302

9:30 AM

CONT...

Kenneth C. Scott

Chapter 13

risk factor affecting its successful completion. This Court's judicial discretion is to be exercised, then, to determine at the time of confirmation whether the risk of failure of the proposed plan is impermissible.

Anderson, 18 B.R. at 765.

At this time, the Debtor's psychology license has not been suspended or revoked, and the Debtor has made his preconfirmation chapter 13 plan payments. In addition, the Debtor's amended schedules I and J [docs. 95 and 96], represent that the Debtor has sufficient net monthly income to fund the Revised Second Amended Plan.

The Court will not deny confirmation of the Revised Second Amended Plan because, in the future, the Debtor's psychology license *may* be suspended or revoked. If this does happen, presumably, the Debtor will no longer be able to make his chapter 13 plan payments; he will not successfully complete his confirmed chapter 13 plan; and his case may be dismissed, without his receipt of a discharge.

The Court will overrule this objection.

III. CONCLUSION

The Court will overrule objections one and four. The Court makes no findings as to objections two and three.

Evidentiary Objections

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the *Declaration of Ken Scott Regarding the Valuation of Corporation* [doc. 167] set forth below:

paras. 4, 6, 7, 9 and 11: overruled

para. 10: sustained as to "*For example, as a result of my condition, MPPI saw an [sic] 26% drop in gross revenue between 2016 and 2017,*" overruled as to the balance

paras. 2, 3 and 5: sustained

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, January 14, 2020

Hearing Room 302

9:30 AM

CONT... Kenneth C. Scott

Chapter 13

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Movant(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, January 14, 2020

Hearing Room 301

10:30 AM

1:14-13821 Edwin Flamenco and Sonia Turcios

Chapter 13

#39.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

fr. 10/8/19

Docket 36

***** VACATED *** REASON: Motion withdrawn 11/21/19 - jc**

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, January 14, 2020

Hearing Room 301

10:30 AM

1:15-10755 Toni Frances Magallanes

Chapter 13

#40.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds
fr. 10/8/19

Docket 47

***** VACATED *** REASON: Motion withdrawn 1/7/20**

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, January 14, 2020

Hearing Room 301

10:30 AM

1:15-11547 Rodolfo Trujillo and Annette Marie Trujillo

Chapter 13

#41.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

fr. 10/8/19

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, January 14, 2020

Hearing Room 301

10:30 AM

1:15-12226 Vassili Moskalenko

Chapter 13

#42.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 67

***** VACATED *** REASON: Motion withdrawn 1/3/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vassili Moskalenko

Represented By
Elena Steers

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, January 14, 2020

Hearing Room 301

10:30 AM

1:15-13159 John Charles Salvatore Vitale and Grettell Vanessa Vitale

Chapter 13

#43.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds
fr. 10/8/19; 12/10/19;

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, January 14, 2020

Hearing Room 301

10:30 AM

1:15-13338 Marcial Paredes Malpica

Chapter 13

#44.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 133

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marcial Paredes Malpica

Represented By
Michael F Chekian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, January 14, 2020

Hearing Room 301

10:30 AM

1:16-10096 Alexander Eshaghian

Chapter 13

#45.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 96

***** VACATED *** REASON: Notice of withdrawal filed 12/16/19**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alexander Eshaghian

Represented By
Richard T Baum

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, January 14, 2020

Hearing Room 301

10:30 AM

1:16-10774 Michel A. Contreras, IV and Carmen Contreras

Chapter 13

#46.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds
fr. 12/10/19;

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, January 14, 2020

Hearing Room 301

10:30 AM

1:16-11316 Sergio Luquin and Lorena Palacios Luquin

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

fr. 11/12/19;

Stip modifying plan filed 01/03/20

Docket 43

***** VACATED *** REASON: Motion withdrawn 1/7/20**

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, January 14, 2020

Hearing Room 301

10:30 AM

1:16-12306 Debbie Giovany Otzoy

Chapter 13

#48.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

fr. 10/8/19

Stip modifying plan filed 1/7/20

Docket 44

***** VACATED *** REASON: Motion withdrawn 01/10/20**

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, January 14, 2020

Hearing Room 301

10:30 AM

1:16-12985 Tanya Monge

Chapter 13

#49.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 70

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tanya Monge

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, January 14, 2020

Hearing Room 301

10:30 AM

1:16-13171 Regla Vera

Chapter 13

#50.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

fr. 09/10/19; 11/12/19;

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, January 14, 2020

Hearing Room 301

10:30 AM

1:17-10038 Oganesh Pashayan and Anahit Pashayan

Chapter 13

#51.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

fr. 11/12/19;

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, January 14, 2020

Hearing Room 301

10:30 AM

1:17-10230 Brenda Jurado Hill

Chapter 13

#52.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brenda Jurado Hill

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, January 14, 2020

Hearing Room 301

10:30 AM

1:17-11036 Theodore Alfred Weinszihr

Chapter 13

#53.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Theodore Alfred Weinszihr

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, January 14, 2020

Hearing Room 301

10:30 AM

1:17-11488 Dana Anthony Bambo and Carla Lombardo Bambo

Chapter 13

#54.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments
fr. 7/2/19; 9/10/19; 11/12/19;

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, January 14, 2020

Hearing Room 301

10:30 AM

1:17-11891 Christine Mettlen

Chapter 13

#55.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christine Mettlen

Represented By
James G. 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, January 14, 2020

Hearing Room 301

10:30 AM

1:17-12788 Gerardo Paz and Araceli Diane Paz

Chapter 13

#56.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds
fr. 12/10/19;

Docket 44

***** VACATED *** REASON: Motion withdrawn 1/7/20**

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, January 14, 2020

Hearing Room 301

10:30 AM

1:17-13039 Benjawan Rachapaetayakom

Chapter 13

#57.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

fr. 11/12/19;

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, January 14, 2020

Hearing Room 301

10:30 AM

1:17-13161 Gerald J. Mathews

Chapter 13

#58.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 29

***** VACATED *** REASON: Motion withdrawn 1/10/20 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerald J. Mathews

Represented By
James G. 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, January 14, 2020

Hearing Room 301

10:30 AM

1:17-13189 Ulysses Juarez

Chapter 13

#59.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 56

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, January 14, 2020

Hearing Room 301

10:30 AM

1:18-10033 Mildred Annett Barajas

Chapter 13

#60.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

fr. 12/10/19;

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, January 14, 2020

Hearing Room 301

10:30 AM

1:18-10661 Andres Salcedo, Jr.

Chapter 13

#61.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 53

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, January 14, 2020

Hearing Room 301

10:30 AM

1:18-11105 Debby Sandra Levy

Chapter 13

#62.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 42

*** VACATED *** REASON: Motion withdrawn 11/21/19 - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Debby Sandra Levy

Represented By
Rob R Nichols

Trustee(s):

Elizabeth (SV) 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 14, 2020

Hearing Room 301

10:30 AM

1:18-11288 Neli Maria Negrea

Chapter 13

#63.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 89

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

Tuesday, January 14, 2020

Hearing Room 301

10:30 AM

1:18-11928 Manuel Antonio Elias, Jr.

Chapter 13

#64.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Antonio Elias Jr.

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, January 14, 2020

Hearing Room 301

10:30 AM

1:18-11928 Manuel Antonio Elias, Jr.

Chapter 13

#65.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Antonio Elias Jr.

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, January 14, 2020

Hearing Room 301

10:30 AM

1:18-11995 Hans Adiatar Oliver

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):

Hans Adiatar Oliver

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, January 14, 2020

Hearing Room 301

10:30 AM

1:18-12027 Yuma Vanessa Perez

Chapter 13

#67.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments
fr. 11/12/19

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, January 14, 2020

Hearing Room 301

10:30 AM

1:18-12090 Michael Anthony Sarnataro and Cindi Joanna Romualdo-

Chapter 13

#68.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds
fr. 12/10/19;

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

Tuesday, January 14, 2020

Hearing Room 301

10:30 AM

1:18-12555 Francisco Javier Miranda

Chapter 13

#69.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Javier Miranda

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, January 14, 2020

Hearing Room 301

10:30 AM

1:18-12662 Brian Jeffrey Minor

Chapter 13

#70.00 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):

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, January 14, 2020

Hearing Room 301

10:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#71.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 56

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, January 14, 2020

Hearing Room 301

11:00 AM

1:16-10774 Michel A. Contreras, IV and Carmen Contreras

Chapter 13

#72.00 Show Cause Hearing Why Debtors' Counsel Should Not be Sanctioned for Failure to Appear at Hearing on Trustee's Motion to Dismiss

Docket 103

Tentative Ruling:

On November 2, 2019, the chapter 13 trustee (the "Trustee") filed a motion to dismiss the case of Michel A. Contreras, IV and Carmen Contreras ("Debtors") for failure to submit all tax returns ("Motion to Dismiss") [doc. 101]. On December 10, 2019, the Court held a hearing on the Motion to Dismiss. Debtors' counsel did not appear.

On December 11, 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. 103], on the grounds that Debtors' counsel failed to appear at the hearing on the Motion to Dismiss as required by Local Bankruptcy Rule 3015-1(u)(1). Debtors' counsel was ordered to explain his failure to appear and file and serve on Debtors a written response to the OSC no later than December 31, 2019.

On December 16, 2019, Debtors' counsel filed his response ("Response") [doc. 106]. In the Response, Debtors' counsel states that he was on his way to the December 10, 2019 hearing when he was involved in a car accident. Debtors' counsel states that he was rushed to the emergency room and discharged on December 11, 2019.

If Debtors' counsel or an appearance attorney appears at the continued Motion to Dismiss hearing on January 14, 2020 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 impose sanctions on Debtors' counsel.

Party Information

Debtor(s):

Michel A. Contreras IV

Represented By
Rene Lopez De Arenosa Jr

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

Tuesday, January 14, 2020

Hearing Room 301

11:00 AM

CONT... Michel A. Contreras, IV and Carmen Contreras

Chapter 13

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, January 14, 2020

Hearing Room 301

11:00 AM

1:17-12788 Gerardo Paz and Araceli Diane Paz

Chapter 13

#73.00 Order to Show Cause Hearing Why Debtors' Counsel Should Not be Sanctioned for Failure to Appear at Hearing on Trustee's Motion to Dismiss

Docket 48

Tentative Ruling:

On October 30, 2019, the chapter 13 trustee (the "Trustee") filed a motion to dismiss the case of Gerardo Paz and Araceli Diane Paz ("Debtors") for failure to submit all tax returns ("Motion to Dismiss") [doc. 44]. On December 10, 2019, the Court held a hearing on the Motion to Dismiss. Debtors' counsel did not appear.

On December 11, 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. 48], on the grounds that Debtors' counsel failed to appear at the hearing on the Motion to Dismiss as required by Local Bankruptcy Rule 3015-1(u)(1). Debtors' counsel was ordered to explain his failure to appear and file and serve on Debtors a written response to the OSC no later than December 31, 2019.

On January 6, 2020, Debtors' counsel filed his response ("Response") [doc. 51]. In the Response, Debtors' counsel states that he failed to calendar the December 10, 2019 hearing.

On January 7, 2020, the chapter 13 trustee filed a withdrawal of the Motion to Dismiss [doc. 53]. Consequently, the Court will discharge the Order to Show Cause.

Appearances on January 14, 2020 are excused.

Party Information

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

Tuesday, January 14, 2020

Hearing Room 301

11:00 AM

CONT... Gerardo Paz and Araceli Diane Paz

Chapter 13

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, January 14, 2020

Hearing Room 301

11:00 AM

1:18-12090 Michael Anthony Sarnataro and Cindi Joanna Romualdo-

Chapter 13

#74.00 Show Cause Hearing Why Debtors' Counsel Should Not be Sanctioned for Failure to Appear at Hearing on Trustee's Motion to Dismiss

Docket 36

Tentative Ruling:

On October 31, 2019, the chapter 13 trustee (the "Trustee") filed a motion to dismiss the case of Michael Anthony Sarnataro and Cindi Joanna Romualdo-Sarnataro ("Debtors") for failure to submit all tax returns ("Motion to Dismiss") [doc.34]. On December 10, 2019, the Court held a hearing on the Motion to Dismiss. Debtors' counsel did not appear.

On December 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. 36], on the grounds that Debtors' counsel failed to appear at the hearing on the Motion to Dismiss as required by Local Bankruptcy Rule 3015-1(u)(1). Debtors' counsel was ordered to explain his failure to appear and file and serve on Debtors a written response to the OSC no later than December 31, 2019.

On December 20, 2019, Debtors' counsel filed and served his response ("Response") [doc. 39]. In his Response, Debtors' counsel states that his office failed to calendar the December 10, 2019 hearing. Nonetheless, prior to that hearing, his office had reached out to the debtors regarding the Motion to Dismiss, and they have been unresponsive.

On January 10, 2020, Debtors' counsel filed a *Declaration of David Chung re Motion to Dismiss* [doc. 41]. In that declaration, Debtors' counsel also states that he has reached out to Debtors on multiple occasions, and Debtors have been unresponsive. Debtors' counsel states that because of the breakdown in communication, he is unable to resolve the Motion to Dismiss. Based on the representations made in the Response and the *Declaration of David Chung re Motion to Dismiss*, the Court will discharge the OSC.

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

Tuesday, January 14, 2020

Hearing Room 301

11:00 AM

CONT... Michael Anthony Sarnataro and Cindi Joanna Romualdo-
Appearances on January 14, 2020 are excused.

Chapter 13

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

Tuesday, January 14, 2020

Hearing Room 301

11:00 AM

1:19-10186 Kenth Ove Arnold Andersson and Kersti Christine

Chapter 13

**#75.00 Debtors' Motion re: Objection to Claim Number 7 by
Claimant Citibank (South Dakota) NA.**

Docket 58

Tentative Ruling:

The Court will continue this hearing to **March 10, 2020 at 11:00 a.m.**

The proof of service attached to the motion indicates that only the proof of claim was served on the claimant; not the objection and notice of hearing. Additionally, according to the FDIC website, Citibank (South Dakota), N.A. has been inactive since July 1, 2011. Citibank (South Dakota), N.A. has become Citibank National Association, which is headquartered at 5800 S Corporate Place, Sioux Falls, SD 57108.

By February 7, 2020, the debtors must serve notice of the continued hearing, the objection and the deadline to file a response (14 days prior to the hearing date) on Citibank National Association at the above-listed address in accordance with the procedures in Fed. R. Bankr. P. 7004(h).

Appearances on January 14, 2020 are excused.

Party Information

Debtor(s):

Kenth Ove Arnold Andersson

Represented By
Louis J Esbin

Joint Debtor(s):

Kersti Christine Andersson

Represented By
Louis J Esbin

Trustee(s):

Elizabeth (SV) 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 14, 2020

Hearing Room 301

11:00 AM

1:19-11223 Noe Moises Cumatz

Chapter 13

#76.00 Debtor's Amended Motion to Disallow Claim #1 of LVNV Funding, LLC
its successors and assigns as assignee of Resurgent Capital Services

fr. 11/12/19;

Docket 24

*** VACATED *** REASON: On November 26, 2019, the case was
dismissed [doc. 29]. The motion is moot.

Tentative Ruling:

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, January 14, 2020

Hearing Room 301

11:00 AM

1:19-12354 Orna Shaposhnik

Chapter 13

#77.00 Debtor's Motion re: Objection to Claim Number 1 by
Claimant Calvary SPV I LLC.

fr 11/12/19;

Docket 12

***** VACATED *** REASON: On November 18, 2019, the case was
dismissed. The motion is moot.**

Tentative Ruling:

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**

Tuesday, January 14, 2020

Hearing Room 301

11:00 AM

1:19-12354 Orna Shaposhnik

Chapter 13

#78.00 Debtor's Motion re: Objection to Claim Number 2 by
Claimant American Express

Docket 34

***** VACATED *** REASON: On November 18, 2019, the case was
dismissed. The motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Orna Shaposhnik

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, January 14, 2020

Hearing Room 301

11:00 AM

1:19-12658 Dan S Watanabe

Chapter 13

#79.00 Debtor's Motion re: Objection to Claim Number 3,4,5 by
Claimant Bank of America, NA. and for Account Ending in 2212

STIP filed on 1/10/20 doc #41

Docket 36

Tentative Ruling:

The Court will continue this hearing to **March 10, 2020 at 11:00 a.m.**

Pursuant to Local Bankruptcy Rule ("LBR") 3007-1(b)(2), the debtor must serve the objection and notice of hearing on the claimant. Although the debtor served notice of the hearing on the claimant [doc. 33], it does not appear that the debtor served the objection on the claimant. The proof of service attached to the objection [doc. 36], indicates that the claimant was not served.

In addition, pursuant to Fed. R. Bankr. P. 7004(h)(3) and LBR 3007-1(b)(2), the debtor must serve the objection and notice of hearing on the claimant via certified mail addressed to an officer of the institution. Here, the notice of hearing [doc. 33], indicates that the claimant was served via United States mail.

By February 7, 2020, the debtor must serve notice of the continued hearing, the objection and the deadline to file a response (14 days prior to the hearing date) on Bank of America, N.A. in accordance with the procedures in Fed. R. Bankr. P. 7004(h) and LBR 3007-1(b)(2).

Appearances on January 14, 2020 are excused.

Party Information

Debtor(s):

Dan S Watanabe

Represented By
Randolph L Neel

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

Tuesday, January 14, 2020

Hearing Room 301

11:00 AM

CONT... Dan S Watanabe

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, January 14, 2020

Hearing Room 301

11:00 AM

1:19-10332 Adan Antonio Salazar and Adriana Salazar

Chapter 13

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

fr. 12/10/19

Docket 45

Tentative Ruling:

The Court continued the hearing on the OSC in order for the debtor's counsel to address the confirmation issues related to the priority claim of the Internal Revenue Service. Depending on the outcome of the confirmation hearing on January 14, 2020, and counsel's attendance at that hearing, the Court may discharge the OSC.

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

Tuesday, January 14, 2020

Hearing Room 301

11:30 AM

1:19-12728 Sally Hernandez

Chapter 13

#80.00 Debtor's Motion to Avoid Junior Lien on Principal Residence with Real Time Resolutions

Docket 14

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." The movant should check the box in section 5 indicating that avoidance of the junior lien is effective upon completion of the chapter 13 plan.

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

Party Information

Debtor(s):

Sally Hernandez

Represented By
Julie J Villalobos

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, January 15, 2020

Hearing Room 301

9:30 AM

1:19-12938 Lalla Aicha Haidara

Chapter 7

#1.00 Motion for relief from stay [UD]

DONALD M. STONE
VS
DEBTOR

fr. 12/18/19

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.

Any other request for relief is denied.

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

Party Information

Debtor(s):

Lalla Aicha Haidara

Pro Se

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Wednesday, January 15, 2020

Hearing Room 301

9:30 AM

1:15-12589 David Harrison Veitch

Chapter 13

#2.00 Motion for relief from stay [RP]

NEW REZ LLC DBA SHELLPOINT MORTGAGE SERVICING
VS
DEBTOR

fr. 12/11/19

Docket 37

Tentative Ruling:

At the prior hearing, the Court ordered the movant to file a reply to the debtor's opposition by January 8, 2020. The movant did not timely file such a reply.

Party Information

Debtor(s):

David Harrison Veitch

Represented By
Ali R Nader

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, January 15, 2020

Hearing Room 301

9:30 AM

1:18-10264 Joe Lopez, Jr.

Chapter 13

#3.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

fr. 12/11/19

Docket 56

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 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.

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

Wednesday, January 15, 2020

Hearing Room 301

9:30 AM

CONT... **Joe Lopez, Jr.**

Chapter 13

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, January 15, 2020

Hearing Room 301

9:30 AM

1:19-13091 Olga Leyva

Chapter 7

#4.00 Motion for relief from stay [UD]

FEDERAL HOME LOAN MORTGAGE 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 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):

Olga Leyva

Pro Se

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

Wednesday, January 15, 2020

Hearing Room 301

9:30 AM

CONT... Olga Leyva

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 15, 2020

Hearing Room 301

9:30 AM

1:19-12456 Cristian Edmundo Cruz

Chapter 7

#5.00 Motion for relief from stay [AN]

ALLSTATE INSURANCE COMPANY
VS
DEBTOR

Docket 9

Tentative Ruling:

The Court will continue this hearing to **February 19, 2020 at 9:30 a.m.** The movant did not attach a proof of service to the motion.

On or before **January 22, 2020**, the movant must file and serve the motion on the debtor, the debtor's attorney, the chapter 7 trustee, the United States Trustee and any other party entitled to notice under Fed. R. Bankr. P. 4001. The motion must include a proof of service that is executed in accordance with the requirements of Local Bankruptcy Rule 9013-3.

Appearances on January 15, 2020 are excused.

Party Information

Debtor(s):

Cristian Edmundo Cruz

Represented By
Rodney N Vosguvian

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 15, 2020

Hearing Room 301

9:30 AM

1:19-12742 Ronnie Mendez, Jr.

Chapter 7

#6.00 Motion for relief from stay [PP]

JPMORGAN CHASE BANK, N.A.
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):

Ronnie Mendez Jr.

Represented By
Peter M Lively

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 15, 2020

Hearing Room 301

9:30 AM

1:19-12913 Krishan De Silva

Chapter 7

#7.00 Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING, LLC
VS
DEBTOR

Docket 10

Tentative Ruling:

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

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to 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):

Krishan De Silva

Represented By
Susan Salehi

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 15, 2020

Hearing Room 301

9:30 AM

1:17-10673 Hermann Muennichow

Chapter 7

#8.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION AS TRUSTEE OF BUNGALOW
SERIES III TRUST
VS
DEBTOR

Docket 60

Tentative Ruling:

The Court will continue this hearing to **February 19, 2020 at 9:30 a.m.**

Service of the motion was defective. 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." The movant also did not serve the motion and notice of hearing on Helayne Muennichow, who is one of the borrowers identified in the promissory note and in the deed of trust.

By January 22, 2020, the movant must serve the motion and notice of the continued hearing, and a deadline to file a response 14 days prior to the continued hearing, on Ms. Muennichow and all parties entitled to notice under Fed. R. Bank. P. 4001 and Local Bankruptcy Rule 4001-1.

By February 5, 2020, Ms. Muennichow must file and serve on movant a substantive response, keeping in mind that the chapter 7 trustee has filed a notice of non-opposition [doc. 63].

Appearances on January 15, 2020 are excused.

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, January 15, 2020

Hearing Room 301

9:30 AM

CONT... Hermann Muennichow

Chapter 7

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

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

Wednesday, January 15, 2020

Hearing Room 301

9:30 AM

1:19-12998 Nancy Jannete Mendez-Vasquez

Chapter 13

#9.00 Motion for relief from stay [RP]

SERGEY POLISHCHUK
VS
DEBTOR

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nancy Jannete Mendez-Vasquez

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 15, 2020

Hearing Room 301

9:30 AM

1:16-11838 Nazim Zamanzade

Chapter 13

#10.00 Motion for relief from stay [RP]

BAYVIEW LOAN SERVICING, LLC
VS
DEBTOR

Docket 63

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):

Nazim Zamanzade

Represented By
Peter L Nisson

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

Wednesday, January 15, 2020

Hearing Room 301

9:30 AM

CONT... Nazim Zamanzade

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 15, 2020

Hearing Room 301

9:30 AM

1:18-11995 Hans Adiatar Oliver

Chapter 13

#11.00 Motion for relief from stay [RP]

NATIONS DIRECT MORTGAGE LLC
VS
DEBTOR

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hans Adiatar Oliver

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, January 15, 2020

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01072 Adri v. Adri

#12.00 Status conference re: complaint to deny debtor's discharge

fr. 8/21/19; 10/2/19; 11/6/19

Docket 1

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, January 15, 2020

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

#13.00 Status conference re: complaint to deny discharge

fr. 10/2/19; 11/6/19

Docket 1

Tentative Ruling:

On November 18, 2019, the parties timely submitted their mediation order [doc. 22] and a scheduling order [doc. 23]. On January 6, 2020, the parties filed a joint status report regarding Robert Yaspan's current disinterest in participating in mediation, as concerns this adversary proceeding. As such, there are no outstanding matters at this time.

Appearances on January 15, 2020 are excused.

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, January 15, 2020

Hearing Room 301

1:30 PM

1:19-11131 Amornrat Kaewthongkam

Chapter 7

Adv#: 1:19-01098 Dechathong v. Kaewthongkam

- #14.00** 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. 727(a)(2)(A), (a)(3), (a)(4)(A), and (a)(5)

fr. 10/16/19

Docket 1

Tentative Ruling:

See calendar no. 16.

Plaintiff's appearance on January 15, 2020 is excused.

Party Information

Debtor(s):

Amornrat Kaewthongkam

Represented By
Byron M Johnson

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, January 15, 2020

Hearing Room 301

1:30 PM

1:19-12150 Houchik Boyadjian

Chapter 7

Adv#: 1:19-01132 Corrdary LLC v. Boyadjian et al

#15.00 Status conference re: complaint for non dischargeability

Docket 3

Tentative Ruling:

Does the defendant object to the plaintiff's motion to amend the complaint [doc. 12]?
If not, the Court will grant the motion and require the plaintiff to file and serve the amended complaint no later than **January 22, 2020**.

If the Court allows the filing of the amended complaint (which is highly likely), the defendant's motion to dismiss will be moot, and the defendant will have to file a response to the amended complaint.

Party Information

Debtor(s):

Houchik Boyadjian Pro Se

Defendant(s):

Houchik Boyadjian Pro Se

DOES 1 through 100, inclusive Pro Se

Plaintiff(s):

Corrdary LLC Represented By
Catherine Schlomann Robertson

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 15, 2020

Hearing Room 301

2:30 PM

1:19-11131 Amornrat Kaewthongkam

Chapter 7

Adv#: 1:19-01098 Dechathong v. Kaewthongkam

#16.00 Motion for default judgment against defendant Amornrat Kaewthongkam

Docket 9

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.

Movant's appearances on January 15, 2020 is excused.

Party Information

Debtor(s):

Amornrat Kaewthongkam

Represented By
Byron M Johnson

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, January 15, 2020

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

#17.00 Motion for Vacatur of Stipulation of Settlement and Settlement

Docket 52

***** VACATED *** REASON: Continued by stip to 2/19/20 at 2:30 p.m. - jc**

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, January 15, 2020

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

#18.00 Motion for rule 11 sanctions against defendant and his counsel
fr. 12/4/19 (pursuant to 11/20/19 calendar)

Docket 49

***** VACATED *** REASON: Continued by stip to 2/19/20 at 2:30 p.m. - jc**

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, January 15, 2020

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

#19.00 Status conference re: parties' dispute concerning settlement

fr. 11/20/19

Docket 1

*** VACATED *** REASON: Continued by stip to 2/19/20 at 2:30 p.m. - jc

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**

Thursday, January 16, 2020

Hearing Room 301

10:30 AM

1:15-11434 YKA Industries Inc a California Corporation

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Amy L. Goldman, Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith LLP, Attorneys for Chapter 7 Trustee

SLBiggs, A Division of SingerLewak, Accountants for Trustee

Docket 242

Tentative Ruling:

On January 14, 2020, the chapter 7 trustee's counsel filed a notice of errata [doc. 245], which included billing records which were omitted from their fee application. In order to review the omitted billing records, the Court will continue this hearing to **February 20, 2020 at 10:30 a.m.**

Appearances on January 22, 2020 are excused.

Party Information

Debtor(s):

YKA Industries Inc a California

Represented By
G Bryan Brannan

Trustee(s):

Amy L Goldman (TR)

Represented By
Doah Kim
Annie Verdries
Lovee D Sarenas

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

Thursday, January 16, 2020

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#2.00 Amended Disclosure Statement hearing

Docket 105

Tentative Ruling:

On December 18, 2019, the U.S. Trustee (the "UST") filed an objection to the debtor's first amended disclosure statement on three bases: (A) that the debtor did not provide a declaration from his spouse regarding her willingness to contribute to the debtor's chapter 11 plan of reorganization; (B) the debtor has not provided for tax withholding in his schedules or Declaration of Current/Postpetition Income and Expenses; and (C) the debtor did not attach a list of unsecured creditors to the disclosure statement.

On December 30, 2019, the debtor filed a declaration by his spouse regarding her willingness to contribute to the debtor's first amended chapter 11 plan of reorganization [doc. 118]. On January 9, 2020, the debtor filed a reply and attached a list of unsecured creditors [doc. 120]. The debtor also filed an updated Declaration of Current/Postpetition Income and Expenses [doc. 119]. This time, the debtor includes a deduction for his spouse's income taxes. However, the debtor **does not** include any deductions for his own income taxes.

In addition, in the debtor's monthly operating report for November 2019 [doc. 114], the debtor indicates that his property insurance expired in September 2019. In his updated Declaration of Current/Postpetition Income and Expenses, the debtor states that his monthly mortgage payment does not include property insurance, and the debtor does not otherwise include any payment towards property insurance in his accounting of expenses. Is the debtor's real property currently insured?

The debtor must supplement the disclosure statement with information about his real property insurance, or lack thereof, and include his tax withholding in his accounting of expenses. The debtor should update his Declaration of Current/Postpetition Income and Expenses accordingly.

Party Information

Debtor(s):

Attilio E Armeni

Represented By

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

Thursday, January 16, 2020

Hearing Room 301

1:00 PM

CONT...

Attilio E Armeni

Anthony Obehi Egbase

Chapter 11

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

Thursday, January 16, 2020

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#3.00 Status conference re: chapter 11 case
fr. 5/23/19; 9/19/19; 11/14/19

Docket 1

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, January 16, 2020

Hearing Room 301

1:00 PM

1:19-12966 Wendy Lane

Chapter 7

#4.00 U.S. Trustee's Motion to dismiss case pursuant to 11 U.S.C. § 707(b)(3)(A) with a one-year bar to refiling pursuant to 11 U.S.C. §§ 349(a) and 105(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):

Wendy Lane

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, January 16, 2020

Hearing Room 301

1:00 PM

1:19-13179 Prudential Equity Group

Chapter 7

#4.10 Order to show cause re dismissal

Docket 7

Tentative Ruling:

The Court will dismiss this case. The debtor has not filed a petition and otherwise appeared with counsel as required by LBR 9011-2(a).

The Court will prepare the order.

Party Information

Debtor(s):

Prudential Equity Group	Pro Se
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Trustee(s):

Amy L Goldman (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, January 16, 2020

Hearing Room 301

2:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#5.00 Motion of Mr. Tortilla, Inc. to approve settlement with Roger Vega
fr. 12/26/19

Docket 139

Tentative Ruling:

Grant.

I. BACKGROUND

On August 14, 2018, Mr. Tortilla, Inc. ("Debtor") filed a voluntary chapter 11 petition. Prepetition, Debtor disputed a \$35,000 invoice by Diana's Mexican Food Products, Inc. ("Diana's"). Declaration of Anthony Alcazar ("Alcazar Declaration") [doc. 139], ¶ 5. Debtor contended that the quality of the product supplied by Diana's was below standard and yielded substandard tortillas, leading to the loss of at least one major customer. *Id.* Eventually, Diana's sued Debtor for payment of the \$35,000, and Debtor filed a cross-complaint seeking damages. *Id.* Diana's included Debtor's two principals, and their father, as defendants (together, the "Nondebtor Defendants"). *Id.*

In 2017, Debtor and the Nondebtor Defendants (together, the "State Court Defendants") hired Roger Vega to represent them during trial. Alcazar Declaration, ¶ 7. According to Mr. Alcazar, the State Court Defendants believe that Mr. Vega did not comply with pretrial requirements, which led to the state court striking the State Court Defendants' answers and cross-complaint and entering a joint and several judgment in the amount of \$214,000 against each of the State Court Defendants (the "Diana's Judgment"). *Id.* Consequently, on February 28, 2019, the State Court Defendants filed a malpractice complaint against Mr. Vega (the "Malpractice Action"). Alcazar Declaration, ¶ 2.

On December 5, 2019, Debtor filed a motion to approve an agreement with Mr. Vega (the "Motion") [doc. 139]. Debtor did not attach the settlement agreement between the State Court Defendants and Mr. Vega. On December 10, 2019, the U.S. Trustee

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

Thursday, January 16, 2020

Hearing Room 301

2:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

(the "UST") filed an opposition to the Motion [doc. 144], on the basis that Debtor must provide a copy of the settlement agreement. On December 12, 2019, Diana's filed an opposition to the Motion [doc. 145]. Diana's also requested a copy of the settlement agreement.

On December 26, 2019, the Court held a hearing on the Motion. The Court instructed Debtor to file a supplement to the Motion and attach the settlement agreement with Mr. Vega. On December 27, 2019, Debtor filed a supplement and attached the subject settlement agreement (the "Agreement") [doc. 148]. Through the Agreement, Debtor and the other Nondebtor Defendants, on the one hand, and Mr. Vega, on the other hand, agreed that Mr. Vega would pay the State Court Defendants \$40,000 in addition to \$20,000 previously paid to Debtor by Mr. Vega. The \$40,000 is to be divided equally among the State Court Defendants, with Debtor receiving its portion of \$10,000. In return, the State Court Defendants agreed to dismiss the Malpractice Action.

On January 10, 2020, Diana's filed another opposition to the Motion (the "Opposition") [doc. 149]. In the Opposition, Diana's asserts that Debtor should not use the Agreement to settle the Nondebtor Defendants' claims, and that the entire \$40,000 should be given to Debtor to settle Debtor's claim against Mr. Vega. The UST no longer objects to the Motion.

II. ANALYSIS

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

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

Thursday, January 16, 2020

Hearing Room 301

2:00 PM

CONT... **Mr. Tortilla, Inc.**

Chapter 11

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).

A. Probability of Success in Litigation

Debtor has met its burden of demonstrating that it would face significant difficulty succeeding in the Malpractice Action. As noted by Debtor, the Malpractice Action would essentially involve proving that, had the state court allowed the parties to proceed to trial, Debtor would have prevailed. This would involve multiple layers of proof, including showing that: (A) the product provided by Diana's was below standard; (B) if the product was below standard, the tortillas made from the product were substandard; (C) if the tortillas were substandard, it was the product supplied by Diana's, and no other factor, that made the tortillas substandard; and (D) if the product supplied by Diana's led to substandard tortillas, the loss of customers or any other damages was the result of the substandard tortillas and no other reason.

Given the significant amount of evidence required to make these showings, the record does not indicate that Debtor had a probability of success against Diana's; consequently, Debtor also would face significant difficulty demonstrating damages in the Malpractice Action. Accordingly, this factor weighs in favor of approving the Agreement.

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

Thursday, January 16, 2020

Hearing Room 301

2:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

B. Difficulties in Collection

Debtor also has shown that, if it is able to win a judgment in the amount of \$214,000, it will be difficult to collect the full amount from Mr. Vega. According to Debtor's counsel, "\$214,000 is significantly more than Mr. Vega's insurance coverage." Declaration of M. Jonathan Hayes [doc. 148], ¶ 10. Without insurance coverage over the full amount of a potential judgment, Debtor will have to initiate collection proceedings against Mr. Vega. Such proceedings to enforce any judgment against Mr. Vega will require more time and resources than the immediate payment of \$40,000 contemplated under the Agreement. As such, this factor also favors approval of the Agreement.

C. Complexity and Expense, Inconvenience and Delay of Litigation

As noted above, prosecuting the Malpractice Action will involve multiple layers of proof. Offering such proof will be expensive. For example, according to Debtor, Debtor would need to retain experts to attempt to litigate the Malpractice Action successfully. Given the complexity of the case and the amount of time and resources necessary to prosecute the action, this factor weighs in favor of approval of the Agreement.

D. Paramount Interest of Creditors

The primary objection by Diana's is that the Nondebtor Defendants should give their portion of the settlement proceeds to Debtor for the benefit of unsecured creditors. However, the Nondebtor Defendants were individually named by Diana's as defendants and are now jointly and severally liable under the Diana's Judgment. Because Mr. Vega represented all of the State Court Defendants, each of the State Court Defendants has their own malpractice claim against Mr. Vega. As such, the distribution of settlement proceeds to the Nondebtor Defendants cannot accurately be characterized as a receipt of Debtor's funds by insiders; the \$10,000 to be paid to each of the Nondebtor Defendants is to settle their own claims against Mr. Vega, and the Court does not have the power to compel these nondebtor entities to turn over their funds to the estate.

Moreover, the assertion by Diana's that Debtor settled the Nondebtor Defendants' claims on their behalf is inaccurate. As noted by Debtor, the Nondebtor Defendants

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

Thursday, January 16, 2020

Hearing Room 301

2:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

were represented by their own counsel, Sevan Gorginian, who separately negotiated on the Nondebtor Defendants' behalf. Declaration of M. Jonathan Hayes, ¶¶ 2, 6, 8. As such, the Nondebtor Defendants did not benefit from the use of Debtor's counsel. Nor is there any evidence on the record that the Nondebtor Defendants received any other benefit from Debtor in connection with the negotiation and execution of the Agreement.

Consequently, the \$30,000 set to be received by the Nondebtor Defendants is outside the scope of the Court's assessment of Mr. Vega's settlement with *Debtor*. The Court's narrow focus is whether it is fair, equitable and reasonable for Debtor to settle with Mr. Vega for \$10,000. Given the discussion above regarding Debtor's chances of success and the significant resources necessary to prosecute the Malpractice Action, the immediate receipt of \$10,000 into the estate is in the paramount interest of creditors. Because all of the factors weigh in favor of approval of the Agreement, the Court will grant the Motion.

III. CONCLUSION

The Court will grant the Motion.

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

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**

Friday, January 17, 2020

Hearing Room 301

9:30 AM

1:19-11843 14554 Friar, LLC

Chapter 11

#1.00 Motion for relief from stay [RP]
[EVIDENTIARY HEARING]

EASY FINANCIAL LLC
VS
DEBTOR

fr. 11/20/19

Stipulation to continue filed 12/26/19

Docket 32

***** VACATED *** REASON: Order approving stip entered 1/6/19.
Hearing continued to 2/28/20 at 9:30 AM.**

Party Information

Debtor(s):

14554 Friar, LLC

Represented By
Donna Bullock

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**

Tuesday, January 21, 2020

Hearing Room 301

8:30 AM

1:19-12397 Julio Rene Solares

Chapter 7

#1.00 Reaffirmation Agreement between debtor and Wells Fargo Auto

Docket 12

Party Information

Debtor(s):

Julio Rene Solares

Represented By
Philomena N Nzegge

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 21, 2020

Hearing Room 301

8:30 AM

1:19-12478 Alvin Abadilla Doria and Auda Cabonilas Doria

Chapter 7

#2.00 Reaffirmation agreement between debtor and JPMorgan Chase Bank, N.A.

Docket 13

Party Information

Debtor(s):

Alvin Abadilla Doria

Represented By
Raymond J Bulaon

Joint Debtor(s):

Auda Cabonilas Doria

Represented By
Raymond J Bulaon

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, January 21, 2020

Hearing Room 301

8:30 AM

1:19-12498 Nancy Curiel Alvarado

Chapter 7

#3.00 Reaffirmation Agreement between Debtor and
Water and Power Community Credit Union
(2015 Kia Optima)

Docket 19

Party Information

Debtor(s):

Nancy Curiel Alvarado Pro Se

Trustee(s):

Nancy J Zamora (TR) Pro Se

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

Tuesday, January 21, 2020

Hearing Room 301

8:30 AM

1:19-12498 Nancy Curiel Alvarado

Chapter 7

#4.00 Reaffirmation Agreement between Debtor and
Water and Power Community Credit Union
(Signature Loan)

Docket 21

Party Information

Debtor(s):

Nancy Curiel Alvarado

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Tuesday, January 21, 2020

Hearing Room 301

8:30 AM

1:19-12551 Julia Fernanda Duran

Chapter 7

#5.00 Reaffirmation Agreement between Debtor and
Wells Fargo Bank NA dba Wells Fargo Auto

Docket 19

Party Information

Debtor(s):

Julia Fernanda Duran

Pro Se

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Tuesday, January 21, 2020

Hearing Room 301

8:30 AM

1:19-12551 Julia Fernanda Duran

Chapter 7

#6.00 Reaffirmation Agreement between Debtor and Santander Consumer USA Inc.

Docket 15

Party Information

Debtor(s):

Julia Fernanda Duran

Pro Se

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Tuesday, January 21, 2020

Hearing Room 301

8:30 AM

1:19-12756 Luisanna Beltran Del Rio

Chapter 7

#7.00 Reaffirmation agreement between debtor and VW Credit, Inc

Docket 8

Party Information

Debtor(s):

Luisanna Beltran Del Rio

Represented By
Gregory Grigoryants

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Tuesday, January 21, 2020

Hearing Room 301

8:30 AM

1:19-12783 Lavinia Ivette Rosales

Chapter 7

#8.00 Reaffirmation agreement between debtor and Toyota Motor Credit Corporation

Docket 13

Party Information

Debtor(s):

Lavinia Ivette Rosales

Represented By
Irma C Coler

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 22, 2020

Hearing Room 301

9:30 AM

1:19-12082 Robert M. Gerstein

Chapter 7

#1.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

fr. 11/6/19(stip), 12/18/19

Docket 44

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, January 22, 2020

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; 11/20/19, 12/18/19

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

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

Wednesday, January 22, 2020

Hearing Room 301

9:30 AM

CONT... Robert M. Gerstein

Chapter 7

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
Courtroom 301 Calendar

Wednesday, January 22, 2020

Hearing Room 301

9:30 AM

1:19-11643 Larry M Halpern

Chapter 7

#3.00 Motion for relief from stay [RP]

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING
VS
DEBTOR

fr. 10/23/19

Stip to continue filed 1/17/20

Docket 27

*** VACATED *** REASON: Order approving stip entered 1/21/20.
Hearing continued to 5/6/20 at 9:30 AM.

Tentative Ruling:

- NONE LISTED -

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, January 22, 2020

Hearing Room 301

9:30 AM

1:18-12467 Colin Basil MacLean

Chapter 13

#4.00 Motion for relief from stay [RP]

JP MORGAN CHASE BANK, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 11/13/19, 12/18/19

Stip for adequate protection filed 12/18/19

Docket 73

*** VACATED *** REASON: Order entered on 12/18/19 [doc. 81].

Tentative Ruling:

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
Courtroom 301 Calendar**

Wednesday, January 22, 2020

Hearing Room 301

9:30 AM

1:17-11883 Roger Valencia, II

Chapter 13

#5.00 Motion for relief from stay [RP]

WILMINGTON TRUST NATIONAL ASSOCIATION
VS
DEBTOR

fr. 11/6/19; 12/4/19, 12/18/19

Stip resolving motion filed 12/19/19

Docket 39

***** VACATED *** REASON: Stipulated order entered 12/19/19**

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, January 22, 2020

Hearing Room 301

9:30 AM

1:19-12810 Blanca Mohd

Chapter 11

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

fr. 12/4/19, 12/18/19

Docket 19

Tentative Ruling:

The Court will deny the motion.

At the prior hearing on December 18, 2019, the Court ordered the debtor to file a declaration to demonstrate that she timely made her proposed adequate protection payments. As of January 21, 2020, the debtor did not timely file such a declaration.

The Court will prepare the order.

Tentative Ruling for December 18, 2019

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.

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

Wednesday, January 22, 2020

Hearing Room 301

9:30 AM

CONT...

Blanca Mohd

Chapter 11

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].

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

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

Wednesday, January 22, 2020

Hearing Room 301

9:30 AM

CONT...

Blanca Mohd

Chapter 11

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 \$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

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

Wednesday, January 22, 2020

Hearing Room 301

9:30 AM

CONT... Blanca Mohd

Chapter 11

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.

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

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

Wednesday, January 22, 2020

Hearing Room 301

9:30 AM

CONT... Blanca Mohd
ability to make them.

Chapter 11

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 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.

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

Wednesday, January 22, 2020

Hearing Room 301

9:30 AM

CONT...

Blanca Mohd

Chapter 11

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**

Wednesday, January 22, 2020

Hearing Room 301

9:30 AM

1:19-12734 Scott Edward Winslow

Chapter 13

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

fr. 11/20/19

Docket 8

Tentative Ruling:

The Court will deny the motion.

At the prior hearing on December 18, 2019, the Court ordered the debtor to file, by January 20, 2020, a declaration to demonstrate that he timely made certain post-petition deed of trust and chapter 13 plan payments. The debtor did not timely file such a declaration.

The Court will prepare the order.

Ruling for December 18, 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 **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.

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

Wednesday, January 22, 2020

Hearing Room 301

9:30 AM

CONT... Scott Edward Winslow

Chapter 13

Party Information

Debtor(s):

Scott Edward Winslow

Represented By
Anil Bhartia

Movant(s):

Scott Edward Winslow

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, January 22, 2020

Hearing Room 301

9:30 AM

1:15-11547 **Rodolfo Trujillo and Annette Marie Trujillo**

Chapter 13

#8.00 Motion for relief from stay [RP]

US BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 48

*** VACATED *** REASON: Stipulated order entered 01/21/20

Tentative Ruling:

Party Information

Debtor(s):

Rodolfo Trujillo

Represented By
Daniel F Jimenez

Joint Debtor(s):

Annette Marie Trujillo

Represented By
Daniel F Jimenez

Movant(s):

US Bank National Association, as

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, January 22, 2020

Hearing Room 301

9:30 AM

1:16-11116 Rodolfo Cortes and Doris Cortes

Chapter 13

#9.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

Docket 43

Tentative Ruling:

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

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

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):

Rodolfo Cortes

Represented By
Glenn Ward Calsada

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

Wednesday, January 22, 2020

Hearing Room 301

9:30 AM

CONT... Rodolfo Cortes and Doris Cortes

Chapter 13

Joint Debtor(s):

Doris Cortes

Represented By
Glenn Ward Calsada

Movant(s):

THE BANK OF NEW YORK

Represented By
Ashish R Rawat
Sumit Bode
John W Lackey
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, January 22, 2020

Hearing Room 301

9:30 AM

1:20-10006 Tarsicio Chavez Bernal

Chapter 13

#10.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay

Docket 11

Tentative Ruling:

The Court will grant the motion on an interim basis and continue the hearing to **February 19, 2020 at 9:30 a.m.**

The notice of the motion indicates that the motion is being heard on regular notice. However, the movant did not provide 21 days notice as required by Local Bankruptcy Rule 4001-1 and 9013-1(d).

By January 29, 2020, 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 January 22, 2020 are excused.

Party Information

Debtor(s):

Tarsicio Chavez Bernal

Represented By
Leroy Bishop Austin

Movant(s):

Tarsicio Chavez Bernal

Represented By
Leroy Bishop Austin

Trustee(s):

Elizabeth (SV) 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 22, 2020

Hearing Room 301

9:30 AM

1:20-10001 Wilfredo Ortega

Chapter 13

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

Docket 8

Tentative Ruling:

Grant.

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

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

Party Information

Debtor(s):

Wilfredo Ortega

Represented By
Onyinye N Anyama

Trustee(s):

Elizabeth (SV) 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 22, 2020

Hearing Room 301

1:30 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

Adv#: 1:18-01113 VitaVet Labs, Inc. v. Gashtili

- #12.00** 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; 10/23/19;

Docket 4

***** VACATED *** REASON: Order approving stip to continue entered 10/16/19. [Dkt.29] Hearing continued to 3/4/20 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, January 22, 2020

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

#13.00 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; 11/6/19

Docket 1

***** VACATED *** REASON: Pretrial cont to 01/29/2020 at 2:30 p.m. per order**

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, January 22, 2020

Hearing Room 301

1:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

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

- #14.00** 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; 11/13/19

Docket 75

Tentative Ruling:

The Court will set the plaintiff's motion for summary judgment [docs. 152-157] for hearing at **2:30 p.m. on March 25, 2020**. The plaintiff must file and serve notice of the hearing no later than February 12, 2020.

The Court also will set the motion for sanctions [docs. 159-161] filed by Sunderland | McCutchan, Inc., Sunderland | McCutchan, LLP and B. Edward McCutchan, Jr. (together, the "McCutchan Parties") for hearing at **2:30 p.m. on March 25, 2020**. The McCutchan Parties must file and serve notice of the hearing no later than March 4, 2020.

The Court will continue this status conference to the same time and date.

Appearances on January 22, 2020 are excused.

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey

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

Wednesday, January 22, 2020

Hearing Room 301

1:30 PM

CONT... Robert Edward Zuckerman

Stuart I Koenig

Chapter 11

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

Wednesday, January 22, 2020

Hearing Room 301

1:30 PM

1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:19-01009 Goldman v. Pavehzadeh et al

- #15.00** Pretrial 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, 11/20/19

CROSS CLAIM

Shahnam Ebrahimi
vs
Houshang Pavehzadeh

FIRST AMENDED COUNTER-CLAIM

Shahnam Ebrahimi
vs
Amy Goldman

Docket 1

***** VACATED *** REASON: Order entered continuing to 3/18/20 [doc. 34].**

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, January 22, 2020

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, January 22, 2020

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

#16.00 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);
11/20/19 (stip);

Stip to cont hrg fld 1/8/20

Docket 1

***** VACATED *** REASON: Order approving stip entered 1/9/20.
Hearing continued to 3/25/19 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, January 22, 2020

Hearing Room 301

1:30 PM

1:19-10494 Gerald Martin Nussbaum

Chapter 7

Adv#: 1:19-01052 Morehead v. Nussbaum et al

- #17.00** Pretrial 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

Stip to continue filed 1/20/20

Docket 1

***** VACATED *** REASON: Order approving stip entered 1/21/20.
Hearing continued to 4/15/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerald Martin Nussbaum

Represented By
Neil R Hedtke

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

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

Wednesday, January 22, 2020

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mor et al

- #18.00** 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); 12/4/19

Stip to continue filed 1/15/20

Docket 1

***** VACATED *** REASON: Continued to 3/18/20 at 1:30 p.m. 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

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

Wednesday, January 22, 2020

Hearing Room 301

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, January 22, 2020

Hearing Room 301

1:30 PM

1:19-11643 Larry M Halpern

Chapter 7

Adv#: 1:19-01108 Business Funding Source v. Halpern

#19.00 Motion to Withdraw as Attorney

Docket 20

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Larry M Halpern

Represented By
David S Hagen

Defendant(s):

Larry M Halpern

Represented By
David S Hagen

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, January 22, 2020

Hearing Room 301

1:30 PM

1:19-11643 Larry M Halpern

Chapter 7

Adv#: 1:19-01108 Business Funding Source v. Halpern

#20.00 Status conference re: amended complaint to determine dischargeability of debt

fr. 12/11/19

Docket 11

Tentative Ruling:

As previously stated by the Court at the December 11, 2019 status conference, the Court may dismiss this case if the Court allows the withdrawal of Richard Shuben as the plaintiff's counsel and if the plaintiff does not obtain new counsel by January 22, 2020.

The Court intends to grant Mr. Shuben's request to withdraw as counsel. Has the plaintiff retained an attorney to replace Mr. Shuben?

12/11/2019 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).

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

Wednesday, January 22, 2020

Hearing Room 301

1:30 PM

CONT... Larry M Halpern

Chapter 7

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

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, January 22, 2020

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

- #20.10** Status conference re: Complaint for:
1. Quiet Title;
 2. Slander of title;
 3. Declaratory relief

fr. 10/2/19; 11/20/19; 1/8/20

Docket 1

Tentative Ruling:

The Court will prepare an order dismissing Martin Serraf as a defendant - without prejudice to Mr. Serraf moving for recovery of any fees and costs he incurred, e.g., in connection with attending the status conferences arising from this adversary proceeding.

1/8/2020 Tentative:

On January 7, 2020, the plaintiff filed a notice of dismissal of the remaining defendant, Martin Serraf [doc. 76]. Although Mr. Serraf's answer references an address in Carlsbad, California, the plaintiff served Mr. Serraf, *the day before this status conference*, with the notice of dismissal at a Beverly Hills, California address and a West Hills, California address. Plaintiff may not have otherwise notified Mr. Serraf of his intent to dismiss Mr. Serraf or that this status conference may be vacated upon that dismissal.

The Court will dismiss Mr. Serraf as a defendant - without prejudice to Mr. Serraf moving for recovery of any fees and costs he incurred, e.g., in connection with attending the status conferences arising from this adversary proceeding.

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, January 22, 2020

Hearing Room 301

1:30 PM

CONT... Ali P Dargah

Chapter 13

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
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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 22, 2020

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

#21.00 Motion for judgment on the pleadings

fr. 12/11/19

Docket 31

Tentative Ruling:

Although the Court has not completed its evaluation of the entirety of the pending motion, it has completed its tentative assessment of particular contentions.

Given the parties' attempts to reach a consensual resolution, the Court is providing a written tentative ruling on which issues the Court has assessed, to date, *i.e.*, regarding the pertinent statutes of limitations and the claims for breach of contract and California Unfair Competition Law. That tentative ruling is set forth below.

At **2:30 p.m., on February 26, 2019**, the Court will hold a continued hearing, to provide a tentative ruling on the claims for negligence and breach of the implied covenant of good faith and fair dealing.

Appearances on January 22, 2019 are excused.

I. BACKGROUND

On November 29, 2016, Christopher Sabin Nassif ("Debtor") filed a voluntary chapter 11 petition. On October 31, 2018, Debtor and his wife, Robin Nassif (together, "Plaintiffs"), filed a complaint (the "Complaint") against Nationstar Mortgage LLC ("Nationstar"), Bank of America, N.A. ("BOFA"), Aztec Foreclosure Corporation, The Bank of New York Mellon ("BONYM") and Does 1-10 (collectively, "Defendants"), initiating this adversary proceeding.

The Complaint alleges causes of action for violation of the California Homeowner Bill of Rights, Cal Civ. Code §§ 2920.5, *et seq.*, breach of written agreement, breach

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

of the covenant of good faith and fair dealing, negligence and violation of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.* In relevant part, the Complaint makes the following allegations:

In June 2004, Plaintiffs purchased real property located at 19016 Devonport Lane, Tarzana, California (the "Property"). On April 4, 2006, a deed of trust ("DOT") securing a \$2,000,000 promissory note (the "Note") was recorded against the Property [Complaint, Exh. A]. The DOT identifies Plaintiffs as the borrowers, America's Wholesale Lender ("AWL") as the lender and Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for the lender. On October 13, 2011, MERS assigned the DOT to BONYM [Complaint, Exh. B]. During this time, BOFA was the servicer for the Note.

On July 1, 2009, Plaintiffs initially fell behind on their deed of trust payments. Thereafter, Plaintiffs attempted to modify the Note based on a change in financial circumstances. On February 1, 2013, BOFA agreed to modify the DOT. BOFA prepared a loan modification agreement ("LMA"), which was signed and notarized by Plaintiffs on December 28, 2012 [Complaint, Exh. C]. On February 1, 2013, Stacie Carrasco, on behalf of BOFA, signed and acknowledged the LMA.

Under the LMA, Plaintiffs were to make the following deed of trust payments: (a) \$6,692.49 per month for the first 36 months; (b) \$7,830.28 per month for the next 12 months; and (c) \$8,726.48 per month for 351 months (the remainder of the term of the Note). Beginning with the February 2013 deed of trust payment, Plaintiffs attempted to make the payments required under the LMA. However, BOFA would not accept the payments and requested that Plaintiffs not make any further payments until the Note was properly modified.

During the period of time that BOFA was investigating the LMA, BOFA transferred the DOT to Nationstar on July 23, 2013 [Complaint, Exh. E]. On January 27, 2016, Nationstar executed a corrective assignment of the DOT transferring the DOT to BONYM [Complaint, Exh. F].

Due to no fault of Plaintiffs, BOFA and Nationstar failed to promptly modify the Note as agreed upon in the LMA. According to the proof of claim ("POC") filed by Nationstar in Debtor's bankruptcy case, the LMA was not "booked"

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Sabin Nassif

Chapter 11

until December 3, 2013, which was 10 months after the LMA was to be implemented [Complaint, Exh. D]. The accounting listed in the POC, shows that Plaintiffs were still delinquent and due for the pre-modified June 2009 date because BOFA failed to reconcile the LMA with the account. Defendants did not provide an explanation for the delay of the implementation of the LMA.

As a result, although Plaintiffs initially attempted to make payments under the LMA, BOFA and Nationstar returned payments that were made and refused to accept payments unless the entire defaulted arrearage was paid by Plaintiffs. As a result of Defendants' negligent conduct, there are numerous unexplained and improper fees associated with the claim while the LMA was being implemented, despite California's restriction on said charges.

On September 15, 2018, Nationstar sent a correspondence to Plaintiffs admitting that there may have been an "error asserted" on their account [Complaint, Exh. K]. However, Nationstar failed to promptly, and through no fault of Plaintiffs, correct the error. Plaintiffs request to fix the issue was thereafter ignored despite acknowledgment of the LMA. Nationstar failed to honor the LMA and proceeded with foreclosure proceedings. In 2016, Nationstar recorded a notice of default and two notices of trustee's sale [Complaint, Exhs. H, I and J]. BOFA and Nationstar failed to rescind the notice of default and notice of sale despite a fully executed LMA and the acknowledgement of an internal error.

The accounting error, when finally reconciled, was not implemented in a timely fashion. This resulted in a series of threats to Plaintiffs of foreclosure and the loss of the Property. Defendants failed to properly update the LMA in the system causing great harm to Plaintiffs, including the instant chapter 11 filing to prevent foreclosure of the Property.

BOFA breached the LMA agreement by failing to complete the booking of the LMA, failing to compel or cooperate with Plaintiff's [*sic*] efforts to compel Nationstar to comply with the LMA, and by transferring the Note to Nationstar despite the failure to book the LMA properly. Defendants represented that they would modify the Note and proceed with the modified terms. However, each

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Sabin Nassif

Chapter 11

Defendant had no intention of honoring said contract. Defendants have made or disseminated untrue or misleading statements with respect to the LMA prior to the proposed foreclosure sale about the status of the agreement.

Briefly mentioned in the Complaint, and attached as Exhibit F, is a Corrective Assignment of the Deed of Trust. On January 27, 2016, BOFA signed this document, as "attorney-in-fact for Nationstar."

On September 27, 2019, BOFA filed a motion for judgment on the pleadings (the "Motion") [doc. 31], along with a request for judicial notice. In the Motion, BOFA argues that all causes of action against BOFA are barred by the applicable statute of limitations and that Plaintiffs' claims fail as to BOFA.

On January 8, 2020, Plaintiffs filed an opposition to the Motion (the "Opposition") [doc. 52]. On January 15, 2020, BOFA filed a reply to the Opposition (the "Reply") [doc. 53].

I. DISCUSSION

A. Standard for Judgment on the Pleadings

Federal Rule of Civil Procedure ("Rule") 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."

"A motion for judgment on the pleadings is a vehicle for summary adjudication, but the standard is like that of a motion to dismiss." *Mag Instrument, Inc. v. JS Products, Inc.*, 595 F.Supp.2d 1102, 1106-07 (C.D. Cal. 2008). "Rule 12(c) is 'functionally identical' to Rule 12(b)(6) and... 'the same standard of review' applies to motions brought under either rule." *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 n. 4 (9th Cir. 2011). The only "significant difference" is that a Rule 12(c) motion is properly brought "after the pleadings are closed and within such time as not to delay the trial." *Mag Instrument*, 595 F.Supp.2d at 1102.

"A judgment on the pleadings is properly granted when, taking all the allegations in

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

the pleadings as true, the moving party is entitled to judgment as a matter of law." *Nelson v. City of Irvine*, 143 F.3d 1196, 1120 (9th Cir. 1998). However, "a plaintiff is not entitled to judgment on the pleadings when the answer raises issues of fact that, if proved, would defeat recovery." *Gen. Conf. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989).

Under Rule 12(d), if, "on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion."

In resolving a Rule 12(c) motion, the court can consider (without converting the motion to a summary judgment): (a) the complaint and answer; (b) any documents attached to or mentioned in the pleadings; (c) matters subject to judicial notice; and (d) documents not attached but "integral" to the claims. *Massey v. Ojaniit*, 759 F.3d 343, 347-348 (4th Cir. 2014); *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2nd Cir. 2011).

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. Leave to Amend

Under Rule 15(a)(2) "the court should freely give leave [to amend] when justice so requires." Courts have the discretion to grant or deny leave to amend a complaint. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). "In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). The factors courts commonly consider when determining whether to grant leave to amend are:

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Sabin Nassif

Chapter 11

1. Bad faith;
2. Undue delay;
3. Prejudice to the opposing party; and
4. Futility of amendment.

Ditto v. McCurdy, 510 F.3d 1070, 1079 (9th Cir. 2007) (internal citations omitted). Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). "Futility alone can justify the denial of a motion for leave to amend." *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2003).

C. Statute of Limitations

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). Under California law, claims based on a written agreement are subject to a four-year statute of limitations. CCP §§ 339 and 337. Similarly, claims under the UCL are subject to a four-year statute of limitations. Cal. Bus. & Prof. Code § 17208. However, claims based on negligence are subject to a two-year statute of limitations. CCP § 339(1).

Neither party addressed when the statute of limitations on each cause of action began to run and the application of 11 U.S.C. § 108(a) to those statute of limitations. Assuming the statute of limitations began to run when both parties (including BOFA)

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

had executed the LMA, i.e., in February 2013, Plaintiffs' breach of contract, breach of the implied covenant of good faith and fair dealing and UCL claims are not barred by the statute of limitations. As stated above, each of those claims has a four-year statute of limitations.

Absent the application of 11 U.S.C. § 108(a), using BOFA's execution date of the LMA, the relevant statute of limitations would run in February 2017. However, in November 2016, Debtor filed his chapter 11 petition. Because Debtor filed his petition before the statute of limitations ran on those claims, pursuant to 11 U.S.C. § 108(a), the statute of limitations was tolled for two years. Before the expiration of this two-year tolling period, Plaintiffs filed the Complaint.

As to Plaintiffs' negligence claim, it is not clear from the Complaint that the claim is barred by the statute of limitations. BOFA contends that, after July 2013, when it transferred service of the Note to Nationstar, it had no involvement with the Plaintiffs' loan or the LMA. However, on January 27, 2016, "as attorney-in-fact" for Nationstar, BOFA signed the Corrective Assignment of the Deed of Trust [Complaint, Exh. F]. Based on this document, attached to the Complaint, it is not clear that BOFA's involvement with Plaintiffs' loan and the LMA ceased in 2013.

Given that BOFA's involvement with the Plaintiffs' loan and the LMA may have extended past 2013, it is not clear that the statute of limitations for negligence ran prior to Debtor filing his chapter 11 petition. Accordingly, as to the negligence claim, based on the statute of limitations only, BOFA has not shown that it is entitled to judgment as a matter of law.

D. Breach of Contract

To allege a cause of action for breach of contract, a plaintiff must allege: (1) the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) the resulting damages to plaintiff. *Bushell v. JPMorgan Chase Bank, N.A.*, 220 Cal.App.4th 915, 921 (2013).

Here, Plaintiffs have properly stated a claim for breach of contract. Plaintiffs alleged that the existence of a valid written contract - the LMA. Plaintiffs alleged that they attempted to make deed of trust payments as required under the LMA, and BOFA

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

rejected those payments. Plaintiffs also alleged that BOFA told Plaintiffs not to make payments until the LMA was properly implemented. Plaintiffs further alleged that BOFA breached the LMA agreement by failing to complete the booking of the LMA and that this breach resulted in damages to Plaintiffs, which include legal fees and costs in bringing the Complaint to enforce the LMA.

In the Motion, BOFA argues that Plaintiffs did not identify a specific provision of the LMA that it breached. However, under the LMA, BOFA agreed to modify the terms of the Note. Before BOFA transferred the Note to Nationstar, BOFA apparently failed to effectuate the modification of the Note. This is a breach of the LMA. In addition, after the LMA should have been implemented, BOFA purportedly refused to accept payments under the LMA. [FN1]

E. California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.

"The UCL is a broad remedial statute that permits an individual to challenge wrongful business conduct 'in whatever context such activity might occur.'" *Lozano v. AT & T Wireless Servs., Inc.*, 504 F.3d 718, 731 (9th Cir. 2007) (citing *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tele. Co.*, 83 Cal.Rptr.2d 548, 561 (1999)). It prohibits "unfair competition," which it broadly defines as including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising...." Cal. Bus. & Prof.Code § 17200. Because the statute is written in the disjunctive, it is violated where a defendant's act or practice is (1) unlawful, (2) unfair, (3) fraudulent, or (4) in violation of section 17500 (false or misleading advertisements). *Cel-Tech*, 83 Cal.Rptr.2d at 565. Each prong of the UCL is a separate and distinct theory of liability. *Lozano*, 504 F.3d at 731.

Under the UCL, an "unlawful" business practice or act "is an act or practice, committed pursuant to business activity, that is at the same time forbidden by law." *People ex rel. Harris v. Pac Anchor Transp., Inc.*, 195 Cal.App.4th 765, 773 (2011).

"A business practice that is not unlawful may nonetheless be actionable as an 'unfair' business practice." *Pinel v. Aurora Loan Servs., LLC*, 814 F.Supp.2d 930, 940 (N.D. Cal. 2011), Under the UCL, an "unfair" business practice is "one that either offends an established public policy or is immoral, unethical, oppressive, unscrupulous, or

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

substantially injurious to consumers." *McDonald v. Coldwell Banker*, 543 F.3d 498, 506 (9th Cir. 2008).

Under the UCL, conduct is considered "fraudulent" if the conduct is "likely to deceive." *Morgan v. AT & T Wireless Servs., Inc.*, 177 Cal.App.4th 1235, 1254 (2009). "A cause of action for fraudulent business acts under section 17200 is distinct from a common law fraud claim." *Webb v. Bank of Am., N.A.*, No. 2:13-CV-02006-MCE-AC, 2013 WL 6839501, at *7 (E.D. Cal. Dec. 23, 2013). Under section 17200, a plaintiff does not need to show reliance to state a claim for fraudulent business acts. *Klein v. Earth Elements*, 59 Cal.App.4th 965, 970 (1997). A plaintiff need only allege that the public is likely to be deceived by the alleged business acts. *Id.*

However, all claims alleging fraudulent business practices under section 17200 are subject to the heightened pleading standard of Rule 9(b). *See, e.g., Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009). To meet the heightened pleading standard of Rule 9(b), a plaintiff must plead facts as to the "who, what, when, where, and how" of the alleged fraudulent conduct, *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997), and "set forth an explanation as to why [a] statement or omission complained of was false and misleading," *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir.1994) (en banc).

In order to have standing, a plaintiff asserting an unfair competition claim must allege that (1) he or she "suffered injury in fact," and (2) "lost money or property as a result of such unfair competition." *Lozano*, 504 F.3d at 731–32.

The types of relief available under the UCL actions are injunctive and restorative. Cal. Bus. & Prof.Code § 17203; *see also Lozano*, 504 F.3d at 733. The California Supreme Court has "stated that the concept of restoration or restitution, as used in the UCL, is not limited only to the return of money or property that was once in the possession of that person. Instead, restitution is broad enough to allow a plaintiff to recover money or property in which he or she has a vested interest." *See Juarez v. Arcadia Fin., Ltd.*, 61 Cal.Rptr.3d 382, 400 (2007) (citing *Korea Supply Co. v. Lockheed Martin Corp.*, 131 Cal.Rptr.2d 29, 42 (2003)).

Here, Plaintiffs have stated a claim for a UCL violation under the "unfair" prong. Plaintiffs alleged that BOFA entered the LMA and never intended to honor the LMA.

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

Plaintiffs also alleged that BOFA did not implement the LMA in a timely manner, which caused improper fees to be added on to the Note and that BOFA refused to accept payments under the LMA. This is actionable under the "unfair" prong because it is "immoral unethical, oppressive, unscrupulous, or substantially injurious to consumers." See *Lewis v. Bank of Am. NA*, No. CV 13-7717 CAS VBKX, 2013 WL 7118066, at *3 (C.D. Cal. Dec. 18, 2013).

In *Lewis*, the plaintiffs alleged that they entered into a loan modification with BAC Home Loans Servicing, LP ("BAC"), a subsidiary of BOFA. The plaintiffs alleged that they began making payments as required by the loan modification agreement and continued making such payments until BOFA and BAC refused to accept further payments. The plaintiffs alleged that BOFA and BAC sold the plaintiffs' note to Select Portfolio Servicing, Inc. ("Select"), or designated Select as servicer of the note. Thereafter, as alleged by the plaintiffs, Select refused to accept payments on the note pursuant to the terms of the loan modification agreement. *Lewis*, 2013 WL 7118066, at *1-2. Additionally, the plaintiffs alleged that the defendants claimed that they never entered into a loan modification agreement with plaintiffs.

When ruling on a Rule 12(b)(6) motion, the court in *Lewis* found that the plaintiffs stated a claim for violation of the UCL based on the defendants' alleged denial of the existence of a loan modification agreement. The *Lewis* court found that this denial was actionable under the "unfair" prong of the UCL because it is "immoral unethical, oppressive, unscrupulous, or substantially injurious to consumers." *Lewis*, 2013 WL 7118066, at *3.

The *Lewis* court also found that the plaintiffs alleged an injury in fact. The court stated that "it is a reasonable inference from the allegations in the [c]omplaint that plaintiffs have suffered an injury in fact due to the threat of a foreclosure, resulting from defendants' alleged breach of the loan modification agreement." *Lewis*, 2013 WL 7118066, at *4. See also *Pinel*, 814 F.Supp.2d at 942 (holding that plaintiff's allegation that she was denied the benefits of a loan workout agreement was sufficient for purposes of prudential standing under the UCL) (citing *Lozano's* finding that injury under the UCL established where plaintiff "did not receive the full value of his contract").

In contrast, Plaintiffs have not stated a UCL claim under the "unlawful" prong.

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

Plaintiffs have not alleged that BOFA's conduct violated any law. Moreover, to the extent that this claim is predicated on Plaintiffs' breach of contract and breach of the implied covenant of good faith and fair dealing claims, it fails as a matter of law. A common law violation is insufficient to establish a violation of the unlawful prong of the UCL. *See Shroyer v. New Cingular Wireless Services, Inc.*, 622 F.3d 1035, 1044 (9th Cir. 2010) ("a common law violation such as breach of contract is insufficient" to establish a claim under the unlawful prong of the UCL); *see also Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 319 F.Supp.2d 1059, 1074–75 (C.D. Cal. 2003).

Similarly, Plaintiffs have not stated a UCL claim under the "fraudulent" prong. In the Opposition, Plaintiffs mention BOFA's alleged fraudulent conduct. Plaintiffs state that on numerous instances, BOFA employees made or disseminated untrue or misleading statements. However, in the Complaint, Plaintiffs did not plead the "who, what, when, where, and how" or set forth an explanation as to why a statement was false and misleading. Consequently, Plaintiffs' fraud allegations do not meet the heightened pleading standard under Rule 9(b).

Similar to the *Lewis* case, in the Motion, BOFA argues that Plaintiffs do not have standing to assert a UCL claim. However, Plaintiffs have alleged an injury in fact because of the loss of benefits under the LWA, and the resulting threat of foreclosure. *See Lewis*, 2013 WL 7118066, at *4; *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 323 (2011) (injury for purposes of standing under the UCL includes "hav[ing] a present or future property interest diminished"). Whether or not BOFA's conduct led to the commencement of foreclosure proceedings is a factual determination that cannot be made on a motion for judgment on the pleadings.

In the Reply, BOFA argues that Plaintiffs' UCL claims fail because they are "damage claims." However, Plaintiffs also requested injunctive relief and the appointment of a receiver, if necessary. Under the UCL, injunctive and restorative relief are available. As such, this argument is unpersuasive.

II. CONCLUSION

The Court will deny the Motion with respect to Plaintiffs' breach of contract and UCL claims.

FOOTNOTES

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

1. Plaintiffs also allege that BOFA breached the LMA by failing to compel, or cooperate with Plaintiffs' efforts to compel, Nationstar to comply with the LMA, and by transferring the Note to Nationstar, despite the failure to book the LMA properly. Plaintiffs presented no authority for the proposition that, after BOFA transferred service of the Note to Nationstar, BOFA was required to compel Nationstar to comply with the LMA. In addition, the DOT states that the Note or a partial interest in the Note, together with the DOT, can be sold one or more times without prior notice to Plaintiffs [Complaint, Exh. A, p. A-40]. Accordingly, by transferring the Note to Nationstar, BOFA could not have breached the LMA.

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

Defendant(s):

THE BANK OF NEW YORK

Represented By

Dane W Exnowski

Nationstar Mortgage LLC, A

Represented By

Dane W Exnowski

Bank of America, N.A, a National

Represented By

Laura G Brys

Payam Khodadadi

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, January 22, 2020

Hearing Room 301

2:30 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, January 22, 2020

Hearing Room 301

2:30 PM

1:18-11471 Atif Sheikh

Chapter 7

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

#22.00 Motion for approval of stipulation for judgment between
plaintiff and defendants

fr. 11/6/19

Stip to cont hearing filed 1/2/20

Docket 17

*** VACATED *** REASON: Hearing continued per order doc # 24 to
3/25/20 at 2:30 PM.

Tentative Ruling:

- NONE LISTED -

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

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

CONT... Atif Sheikh

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

1:18-11471 Atif Sheikh

Chapter 7

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

#23.00 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; 11/13/19

Docket 1

Tentative Ruling:

The Court will continue this pretrial conference to **2:30 p.m. on March 25, 2020**, to be held in connection with the hearing on the plaintiff's amended motion to approve the parties' stipulation.

Appearances on January 22, 2020 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, January 22, 2020

Hearing Room 301

2:30 PM

CONT... Atif Sheikh

Chapter 7

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

Wednesday, January 22, 2020

Hearing Room 301

2:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mor et al

#24.00 Defendant's motion to dismiss adversary complaint for defective service of summons and failure to state a claim

Docket 14

Tentative Ruling:

Given that the plaintiff filed an amended complaint [doc. 11] and the parties stipulated to a new response deadline for the defendants [doc. 38], this motion to dismiss is now moot.

The Court will prepare an order.

Appearances on January 22, 2020 are excused.

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

Represented By
Shai S Oved

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, January 22, 2020

Hearing Room 301

2:30 PM

CONT... Sharon Mizrahi

Chapter 13

Patricia Bartlett

Represented By
E. Samuel Johnson

Trustee(s):

Elizabeth (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 23, 2020

Hearing Room 301

1:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#1.00 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); 12/12/19

Docket 1

Tentative Ruling:

Based on, among other things, the debtor's receipts and expenses as identified in his monthly operating reports, pursuant to 11 U.S.C. §§ 105(a) and 1104(c)(1), the Court may order the appointment of a chapter 11 examiner to investigate the debtor's income and monthly expenditures from January 1, 2018 forward and whether the debtor's 2018 tax return was properly prepared.

At the prior status conference on December 12, 2019, the debtor's counsel represented that the debtor filed his 2018 personal tax return and that she would file it with the Court within a few days. On January 22, 2020, the debtor's counsel filed that tax return with the Court. That tax return indicates that the debtor prepared that tax return himself, without the assistance of an accountant.

The debtor's 2018 tax return apparently does not correspond with the debtor's monthly operating reports from 2018. Based on the debtor's monthly operating reports from 2018, during that year, the debtor deposited \$175,758.83 into the debtor in possession bank account. In contrast, the debtor's 2018 tax return indicates that his gross income for 2018 was \$30,445.00.

At the prior status conference, the debtor's counsel represented that Unlimited Financial Services provides bookkeeping services for the debtor's production company. The Court ordered the debtor to file a declaration regarding his production company and why the debtor is paying services for the company, an alleged separate entity, from estate funds. The Court also ordered the debtor to file his company's 2018 tax return. As of January 22, 2020, the debtor has not filed his company's tax return or a declaration.

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

CONT... Christopher Sabin Nassif

Chapter 11

The debtor's monthly operating reports for 2019 indicate that the debtor was paying Unlimited Financial Services \$1,577.00 each month, without Court approval or Unlimited Financial Services having being employed as an estate professional.

Tentative Ruling from 12/12/19

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, January 23, 2020

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#2.00 Confirmation hearing re: second amended chapter 11 plan

fr. 12/5/19

Docket 124

Tentative Ruling:

At this time, the Court will not confirm the debtor's proposed chapter 11 plan of reorganization.

I. BACKGROUND

On November 25, 2019, Mr. Tortilla, Inc. ("Debtor") filed a plan confirmation brief (the "Brief") [doc. 137] in support of Debtor's chapter 11 plan of reorganization (the "Plan") [doc. 124]. The Plan provides for an 8.3% distribution to nonpriority unsecured creditors, totaling \$50,000, plus an anticipated \$10,000 received by a recent settlement. In the Brief, Debtor acknowledged that the Plan violates the absolute priority rule because Debtor's shareholders, Ronald Alcazar and Anthony Alcazar (together, the "Shareholders"), intend to retain their equity interest despite a rejection of the Plan by the class of general unsecured creditors (Class 4A). In light of the violation of the absolute priority rule, Debtor stated that the Shareholders intend to contribute new value of \$20,000 into the Plan for payment to nonpriority unsecured creditors, thereby increasing the total contribution to nonpriority unsecured creditors to 13.3% of their claims. The \$20,000 new value contribution amounts to approximately 3.3% of the total nonpriority unsecured claims, excluding the class of insider unsecured claims.

On December 5, 2019, the Court held a hearing regarding confirmation of the Plan. At that time, the Court continued the hearing and provided a deadline for creditors to object to the new value contribution proposed by Debtor. On January 16, 2020, Diana's Mexican Foods, Inc. ("Diana's") filed an objection to the proposed new value contribution (the "Objection") [doc. 153]. Diana's argues that the \$20,000 new value contribution by the Shareholders is not substantial and is a small fraction of Debtor's value.

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

CONT... Mr. Tortilla, Inc.

Chapter 11

II. ANALYSIS

"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." *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 654 (9th Cir. 1997). "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." *Id.* "The burden is clearly on the proponent of the plan to satisfy all the requirements of the new value exception." *In re Tucson Self-Storage, Inc.*, 166 B.R. 892, 899 (B.A.P. 9th Cir. 1994).

Here, there is no dispute over whether the \$20,000 cash infusion by the Shareholders is new or "money or money's worth." The parties also do not dispute whether a new value contribution is necessary for successful reorganization. As such, the sole dispute is whether the proposed \$20,000 contribution is "substantial" and "reasonably equivalent to the value or interest received."

A. Whether the \$20,000 Contribution is 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*, 115 F.3d at 655.

Here, Debtor has provided for two classes of unsecured creditors: a class of general unsecured creditors and a class of insider unsecured creditors. The nonpriority unsecured claims total \$862,720; the claims total \$601,920 if the Court excludes the class of insider unsecured creditors from the calculation. As noted above, Debtor has the burden of proving each element of the new value exception to the absolute priority rule.

In support of its argument that the contribution of \$20,000 is substantial, Debtor states that nonpriority unsecured creditors will receive nothing in a chapter 7 liquidation based on a liquidation value of \$400,000. However, Debtor provides no analysis or

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

evidence under the standard above, i.e., whether the \$20,000 is substantial when compared to: (A) the total nonpriority unsecured claims; (B) the total amount of claims to be discharged; and (C) the dividend being paid on nonpriority unsecured claims by virtue of the contribution.

Although there is no bright line rule, a review of several cases provides a general overview of what courts consider "substantial." For instance, in *Ambanc*, the Ninth Circuit Court of Appeals held that a contribution that was 0.5% of the total unsecured debt was a *de minimis* contribution that did not satisfy the substantiality element. *Ambanc*, 115 F.3d at 655. In reaching this conclusion, the Court of Appeals relied on three cases where courts held that contributions between 1.56% and 3.8% were insufficient to satisfy the substantiality requirement. *See 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); *Matter of Snyder*, 967 F.2d 1126, 1131 (7th Cir. 1992) (holding that "the disparity between the contribution and the unsecured debt," 2.2% of approximately \$1,000,000 unsecured claims, was "so extreme ... there [was] no need to proceed any further"); and *In re Olson*, 80 B.R. 935, 937 (Bankr. C.D. Ill. 1987) (finding that a \$5,000 contribution was not substantial because it represented 1.56% of \$320,000 in unsecured debt).

Other courts have held similarly. For instance, in *In re H.H. Distributions, L.P.*, 400 B.R. 44, 52-53 (Bankr. E.D. Pa. 2009), the court aggregated cases and held that a contribution totaling "slightly less than 3% of the unsecured debt" was not substantial. The court referenced multiple cases in reaching this conclusion. *See, e.g. In re Haskell Dawes, Inc.*, 199 B.R. 867, 876-77 (Bankr. E.D. Pa. 1996) (holding that a 5.1% contribution was insubstantial); and *In re Sovereign Group 1985-27, Ltd.*, 142 B.R. 702, 710 (E.D. Pa. 1992) (holding that a 3.6% contribution was insubstantial).

Under these authorities, and especially because Debtor has not provided analysis or evidence using the standard above, Debtor's proposed new value contribution is not substantial. Even using the lower \$601,920 number, a payment of \$20,000 constitutes approximately 3.3% of nonpriority, noninsider unsecured debt. Because Debtor has not met its burden of proving that the 3.3% contribution is substantial under any of the metrics above, the Court cannot hold that the contribution is substantial; several courts have held similar contributions insubstantial.

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

B. Whether the \$20,000 Contribution is 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*, 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 B.R. 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).

Here, in its disclosure statement in support of the Plan (the "Disclosure Statement") [doc. 123], Debtor offered a Broker's Price Opinion valuing Debtor between \$619,000 and \$649,000. Disclosure Statement, Exhibit B. Nevertheless, in a declaration attached to the Disclosure Statement, one of the Shareholders stated that he believes the *liquidation* value is closer to \$400,000 based on his knowledge of Debtor. Disclosure Statement, Declaration of Ronald Alcazar, ¶¶ 5-9. Diana's challenges Debtor's valuation on the basis that the value of Debtor has not been market tested.

The Supreme Court of the United States "requires that the quantum of new value be market tested; otherwise the parties and the court cannot know whether the amount of new value proposed in the debtor's plan is the most available." *In re NNN Parkway 400 26, LLC*, 505 B.R. 277, 281 (Bankr. C.D. Cal. 2014) (citing *Bank of America Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle Street P'ship*, 526 U.S. 434, 456-57, 119 S.Ct. 1411, 1424, 143 L.Ed.2d 607 (1999)). However, as noted by the court in *NNN Parkway*, "*LaSalle* is... vague as to what exactly a debtor must do to 'market test' the interest; the Supreme Court expressly left the question open while naming some alternatives, such as the right to bid for the same interest or the right to file a competing plan." *Id.*

In assessing *LaSalle* and its progeny, the *NNN Parkway* court derived certain guidelines for ascertaining whether new value has been appropriately market tested—

First, what is required to meet the threshold "market test" must be

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

evaluated on a case by case basis. *In re Union Fin. Servs. Grp., Inc.*, 303 B.R. 390, 426 (Bankr. E.D. Missouri 2003). In *Union Financial*, the court found that efforts of an independent special committee, separately represented by counsel, in soliciting participation from 137 firms, including most of the leading equity, financial services and investment banking firms, over a reasonable bid period, was adequate to meet the *LaSalle* standard. *Id.* at 425–26. In contrast, talking to only one investor unrelated to the sponsoring investor about the investment opportunity is obviously insufficient. *In re Global Ocean Carriers Ltd.*, 251 B.R. 31, 49, n. 19 (Bankr. Del. 2000). Certainly, an appraisal or expert's opinion as to the value cannot alone satisfy the "market testing" of *LaSalle*. *H.G. Roebuck & Son, Inc. v. Alter Communications, Inc. (In re Alter Communications, Inc.)*, 2011 WL 2261483, *7 (Dist. Md. 2011). Reaching out to 15 members of a potentially interested community, particularly if those efforts are only pre-petition, is not sufficient. *Id.* at *7 n.7. Eight cryptic, bare-bones advertisements after the initial plan was on file were also insufficient. *Id.* at *8. This court does not hold that in every case an investment banker must be hired, whose fee is tied to success in finding the most money on the best terms. But engagement of such a person with that goal and motivation would help. The court does not hold that advertisements in targeted local and national newspapers are always required, or that they would even be appropriate in every case. But the court does hold that debtors bear the burden of showing that the new money offered is the most and best reasonably obtainable after some "market testing" in order to cram down over the objections of a non-consenting class of unsecured creditors. This probably requires, at a minimum, demonstration of a systematic effort designed to "market test" the deal. Debtor bears the burden of persuasion on that point and that burden is not carried in this case.

Id., at 283; see also *In re Davis*, 262 B.R. 791, 799 (Bankr. D. Ariz. 2001) ("The Supreme Court expressly did not decide what is necessary to meet its "market test," but did broadly suggest that *either* the right to bid for equity under a plan *or* the opportunity to propose a competing plan would suffice.") (emphases in *Davis*); and *In re Castleton Plaza, LP*, 707 F.3d 821, 821-22 (7th Cir. 2013) ("Competition is

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

essential whenever a plan of reorganization leaves an objecting creditor unpaid yet distributes an equity interest to an insider.").

Under the guidance of these in-circuit decisions, it appears allowing an opportunity for creditors to propose a competing plan or providing for the right to bid for equity would be appropriate methods of market testing under *LaSalle*. Using the same guidance, "an appraisal or expert's opinion as to the value cannot alone satisfy the 'market testing....'" *NNN Parkway*, 505 B.R. at 283. For evidence of value, Debtor offers only an appraisal and the opinion of one of the Shareholders. Of note, even these valuations are not consistent; the Broker's Price Opinion values Debtor at \$219,000 more than the opinion offered by one of the Shareholders. Moreover, the opinion offered by one of the Shareholders is as to Debtor's liquidation value, not the going concern value.

Debtor asserts that creditors could have filed a competing plan because the exclusivity period set forth by 11 U.S.C. § 1121(b) and (c) expired. Although it is true that creditors could have filed a competing plan, and may yet decide to do so, the decision not to file a competing plan to date does not alleviate Debtor from meeting its burden of providing a market tested valuation under *LaSalle*. As it stands, Debtor's own valuations are inconsistent, and the valuation used by Debtor for its calculations in the Brief is based on an opinion regarding liquidation value, not the going concern value of Debtor. Debtor has not otherwise subjected its valuation to competition, which appears to be the basic requirement of *LaSalle*'s mandate for market testing.

In any event, even if Debtor had satisfied this element, Debtor has not met the substantiality requirement (discussed above). As such, the parties should be prepared to discuss how they intend to proceed. Are the Shareholders prepared to offer additional cash to increase their new value contribution? If Diana's is not satisfied with any increased amount proposed by the Shareholders, how does Diana's propose that Debtor's valuation be market tested? Does Diana's intend to file a competing chapter 11 plan, or does Diana's believe that Debtor's equity should be subject to bidding? The parties should be prepared to discuss these issues and relevant dates and deadlines.

III. CONCLUSION

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

The Court will not confirm the Plan at this time. The parties should be prepared to discuss the issues raised above.

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, January 23, 2020

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; 10/10/19; 12/5/19

Docket 1

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, January 23, 2020

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#4.00 Status conference re: chapter 11 case
fr. 8/29/19

Docket 1

Tentative Ruling:

The debtor has not timely filed her December 2019 monthly operating report.

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D Resnik

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

1:19-11843 14554 Friar, LLC

Chapter 11

#5.00 U.S. Trustee's Motion under 11 U.S.C. § 1112(b) to dismiss or convert case

Docket 42

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 1112(b)(1) and (4)(F), (4)(H) 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 August 5, 2019, 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.

The Court will retain jurisdiction under 11 U.S.C. §§ 105(a) and 329(b) to issue an order to show cause why Donna Bullock should not be ordered to disgorge some or all of the compensation she received from the debtor, because such compensation exceeds the reasonable value of her services.

According to the debtor's statement of financial affairs [doc. 9], the debtor paid Ms. Bullock \$2,500 for services related to this bankruptcy case. As noted in the United States Trustee's motion to dismiss or convert, Ms. Bullock never filed an application to be employed as counsel to the debtor and debtor in possession.

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

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

CONT...

14554 Friar, LLC

Donna Bullock

Chapter 11

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

1:19-13011 5019 Partners, LLC

Chapter 11

#6.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

On December 19, 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. 9]. 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 January 9, 2020. Contrary to the Order, the debtor did not timely file a case status conference report.

To the extent that the deed of trust on the debtor's sole significant asset, *i.e.*, improved real property located in Encino, California, provides for an assignment of rents, the debtor has not filed a motion to obtain authorization for its use of cash collateral.

Pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1112(b)(1) and (4)(E), 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 [doc. 1] and statement of financial affairs [doc. 8], the Court concludes that it is in the best interest of creditors and the estate to dismiss this case.

In addition, the Court will issue an order to show cause why, in accordance with 11 U.S.C. §§ 105(a) and 329(b), Dana Douglas should not be ordered to disgorge some or all of the compensation she received from the debtor, because such compensation exceeds the reasonable value of her services.

According to the debtor's statement of financial affairs [doc. 8], the debtor paid Ms. Douglas \$7,500 for services related to this bankruptcy case. As of January 21, 2020—48 days after the petition date—Ms. Douglas has not filed an application to be employed as counsel to the debtor and debtor in possession.

The Court will prepare the order.

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

CONT... 5019 Partners, LLC

Chapter 11

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#6.10 Amended Disclosure Statement hearing

fr. 1/16/20

Docket 105

Tentative Ruling:

The debtor having cured the deficiencies outlined by the Court at the prior hearing on January 16, 2020, the Court will approve the latest amended disclosure statement (the "Disclosure Statement") [doc. 124] as containing adequate information.

Proposed dates and deadlines regarding "Individual Debtor's Amended Chapter 11 Plan of Reorganization" (the "Plan")

Hearing on confirmation of the Plan: **March 19, 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: **January 31, 2020.**

The debtor must serve the notice and the other materials on all creditors, parties who have requested special notice and the Office of the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtor: **February 28, 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: **March 9, 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 Office of the U.S. Trustee and any party who objects to confirmation.

Party Information

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

Thursday, January 23, 2020

Hearing Room 301

1:00 PM

CONT... Attilio E Armeni

Chapter 11

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, January 23, 2020

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#6.20 Status conference re: chapter 11 case

fr. 5/23/19; 9/19/19; 11/14/19; 1/16/20

Docket 1

Tentative Ruling:

The Court will continue the status conference to **March 19, 2020 at 1:00 p.m.**

Appearances on January 22, 2020 are excused.

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, January 23, 2020

Hearing Room 301

2:00 PM

1:14-13347 Grigor Dumanyan

Chapter 11

#7.00 Motion by Reorganized Debtor for Entry of Discharge

Docket 146

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):

Grigor Dumanyan

Represented By

Kevin T Simon

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, January 23, 2020

Hearing Room 301

2:00 PM

1:18-10385 **Jorge Alberto Romero II**

Chapter 7

#8.00 Trustee's motion for order authorizing sale of real property located at 13755 Wingo Street, Arleta, CA 91331; (A) Outside the ordinary course of business; (B) Free and clear of interests; (C) Subject to overbids; and (D) For determination of good faith purchaser under § 363(M)

Docket 78

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days. The Court will condition the entry of this order on the movant paying the required \$181 filing fee for filing a motion to sell under 11 U.S.C. § 363(f).

Party Information

Debtor(s):

Jorge Alberto Romero II

Represented By
Stella A Havkin

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

1:18-10385 Jorge Alberto Romero II

Chapter 7

#9.00 Objection by Chapter 7 Trustee to Debtor's claimed exemption
fr. 1/9/20(stip)

Docket 71

*** VACATED *** REASON: Continued by stip to 2/20/20 at 2:00 p.m. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Alberto Romero II

Represented By
Stella A Havkin

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

1:18-10417 Deborah Lois Adri

Chapter 7

#10.00 Creditor Moshe Adri's motion for allowance of administrative
expense claim

fr. 7/18/19

Stip to cont hrg fld 1/8/20

Docket 335

***** VACATED *** REASON: Order approving stip entered 1/9/20.
Hearing continued to 4/30/20 at 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub

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**

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#11.00 Motion re: objection to claim number 7 by claimant David Goldberg
fr. 12/19/19

Docket 227

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

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

**#12.00 Debtor's Objection to Claim of Steliana Stoyanova and
Skuli Sigurdarson, Claim Number 3**

Docket 223

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
Jeremy H Rothstein

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

1:18-12354 **MidiCi Group, LLC**

Chapter 11

#13.00 Debtor's Objection to Claim of Grato Ventures, Inc.
claim number 18

Docket 222

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
Jeremy H Rothstein

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

1:18-12354 **MidiCi Group, LLC**

Chapter 11

#14.00 Debtor's Objection to Claim of Stickman Family Enterprises, Inc..
Claim no. 31

Docket 221

Tentative Ruling:

In accordance with Local Bankruptcy Rule 9011-2(a), a corporation may file a proof of claim without counsel. However, in order to appear in response to an objection to claim, a corporation must appear through counsel.

In order to give the claimant sufficient time to secure the assistance of counsel in this matter, the Court will continue the hearing.

Written instructions on how to appear, by telephone, at a hearing before Judge Victoria S. Kaufman may be found on the Court's website, [www. cacb.uscourts.gov](http://www.cacb.uscourts.gov), "Our Judges," "Judge Directory - Kaufman, V.," "Honorable Victoria S. Kaufman" and "Telephonic Instructions."

The parties should be prepared to discuss dates for a continued hearing.

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

1:19-12216 Cheryl Placencia

Chapter 11

#15.00 Debtor's Motion to dismiss bankruptcy case pursuant to 11 U.S.C. § 1112

Docket 52

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):

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, January 23, 2020

Hearing Room 301

2:00 PM

1:19-12517 Hayde Rodriguez Barahona

Chapter 7

#16.00 Motion by Chapter 7 Trustee Objecting to Debtor's Claimed Homestead Exemption

Docket 26

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):

Hayde Rodriguez Barahona

Represented By
Navid Kohan

Trustee(s):

Nancy J Zamora (TR)

Represented By
Larry D Simons

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

1:19-12590 Marine Kasabyan

Chapter 7

#17.00 Debtor's motion to convert case from chapter 7 to 13

Docket 21

Tentative Ruling:

Grant, subject to the conditions set forth below.

I. BACKGROUND

On October 15, 2019, Marine Kasabyan ("Debtor") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

On October 29, 2019, Debtor filed her schedules and statements [doc. 11]. In her schedule A/B, Debtor scheduled real property located at 16344 Itasca Street, North Hills, CA 91343 (the "North Hills Property"). Debtor valued the North Hills Property at \$575,000. Debtor also scheduled real property located at 4620 Inland Court, Las Vegas, NV 89147 (the "Nevada Property"), valued at \$250,000. In her schedule C, Debtor claimed an exemption in the Nevada Property in the amount of \$99,011.30 under California Code of Civil Procedure § 704.730.

In her schedule D, Debtor indicated that the North Hills Property is encumbered by two liens: (A) a first priority lien in favor of Mr. Cooper in the amount of \$288,497.68; and (B) a second priority lien in favor of Nazaret Tonoyan in the amount of \$300,000. Debtor also indicated that the Nevada Property is encumbered by a lien in favor of Rushmore Loan Management Services in the amount of \$150,988.70. In her schedule E/F, Debtor scheduled unsecured debt totaling \$112,807.40. Finally, in her schedules I and J, Debtor stated that she and her spouse have a monthly net income of \$18.94.

On December 4, 2019, Debtor filed an amended schedule C [doc. 17]. In her amended schedule C, Debtor modified her claim of an exemption in the Nevada Property to a claim under Nevada Revised Statute ("NRS") § 21.090(1)(l) and (1)(m).

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

CONT... Marine Kasabyan

Chapter 7

On December 11, 2019, Debtor filed a motion to convert her case to one under chapter 13 (the "Motion") [doc. 21] and a declaration in support of the Motion [doc. 22]. On December 17, 2019, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 24]. In the Opposition, the Trustee argues: (A) Debtor's scheduled net monthly income of \$18.94 is insufficient to fund a chapter 13 plan; (B) Debtor cannot confirm a chapter 13 plan because a chapter 7 liquidation will yield \$100,000 from the sale of the Nevada Property and Debtor would have to pay \$1,600 per month for 60 months to provide the same amount to creditors; and (C) Debtor acted in bad faith because she undervalued her real property and moved to convert this case after it became apparent the Trustee may sell the Nevada Property. The Trustee also notes that Debtor has not furnished all required documents to the Trustee.

On January 9, 2020, Debtor filed a reply to the Opposition (the "Reply") [doc. 29]. In the Reply, Debtor contends that: (A) Debtor will reduce her expenses to increase her monthly net income; (B) Debtor's family will provide contributions towards a chapter 13 plan; (C) the Trustee cannot liquidate the Nevada Property because of Debtor's homestead exemption; and (D) Debtor's valuations of her real properties are not evidence of bad faith merely because Debtor's valuations are different from the Trustee's valuations. Debtor also notes that she is willing to propose a chapter 13 plan that pays 100% of unsecured creditors' claims.

On January 16, 2020, the Trustee filed a sur-reply [doc. 31]. The Court did not authorize the filing of a sur-reply. In the unauthorized sur-reply, the Trustee contends, among other things, that Debtor is not entitled to a homestead exemption under Nevada law and that Debtor has not provided evidence that her family will contribute funds towards a chapter 13 plan.

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.

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

CONT...

Marine Kasabyan

Chapter 7

...

(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 § 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 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 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

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

CONT...

Marine Kasabyan

Chapter 7

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 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.

In re Leavitt, 171 F.3d 1219, 1224 (9th Cir. 1999).

A. Whether Debtor is Eligible to be a Chapter 13 Debtor

The Trustee contends that Debtor is not eligible to be a chapter 13 debtor because Debtor scheduled a monthly net income of \$18.94. The Trustee asserts a chapter 7 liquidation is more beneficial to Debtor's creditors because such a liquidation will yield at least \$100,000 from the sale of the Nevada Property.

However, as noted by Debtor, there does not appear to be any equity in the Nevada Property based on Debtor's claim of homestead exemption. Although the Trustee argues that Debtor is not entitled to a homestead exemption, the Trustee has not yet objected to Debtor's claim of a homestead exemption. Under 11 U.S.C. § 522(l)—

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

CONT...

Marine Kasabyan

Chapter 7

The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. *Unless a party in interest objects, the property claimed as exempt on such list is exempt.*

(emphasis added). Pursuant to Federal Rule of Bankruptcy Procedure 4003(b), "a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later."

The § 341(a) meeting of creditors has not concluded. As such, there is still time for the Trustee to object to Debtor's claim of an exemption. Nevertheless, to date, the Trustee has not filed an objection, and there is no determination by the Court as to Debtor's entitlement to a homestead exemption under Nevada law. Although the Trustee raises arguments as to why Debtor is not entitled to a homestead exemption in the unauthorized sur-reply, neither Debtor nor the Court has had a meaningful opportunity to assess and/or respond to these arguments.

In any event, in the Reply, Debtor states that she is ready to propose a chapter 13 plan that will pay unsecured creditors 100% of their claims. Although Debtor has not yet provided evidence that her family is willing to contribute funds towards her chapter 13 plan, prior to the Court confirming any plan that relies on family contributions, Debtor will have to provide such evidence to the chapter 13 trustee. If raised by the chapter 13 trustee, or any creditors, the Court will adjudicate these issues, including Debtor's entitlement to a homestead exemption and/or whether there is equity in either of Debtor's real properties.

B. Whether Bad Faith Conduct Exists to Prevent Conversion of this Case

Here, the Trustee contends that Debtor acted in bad faith by undervaluing her real

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

Thursday, January 23, 2020

Hearing Room 301

2:00 PM

CONT...

Marine Kasabyan

Chapter 7

properties and failing to provide the Trustee with documentation requested by the Trustee. However, it is not evident that Debtor's real properties are worth more than Debtor's scheduled values. At this time, there is only a difference of opinion in value. Moreover, Debtor's failure to furnish certain documents does not necessarily rise to the level of bad faith contemplated by *Marrama*.

Nevertheless, to ensure that creditors are not prejudiced by the conversion, the Court will allow conversion only if Debtor agrees to the following conditions: (A) if there is cause to dismiss or convert Debtor's chapter 13 case, the Court will reconvert this case to a chapter 7 case; (B) in the chapter 13 plan, Debtor must provide for payment in full of reasonable administrative expenses incurred during the chapter 7 case; and (C) Debtor must agree to toll the deadlines to object to Debtor's claim of a homestead exemption or to file avoidance actions as to liens against Debtor's real property, such that the applicable time periods will be suspended until entry of an order (if any) reconverting the chapter 13 case to a chapter 7 case.

III. CONCLUSION

The Court will grant the Motion, subject to the conditions set forth above.

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

Party Information

Debtor(s):

Marine Kasabyan

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Laila Masud

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

Wednesday, January 29, 2020

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

#1.00 Motion for summary judgment or, in the alternative,
summary adjudication of issues

fr. 12/18/19

Docket 27

Tentative Ruling:

Grant.

I. BACKGROUND

On April 19, 2018, Gabriel Medina ("Debtor") filed a chapter 13 petition. On December 10, 2018, Debtor filed a complaint against Strunzo Development Corp. ("Strunzo"), requesting cancellation of a deed of trust in favor of Strunzo and a judicial declaration that neither Debtor nor his real property is subject to the deed of trust. Based on the following facts, Strunzo moves for a judgment in its favor or, in the alternative, partial summary adjudication.

A. Debtor's History with the Subject Property

On May 27, 1986, Debtor and Belen Gonzalez Rangel acquired real property located at 15143 Polk Street, Sylmar, California 91342 (the "Property"). Request for Judicial Notice ("Strunzo's RJN") [doc. 27], Exhibit 1. At the same time, Debtor and Ms. Rangel executed a deed of trust securing a loan of \$90,669. Strunzo's RJN, Exhibit 2.

On May 28, 1992, in connection with a refinance, Debtor and Ms. Rangel recorded a new deed of trust securing a new promissory note of \$134,000. Strunzo's RJN, Exhibit 3. On March 17, 1998, Debtor and Ms. Rangel recorded another deed of trust securing a home equity line of credit in the amount of \$25,000. Strunzo's RJN, Exhibit 4. On July 30, 1998, Ms. Rangel executed a quitclaim deed conveying her interest in the Property to Debtor as his sole and separate property. Strunzo's RJN, Exhibit 5.

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT... Gabriel Medina

Chapter 13

From 2003 through 2007, Debtor refinanced the Property five times. Strunzo's RJN, Exhibits 7-10, 12. Specifically, Debtor refinanced the Property: (A) in 2003, when Debtor borrowed \$158,000 secured by a deed of trust; (B) in 2004, when Debtor borrowed \$262,500 secured by a deed of trust; (C) in 2005, when Debtor borrowed \$337,500 secured by a deed of trust; (D) in January 2007, when Debtor borrowed \$367,500 secured by a deed of trust; and (E) in August 2007, when Debtor borrowed \$480,000 secured by a deed of trust in favor of Mortgageit, Inc. ("Mortgageit"). *Id.* In January 2007, Debtor also obtained a \$17,000 home equity line of credit secured by a deed of trust. Strunzo's RJN, Exhibit 11.

B. Debtor's Transactions with the Herreras

In March 2009, Debtor sought assistance to obtain a loan modification and retained the Herrera Sindell Group. Declaration of Gabriel Medina [Bankruptcy Docket, doc. 70], ¶ 3. On March 2, 2009, Debtor signed an Option Agreement to Purchase Real Property (the "Option Agreement"). Declaration of Michael Herrera (the "Herrera Declaration") [doc. 27], ¶ 8, Exhibit 3. Through the Option Agreement, Debtor agreed that the mortgage against the Property was in danger of default and conveyed the Property to the Herrera Sindell Group for the Herrera Sindell Group to, among other things, potentially negotiate the mortgage. *Id.* The Option Agreement allowed for Debtor to repurchase the Property. *Id.*

On April 27, 2009, Mortgageit recorded a notice of default and election to sell. Strunzo's RJN, Exhibit 13. On July 29, 2009, Mortgageit recorded a notice of sale of the Property and scheduled a foreclosure sale for August 18, 2009. Strunzo's RJN, Exhibit 14.

On August 27, 2009, Debtor executed a grant deed transferring the Property to Diesel Enterprises, Inc. ("Diesel"). Strunzo's RJN, Exhibit 15. On September 17, 2009, the grant deed was recorded. *Id.* Subsequently, beginning September 22, 2009, Debtor leased the Property for \$2,443 per month pursuant to a written lease agreement. Herrera Declaration, ¶ 11, Exhibit 5.

On October 27, 2009, Diesel executed a grant deed transferring the Property to Jennifer Corona. Strunzo's RJN, Exhibit 16. On November 3, 2009, the grant deed

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT... Gabriel Medina

Chapter 13

was recorded. *Id.* On October 13, 2010, Ms. Corona executed a grant deed transferring the Property to M&J Development Group, LLC ("M&J"). Strunzo's RJN, Exhibit 17. On October 25, 2010, the grant deed was recorded. *Id.* On January 12, 2012, M&J executed a grant deed transferring the Property to Edge Holdings, LLC ("Edge Holdings"). Strunzo's RJN, Exhibit 18. On January 26, 2012, the grant deed was recorded. *Id.*

On May 2, 2013, Edge Holdings executed a promissory note in return for a \$165,000 loan from Strunzo (the "Note"). Declaration of Pasquale Caiazza ("Caiazza Declaration"), ¶ 7, Exhibit 1. On the same day, Edge Holdings executed a deed of trust against the Property (the "DOT"). Caiazza Declaration, ¶ 7, Exhibit 2. The DOT identified Strunzo as the lender and JMJ Funding Group, Inc. ("JMJ Funding") as the trustee. *Id.* On May 16, 2013, Strunzo funded the loan with a check in the amount of \$165,000. Caiazza Declaration, ¶ 8, Exhibit 3. On May 28, 2013, the grant deed was recorded. Caiazza Declaration, ¶¶ 7, 13, Exhibit 2.

C. The Unlawful Detainer Action

On April 10, 2014, Debtor was served with a Three-Day Notice to Quit. Declaration of Gabriel Medina [Bankruptcy Docket, doc. 70], ¶ 6. On May 2, 2014, Edge Holdings filed an unlawful detainer action against Debtor and his spouse (the "UD Action"). *Id.* Subsequently, the court presiding over the UD Action entered judgment against Debtor and his wife; on October 14, 2014, Debtor and his wife were evicted. *Id.*

On May 6, 2014, in connection with the UD Action, Debtor filed a declaration under penalty of perjury (the "UD Declaration"). Strunzo's RJN, Exhibit 22. In relevant part, Debtor explained that he sold the Property to the Herrera Sindell Group expecting to repurchase it when he was ready. *Id.* Debtor also stated—

When I was ready to get my house I went to a real estate agent. I showed him my case *and was given a record of the property* and he told me I could not for any reason buy the house because what Herrera Sindel[l] had done was been a fraud. I sought help and for now a detective with the real estate is helping us with the case....

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT... **Gabriel Medina**

Chapter 13

Id. (emphasis added). Debtor then retained counsel to file a lawsuit against several defendants to quiet title to the Property. Declaration of Gabriel Medina [Bankruptcy Docket, doc. 70], ¶ 7.

D. The Quiet Title Action

On May 7, 2015, Debtor filed a complaint in state court against the Herrera Sindell Group, Edge Holdings and several other entities, asserting causes of action for Quiet Title, Cancellation of Deeds and Fraud, among other claims (the "Quiet Title Action"). Strunzo's RJN, Exhibit 20. Debtor also named "all persons claiming any interest in the subject property adverse to plaintiff's title thereto" and "Does 1-50" as defendants. *Id.* Debtor alleged he would "amend [the complaint] to allege their true names and capacities when they have been ascertained." *Id.*

Debtor did not name Strunzo or JMJ Funding as defendants. *Id.* Nevertheless, to the state court complaint, Debtor attached a title report by First American (the "Title Report"). *Id.* The Title Report was generated on April 15, 2015. *Id.* On the first page of the Title Report, JMJ Funding is listed as a lender on a \$165,000 loan. *Id.*

On October 5, 2016, the state court entered a judgment in favor of Debtor, cancelling the grant deed from Debtor to Diesel and the string of grant deeds executed thereafter (the "Quiet Title Judgment"). Strunzo's RJN, Exhibit 21. In relevant part, the state court held—

IT IS FURTHER DECLARED AND ORDERED BY THE COURT
that Plaintiff GABRIEL MEDINA is the owner in fee simple of the
Subject Property, free and clear of any interest, claim or lien of any of
said Defendants or of anyone (*EXCLUDING LIENS OF
NONDEFENDANT PARTIES*) claiming an interest in the Subject
Property adverse to Plaintiff's rights thereto.

Id. The italicized portion of this language was handwritten and interlineated into this paragraph by the state court judge. *Id.*

E. Debtor's Bankruptcy Case and this Adversary Proceeding

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT...

Gabriel Medina

Chapter 13

On April 19, 2018, Debtor filed his chapter 13 case. On December 10, 2018, Debtor filed the complaint against Strunzo, requesting cancellation of the DOT. On September 30, 2019, Strunzo timely filed a motion for summary judgment (the "MSJ") [doc. 27]. In the MSJ, Strunzo asserts that: (A) Strunzo is not bound by the Quiet Title Judgment because the state court explicitly excluded nonparty lienholders from its purview; (B) Strunzo is a good faith encumbrancer for value; and (C) the statute of limitations on Debtor's claims against Strunzo has expired because Debtor generated the Title Report on April 15, 2015, which showed the DOT encumbering the Property.

On November 20, 2019, Debtor filed an opposition to the MSJ (the "Opposition") [doc. 43]. Debtor also filed an untimely motion for summary judgment [doc. 44]. The Court entered an order striking Debtor's motion for summary judgment as untimely [doc. 49].

In the Opposition, Debtor contends that: (A) Strunzo was a party to the Quiet Title Action because Debtor named "all persons claiming any interest in the subject property adverse to plaintiff's title thereto" and served "all persons claiming any interest in the subject property adverse to plaintiff's title thereto" by publication; (B) the void grant deed in favor of Edge Holdings cannot pass title to Strunzo; (C) Strunzo is not a bona fide purchaser because the multiple transfers of the Property should have put Strunzo on notice; (D) the Quiet Title Judgment is binding on Strunzo because Strunzo was a party and is in privity with Edge Holdings; and (E) Debtor timely filed this action because Debtor did not learn about Strunzo's claim until September 15, 2018, when Strunzo filed a motion for relief from the automatic stay (the "RFS Motion") in Debtor's bankruptcy case. The Opposition is supported, in large part, by Debtor's spouse and guardian ad litem, Maria de Los Angeles Medina. On December 4, 2018, Strunzo filed a reply to the Opposition [doc. 48], reiterating its arguments from the MSJ and objecting to Ms. Medina's declaration in its entirety on the basis that Ms. Medina was not a listed witness in Debtor's initial disclosures and does not have personal knowledge about the events at issue.

II. ANALYSIS

A. General Motion for Summary Judgment Standard

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT...

Gabriel Medina

Chapter 13

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.").

The nonmoving party meets this burden through the presentation of "evidentiary

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT...

Gabriel Medina

Chapter 13

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. Whether Strunzo was Deemed a Defendant in the Quiet Title Action

Pursuant to California Code of Civil Procedure ("CCP") § 762.060—

- (a) In addition to the persons required to be named as defendants in the action, the plaintiff may name as defendants "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title, or any cloud upon plaintiff's title thereto," naming them in that manner.
- (b) In an action under this section, *the plaintiff shall name as defendants the persons having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property.*

(emphasis added). Under CCP § 764.045—

Except to the extent provided in Section 1908, the judgment does not affect a claim in the property or part thereof of any person who was not a party to the action if any of the following conditions is satisfied:

- (a) The claim was of record at the time the lis pendens was filed or, if none was filed, at the time the judgment was recorded.
- (b) The claim was actually known to the plaintiff or would have been reasonably

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT...

Gabriel Medina

Chapter 13

apparent from an inspection of the property at the time the lis pendens was filed or, if none was filed, at the time the judgment was entered. Nothing in this subdivision shall be construed to impair the rights of a bona fide purchaser or encumbrancer for value dealing with the plaintiff or the plaintiff's successors in interest.

"In addition to persons required to be named as defendants, a quiet title plaintiff may elect to include 'all persons unknown' with adverse claims to the property. Cal. Civ. Proc. Code § 762.060(a). Even so, the plaintiff *must* name those persons 'having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property.' Cal. Civ. Proc. Code § 762.060(b)." *Mortg. Elec. Registration Sys. v. Robinson*, 45 F.Supp.3d 1207, 1210 (C.D. Cal. 2014). California courts have held that quiet title judgments do not bind nonparties that were "of record and known to" the plaintiff even where the plaintiff had initially named an entity as a defendant but subsequently dismissed the entity prior to judgment. *Deutsche Bank Nat'l Tr. Co. v. McGurk*, 206 Cal.App.4th 201, 212 (Ct. App. 2012) ("As the result of its voluntary dismissal, New Century became a nonparty to the quiet title action. New Century's interest was both of record and known to McGurk prior to filing her lis pendens. Thus, under both subdivisions of Code of Civil Procedure section 764.045, the quiet title judgment could not have bound it.")

Here, there is no dispute that Strunzo's claim was of record prior to Debtor's filing of the Quiet Title Action. In fact, Debtor attached the Title Report to his state court complaint, which included Strunzo's claim on the first page. As such, Debtor was required to name Strunzo as a defendant. Debtor's inclusion of "all persons claiming any interest in the subject property adverse to plaintiff's title thereto" as defendants did not suffice where Strunzo's claim was a known adverse claim against the Property.

Debtor argues that he served Strunzo by publication. Notwithstanding the fact that there is no admissible evidence regarding Debtor's service by publication [FN1], Debtor does not state that he served *Strunzo* by publication; rather, Debtor states that he served "all persons claiming any interest in the subject property adverse to plaintiff's title thereto" by publication. Moreover, Debtor's service of papers on parties, by any method, was not a substitute for *naming* entities known to Debtor. The record demonstrates that Debtor never named Strunzo as a defendant. As a result,

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT... **Gabriel Medina**

Chapter 13

under California law, the Quiet Title Judgment cannot bind Strunzo.

C. Whether Issue Preclusion Applies

"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)).

"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.

Here, Strunzo was neither a party to the Quiet Title Action nor in privity with any of the parties to the Quiet Title Action. Debtor asserts that Strunzo was a party because Debtor named "all persons claiming any interest in the subject property adverse to plaintiff's title thereto" as defendants. However, as noted above, this was insufficient to bind parties of record like Strunzo.

Debtor also asserts that Strunzo was in privity with Edge Holdings because Edge

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT... **Gabriel Medina**

Chapter 13

Holdings had a similar interest in the validity of its grant deed. Debtor does not explain why Edge Holdings would be motivated to defend the validity of a deed of trust encumbering the property in which Edge Holdings claimed an interest. Strunzo's interest in the validity of the DOT was different from Edge Holdings' claim to ownership of the Property via a grant deed.

In any event, the state court explicitly excluded nonparty lienholders from the Quiet Title Judgment. The state court having explicitly expressed its intent not to bind nonparty lienholders like Strunzo, this Court is not precluded from litigating the issue of the validity of the DOT held by Strunzo.

D. *The Statute of Limitations*

The parties do not dispute that CCP § 338(d) governs this action. Under CCP § 338(d), parties must bring "[a]n action for relief on the ground of fraud or mistake" within three years. "The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." CCP § 338(d).

The defendant bears the initial burden of proving the plaintiff's claims are barred by the applicable limitations period. Thereafter, the burden shifts to the plaintiff to demonstrate his claims survive based on one or more nonstatutory exceptions to the basic limitations period.

Luke v. Sonoma Cty., 43 Cal.App.5th 301 (Ct. App. 2019).

"Under the discovery rule, the cause of action accrues when the plaintiff suspects or should suspect that the injury was caused by wrongdoing, that someone has done something wrong to her or him. In other words, the limitations period begins once the plaintiff has notice information of circumstances to put a reasonable person *on inquiry*...." *Nguyen v. W. Digital Corp.*, 229 Cal.App.4th 1522, 1539 (Ct. App. 2014) (emphasis in *Nguyen*) (internal quotations and citations omitted).

Here, on May 6, 2014, Debtor filed the UD Declaration, under penalty of perjury, stating that he was "given a record of the property." Strunzo's RJN, Exhibit 22. Debtor also noted in the UD Declaration that he had informed a detective that the

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT... Gabriel Medina

Chapter 13

Property had been fraudulently transferred. As such, at least as of May 6, 2014, Debtor was on inquiry notice that there may be deeds or deeds of trust involving the Property that Debtor did not authorize. Because the DOT in favor of Strunzo was recorded on May 28, 2013, approximately one year before Debtor signed the UD Declaration, any "record of the property" would have included the DOT.

Either way, by April 15, 2015, Debtor knew about Strunzo's claim against the Property when Debtor's attorneys generated the Title Report in preparation for filing the Quiet Title Action. Notably, although Debtor contends he did not learn about Strunzo's claim until Strunzo filed the RFS Motion, Debtor does not dispute that the Title Report was generated on April 15, 2015. Debtor also does not dispute the authenticity of the verified state court complaint. Debtor only objects on the bases of relevance and by arguing that the Quiet Title Judgment precludes litigation of these matters. However, the Title Report is relevant to the statute of limitations issue, and the Court addressed Debtor's preclusion argument above.

Although Strunzo bears the initial burden of proving that Debtor's claims are time barred, the burden then shifts to Debtor to demonstrate that his claims survived. Here, Strunzo met its burden by referencing the UD Declaration and by pointing to the Title Report generated on April 15, 2015. The burden then shifted to Debtor. In response, Debtor states, in a conclusory fashion, that he did not learn about Strunzo's claim until Strunzo filed the RFS Motion. Debtor does not meaningfully address the UD Declaration or the Title Report. As such, Debtor did not meet his burden of showing an exception to the statute of limitations. Debtor did not name Strunzo or JMJ Funding (the entity that appeared on the Title Report) as defendants to the Quiet Title Action. Consequently, the applicable statute of limitations expired on April 15, 2018, four days before Debtor filed his chapter 13 petition.

The Court need not decide the merits of Debtor's arguments regarding whether the DOT is void because there is no genuine dispute that Debtor's claims expired prepetition. As such, the Court will enter judgment in favor of Strunzo.

III. CONCLUSION

The Court will grant the MSJ.

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT... Gabriel Medina

Chapter 13

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

FOOTNOTES

1. Debtor attempts to authenticate the publications to which Debtor refers using a declaration by Ms. Medina. However, even if the Court were to consider Ms. Medina's declaration, Ms. Medina would not have personal knowledge of the publications prepared by Debtor's attorneys.

Tentative ruling regarding the evidentiary objections to the identified evidence set forth below:

Debtor's Evidentiary Objections to Strunzo's Statement of Uncontroverted Facts and Conclusions of Law

Based on the Court's reasoning above, the Court will overrule all objections on the basis that the Court is precluded by the Quiet Title Judgment.

paras. 19-51, 57, 59, 62-63, 65, 69, 70-71, 76-77, 79, 82-87, 89-104: overrule
paras. 78, 80-81, 88: sustain

Strunzo's Evidentiary Objections to the Declaration of Maria de Los Angeles Medina

The Court will not consider the testimony offered by Ms. Medina because Ms. Medina was not listed as a witness with percipient knowledge in Debtor's Federal Rule of Civil Procedure 26(a)(1)(A) disclosures. In any event, Ms. Medina's testimony would not impact the Court's ruling above.

Strunzo's Evidentiary Objections to Debtor's Request for Judicial Notice

exs. 24-25: overrule
bankruptcy docket, doc. 97: overrule
adversary docket, docs. 5, 40: overrule

Party Information

Debtor(s):

Gabriel Medina

Represented By

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

Wednesday, January 29, 2020

Hearing Room 301

2:30 PM

CONT...

Gabriel Medina

Chapter 13

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

Wednesday, January 29, 2020

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

#2.00 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; 11/6/19/ 1/22/2020 (stip)

Docket 1

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**

Thursday, January 30, 2020

Hearing Room 301

10:00 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; 12/20/19

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.

A. Initiation of this Adversary Proceeding and the Consent Order

On June 29, 2018, The Lincoln National Life Insurance Company, an Indiana Corporation ("Lincoln National") filed a complaint for interpleader (the "Complaint"). Lincoln National named Helayne Muennichow, Debtor's widow, the Trustee and the Duane Van Dyke Irrevocable Trust as defendants. 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 Ms. 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

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT...

Hermann Muennichow

Chapter 7

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 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 September 11, 2018, the Court entered a consent order (the "Consent Order") [doc. 11]. As relevant to this matter, Gary Kurtz, Ms. Muennichow's attorney, signed the Consent Order on behalf of Ms. Muennichow. Ms. Muennichow did not sign the Consent Order, and there is no proof of service of the Consent Order on Ms. Muennichow.

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 National 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.

B. Ms. Muennichow Learns about the Consent Order

On November 12, 2018, Robert J. McKennon, another attorney representing Ms. Muennichow, sent an email to Ms. Muennichow, stating—

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT...

Hermann Muennichow

Chapter 7

It appears that [Mr. Kurtz], as your attorney, signed a consent order allowing Lincoln to deposit the funds into court and be dismissed from the interpleader action. This appears to mean that your attorney consented to allowing dismissal of Lincoln such that it could not now be sued for bad faith. In my opinion, he should not have consented to this and probably stems from his ignorance of insurance law. This may well preclude you from filing a bad faith action. I would like to hear from you if you consented to allowing [Mr. Kurtz] to file this and I would like to hear from [Mr. Kurtz] about this and why this was done.

Declaration of Robert J. McKennon (the "McKennon Declaration") [doc. 90], ¶ 2, Exhibit A. On November 13, 2018, Ms. Muennichow emailed Mr. Kurtz inquiring about the Consent Order and stating that she "was only informed of an interpleading but never informed of any other action thereafter." McKennon Declaration, ¶ 3, Exhibit B. Ms. Muennichow continued—

You kept this a secret from me? How dare you blindside me this way and violate my rights by independently making this decision without knowing what you were doing.

Know this. I was never informed of your decision to [sic] this consent order nor did I authorize you to sign this order.

For unknown reasons, **you signed this consent order without my knowledge and without my consent.**

Please contact and speak to Mr. Robert McKennon now. Time is of the essence.

Id. (emphasis in Exhibit B). Approximately one hour later, Ms. Muennichow sent another email to Mr. Kurtz, stating—

Furthermore, when I retained the McKennon Law Group, in mid October, and you were asked by myself and the McKennon Law Group for all documents pertaining to the Lincoln Bad Faith case. Even then no one knew of this "Consent Order" that you had signed, without my

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT...

Hermann Muennichow

Chapter 7

knowledge and consent. It appears that the McKennon people had to dig for themselves to find out about this atrocity.

I looked at all past emails from your firm and nowhere am I asked, informed, or emailed documents pertaining to this Consent order or Filings.

I LOOK FOR YOUR COMPLETE COOPERATION WITH THE
McKENNON LAW GROUP AND MR. ROBERT McKENNON,
ESQ. TO RECTIFY THIS CLUSTER

McKennon Declaration, ¶ 3, Exhibit C (emphasis in Exhibit C).

C. Ms. Muennichow's Substitution of Mr. Kurtz with Mr. McKennon

On December 5, 2018, Mr. Kurtz notified all parties involved in this adversary proceeding of the substitution of Mr. McKennon as Ms. Muennichow's attorney. McKennon Declaration, ¶ 4, Exhibit D. On the same day, the Trustee responded to the email and informed Mr. McKennon about an upcoming global mediation set for January 17, 2019. *Id.*

On December 10, 2018, Ms. Muennichow filed a Substitution of Attorney, substituting Mr. McKennon in place of Mr. Kurtz [doc. 18]. On the same day, Mr. McKennon emailed the parties and informed them that he had been out of town and Mr. Kurtz had not updated Mr. McKennon on the status of the adversary proceeding. McKennon Declaration, ¶ 4, Exhibit D.

D. Ms. Muennichow Informs Lincoln National about Mr. Kurtz's Lack of Authority

On December 10, 2018, Mr. McKennon asked Lincoln National's counsel, Tim Lendino, to speak to him about the case. *Id.* As a result, Mr. McKennon and Mr. Lendino arranged a telephone conversation for the following day. *Id.* On December 21, 2018, Mr. McKennon emailed Mr. Lendino the following—

[W]hen we last spoke, you informed me that you would discuss my

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT...

Hermann Muennichow

Chapter 7

client's desire to extricate herself from the consent order that she never saw or approved so she could file a counterclaim for bad faith against Lincoln. Please let me know the status of this. I think it would be a good idea for Lincoln National to participate in the mediation in January for this reason. Otherwise, there is not likely going to be a global resolution of the interpleader matter.

Id. On the same day, Mr. Lendino responded that Lincoln National would not agree to set aside the Consent Order, but that Mr. Lendino would consult with his client regarding whether Lincoln National would participate in the upcoming global mediation. *Id.*

E. Ms. Muennichow's Post-Mediation Efforts to Settle and/or Mediate

On December 27, 2018, Mr. McKennon again emailed Mr. Lendino, asking Mr. Lendino to summarize Lincoln National's position in an email. *Id.* On December 30, 2018, Mr. Lendino responded that Lincoln National is not inclined to participate in a mediation because they had been dismissed from this adversary proceeding. *Id.*

The parties (excluding Lincoln National) attended a global mediation on January 17, 2019 [Status Report, doc. 35]. Evidently, the mediation did not result in a settlement agreement between any of the parties. On January 22, 2019, after the parties' failed mediation, Ms. Muennichow emailed Mr. Kurtz the following—

You need to file a motion to modify the portion of the consent order discharging Lincoln from its liability with respect to that policy. You need to do this quickly, so that I can get started pursuing my claims against Lincoln. You must state in the motion that you did not speak to me before you consented to the release and never obtained my permission, which is the truth. You and I must include declarations establishing that you did not get my permission before agreeing to the consent order. The motion must explain that I intend on pursuing a bad faith action against Lincoln.

McKennon Declaration, ¶ 5, Exhibit E. Mr. Kurtz responded by telling Ms. Muennichow that Mr. McKennon should prepare any such motion as the new attorney

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT... Hermann Muennichow

Chapter 7

of record. *Id.* From January 22, 2019 to January 23, 2019, Mr. Kurtz and Ms. Muennichow went back and forth regarding whether Mr. Kurtz or Mr. McKennon should file a motion modifying the Consent Order. *Id.* On January 23, 2019, Ms. Muennichow informed Mr. Kurtz she would "see what [she] can do." *Id.* Subsequently, Ms. Muennichow informed Mr. McKennon's law firm that they would have to prepare the motion to modify the Consent Order. Deposition of Helayne Muennichow [doc. 91], Exhibit 2, 92:4-8.

From February 19, 2019 to February 20, 2019, the Trustee and Mr. McKennon discussed the possibility of attending another day of mediation. McKennon Declaration, ¶ 6, Exhibit F. On February 20, 2019, the parties attended a status conference, at which time the Court instructed the defendant parties to file and serve their responses to the Complaint [doc. 21].

F. The Present Motion

On March 12, 2019, Ms. Muennichow filed a motion to be relieved from the Consent Order (the "Motion") [doc. 24] and three declarations in support of the Motion [docs. 26, 27, 28]. Among other things, Mr. Kurtz stated in his declaration in support of the Motion that Ms. Muennichow had repeatedly told him that she intended to sue Lincoln National for its removal of Ms. Muennichow from the Policy [doc. 28, ¶¶ 7-8]. A declaration by William Towers, identified as an associate to Ms. Muennichow, also noted that Ms. Muennichow had been vocal to Mr. Kurtz about her intent to sue Lincoln National [doc. 27, ¶¶ 5-11]. On March 15, 2019, Ms. Muennichow also filed an answer to the Complaint and a counterclaim against Lincoln National [doc. 33] as well as crossclaims against the other defendants [doc. 34].

On March 26, 2019, Lincoln National filed an opposition to the Motion (the "Opposition") [doc. 36], arguing that Ms. Muennichow did not meet the standard under Federal Rule of Civil Procedure ("Rule") 60(b). In the Opposition, Lincoln National did not address the attorney authorization arguments set forth in the Motion.

On May 15, 2019, the Court held a hearing on the Motion. At that time, the Court issued a tentative ruling setting forth the applicable standard regarding attorney authorization under California law (the "May 15, 2019 Tentative Ruling"). In relevant

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT... Hermann Muennichow

Chapter 7

part, the Court stated that the Consent Order operated as a settlement of any claims against Lincoln National involving the Policy, and that the settlement was governed by California law on attorney authorization. The Court noted—

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).

(emphasis in the May 15, 2019 Tentative Ruling). As to Rule 60(b), the Court reiterated at the end of the May 15, 2019 Tentative Ruling that, "[t]o the extent Mr. Kurtz had authority to sign the Consent Order, the Court will not grant Ms. Muennichow relief under Rule 60(b)." (emphasis added). The Court then set the remaining issues for an evidentiary hearing, specifically: "(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."

The Court set an evidentiary hearing on the remaining issues for December 20, 2019 [doc. 87]. On December 11, 2019, Ms. Muennichow filed a trial brief [doc. 89] and the McKennon Declaration, attaching the relevant evidence in preparation for the evidentiary hearing. On the same day, Lincoln National filed its trial brief (the "Lincoln Trial Brief") [doc. 91]. In the Lincoln Trial Brief, Lincoln National concedes that Mr. Kurtz did not have authority to execute the Consent Order on Ms. Muennichow's behalf. Lincoln Trial Brief, p. 9 ("Lincoln does not intend to contest Ms. Muennichow's assertion that she did not consent to the Consent order."). As such, Lincoln National narrowed the issues in its brief to the following: (A) whether Ms. Muennichow subsequently ratified the Consent Order; and (B) whether Rule 60(b) should govern this matter and, if so, whether there is a basis under Rule 60(b) to modify the Consent Order. Regarding the first issue, Lincoln National contends that the approximately four months between Ms. Muennichow learning about the Consent Order and filing the Motion represented a long enough delay for a finding of ratification. Finally, if the Court grants the Motion, Lincoln National requests that the entire Consent Order should be vacated.

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT... Hermann Muennichow

Chapter 7

Shortly before the evidentiary hearing, the parties contacted chambers to inform the Court that the parties stipulate to the admission of all exhibits. In light of this stipulation, the parties requested that the Court decide this matter without an evidentiary hearing. Consequently, the Court continued the evidentiary hearing to issue a ruling.

II. ANALYSIS

The parties now agree that Ms. Muennichow did not authorize Mr. Kurtz to sign the Consent Order. The parties also have stipulated to the admission of all exhibits without objection. As such, the sole remaining issues are whether Ms. Muennichow ratified the Consent Order and whether there is a basis to modify the Consent Order.

A. Ratification

Under California law, "[a] principal is liable 'when the principal knows the agent holds himself or herself out as clothed with certain authority and remains silent.'" *NORCAL Mut. Ins. Co. v. Newton*, 84 Cal.App.4th 64, 78 (Ct. App. 2000) (quoting *Jacoves v. United Merchandising Corp.*, 9 Cal.App.4th 88, 103 (Ct. App. 1992)). "A principal's failure to promptly disaffirm an agent's conduct on her behalf constitutes a ratification." *Id.*, at 79; *see also Gates v. Bank of America*, 120 Cal.App.2d 571, 576-577 (Ct. App. 1953) ("[W]here 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.").

Pursuant to the authorities above, the principal is required to promptly act to disaffirm her agent's conduct to third parties. However, the authorities *do not* require that the act in question be the filing of a motion. To attempt to show a delay, Lincoln National calculated that four months passed between Ms. Muennichow's notice of the Consent Order and the filing of the Motion. However, Ms. Muennichow, through Mr. McKennon, informed Lincoln National by mid-December 2018 that Ms. Muennichow never authorized Mr. Kurtz to execute the Consent Order and that Ms. Muennichow intended to move for modification of the Consent Order. *See* McKennon Declaration, ¶ 4, Exhibit D.

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT... Hermann Muennichow

Chapter 7

In fact, Ms. Muennichow emailed Mr. Kurtz the *same day* she learned about the Consent Order from Mr. McKennon. Ms. Muennichow immediately informed Mr. Kurtz that "[t]ime is of the essence" and sought both Mr. Kurtz's and Mr. McKennon's advice regarding how to reverse Mr. Kurtz's unauthorized actions. Shortly thereafter, Ms. Muennichow substituted Mr. McKennon as her attorney of record. On the same day as the substitution, Mr. McKennon sent an email to all other parties to this adversary proceeding to receive updates about the status of the case and requested a conversation with Lincoln National about the Consent Order.

As evidenced by the emails between Mr. Lendino and Mr. McKennon, no later than December 21, 2018, Lincoln National knew that Ms. Muennichow intended to modify the Consent Order on the basis that her attorney did not have authority to sign the Consent Order on her behalf. Thus, contrary to Lincoln National's calculation of four months, approximately five weeks lapsed between Ms. Muennichow learning about the unauthorized act and her disaffirmance of the act to third parties. Given Ms. Muennichow's immediate spur to action after receiving notice of the Consent Order, Ms. Muennichow did not ratify the Consent Order.

The additional lapse of time between December 2018, when Lincoln National learned of Ms. Muennichow's position, and the filing of the Motion, did not serve to ratify Mr. Kurtz's conduct. First, as discussed above, the relevant act to disaffirm Mr. Kurtz's conduct was Ms. Muennichow's prompt notice to Lincoln National that she did not authorize her attorney's signature on the Consent Order.

Second, from December 2018 through mid-February 2019, Ms. Muennichow attempted to negotiate with Lincoln National and/or the other defendants to this action. Specifically, until the end of December 2018, Ms. Muennichow attempted to convince Lincoln National to stipulate to modification of the Consent Order and to attend the global mediation set for January 17, 2019. Lincoln National refused. In January 2019, Ms. Muennichow attended a mediation with the remaining defendants. Although that mediation failed, until mid-February 2019, Ms. Muennichow discussed the possibility of a second mediation with the other defendants to this action. Approximately three weeks after those discussions, Ms. Muennichow filed the Motion.

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT... Hermann Muennichow

Chapter 7

The Court will not penalize Ms. Muennichow for attempting to negotiate with Lincoln National and/or the other defendants prior to filing the Motion. Such a penalty would disincentivize parties from attempting to settle matters before incurring the time and expense of filing and prosecuting a motion. Although Ms. Muennichow knew that Lincoln National would not settle by the end of December 2018, it is reasonable that Ms. Muennichow would wait for the result of mediation with the other defendants in case the result of such a mediation impacted how Ms. Muennichow would proceed against Lincoln National.

Third, Ms. Muennichow, like all other defendants, had a mid-March deadline to file a response to the Complaint, including her counterclaims and crossclaims against Lincoln National and the other defendants. In addition, Ms. Muennichow obtained declarations from multiple individuals in connection with the Motion. Given the amount of work required to file the Motion and the other pleadings, there was not a significant delay between mid-February 2018, when it became evident a settlement would not be forthcoming, and the filing of the Motion.

In any event, as noted above, the relevant act of disaffirmance occurred when Ms. Muennichow promptly notified Lincoln National, in December 2018, that she never authorized entry into the Consent Order. Subsequent to December 2018, Ms. Muennichow did not take any action that would lead Lincoln National to believe that Ms. Muennichow had changed her mind and would no longer seek a modification of the Consent Order. Ms. Muennichow's participation in mediation and/or settlement discussions did not translate to a ratification of Mr. Kurtz's conduct. Lincoln National has not referenced anything else in the record that would indicate that Ms. Muennichow waived from her position that she did not authorize entry of the Consent Order and would seek to obtain relief from the Consent Order.

The cases cited by Lincoln National do not compel a different result. For instance, Lincoln National references *Gaine v. Austin*, 58 Cal.App.2d 250 (Ct. App. 1943), arguing that the four-month span between Ms. Muennichow learning about the pertinent language in the Consent Order and filing the Motion is analogous to the four-month delay in *Gaine*. Notwithstanding the approximately 77 years of jurisprudence between the publication of *Gaine* and this decision, the facts in *Gaine* are not comparable to the facts here.

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT... **Hermann Muennichow**

Chapter 7

In *Gaine*, the plaintiff retained an attorney to represent him in connection with certain real property transactions. *Gaine*, 58 Cal.App.2d at 253-57. In connection with his representation of the plaintiff, the attorney settled a dispute and collected \$7,500 into his account. *Id.*, at 259-60. The attorney advised the plaintiff by April 6, 1937 that he had settled the dispute and collected the \$7,500 into his account. *Id.*, at 260. Nevertheless, the plaintiff did *nothing* until August of 1937, when the plaintiff fired the attorney. *Id.*

In contrast, Ms. Muennichow *immediately* emailed Mr. Kurtz and, within approximately a week, substituted Mr. McKennon in place of Mr. Kurtz. By approximately one month after receiving notice of the Consent Order, Lincoln National had been apprised that Ms. Muennichow intended to modify the Consent Order.

In *NORCAL*, the defendant and her husband (together, the "Newtons"), were sued for malpractice. *NORCAL*, 84 Cal.App.4th at 67. The Newtons, through an attorney named James Murphy, sought defense and indemnity from the insurance company on behalf of both the Newtons, despite the fact that only the husband was insured through the relevant policy. *Id.* The plaintiff agreed to provide the defendant a defense with a reservation of rights. *Id.* Subsequently, the plaintiff insurer funded a settlement of the claims. *Id.*, at 68.

After the settlement, the Newtons and the plaintiff disagreed as to how the settlement would be reported to a medical practitioner data bank. *Id.*, at 69. Mr. Murphy, on behalf of both the defendant and her husband, sent multiple letters to the plaintiff over the span of a year demanding arbitration under the insurance policy. *Id.*, at 69-70. After the plaintiff and the defendant could not agree on an arbitrator, the defendant informed the plaintiff, through a new attorney, that she did not consent to arbitration. *Id.*, at 70. The plaintiff then sought to compel arbitration, and the trial court granted this request. *Id.*, at 70-71.

On appeal, the defendant argued that her attorneys could not bind her to arbitration. *Id.*, at 78. The appellate court disagreed, noting that Mr. Murphy had sent letters, on the defendant's behalf, demanding arbitration, and copies of these letters were sent to the defendant. *Id.*, at 79. The appellate court also observed that the defendant never stated in her declaration that she was unaware of these legal demands being made on

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT... **Hermann Muennichow**

Chapter 7

her behalf. *Id.* Moreover, Mr. Murphy had sent arbitration demand letters on behalf of the defendant for approximately *one year* before the defendant stated that she did not consent to arbitration. *Id.*, at 69-70, 79. [FN1].

Here, the evidence shows that Ms. Muennichow was unaware of the Consent Order until November 13, 2018; nothing in the record indicates that Ms. Muennichow received notice of the Consent Order prior to November 13, 2018. As noted above, there is no proof of service showing that the Consent Order was served on Ms. Muennichow. By mid-December 2018, approximately *one month* later, Ms. Muennichow had informed Lincoln National that she did not authorize Mr. Kurtz's execution of the Consent Order and intended to move for modification of the Consent Order.

Although *NORCAL* is inapposite, the *NORCAL* court referenced a case that is analogous to this case. *Id.*, at 78 (citing *Blanton v. Womancare, Inc.*, 38 Cal.3d 396 (1985)). In *Blanton*, a decision by the Supreme Court of California, the attorney admitted that his client informed him that she would submit to arbitration only if her right to a de novo trial was preserved. *Blanton*, 38 Cal.3d at 399. Despite this, the attorney entered into a stipulation on behalf of the client agreeing to binding arbitration and failing to preserve his client's right to a de novo trial. *Id.*, at 399-400. The client did not learn about the stipulation until approximately three months after the stipulation was entered. *Id.*, at 400. At that time, she objected, fired her attorney and retained new counsel to invalidate the stipulation. *Id.* Under these facts, the *Blanton* court held that the attorney did not have authority to enter into the stipulation, and the client did not subsequently ratify the stipulation. *Id.*, at 408.

These facts are strikingly similar to the facts here. As in *Blanton*, Ms. Muennichow repeatedly informed Mr. Kurtz (and others) that she intended to pursue an action against Lincoln National. Nevertheless, Mr. Kurtz entered into a stipulation, on Ms. Muennichow's behalf and without her authorization, relieving Lincoln National from any further liability arising from the Policy. Similar to *Blanton*, Ms. Muennichow learned about the Consent Order three months after its entry and immediately retained new counsel to invalidate the Consent Order. Thus, like the client in *Blanton*, Ms. Muennichow did not ratify the Consent Order.

B. Rule 60(b)

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT... Hermann Muennichow

Chapter 7

Lincoln National asserts that Rule 60(b) should govern this matter and that, under Rule 60(b), there are no grounds to modify the Consent Order. As part of its support for this contention, Lincoln National references the May 15, 2019 Tentative Ruling, wherein the Court stated that Ms. Muennichow had not demonstrated a basis for modifying the Consent Order under Rule 60(b)(1) based on Mr. Kurtz's negligence.

The May 15, 2019 Tentative Ruling was a *tentative* ruling subject to change. Nevertheless, in the May 15, 2019 Tentative Ruling, the Court stated that Ms. Muennichow was not entitled to relief under Rule 60(b) only "[t]o the extent Mr. Kurtz had authority to sign the Consent Order...." (emphasis added). There is no longer any dispute that Mr. Kurtz did not have authority to sign the Consent Order. As such, the Court's prior analysis under Rule 60(b)(1) is no longer applicable.

Nor is Lincoln National's argument that Rule 60(b) should apply to the Consent Order dispositive of the issues before the Court. Whether the Court uses Rule 60(b) or California law as the avenue to modify the Consent Order, the result is the same. As noted by Lincoln National, Rule 60(b)(1) does not apply to remedy "mistakes [that] arose from attorney misconduct." *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1100-01 (9th Cir. 2006).

However, courts have drawn a distinction between the type of attorney misconduct that is not covered by Rule 60(b), such as an attorney failing to explain legal consequences properly to a client, and an attorney's lack of authority to act on behalf of a client. For instance, one in-circuit court provided the following reasoning—

The *Latshaw* matter is distinguishable from this matter in that the Defendants did not make their offer under advice from counsel which was legally incorrect. Defendants' offer was not the offer that was intended—defense counsel made a drafting error. Moreover, defense counsel did not have the authority to make an offer of judgment of \$100,000 as to just the county.

Close v. Pierce Cty., Wash., 2009 WL 2987190, at *3 (W.D. Wash. Sept. 15, 2009) (citing *Yapp v. Excel Corp.*, 186 F.3d 1222, 1231 (10th Cir. 1999) (holding that Rule 60(b) motions should provide relief to a party when an attorney in the litigation has

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT... Hermann Muennichow

Chapter 7

acted without authority)). Another in-circuit court held that, although Rule 60(b) does not protect from attorney incompetence, Rule 60(b)(6) may serve to vacate orders entered without authority—

This principle bars a litigant from avoiding the consequences of voluntarily hiring an incompetent attorney, but the principle reaches its limit here. The movants are not asking for relief from simple incompetence; they were wholly abandoned by their former attorney at a critical time. Nothing indicates they approved of, knew of, ratified or anticipated his conduct.

Johnson v. Siu Keung Chan, 2020 WL 230200, at *3 (E.D. Cal. Jan. 15, 2020).

"Upon a proper showing, even a consent judgment may be set aside under Rule 60(b). In particular, a consent judgment shown to have been entered without express authority from the client or without the client's actual consent may be the subject of Rule 60(b) relief." *Smith v. Widman Trucking & Excavating, Inc.*, 627 F.2d 792, 796 (7th Cir. 1980); *see also Bosch v. Olympia Brewing Co.*, 849 F.2d 1475 (9th Cir. 1988) ("Settlement agreements entered into without authority of the client may be voided by motion to vacate.") (citing *Surety Ins. Co. v. Williams*, 729 F.2d 581, 582 (8th Cir. 1984) (holding that an attorney's lack of authority to settle a claim states a ground for relief under Rule 60(b)).

Given this ample authority, there are grounds to modify the Consent Order under Rule 60(b) as well as under the California law referenced herein and in the May 15, 2019 Tentative Ruling. There is no longer any dispute that Mr. Kurtz acted without authority. Consequently, under either body of law, the Court may relieve Ms. Muennichow from the Consent Order based on Mr. Kurtz's lack of authority to act on her behalf.

Lincoln National contends that relief under Rule 60(b) is inappropriate because Ms. Muennichow's claims against Lincoln National lack merit. However, prior to vacating a consent order as a result of an attorney's lack of authority, the authorities cited above do not require an analysis of the merits of the parties' claims against each other. Nor does this Court have the benefit of full briefing about the underlying claims between Ms. Muennichow and Lincoln National, as required to assess those

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT... **Hermann Muennichow**

Chapter 7

claims. At this time, those issues are not properly before the Court. Consequently, in the determination of the Motion, the Court will not make any findings with respect to the merits of Ms. Muennichow's claims against Lincoln National.

C. Lincoln National's Request to Vacate the Consent Order

If the Court grants the Motion, Lincoln National asks the Court to vacate the Consent Order in its entirety. However, Ms. Muennichow is the only party that has moved for modification of the Consent Order. As such, unless the parties stipulate to vacate the Consent Order in its entirety, the Court will not vacate the Consent Order at this time. The Court only will relieve Ms. Muennichow from the Consent Order.

III. CONCLUSION

The Court will relieve Ms. Muennichow from the Consent Order. If the other parties file a stipulation to vacate the Consent Order, the Court will vacate the Consent Order in its entirety. If the other parties do not stipulate to such relief, they may file a motion for the Court to vacate the Consent Order.

Ms. Muennichow must submit an order within seven (7) days.

FOOTNOTES

1. The Court notes that the defendant's disaffirmance in *NORCAL* was not in the form of a motion; one year after the defendant received multiple copies of letters demanding arbitration, the defendant's attorney informed the plaintiff that the defendant did not consent to arbitration. *NORCAL*, 84 Cal.App.4th at 70.

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, January 30, 2020

Hearing Room 301

10:00 AM

CONT... Hermann Muennichow Chapter 7

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

Thursday, January 30, 2020

Hearing Room 301

10:00 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;
12/20/19

Cross-claim

David Seror, solely 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 continue this status conference for the parties to submit an updated joint status report.

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

Thursday, January 30, 2020

Hearing Room 301

10:00 AM

CONT... Hermann Muennichow

Chapter 7

The parties should be prepared to discuss the date to be set for a continued status conference.

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

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

1:19-12206 F.A. SOLIMAN MANAGEMENT, INC.

Chapter 7

#3.00 Debtor's motion to convert case from chapter 7 to 11

Docket 29

***** VACATED *** REASON: Motion withdrawn 1/7/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

F.A. SOLIMAN MANAGEMENT,

Represented By
Matthew Abbasi

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, January 30, 2020

Hearing Room 301

2:00 PM

1:19-12646 Nora Los, LLC

Chapter 11

#4.00 Order to show cause why this case should not be dismissed with a 180-day bar to refiling for having been filed in bad faith

Docket 29

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1112(a), (b)(4)(E) and (4)(F), the Court will dismiss this case with a 180-day bar to the debtor's filing another petition under any chapter of the Bankruptcy Code.

I. BACKGROUND

A. The Debtor's Schedules and Statements

On October 20, 2019, Nora Los, LLC (the "Debtor") filed a voluntary chapter 11 petition. The Debtor concurrently filed its schedules and statements.

In its belatedly filed status report [doc. 25], the Debtor represented that it owned 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

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Nora Los, LLC

Chapter 11

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 Debtor indicates that it has **no** gross revenue and made no payments or transfers to creditors within 90 days before filing its petition.

The Debtor also 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 did not list **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.

On December 19, 2019 the Debtor filed an amended SFA (the "Amended SFA") [doc. 28]. The Debtor filed the Amended SFA **after** the status conference on December 12, 2019, where the Court pointed out the numerous apparent inaccuracies and omissions in the SFA. In contrast to the SFA, in the Amended SFA the Debtor represents that: (1) it made two payments to creditors within 90 days of filing its petition, one in the amount of \$12,228.75 and the other in the amount of \$500; (2) Mahdis Ekbantani is an accountant or bookkeeper who maintained the Debtor's books and records; and (3) Fahd Soliman is the managing member and 100% owner of the Debtor, and his address is the Tarzana Property.

B. The Debtor's Monthly Operating Reports

In its monthly operating reports filed for October 2019 and November 2019, the Debtor did not complete Section IV - regarding payment to secured creditors, or Section V - regarding insurance coverage. In both of these monthly operating reports, the Debtor left these sections blank. The Debtor did not timely file its December 2019 monthly operating report.

C. The Status Conference Order

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Nora Los, LLC

Chapter 11

On November 6, 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. 13]. Contrary to the 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.

In the Debtor's belatedly filed status report, the Debtor represented that the Tarzana Property "requires some repair to make it attractive for rental and/or sale" [doc. 25, ¶ 10]. The Debtor further stated, "the Debtor will require 60-90 days to effectuate repairs and to prepare a marketing package for potential investors to sell the Subject Property or seek a lender to refinance the current obligations of the Debtor based on better rates" [doc. 25, ¶ 13]. This status report was signed by Mr. Soliman, under penalty of perjury.

In contrast, in the *Declaration of Fahd Soliman re: Response to Order to Show Cause*, which was also signed by Mr. Soliman under penalty of perjury [doc. 42], Mr. Soliman now represents that the Debtor intends to sub-divide the Tarzana Property into four separate plots of land which will allow the construction of four single family homes [doc. 42, ¶ 10]. In fact, Mr. Soliman states that "the Debtor is in the middle of sub-dividing the Property" and that "the Debtor has to make certain repairs to the Property before the Debtor is able to finish the permitting process for the subdivision" [doc. 42, ¶ 15]. Mr. Soliman also represents that the Debtor filed this chapter 11 case to "raise new capital for its redevelopment and to limit interest demands" [doc. 42, ¶ 14]. The status report [doc. 25] made no mention of the Debtor's purported intent subdivide the Tarzana Property, that the Debtor was supposedly in the permitting process for the subdivision or the need to raise new capital to effectuate this subdivision.

D. KBP Dumont LLC

On January 14, 2020, KBP Dumont LLC ("KBP") filed a motion for an extension of the deadline to file a complaint against the Debtor under 11 U.S.C. § 523. In that motion, KBP represents that it made a loan to the Debtor secured by the Tarzana

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Nora Los, LLC

Chapter 11

Property. KBP states that it was not served with notice of the Debtor's filing of this bankruptcy case. KBP states that the first time it was notified of the filing or served with any documents was on December 30, 2019.

E. The Order to Show Cause

On December 12, 2019, the Court held a status conference in the above-captioned case. After the status conference, the Court issued an *Order to Show Cause Why this Case Should Not Be Dismissed with a 180-Day Bar to Refiling for Having Been Filed in Bad Faith* (the "OSC") [doc. 29]. The OSC ordered any response to be filed by January 16, 2020.

On January 17, 2020, the Debtor belatedly filed a *Declaration of Fahd Soliman re: Response to Order to Show Cause* (the "Debtor's Response") [doc. 42]. In the Debtor's Response, Mr. Soliman states that "the Debtor has been making regular payments to its primary secured creditors until it filed for bankruptcy" [doc. 42, ¶ 16]. However, KBP represents that the Debtor has not made a payment in over two years [doc. 50].

On January 23, 2020, the Debtor filed a *Supplemental Declaration of Fahd Soliman re: Response to Order to Show Cause* (the "Supplemental Response") [doc. 44], a *Declaration of Edward Askelrod re: Proposed DIP Loan/Investment* [doc. 45] and a *Declaration of Hen Levi re: Proposed DIP Loan/Investment* [doc. 46]. Also on January 23, 2020, KBP filed a nonopposition to the OSC [doc. 50].

Attached to the Supplemental Response is a typographical plan with a geology and soil report approval letter from the City of Los Angeles, dated November 3, 2017 [Exh. A], an environmental clearance approval letter from the City of Los Angeles, dated August 3, 2018 [Exh. B] and two proposals for repairs to the Property, dated May 31, 2019 and June 17, 2019 [Exh. C]. Clearly, the Debtor knew of the existence of these documents and its purported intention to subdivide the Tarzana Property well before it filed the status report on December 5, 2019 [doc. 25].

II. DISCUSSION

Pursuant to 11 U.S.C. § 1112(b)—

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT...

Nora Los, LLC

Chapter 11

(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) 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. . . .

"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 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

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Nora Los, LLC

Chapter 11

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)(4) (E) and (4)(F). Contrary to the 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. Further, the Debtor did not timely file its December 2019 monthly operating report.

Moreover, 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 Soliman, as "Manager"), having reviewed the information provided in the Debtor's schedules, SFAs and the chapter 11 case status conference report and the Debtor's Response, it appears that this bankruptcy case was filed in bad faith.

In the Debtor's Response, Mr. Soliman states that he did not have some of the needed information to complete the petition documents at the time of filing this chapter 11 case because these documents were destroyed in a fire [Declaration of Fahd Soliman re: Response to Order to Show Cause ("Soliman Decl."), ¶ 6]. Instead of requesting an extension of time to file the case commencement documents, which this Court routinely grants, the Debtor made misrepresentations in its initial schedules and statements, signed under penalty of perjury. The Court cannot have confidence that the statements in the Soliman Decl., which are also signed under penalty of perjury, are accurate when the Debtor previously made highly inaccurate and misleading representations, signed under penalty of perjury.

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 the Debtor's case were converted, it does not appear that there would be sufficient assets in the Debtor's estate that could be administered for the benefit of creditors.

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Nora Los, LLC

Chapter 11

Further, it does not appear that the Debtor has sufficient income to make adequate protection payments or deed of trust payments regarding the debt secured by the Tarzana Property (which is overencumbered). In the Debtor's Response, Mr. Soliman states that the Debtor does not generate any income [Soliman Decl., ¶ 7]. Mr. Soliman further states that he is paying for the Debtor's expenses and obligations. In the Debtor's 90-day projections, apparently provided to the United States Trustee, the Debtor represents that the deed of trust payments and the maintenance expenses on the Tarzana Property total \$21,075 per month [doc. 41, Exh. A]. These projections do not include payment to KBP. The Debtor did not provide evidence of Mr. Soliman's ability to make adequate protection payments or deed of trust payments, and apparently, Mr. Soliman has not been able to pay all the obligations on the Tarzana Property, as represented by KBP.

III. CONCLUSION

The Court will dismiss the case with a 180-day bar to refileing.

The Court will prepare the order.

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, January 30, 2020

Hearing Room 301

2:00 PM

1:19-12646 Nora Los, LLC

Chapter 11

#5.00 Order to Show cause why debtor's counsel should not disgorge fees

Docket 31

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a), 329(b) and 330(a)(3), the Court will order Matthew Abbasi to disgorge the \$5,283 he received as compensation for legal services provided in this case.

I. BACKGROUND

A. The Debtor's Schedules and Statements

On October 20, 2019, Nora Los, LLC (the "Debtor") filed a voluntary chapter 11 petition. The Debtor concurrently filed its statements and schedules. The Debtor's petition was signed by the Debtor's proposed counsel, Matthew Abbasi.

In its belatedly filed status report [doc. 25], the Debtor represented that it owned 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

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Nora Los, LLC

Chapter 11

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 Debtor indicates that it has **no** gross revenue and made no payments or transfers to creditors within 90 days before filing its petition.

The Debtor also 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 did not list **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.

On December 19, 2019 the Debtor filed an amended SFA (the "Amended SFA") [doc. 28]. The Debtor filed the Amended SFA **after** the status conference on December 12, 2019, where the Court pointed out the numerous apparent inaccuracies and omissions in the SFA. In contrast to the SFA, in the Amended SFA the Debtor represents that: (1) it made two payments to creditors within 90 days of filing its petition, one in the amount of \$12,228.75 and the other in the amount of \$500; (2) Mahdis Ekbantani is an accountant or bookkeeper who maintained the Debtor's books and records; and (3) Fahd Soliman is the managing member and 100% owner of the Debtor, and his address is the Tarzana Property.

B. The Debtor's Monthly Operating Reports

In its monthly operating reports filed for October 2019 and November 2019, the Debtor did not complete Section IV - regarding payment to secured creditors, or Section V - regarding insurance coverage. In both of these monthly operating reports, the Debtor left these sections blank. The Debtor did not timely file its December 2019 monthly operating report.

C. The Status Conference Order

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Nora Los, LLC

Chapter 11

On November 6, 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. 13]. Contrary to the 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. Also contrary to the Order, the Debtor belatedly filed a status report [doc. 25].

D. KBP Dumont LLC

On January 14, 2020, KBP Dumont LLC ("KBP") filed a motion for an extension of the deadline to file a complaint against the Debtor under 11 U.S.C. § 523. In that motion, KBP represents that it made a loan to the Debtor secured by the Tarzana Property. KBP states that it was not served with notice of the Debtor's filing of this bankruptcy case. KBP states that the first time it was notified of the filing or served with any documents was on December 30, 2019.

E. Application to Employ Matthew Abbasi as Debtor in Possession Counsel and his Compensation

On December 30, 2019, 71 days after the petition date, the Debtor filed an application to employ Matthew Abbasi as debtor in possession counsel [doc. 35]. The Court has not granted that application.

On October 21, 2019, the Debtor filed an amended Disclosure of Compensation of Attorney for Debtor(s) [doc. 7]. That disclosure indicates that the Debtor paid Mr. Abbasi \$5,283 as compensation for legal services provided in this chapter 11 case. [FN1]

F. The Order to Show Cause

On December 12, 2019, the Court held a status conference in the above-captioned case. Appearances were as noted on the record. After the status conference, the Court issued an *Order to Show Cause Why Debtor's Counsel Should Not Disgorge Fees* (the "OSC") [doc. 31]. The OSC ordered any response to be filed by January 16, 2020.

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Nora Los, LLC

Chapter 11

On January 17, 2020, Mr. Abbasi belatedly filed a *Declaration of Matthew Abbasi re: Response to Order to Show Cause* (the "Response") [doc. 41]. In the Response, Mr. Abbasi states that from October 1, 2019 to December 31, 2019, Mr. Abbasi had to take a significant amount of time off work. Mr. Abbasi represents that he had to take care of his wife, who was injured giving birth to their child, and his children as his wife recovered. Mr. Abbasi represents that because he was taking care of his wife and children, his availability during that time was very limited. Mr. Abbasi stats that he made matters more complicated by filing two chapter 11 cases within 48 hours.

II. DISCUSSION

Pursuant to 11 U.S.C. § 329(a)—

- (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
- (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—
 - (1) the estate, if the property transferred—
 - (A) would have been property of the estate; or
 - (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
 - (2) the entity that made such payment.

Pursuant to 11 U.S.C. § 330(a)(3)—

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT...

Nora Los, LLC

Chapter 11

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;
- (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;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Under Local Bankruptcy Rule ("LBR") 2014-1(b)(1)(E)—

A timely application for employment is a prerequisite to compensation from the estate. Therefore, 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.

(emphasis added).

"[A] bankruptcy court has broad and inherent authority to deny any and all compensation when an attorney fails to meet the requirements of [§§ 327, 329, 330, 331]." *In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997).

The Court has discretion to order the return of excess compensation when compensation received by the debtor's counsel exceeds the reasonable value of services rendered. 11 U.S.C. § 329(b); *see also In re Spickelmier*, 469 B.R. 903, 914 (Bankr. D. Nev. 2012) (finding that counsel for the debtor demonstrated "a lack of

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Nora Los, LLC

Chapter 11

competence and diligence" which did "not deserve to be compensated").

"Services charged by a debtor's attorney which are of poor quality and/or which do not comply with the attorney's ethical duties are not reasonable and provide grounds for disgorgement of fees for purposes of § 329(b)." *In re Smith*, 436 B.R. 476, 483 (Bankr. N.D. Ohio 2010). "Improper conduct on the part of...attorneys has frequently been penalized by withholding compensation or reimbursement or both." *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 844 (Bankr. C.D. Cal. 1991) (citing *In re Rancho Motor Inn, Inc.*, 527 F.2d 1044, 1047 (9th Cir. 1975)).

First, Mr. Abbasi failed to file an application to be employed as debtor in possession counsel promptly, as required by LBR 2014-1(b)(1)(E). Second, Mr. Abbasi's services have been "of poor quality and... [did] not comply with [Mr. Abbasi's] ethical duties." *Smith*, 436 B.R. at 483. Regarding Mr. Abbasi's decision to file inaccurate schedules and statements, Mr. Abbasi states, in his declaration, that the Debtor did not provide him with all the information needed. If this was so, Mr. Abbasi should have filed a motion for an extension of time to file the case commencement documents, which the Court routinely grants. Furthermore, Mr. Abbasi had a duty to investigate the assets and liabilities of the Debtor prior to filing the schedules and statements. A simple title search on the Tarzana Property would have revealed that the Debtor has secured creditors.

Moreover, Mr. Abbasi's explanation that he had to take time off work to care of his wife and children, and that the matter was complicated by his decision to file two chapter 11 cases within 48 hours, is unavailing. Once Mr. Abbasi decided to appear on behalf of the Debtor, he was required to act diligently and competently on behalf of his client. Instead, Mr. Abbasi filed inaccurate and misleading schedules and statements, apparently did not provide notice of the Debtor's chapter 11 bankruptcy filing to all secured creditors, failed to file complete monthly operating reports as required by the United States Trustee guidelines and belatedly filed several documents, including the status report [doc. 25], the Response and the Debtor's response to a related order to show cause in this case.

Mr. Abbasi argues that the Court should vacate the OSC because "no one was prejudiced by [his] good faith errors" [doc. 41, ¶ 15]. However, the Debtor has been prejudiced by Mr. Abbasi's actions. The Court has issued an order to show cause why this case should not be dismissed with a 180-day bar to refiling for having been filed

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... **Nora Los, LLC**

Chapter 11

in bad faith [doc. 29] because of the poor quality of legal services provided by Mr. Abbasi.

Based on the poor quality of services provided by Mr. Abbasi in this case, the Court will not approve his employment; he is not competent to be counsel for the debtor and debtor in possession. Consequently, Mr. Abbasi must disgorge the fees he received in this case.

III. CONCLUSION

The Court will order Mr. Abbasi to disgorge the \$5,283 he received from the Debtor or Mr. Soliman as compensation for legal services provided in this case.

The Court will prepare the order.

FOOTNOTES

1. In the *Declaration of Matthew Abbasi re: Response to Order to Show Cause* (the "Response") [doc. 41], Mr. Abbasi states that Mr. Soliman paid the \$5,283 retainer; not the Debtor. The Debtor has not filed an amended Disclosure of Compensation of Attorney for Debtor(s) showing that Mr. Soliman was the source of the compensation. On January 10, 2020, the Debtor filed an amended Disclosure of Compensation of Attorney for Debtor(s) [doc. 38]. However, it appears that this document was inadvertently filed in this case. The caption of that document indicates that it is for an unrelated chapter 11 case. Whether the Debtor or Mr. Soliman paid Mr. Abbasi, the Court has authority to order disgorgement of the fees.

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, January 30, 2020

Hearing Room 301

2:00 PM

1:19-12646 Nora Los, LLC

Chapter 11

#6.00 Status conference re chapter 11 case

fr. 12/12/19

Docket 1

Tentative Ruling:

- NONE LISTED -

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, January 30, 2020

Hearing Room 301

2:00 PM

1:19-12647 Amir & Leila, LLC

Chapter 11

#7.00 Order to show cause why this case should not be dismissed with a 180-day bar to refile for having been filed in bad faith

Docket 37

Tentative Ruling:

On January 23, 2020, the debtor's managing member, Fahd Soliman, filed a *Declaration of Fahd Soliman re: Response to Order to Show Cause* [doc. 51]. In that declaration, Mr. Soliman states "the Debtor's Chapter 11 case is no longer viable," that he "can no longer afford to pay for [the] mortgage" on the debtor's principal asset, *i.e.*, commercial real property located in Ontario, California, and that "it is in the best interest of the Debtor, its creditors, and its estate to dismiss" this bankruptcy case.

Pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1112(a), 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. Based upon the Court's review of the debtor's schedules and statement of financial affairs, 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):

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, January 30, 2020

Hearing Room 301

2:00 PM

1:19-12647 Amir & Leila, LLC

Chapter 11

#8.00 Order to show cause why debtor's counsel should not disgorge fees

Docket 39

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a), 329(b) and 330(a)(3), the Court will order Matthew Abbasi to disgorge the \$5,283 he received as compensation for legal services provided in this case.

I. BACKGROUND

A. The Debtor's Schedules and Statements

On October 20, 2019, Amir & Leila, LLC (the "Debtor") filed a voluntary chapter 11 petition. The Debtor concurrently filed its schedules and statements. The Debtor's petition was signed by the Debtor's proposed counsel, Matthew Abbasi.

In its belatedly filed status report [doc. 27], the Debtor represented 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 indicated that it had **no** unexpired leases.

In the Debtor's amended schedule G, filed on January 8, 2020 [doc. 46], the Debtor indicated that it has two unexpired leases, one on the commercial property and one on the residential real property. The Debtor filed the amended schedule G **after** the status conference on December 12, 2019, where the Court pointed out the numerous apparent inaccuracies and omissions in the Debtor's schedules.

In its amended schedule A/B, filed on November 21, 2019 [doc. 24], the Debtor indicated that it had **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 was the IRS, with a claim in the

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Amir & Leila, LLC
amount of \$0.00.

Chapter 11

In its amended schedule D, filed on November 21, 2019 [doc. 25], the Debtor identified 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 indicated that it had **no** gross revenue and that it made no payments or transfers to creditors within 90 days before filing its petition.

The Debtor also 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 had **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 did not list **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.

On December 19, 2019 the Debtor filed an amended SFA (the "Amended SFA") [doc. 33]. The Debtor filed the Amended SFA **after** the status conference on December 12, 2019, where the Court pointed out the numerous apparent inaccuracies and omissions in the SFA. In contrast to the SFA, in the Amended SFA the Debtor represents that: (1) it received gross income in the amount of \$73,400 from January 2019 to the petition date from operating a business; (2) it made six payments or transfers to creditors within 90 days before filing its petition in the aggregate amount of \$9,116.26; (3) Mahdis Ekbatani is an accountant or bookkeeper who maintained the Debtor's books and records; and (4) Fahd Soliman is the managing member and 95% owner of the Debtor. The Debtor did not indicate who owns the other 5% of the Debtor.

B. The Debtor's Monthly Operating Reports

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Amir & Leila, LLC

Chapter 11

In its monthly operating reports filed for October 2019 [doc. 28] and November 2019 [doc. 29], the Debtor did not complete Section IV - regarding payment to secured creditors, or Section V – regarding insurance coverage. In both of these monthly operating reports, the Debtor left these sections blank. The Debtor did not timely file its December 2019 monthly operating report.

C. The Status Conference Order

On November 6, 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. 15]. Contrary to the 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. Also contrary to the Order, the Debtor belatedly filed a status report [doc. 27].

D. Application to Employ Matthew Abbasi as Debtor in Possession Counsel and his Compensation

On December 30, 2019, 71 days after the petition date, the Debtor filed an application to employ Matthew Abbasi as debtor in possession counsel [doc. 43]. The Court has not granted that application.

On January 10, 2020, the Debtor filed an amended Disclosure of Compensation of Attorney for Debtor(s) [doc. 48]. That disclosure indicates that the Mr. Soliman paid Mr. Abbasi \$5,283 as compensation for legal services provided in this chapter 11 case.

E. The Order to Show Cause

On December 12, 2019, the Court held a status conference in the above-captioned case. After the status conference, the Court issued an *Order to Show Cause Why Debtor's Counsel Should Not Disgorge Fees* (the "OSC") [doc. 39]. The OSC ordered any response to be filed by January 16, 2020.

On January 19, 2020, Mr. Abbasi belatedly a response to the OSC (the "Response")

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Amir & Leila, LLC

Chapter 11

[doc. 49]. In the Response, Mr. Abbasi states that from October 1, 2019 to December 31, 2019, Mr. Abbasi had to take a significant amount of time off work. Mr. Abbasi represents that he had to take care of his wife, who was injured giving birth to their child, and his children as his wife recovered. Mr. Abbasi represents that because he was taking care of his wife and children, his availability during that time was very limited. Mr. Abbasi states that he made matters more complicated by filing two chapter 11 cases within 48 hours.

II. DISCUSSION

Pursuant to 11 U.S.C. § 329(a)—

- (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
- (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—
 - (1) the estate, if the property transferred—
 - (A) would have been property of the estate; or
 - (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
 - (2) the entity that made such payment.

Pursuant to 11 U.S.C. § 330(a)(3)—

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT...

Amir & Leila, LLC

Chapter 11

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;
- (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;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Under Local Bankruptcy Rule ("LBR") 2014-1(b)(1)(E)—

A timely application for employment is a prerequisite to compensation from the estate. Therefore, 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.

(emphasis added).

"[A] bankruptcy court has broad and inherent authority to deny any and all compensation when an attorney fails to meet the requirements of [§§ 327, 329, 330, 331]." *In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997).

The Court has discretion to order the return of excess compensation when compensation received by the debtor's counsel exceeds the reasonable value of services rendered. 11 U.S.C. § 329(b); *see also In re Spickelmier*, 469 B.R. 903, 914 (Bankr. D. Nev. 2012) (finding that counsel for the debtor demonstrated "a lack of competence and diligence" which did "not deserve to be compensated").

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Amir & Leila, LLC

Chapter 11

"Services charged by a debtor's attorney which are of poor quality and/or which do not comply with the attorney's ethical duties are not reasonable and provide grounds for disgorgement of fees for purposes of § 329(b)." *In re Smith*, 436 B.R. 476, 483 (Bankr. N.D. Ohio 2010). "Improper conduct on the part of...attorneys has frequently been penalized by withholding compensation or reimbursement or both." *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 844 (Bankr. C.D. Cal. 1991) (citing *In re Rancho Motor Inn, Inc.*, 527 F.2d 1044, 1047 (9th Cir. 1975)).

First, Mr. Abbasi failed to file an application to be employed as debtor in possession counsel promptly, as required by LBR 2014-1(b)(1)(E). Second, Mr. Abbasi's services have been "of poor quality and... [did] not comply with [Mr. Abbasi's] ethical duties." *Smith*, 436 B.R. at 483. Regarding Mr. Abbasi's decision to file inaccurate schedules and statements, Mr. Abbasi states, in his declaration, that the Debtor did not provide him with all the information needed. If this was so, Mr. Abbasi should have filed a motion for an extension of time to file the case commencement documents, which the Court routinely grants. Furthermore, Mr. Abbasi had a duty to investigate the assets and liabilities of the Debtor prior to filing the schedules and statements. Simple title searches on the Debtor's residential and commercial properties would have revealed that the Debtor had secured creditors.

Moreover, Mr. Abbasi's explanation that he had to take time off work to care of his wife and children, and that the matter was complicated by his decision to file two chapter 11 cases within 48 hours, is unavailing. Once Mr. Abbasi decided to appear on behalf of the Debtor, he was required to act diligently and competently on behalf of his client. Instead, Mr. Abbasi filed inaccurate and misleading schedules and statements, failed to file complete monthly operating reports as required by the UST guidelines and belatedly filed several documents, including the status report [doc. 27], the Response and the Debtor's response to a related order to show cause in this case.

Based on the poor quality of services provided by Mr. Abbasi in this case, the Court will not approve his employment; he is not competent to be counsel for the debtor and debtor in possession. Consequently, Mr. Abbasi must disgorge the fees he received in this case.

III. CONCLUSION

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... Amir & Leila, LLC

Chapter 11

The Court will order Mr. Abbasi to disgorge the \$5,283 he received from Mr. Soliman as compensation for legal services provided in this case.

The Court will prepare the order.

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, January 30, 2020

Hearing Room 301

2:00 PM

1:19-12647 Amir & Leila, LLC

Chapter 11

#9.00 Status conference re chapter 11 case

fr. 12/12/19

Docket 1

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, January 30, 2020

Hearing Room 301

2:00 PM

1:19-12651 80 Flintlock Lane, LLC

Chapter 11

#10.00 Order to show cause why this case should not be dismissed with a 180-day bar to refile for having been filed in bad faith

Docket 29

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1112(a), (b)(4)(E) and (4)(F), the Court will dismiss this case with a 180-day bar to the debtor's filing another petition under any chapter of the Bankruptcy Code.

I. BACKGROUND

A. The Debtor's Schedules and Statements

On October 21, 2019, 80 Flintlock Lane, LLC (the "Debtor") filed a voluntary chapter 11 petition. The Debtor concurrently filed its schedules and statements.

In its belatedly filed status report [doc. 22], the Debtor represented that it owned 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.

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... **80 Flintlock Lane, LLC**

Chapter 11

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.

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 G [doc. 1], the Debtor represented that it has no unexpired leases. 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 represented that it had no losses from fire within one year before filing this case.

The Debtor also 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 did not list **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.

On December 19, 2019 the Debtor filed an amended SFA (the "Amended SFA") [doc. 27]. The Debtor filed the Amended SFA **after** the status conference on December 12, 2019, where the Court pointed out the numerous apparent inaccuracies and omissions in the SFA. In contrast to the SFA, in the Amended SFA the Debtor represents that: (1) it received gross income in the amount of \$58,500 in 2018 and \$32,500 in 2017 from "Lease of Property;" (2) the Bell Canyon Property "suffered smoke and related damages" in November 2018; the Debtor valued the property lost as unknown; (3) Shahrad Tadayon is an accountant or bookkeeper who maintained the Debtor's books and records; and (4) Anthony Nowaid is the managing member and 100% owner of the Debtor.

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... 80 Flintlock Lane, LLC

Chapter 11

B. The Debtor's Monthly Operating Reports

In its monthly operating reports filed for October 2019 [doc. 23] and November 2019 [doc. 24], 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 did not timely file its December 2019 monthly operating report.

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.

C. The Status Conference Order

On November 6, 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. 7]. Contrary to the 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.

Although the Debtor represents that it has provided the United States Trustee its 90-day income and expense projections [Declaration of Matthew Abbasi re: Response to Order to Show Cause, ¶ 13], the Debtor has not provided this to the Court.

D. The Order to Show Cause

On December 12, 2019, the Court held a status conference in the above-captioned case. After the status conference, the Court issued an *Order to Show Cause Why this Case Should Not Be Dismissed with a 180-Day Bar to Refiling for Having Been Filed in Bad Faith* (the "OSC") [doc. 29]. The OSC ordered any response to be filed by January 16, 2020. On January 24, 2020, the Debtor belatedly filed a *Declaration of Anthony Nowaid re: Response to Order to Show Cause* (the "Debtor's Response") [doc. 42].

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... 80 Flintlock Lane, LLC

Chapter 11

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) 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. . . .

"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 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

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... 80 Flintlock Lane, LLC

Chapter 11

of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *In re Nelson*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006). The bankruptcy court has discretion to dismiss or convert a chapter 11 case pursuant to 11 U.S.C. §1112(b). *See In re Consolidated Pioneer Mortg. Entities*, 264 F.3d 803, 806 (9th Cir. 2001) ("The decision to convert the [chapter 11] case to Chapter 7 is within the bankruptcy court's discretion."); *and In re Silberkraus*, 253 B.R. 890, 903 (Bankr. C.D. Cal. 2000) ("A bankruptcy court has broad discretion to convert or dismiss a chapter 11 petition for 'cause' under 11 U.S.C. § 1112(b).").

Here, there is cause to convert or dismiss this case pursuant to 11 U.S.C. § 1112(b)(4) (E) and (4)(F). Contrary to the 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. Further, the Debtor did not timely file its December 2019 monthly operating report.

Moreover, 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"), having reviewed the information provided in the Debtor's schedules, SFAs and the 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), it appears that this bankruptcy case was filed in bad faith.

In the Debtor's Response, Mr. Nowaid states that he did not have some of the needed information to complete the petition documents fully at the time of filing this chapter 11 case [Declaration of Anthony Nowaid re: Response to Order to Show Cause ("Nowaid Decl."), ¶ 4]. Instead of requesting an extension of time to file the case commencement documents, which this Court routinely grants, the Debtor made misrepresentations in its initial schedules and statements, signed under penalty of perjury. The Court cannot have confidence that the Debtor's statements in the Nowaid Decl., which are also signed under penalty of perjury, are accurate when the Debtor previously made inaccurate and misleading representations, signed under penalty of perjury.

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... 80 Flintlock Lane, LLC

Chapter 11

In the Debtor's Response, Mr. Nowaid states that the Debtor does not generate any income and that the Bell Canyon Property requires extensive repairs [Nowaid Decl., ¶ 13]. Mr. Nowaid further states that he is paying for the Debtor's expenses including the payment of Mr. Abassi's fees for services related to this chapter 11 case. *Id.* However, in the Disclosure of Compensation of Attorney for Debtor(s) [doc. 1], the Debtor represented that it paid \$5,783 to Mr. Abassi; not that Mr. Nowaid had done so. [FN1]

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 the Debtor's case were converted, it does not appear that there would be sufficient assets in the Debtor's estate that could be administered for the benefit of creditors.

Further, it does not appear that the Debtor has sufficient income to make adequate protection payments or deed of trust payments regarding the debt secured by the Bell Canyon Property (which is overencumbered). Mr. Nowaid states that he is paying for the Debtor's expenses. The Debtor did not provide evidence of Mr. Nowaid's ability to make adequate protection payments or deed of trust payments or his ability to fund the purported extensive repairs to the Bell Canyon Property.

In the Debtor's Response, Mr. Nowaid represents that the secured creditor of the Bell Canyon Property has wrongfully began foreclosure proceedings on that property. If any foreclosure sale of the Bell Canyon Property does not take place in accordance with state law, the Debtor remains entitled to seek relief from the state court.

III. CONCLUSION

The Court will dismiss the case with a 180-day bar to refileing.

The Court will prepare the order.

FOOTNOTES

1. On January 10, 2020, the Debtor filed an amended Disclosure of Compensation of Attorney for Debtor(s) [doc. 38]. However, it appears that

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT...

80 Flintlock Lane, LLC

Chapter 11

this document was inadvertently filed in this case. The caption of that document indicates that it is for an unrelated chapter 11 case.

Party Information

Debtor(s):

80 Flintlock Lane, LLC

Represented By
Matthew Abbasi

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

1:19-12651 80 Flintlock Lane, LLC

Chapter 11

#11.00 Order to show cause why debtor's counsel should not disgorge fees

Docket 31

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a), 329(b) and 330(a)(3), the Court will order Matthew Abbasi to disgorge the \$5,783 he received as compensation for legal services provided in this case.

I. BACKGROUND

A. The Debtor's Schedules and Statements

On October 21, 2019, 80 Flintlock Lane, LLC (the "Debtor") filed a voluntary chapter 11 petition. The Debtor concurrently filed its schedules and statements. The Debtor's petition was signed by the Debtor's proposed counsel, Matthew Abbasi.

In its belatedly filed status report [doc. 22], the Debtor represented that it owned 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.

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... **80 Flintlock Lane, LLC**

Chapter 11

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.

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 G [doc. 1], the Debtor represented that it has no unexpired leases. 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 represented that it had no losses from fire within one year before filing this case.

The Debtor also 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 did not list **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.

On December 19, 2019 the Debtor filed an amended SFA (the "Amended SFA") [doc. 27]. The Debtor filed the Amended SFA **after** the status conference on December 12, 2019, where the Court pointed out the numerous apparent inaccuracies and omissions in the SFA. In contrast to the SFA, in the Amended SFA the Debtor represents that: (1) it received gross income in the amount of \$58,500 in 2018 and \$32,500 in 2017 from "Lease of Property;" (2) the Bell Canyon Property "suffered smoke and related damages" in November 2018; the Debtor valued the property lost as unknown; (3) Shahrad Tadayon is an accountant or bookkeeper who maintained the Debtor's books and records; and (4) Anthony Nowaid is the managing member and 100% owner of the Debtor.

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... 80 Flintlock Lane, LLC

Chapter 11

B. The Debtor's Monthly Operating Reports

In its monthly operating reports filed for October 2019 [doc. 23] and November 2019 [doc. 24], the Debtor did not complete Section IV - regarding payment to secured creditors, or Section V – regarding insurance coverage. In both of these monthly operating reports, the Debtor left these sections blank. The Debtor did not timely file its December 2019 monthly operating report.

C. The Status Conference Order

On November 6, 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. 7]. Contrary to the 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. Also contrary to the Order, the Debtor belatedly filed a status report [doc. 22].

Although the Debtor's counsel represents that it has provided the United States Trustee with the Debtor's 90-day income and expense projections [Declaration of Matthew Abbasi re: Response to Order to Show Cause, ¶ 13], he has not provided this to the Court.

D. Application to Employ Matthew Abbasi as Debtor in Possession Counsel and his Compensation

On December 20, 2019, 60 days after the petition date, the Debtor filed an application to employ Matthew Abbasi as debtor in possession counsel [doc. 33]. The Court has not granted that application.

On October 21, 2019, the Debtor filed a Disclosure of Compensation of Attorney for Debtor(s) [doc. 1]. That disclosure indicates that the Debtor paid Mr. Abbasi \$5,783 as compensation for legal services provided in this chapter 11 case. [FN1]

E. The Order to Show Cause

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... 80 Flintlock Lane, LLC

Chapter 11

On December 12, 2019, the Court held a status conference in the above-captioned case. Appearances were as noted on the record. After the status conference, the Court issued an *Order to Show Cause Why Debtor's Counsel Should Not Disgorge Fees* (the "OSC") [doc. 31]. The OSC ordered any response to be filed by January 16, 2020.

On January 19, 2020, Mr. Abbasi belatedly a response to the OSC [doc. 39], and on January 21, 2020, Mr. Abbasi filed a *Declaration of Matthew Abbasi re: Response to Order to Show Cause* (the "Response") [doc. 40]. In the Response, Mr. Abbasi states that from October 1, 2019 to December 31, 2019, Mr. Abbasi had to take a significant amount of time off work. Mr. Abbasi represents that he had to take care of his wife, who was injured giving birth to their child, and his children as his wife recovered. Mr. Abbasi represents that because he was taking care of his wife and children, his availability during that time was very limited. Mr. Abbasi states that he made matters more complicated by filing two chapter 11 cases within 48 hours.

II. DISCUSSION

Pursuant to 11 U.S.C. § 329(a)—

- (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
- (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—
 - (1) the estate, if the property transferred—
 - (A) would have been property of the estate; or
 - (B) was to be paid by or on behalf of the debtor under a

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT...

80 Flintlock Lane, LLC

Chapter 11

plan under chapter 11, 12, or 13 of this title; or
(2) the entity that made such payment.

Pursuant to 11 U.S.C. § 330(a)(3)—

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or 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;
- (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;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Under Local Bankruptcy Rule ("LBR") 2014-1(b)(1)(E)—

A timely application for employment is a prerequisite to compensation from the estate. Therefore, 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.

(emphasis added).

"[A] bankruptcy court has broad and inherent authority to deny any and all

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... 80 Flintlock Lane, LLC

Chapter 11

compensation when an attorney fails to meet the requirements of [§§ 327, 329, 330, 331]." *In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997).

The Court has discretion to order the return of excess compensation when compensation received by the debtor's counsel exceeds the reasonable value of services rendered. 11 U.S.C. § 329(b); *see also In re Spickelmier*, 469 B.R. 903, 914 (Bankr. D. Nev. 2012) (finding that counsel for the debtor demonstrated "a lack of competence and diligence" which did "not deserve to be compensated").

"Services charged by a debtor's attorney which are of poor quality and/or which do not comply with the attorney's ethical duties are not reasonable and provide grounds for disgorgement of fees for purposes of § 329(b)." *In re Smith*, 436 B.R. 476, 483 (Bankr. N.D. Ohio 2010). "Improper conduct on the part of...attorneys has frequently been penalized by withholding compensation or reimbursement or both." *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 844 (Bankr. C.D. Cal. 1991) (citing *In re Rancho Motor Inn, Inc.*, 527 F.2d 1044, 1047 (9th Cir. 1975)).

First, Mr. Abbasi failed to file an application to be employed as debtor in possession counsel promptly, as required by LBR 2014-1(b)(1)(E). Second, Mr. Abbasi's services have been "of poor quality and... [did] not comply with [Mr. Abbasi's] ethical duties." *Smith*, 436 B.R. at 483. Regarding Mr. Abbasi's decision to file inaccurate schedules and statements, Mr. Abbasi states, in his declaration, that the Debtor did not provide him with all the information needed. If this was so, Mr. Abbasi should have filed a motion for an extension of time to file the case commencement documents, which the Court routinely grants. Furthermore, Mr. Abbasi had a duty to investigate the assets and liabilities of the Debtor prior to filing the schedules and statements.

Moreover, Mr. Abbasi's explanation that he had to take time off work to care of his wife and children, and that the matter was complicated by his decision to file two chapter 11 cases within 48 hours, is unavailing. Once Mr. Abbasi decided to appear on behalf of the Debtor, he was required to act diligently and competently on behalf of his client. Instead, Mr. Abbasi filed inaccurate and misleading schedules and statements, failed to file complete monthly operating reports as required by the UST guidelines and belatedly filed several documents, including the status report [doc. 22], the Response and the Debtor's response to a related order to show cause in this case.

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... **80 Flintlock Lane, LLC**

Chapter 11

Mr. Abbasi argues that the Court should vacate the OSC because "no one was prejudiced by [his] good faith errors" [doc. 40, ¶ 19]. However, the Debtor has been prejudiced by Mr. Abbasi's actions. The Court has issued an order to show cause why this case should not be dismissed with a 180-day bar to refiling for having been filed in bad faith [doc. 29] - a situation which was exacerbated because of the poor quality of Mr. Abbasi's legal services.

Based on the poor quality of services provided by Mr. Abbasi in this case, the Court will not approve his employment; he is not competent to be counsel for the debtor and debtor in possession. Consequently, Mr. Abbasi must disgorge the fees he received in this case.

III. CONCLUSION

The Court will order Mr. Abbasi to disgorge the \$5,783 he received from the Debtor or Mr. Nowaid as compensation for legal services provided in this case.

The Court will prepare the order.

FOOTNOTES

1. In the *Declaration of Matthew Abbasi re: Response to Order to Show Cause* (the "Response") [doc. 40], Mr. Abbasi states that Mr. Nowaid paid the \$5,783 retainer; not the Debtor. The Debtor has not filed an amended Disclosure of Compensation of Attorney for Debtor(s) showing that Mr. Nowaid was the source of the compensation. On January 10, 2020, the Debtor filed an amended Disclosure of Compensation of Attorney for Debtor(s) [doc. 38]. However, it appears that this document was inadvertently filed in this case. The caption of that document indicates that it is for an unrelated chapter 11 case. Whether the Debtor or Mr. Nowaid paid Mr. Abbasi, the Court has authority to order disgorgement of the fees.

Party Information

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

CONT... 80 Flintlock Lane, LLC

Chapter 11

Debtor(s):

80 Flintlock Lane, LLC

Represented By
Matthew Abbasi

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

Thursday, January 30, 2020

Hearing Room 301

2:00 PM

1:19-12651 80 Flintlock Lane, LLC

Chapter 11

#12.00 Status conference re chapter 11 case

fr. 12/12/19

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

80 Flintlock Lane, LLC

Represented By
Matthew Abbasi

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

Wednesday, February 5, 2020

Hearing Room 301

9:30 AM

1:18-10849 David Perez and Cynthia Margarita Perez

Chapter 13

#1.00 Motion for relief from stay [PP]

JPMORGAN CHASE BANK, N.A.
VS
DEBTOR

fr: 1/8/20

Docket 55

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Perez

Represented By
Todd J Roberts

Joint Debtor(s):

Cynthia Margarita Perez

Represented By
Todd J Roberts

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, February 5, 2020

Hearing Room 301

9:30 AM

1:16-10630 Gerald E Klein and Norma L Klein

Chapter 13

#2.00 Motion for relief from stay [RP]

MUFG UNION BANK, N.A.
VS
DEBTOR

fr. 9/11/19; 11/13/19; 12/4/19

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, February 5, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#3.00 Motion for relief from stay [RP]

BAYVIEW LOAN SERVICING, LLC
VS
DEBTOR

fr: 1/8/20

Docket 45

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**

Wednesday, February 5, 2020

Hearing Room 301

9:30 AM

1:18-12555 Francisco Javier Miranda

Chapter 13

#4.00 Motion for relief from stay [RP]

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

fr: 1/8/20

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 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):

Francisco Javier Miranda

Represented By
R Grace Rodriguez

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

Wednesday, February 5, 2020

Hearing Room 301

9:30 AM

CONT... Francisco Javier Miranda

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, February 5, 2020

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; 11/6/19, 12/18/19

Docket 64

*** VACATED *** REASON: Order entered 2/3/20 continuing hearing to 2/26/20 at 2:30 PM. [Dkt. #198]

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, February 5, 2020

Hearing Room 301

9:30 AM

1:20-10078 Behrouz Nazeradi

Chapter 7

#6.00 Motion for relief from stay [UD]

EHSAN YAGHOUBI
VS
DEBTOR

Docket 4

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.

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

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

Wednesday, February 5, 2020

Hearing Room 301

9:30 AM

CONT... Behrouz Nazeradl

Chapter 7

Debtor(s):

Behrouz Nazeradl

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, February 5, 2020

Hearing Room 301

9:30 AM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

#7.00 Motion for relief from stay [AN]

RENZER BELL
VS
DEBTOR

Docket 99

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):

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**

Wednesday, February 5, 2020

Hearing Room 301

9:30 AM

1:19-12739 Nelson M. Diaz

Chapter 7

#8.00 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) 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):

Nelson M. Diaz

Represented By
Allan S Williams

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 5, 2020

Hearing Room 301

9:30 AM

1:20-10075 Monique Hernandez

Chapter 7

#9.00 Motion for relief from stay [PP]

MECHANICS BANK
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):

Monique Hernandez

Represented By
Chirnese L Liverpool

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 5, 2020

Hearing Room 301

9:30 AM

1:19-13133 Lake Elsinore Diamond Road LLC

Chapter 7

#10.00 Motion for relief from stay [RP]

PALISADES FUNDING, INC.
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.

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

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

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a 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, February 5, 2020

Hearing Room 301

9:30 AM

CONT... Lake Elsinore Diamond Road LLC

Chapter 7

Debtor(s):

Lake Elsinore Diamond Road LLC

Represented By
John Burgee

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 5, 2020

Hearing Room 301

9:30 AM

1:20-10024 Antonio Jesus Almeida

Chapter 13

#11.00 Motion for relief from stay [UD]

ARTEM GERASHCHENKOV
VS
DEBTOR

Docket 8

Tentative Ruling:

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

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

The 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.

Deny any other request for relief.

The movant's request for relief under 11 U.S.C. § 362(d)(4) is denied, because 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.

Party Information

Debtor(s):

Antonio Jesus Almeida

Pro Se

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

Wednesday, February 5, 2020

Hearing Room 301

9:30 AM

CONT... Antonio Jesus Almeida

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 5, 2020

Hearing Room 301

9:30 AM

1:19-13057 Yuthana Singruang

Chapter 13

#12.00 Motion for relief from stay [RP]

WILMINGTON TRUST NATIONAL ASSOCIATION
VS
DEBTOR

Docket 14

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.

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

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

Wednesday, February 5, 2020

Hearing Room 301

9:30 AM

CONT... Yuthana Singruang
notified.

Chapter 13

Party Information

Debtor(s):

Yuthana Singruang

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 5, 2020

Hearing Room 301

9:30 AM

1:20-10059 Faye Ellen Di Panni and Robert Allen Di Panni

Chapter 13

#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:

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):

Faye Ellen Di Panni

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Robert Allen Di Panni

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 5, 2020

Hearing Room 301

9:30 AM

1:20-10094 Jonathan Hidalgo

Chapter 13

#14.00 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 up to the date of the continued hearing. The Court will continue this hearing to **March 25, 2020 at 9:30 a.m. No later than February 12, 2020**, 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).

On January 31, 2020, Pensco Trust Company Custodian fbo Alan L Brooks, IRA ("Pensco"), a secured creditor, filed a timely opposition to the motion [doc. 20]. Pensco argues that the debtor has not overcome the presumption of bad faith as required by 11 U.S.C. § 362(c)(3)(C).

In his immediately preceding case, the debtor was not represented by counsel. In the pending case, the debtor has retained counsel, which is a change in the debtor's personal and financial affairs. The Court will continue this hearing in order to assess the debtor's ability to perform under his proposed chapter 13 plan.

The debtor must timely pay his: (A) February 2020 and March 2020 plan payments in the amount of \$4,798.00 (as stated in the debtors' proposed chapter 13 plan) to the chapter 13 trustee [doc. 15]; (B) February 2020 and March 2020 deed of trust payments in the amount of \$3,000.00 (as stated in his current schedule J) as to his residential real property [doc. 14]; (C) February 2020 and March 2020 deed of trust payments in the amount of \$1,523.72 (as stated in Pensco's opposition) as to his commercial real property [doc. 20]; and (D) February 2020 and March 2020 homeowner's association ("HOA") payments on his residential real property in the amount of \$380 (as stated in his current schedule J). **No later than March 23, 2020**, the debtor must file a declaration to demonstrate that he timely made his required post-petition deed of trust, HOA and chapter 13 plan payments.

In addition, the debtor's schedule I [doc. 14] indicates rental income in the amount of

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

Wednesday, February 5, 2020

Hearing Room 301

9:30 AM

CONT... Jonathan Hidalgo

Chapter 13

\$3,000 per month. However, the debtor's schedule G [doc. 14] indicates that the debtor has no unexpired leases. **By February 12, 2020**, the debtor must amend his schedule G to include any unexpired leases.

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

Party Information

Debtor(s):

Jonathan Hidalgo

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, February 5, 2020

Hearing Room 301

1:30 PM

1:19-10272 Zaven Armen Pehlevanian

Chapter 7

Adv#: 1:19-01141 Pehlevanian v. Wells Fargo et al

#15.00 Status conference re: complaint for declaratory judgment
for bankruptcy relief of student loan debt

Docket 1

Tentative Ruling:

The plaintiff did not timely serve the summons on the defendants. Although defendant Wells Fargo Bank, N.A. has filed an answer, defendant Navient has not responded to the complaint.

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 defendant Navient 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 that summons were timely served on the defendants. If the plaintiff can obtain an issued Another Summons from the Court by February 19, 2020, the status conference will be continued to **1:30 p.m. on April 8, 2020**.

No later than **March 25, 2020**, the parties must submit a joint status report in accordance with Local Bankruptcy Rule 7016-1(a).

Party Information

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

Wednesday, February 5, 2020

Hearing Room 301

1:30 PM

CONT... Zaven Armen Pehlevanian

Chapter 7

Debtor(s):

Zaven Armen Pehlevanian Pro Se

Defendant(s):

Wells Fargo Pro Se

Navient Pro Se

Plaintiff(s):

Zaven Armen Pehlevanian Pro Se

Trustee(s):

Nancy J Zamora (TR) Pro Se

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

Wednesday, February 5, 2020

Hearing Room 301

1:30 PM

1:19-10448 Linda Moraga

Chapter 7

Adv#: 1:19-01122 Zamora, Chapter 7 Trustee v. Moraga

- #16.00** 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

fr. 12/11/19

Docket 1

Tentative Ruling:

In accordance with the joint status report [doc. 6], the Court will continue this status conference to **1:30 p.m. on March 25, 2020**. No later than **March 16, 2020**, the parties must submit an updated joint status report.

Appearances on February 5, 2020 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

Trustee(s):

Nancy J Zamora (TR)

Represented By
Anthony A Friedman

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

Wednesday, February 5, 2020

Hearing Room 301

1:30 PM

1:19-11034 John Bicz

Chapter 7

Adv#: 1:19-01125 Peterson v. Bicz

#17.00 Defendant's motion to vacate default pursuant to F.R.C.P. 60(b)

fr. 1/8/20

Docket 18

***** VACATED *** REASON: Order ent vacating default [doc. 26].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Bicz

Represented By
M. Jonathan Hayes

Defendant(s):

John Bicz

Represented By
M. Jonathan Hayes

Plaintiff(s):

Ben Peterson

Represented By
Shai S Oved

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 5, 2020

Hearing Room 301

1:30 PM

1:19-11034 John Biczo

Chapter 7

Adv#: 1:19-01125 Peterson v. Biczo

#18.00 Status conference re: complaint to determine dischargeability
of debt under 11 USC sec 523

fr. 12/18/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on March 18, 2020**, to be held in connection with the hearing on the plaintiff's motion for summary judgment [doc. 11].

Appearances on February 5, 2020 are excused.

Party Information

Debtor(s):

John Biczo

Represented By
John Asuncion

Defendant(s):

John Biczo

Pro Se

Plaintiff(s):

Ben Peterson

Represented By
Shai S Oved

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 5, 2020

Hearing Room 301

1:30 PM

1:19-11643 Larry M Halpern

Chapter 7

Adv#: 1:19-01108 Business Funding Source v. Halpern

#19.00 Status conference re: amended complaint to determine dischargeability of debt

fr. 12/11/19; 1/22/20

Docket 11

***** VACATED *** REASON: Order of dismissal entered 1/23/20 [Dkt. 29]**

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

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

Wednesday, February 5, 2020

Hearing Room 301

1:30 PM

1:19-12082 Robert M. Gerstein

Chapter 7

Adv#: 1:19-01140 Himes v. Gerstein

#20.00 Status conference re: first amended complaint

Docket 3

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on March 4, 2020**, to be held in connection with the hearing on the defendant's motion to dismiss [doc. 4].

Appearances on February 5, 2020 are excused.

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Defendant(s):

Robert M. Gerstein

Pro Se

Plaintiff(s):

Greg Himes

Pro Se

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
Courtroom 301 Calendar**

Wednesday, February 5, 2020

Hearing Room 301

1:30 PM

1:19-12198 Boris Pinchevskiy

Chapter 7

Adv#: 1:19-01138 Plattner et al v. Pinchevskiy

#21.00 Status conference re: complaint to determine dischargeability 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 April 15, 2020.**

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 **March 31, 2020.**

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 February 5, 2020 is excused.

Party Information

Debtor(s):

Boris Pinchevskiy

Represented By
Elena Steers

Defendant(s):

Boris Pinchevskiy

Pro Se

Plaintiff(s):

Gabriella Plattner

Represented By
Gabriella G Plattner
Holly Roark

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

Wednesday, February 5, 2020

Hearing Room 301

1:30 PM

CONT... **Boris Pinchevskiy**
Allen Letgolts

Chapter 7

Represented By
Gabriella G Plattner
Holly Roark

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 5, 2020

Hearing Room 301

1:30 PM

1:19-12320 Mihir Shah

Chapter 7

Adv#: 1:19-01146 Bank of America, N.A. v. Shah

#22.00 Status conference re: complaint to determine dischargeability of debt [11 U.S.C. sec 523(a)2)(B)]

Docket 1

*** VACATED *** REASON: Order dismissing adversary entered 1/31/20 [doc. 14].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mihir Shah

Represented By
Shirlee L Bliss

Defendant(s):

Mihir Shah

Pro Se

Plaintiff(s):

Bank of America, N.A.

Represented By
Joshua K Partington

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 5, 2020

Hearing Room 301

1:30 PM

1:19-12557 Judy A Scott

Chapter 7

Adv#: 1:19-01144 West Medical Center, Inc. v. Scott

#23.00 Status conference re: complaint objecting to discharge under section 523 of the bankruptcy code

Docket 1

Tentative Ruling:

If this matter goes to trial, the Court anticipates that the trial will take place in Santa Barbara or downtown Los Angeles and be adjudicated by a recall judge.

Parties should be prepared to discuss the following:

Deadline to complete discovery: 3/16/20.

Deadline to file pretrial motions: 3/31/20.

Deadline to complete and submit pretrial order in accordance with Local Bankruptcy Rule 7016-1: 4/15/20.

Pretrial: 4/29/20 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), 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):

Judy A Scott

Represented By
James G. Beirne

Defendant(s):

Judy A Scott

Pro Se

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

Wednesday, February 5, 2020

Hearing Room 301

1:30 PM

CONT... Judy A Scott

Chapter 7

Plaintiff(s):

West Medical Center, Inc.

Represented By
Adam Van Susteren

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 5, 2020

Hearing Room 301

2:30 PM

1:19-10494 Gerald Martin Nussbaum

Chapter 7

Adv#: 1:19-01052 Morehead v. Nussbaum et al

#24.00 Amended motion to dismiss claims arising under 11 U.S.C. sec 727

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):

Gerald Martin Nussbaum

Represented By
Neil R Hedtke

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

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

Wednesday, February 5, 2020

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 Defendants' motion to dismiss

fr. 10/2/19; 10/16/19; 11/13/19

Docket 12

*** VACATED *** REASON: Order entered 2/3/20 continuing hearing to
2/26/20 at 2:30 PM. 18-13024 [Dkt. #198]

Tentative Ruling:

- NONE LISTED -

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, February 5, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #26.00** 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; 11/13/19

Docket 8

***** VACATED *** REASON: Order entered 2/3/20 continuing hearing to 2/26/20 at 2:30 PM. 18-13024 [Dkt. #198]**

Tentative Ruling:

- NONE LISTED -

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, February 5, 2020

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, February 5, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#27.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper.
fr. 5/14/19; 10/16/19; 11/13/19

Docket 55

*** VACATED *** REASON: Order entered 2/3/20 continuing hearing to
2/26/20 at 2:30 PM. [Dkt. #198]

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, February 5, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#28.00 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; 12/10/19;

Docket 70

*** VACATED *** REASON: Order entered 2/3/20 continuing hearing to 2/26/20 at 2:30 PM. [Dkt. #198]

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, February 5, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#29.00 Debtor's motion for summary judgment and/or summary adjudication of facts

Docket 174

*** VACATED *** REASON: Order entered 2/3/20 continuing hearing to 2/26/20 at 2:30 PM. [Dkt. #198]

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**

Thursday, February 6, 2020

Hearing Room 301

10:30 AM

1:17-11503 RALPH L FERGUSON

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Zamora & Hoffmeier, Attorneys for Chapter 7 Trustee

Docket 85

Tentative Ruling:

David Seror, chapter 7 trustee – approve fees of \$1,250.00 and reimbursement of expenses of \$5.80, 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.

Zamora & Hoffmeier, APC, counsel to chapter 7 trustee – approve fees of \$2,200.00 and reimbursement of expenses of \$725.00, pursuant to 11 U.S.C. § 330, on a final basis. Zamora & Hoffmeier, APC is authorized to collect 100% of the approved fees and reimbursement of expense.

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):

RALPH L FERGUSON

Represented By
Suresh C Pathak

Trustee(s):

David Seror (TR)

Represented By
Nancy H Zamora

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

Thursday, February 6, 2020

Hearing Room 301

10:30 AM

CONT... RALPH L FERGUSON

Chapter 7

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

Thursday, February 6, 2020

Hearing Room 301

1:00 PM

1:17-13142 Amir Elosseini

Chapter 11

#2.00 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; 11/14/19

Docket 1

Tentative Ruling:

The debtor's monthly operating report for December 2019 [doc. 186], indicates that the debtor has not paid the United State trustee fees for the fourth quarter of 2019 in the amount of \$650.00. Is the debtor current on his United States trustee fees?

In the status report, filed on January 29, 2020 [doc. 189], the debtor indicates that he will file a motion to approve a settlement in his state court litigation with UCSD by February 1, 2020. As of February 3, 2020, the debtor has not filed such a motion. When does the debtor intend to file this motion?

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, February 6, 2020

Hearing Room 301

1:00 PM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#3.00 Confirmation hearing re: Second Amended Plan Redlined Version

Docket 134

Tentative Ruling:

Confirm Second Amended Chapter 11 Plan dated December 2, 2019 [doc. 134]. No later than **May 21, 2020**, 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 **June 4, 2020 at 1:00 p.m.**

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

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

Party Information

Debtor(s):

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, February 6, 2020

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; 12/12/19

Docket 1

Tentative Ruling:

See calendar no. 2.

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, February 6, 2020

Hearing Room 301

1:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#5.00 Second Amended Disclosure Statement Describing Debtors
Chapter 11 Plan Dated April 16, 2019

Docket 118

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, February 6, 2020

Hearing Room 301

1:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#6.00 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; 12/5/19

Docket 1

Tentative Ruling:

- NONE LISTED -

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, February 6, 2020

Hearing Room 301

1:00 PM

1:19-11902 John Christian Lukes

Chapter 11

#7.00 Status conference re: chapter 11 case
fr. 9/19/19

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

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

Thursday, February 6, 2020

Hearing Room 301

1:00 PM

CONT... John Christian Lukes

Chapter 11

Debtor(s):

John Christian Lukes

Represented By
Matthew D Resnik

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

Thursday, February 6, 2020

Hearing Room 301

1:00 PM

1:19-13166 Genesis Home Health, Inc.

Chapter 11

#8.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

The debtor did not timely file a monthly operating report for December 2019.

The debtor has not yet filed an application to employ an accountant.

Deadline to file proof of claim ("Bar Date"): **May 1, 2020.**

Deadline to mail notice of Bar Date: **February 28, 2020.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **June 15, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on June 25, 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.

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

Thursday, February 6, 2020

Hearing Room 301

1:00 PM

CONT... Genesis Home Health, Inc.

Chapter 11

Debtor(s):

Genesis Home Health, Inc.

Represented By
Matthew D. Resnik

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

Thursday, February 6, 2020

Hearing Room 301

1:00 PM

1:20-10155 Prudential Equity Group

Chapter 7

#8.10 Order to show cause re: dismissal with a 180-day bar to refiling

Docket 4

Tentative Ruling:

The Court will dismiss this case with a 180-day bar.

On December 23, 2020, Prudential Equity Group ("Debtor") filed a voluntary chapter 7 petition (the "First Case") [1:19-bk-13179]. On January 6, 2020, the Court issued an Order to Show Cause why the First Case should not be dismissed for failure to retain counsel pursuant to Local Bankruptcy Rule ("LBR") 9011-2(a) (the "First OSC") [1:19-bk-13179, doc. 7].

On January 16, 2020, the Court held a hearing on the First OSC. Debtor appeared without counsel. At that time, the Court informed Zoraida Molina, who appeared on behalf of Debtor, that Debtor must retain counsel to proceed with a bankruptcy case.

On January 22, 2020, the Court entered an order dismissing the First Case based on Debtor's failure to retain counsel [1:19-bk-13179, doc. 14]. On the same day, Debtor filed a new chapter 7 petition. The petition was filed and signed by Ms. Molina. Once again, Debtor is not represented by counsel.

On January 24, 2020, the Court issued an Order to Show Cause why this case should not be dismissed for failure to retain counsel pursuant to LBR 9011-2(a) (the "OSC") [doc. 4]. In the OSC, the Court instructed Debtor to file a disclosure of compensation of attorney for Debtor by February 3, 2020, or the case would be dismissed with a 180-day bar.

As of February 4, 2020, a response to the OSC or disclosure of compensation form has not been filed. Consequently, pursuant to 11 U.S.C. §§ 105(a) and 349(a), the Court will dismiss this case with a 180-day bar to Debtor's filing of another petition under any chapter of the Bankruptcy Code.

The Court will prepare the Order.

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

Thursday, February 6, 2020

Hearing Room 301

1:00 PM

CONT... Prudential Equity Group

Chapter 7

Party Information

Debtor(s):

Prudential Equity Group

Pro Se

Trustee(s):

David Seror (TR)

Pro Se

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

1:15-12563 Reza Fateh Manesh

Chapter 7

#9.00 Motion by Chapter 7 Trustee to: (1) Approve sale of real property free and clear of all liens, interests, claims and encumbrances with such liens, interests, claims, and encumbrances to attach to proceeds pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approve overbid procedures; and (3) Determine that buyer is entitled to protection pursuant to 11 U.S.C. § 363(m)

Docket 144

Tentative Ruling:

Grant.

I. BACKGROUND

A. Debtor's Bankruptcy Filing and Prepetition History with the Delano Property

On July 30, 2015, Reza Fateh Manesh ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee"). On August 12, 2015, Debtor filed his schedule A [doc. 26] and included real property located at 14520 Delano Street, Van Nuys, CA 91411 (the "Delano Property"). In his schedule A, Debtor stated that his wife, Shahla Tehrani Broomand, held a 20% separate property interest in the Delano Property.

Contrary to Debtor's statements in his schedule A regarding ownership of the Delano Property, prepetition, Reza Pour, a judgment creditor of Debtor, obtained a judgment from state court through which the state court held that Debtor owned the Delano Property and Ms. Broomand "had no valid right, title, or interest in the Delano Property" (the "State Court Judgment") [FN1]. In relevant part, the state court also held that the Delano Property was subject to Mr. Pour's judgment lien.

On November 2, 2015, Debtor attended a § 341(a) meeting of creditors. Hossein Fatehmanesh, Debtor's brother, also was present. At this meeting, Debtor testified that the Delano Property was generating rental income. Subsequently, Mr.

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

CONT...

Reza Fateh Manesh

Chapter 7

Fatehmanesh confirmed that he and Debtor had received \$15,000 in security deposits and rental income from the Delano Property. Shortly after the § 341(a) meeting, the Trustee filed a motion for turnover, requesting that Debtor turn over the Delano Property and the related rental income and security deposits to the estate (the "Turnover Motion") [doc. 54].

On November 19, 2015, Debtor filed amended schedules and statements [docs. 66-71] and a motion to convert his case to a chapter 13 case [doc. 65]. In his amended schedule A [doc. 66], Debtor stated that he owns the Delano Property in fee simple. In his amended schedule C [doc. 67], Debtor claimed an exemption in the Delano Property. In his schedule I [doc. 68], Debtor stated that he receives \$4,425.11 in monthly rental income from the Delano Property. Debtor also amended his Statement of Financial Affairs [doc. 69] to reflect yearly rental income from the Delano Property.

On December 21, 2015, the Court entered an order granting the Trustee's motion for turnover and instructing Debtor to turn over the Delano Property and all security deposits and postpetition rent related to the Delano Property [doc. 88]. Subsequently, the Court denied Debtor's request to convert this case [doc. 104].

B. The Trustee's Complaint against Mr. Fatehmanesh

On November 5, 2015, along with the Turnover Motion, the Trustee filed a complaint against Mr. Fatehmanesh (the "Fatehmanesh Action") [1:15-ap-01237-VK, doc. 1]. In the complaint filed in the Fatehmanesh Action, the Trustee requested that Mr. Fatehmanesh turn over the Delano Property as well as any related rents and security deposits generated from the Delano Property.

On November 29, 2016, the Court held trial in the Fatehmanesh Action. On January 11, 2017, the Court issued a ruling holding that the Delano Property is property of the estate and that Mr. Fatehmanesh does not have an interest in the Delano Property (the "Ruling") [doc. 35]. The Court relied on, among other things, the preclusive effect of the State Court Judgment; specifically, the Court held that Mr. Fatehmanesh (as well as Debtor and Ms. Broomand, who were parties to the action that led to the State Court Judgment) was bound by the State Court Judgment. On January 26, 2017, the Court entered judgment in favor of the Trustee (the "Judgment") [doc. 38], reiterating

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

CONT... Reza Fateh Manesh

Chapter 7

that Mr. Fatehmanesh "has no interest in the [Delano Property] and the [Delano] Property is property of the bankruptcy estate pursuant to 11 U.S.C. § 541." Judgment, p. 2. The Court also awarded the Trustee attorneys' fees and costs as contempt sanctions under 11 U.S.C. § 105(a).

Mr. Fatehmanesh appealed the Judgment to the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"). On February 6, 2018, the BAP issued a decision affirming the Judgment. Mr. Fatehmanesh then filed an appeal with the Ninth Circuit Court of Appeals. On August 8, 2019, the Ninth Circuit Court of Appeals affirmed the Judgment. On August 22, 2019, Mr. Fatehmanesh filed a petition for rehearing en banc. On September 23, 2019, the Ninth Circuit Court of Appeals entered an order denying Mr. Fatehmanesh's petition for a hearing en banc.

C. Debtor's Complaint against Mr. Pour

On August 30, 2017, Debtor filed a complaint against Mr. Pour (the "Complaint") [1:17-ap-01080-VK, doc. 1], asking the Court to set aside two renewals of the judgment held by Mr. Pour. On September 21, 2017, Mr. Pour filed a motion to dismiss the Complaint (the "Motion to Dismiss") [1:17-ap-01080-VK, doc. 4], asserting that, prepetition, a state court had disposed of a near identical complaint filed by Debtor against Mr. Pour. On December 6, 2017, the Court issued a ruling holding that this Court could not invalidate the state court's prior decision in favor of Mr. Pour [1:17-ap-01080-VK, doc. 13]. On December 21, 2017, the Court entered an order dismissing the Complaint [1:17-ap-01080-VK, doc. 16].

D. The Trustee's Motion to Sell the Delano Property

On January 14, 2020, the Trustee filed a motion to sell the Delano Property (the "Motion") [doc. 144]. In the Motion, the Trustee states that he does not dispute Mr. Pour's judgment lien against the Delano Property and that he intends to pay Mr. Pour from the sale proceeds. On January 23, 2020, Mr. Fatehmanesh and Ms. Broomand filed an opposition to the Motion (the "Opposition") [doc. 148]. In the Opposition, Mr. Fatehmanesh and Ms. Broomand characterize themselves as the owners of the Delano Property and request that the Court stay any sale of the Delano Property to allow Mr. Fatehmanesh and Ms. Broomand to file a quiet title action in state court. In addition, Mr. Fatehmanesh and Ms. Broomand contend that the Trustee has not

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

CONT... **Reza Fateh Manesh**

Chapter 7

properly investigated whether Mr. Pour has a legitimate claim against the estate.

On January 30, 2020, the Trustee filed a reply to the Opposition (the "Reply") [doc. 150], noting that Mr. Pour has a judgment against Debtor and a judgment lien against the Delano Property, and that both the state court and this Court have repeatedly stated that the State Court Judgment is valid. The Trustee also states that neither Mr. Fatehmanesh nor Ms. Broomand has any legal interest in the Delano Property. On January 31, 2020, Mr. Fatehmanesh and Ms. Broomand filed an unauthorized sur-reply to the Reply [doc. 151]. The Court will not consider this sur-reply as Mr. Fatehmanesh and Ms. Broomand did not obtain permission from the Court to file a sur-reply.

II. ANALYSIS

Mr. Fatehmanesh and Ms. Broomand oppose the Motion on two bases, arguing that: (A) they are the owners of the Delano Property and intend to file a quiet title action in state court to obtain a determination regarding their ownership; and (B) the Trustee should investigate the legitimacy of Mr. Pour's claim against the estate.

As to the first argument, Mr. Fatehmanesh and Ms. Broomand are barred from relitigating the issues related to ownership of the Delano Property. Under California law, which applies to the State Court Judgment, "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). Under federal law, which applies to this Court's Judgment, 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.

Rein v. Providian Fin. Corp., 270 F.3d 895, 899 (9th Cir. 2001). Under both California and federal law, claim preclusion bars relitigation of all issues that were *or could have been* raised in the prior actions. *See Rein*, 270 F.3d 895, 898-99 (federal

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

CONT... Reza Fateh Manesh

Chapter 7

law); *Tensor Grp. v. City of Glendale*, 14 Cal.App.4th 154, 160 (Ct. App. 1993) (California law).

Here, Debtor, Ms. Broomand and Mr. Fatehmanesh have had ample opportunity to assert their claims to the Delano Property. The state court, through the State Court Judgment, explicitly held that Ms. Broomand does not have an interest in the Delano Property. Subsequently, this Court, through the Ruling and the Judgment, held that Mr. Fatehmanesh is bound by the State Court Judgment and also does not have an interest in the Delano Property. The Court further held that the Delano Property is property of the estate. Both the State Court Judgment and this Court's Judgment are final judgments no longer subject to appeal. As such, Mr. Fatehmanesh and Ms. Broomand are barred from asserting an ownership interest in the Delano Property.

For the same reasons, Ms. Broomand and Mr. Fatehmanesh cannot challenge the validity of Mr. Pour's judgment lien. In the State Court Judgment, the state court held that Mr. Pour's judgment lien attached to the Delano Property. After Debtor attempted to relitigate the same issue before this Court by filing a complaint against Mr. Pour, the Court referenced the State Court Judgment and held that this Court does not have the power to overturn the State Court Judgment. Consequently, the issues of ownership of the Delano Property and the validity of Mr. Pour's judgment lien have been thoroughly litigated, and there are final judgments disposing of these issues. Neither Ms. Broomand nor Mr. Fatehmanesh has provided a legally sound reason to revisit the final judgments entered by this Court and the state court. The Court will not delay administration of this estate based on resurrected arguments already adjudicated by multiple courts.

III. CONCLUSION

The Court will grant the Motion.

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

FOOTNOTES

1. Certain pertinent facts are taken from the Court's ruling in the adversary proceeding initiated by the chapter 7 trustee against Hossein Fatehmanesh [1:15-ap-01237-VK, doc. 35].

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

CONT... Reza Fateh Manesh

Chapter 7

Party Information

Debtor(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**

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#10.00 Motion for counsel of record, Levene, Neale, Bender, Yoo & Brill L.L.P.,
to withdraw as counsel for the Debtor And Debtor In Possession

Docket 139

Tentative Ruling:

Grant.

I. BACKGROUND

On January 16, 2019, Coast to Coast Holdings, LLC ("Debtor") filed a voluntary chapter 11 petition. Debtor retained Levene, Neale, Bender, Yoo & Brill L.L.P. ("Levene Neale") as its general restructuring counsel.

In its schedule A/B, Debtor scheduled a fee simple interest in real property located at 1140 Henry Ridge Motorway, Topanga, CA 90290 (the "Property") [doc. 13]. In an amended schedule D [doc. 60], Debtor indicated that Keystone Real Estate Lending Fund ("Keystone") holds a secured claim against the Property. In an amended schedule E/F, Debtor also listed a disputed claim asserted by Joseph Leonardi.

On August 13, 2019, Debtor filed a motion for approval of a compromise between Debtor and Debtor's principals, on the one hand, and Mr. Leonardi, on the other hand (the "Leonardi Agreement") [doc. 88]. Keystone was not a party to the Leonardi Agreement. As relevant to this matter, in the Leonardi Agreement, the parties agreed to release their claims against each other, with the exception of any vandalism claim against Mr. Leonardi, and Mr. Leonardi agreed to dismiss all legal proceedings, claims, liens, filings and notices against Debtor. On September 11, 2019, the Court entered an order approving the Leonardi Agreement [doc. 105].

On November 6, 2019, Debtor filed a proposed amended chapter 11 plan (the "Plan") [doc. 117] and related disclosure statement [doc. 118]. Through the Plan, Debtor stated that it intends to fund the Plan by selling the Property or, as an alternative, obtaining financing in the amount of \$2.4 million.

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

CONT... Coast to Coast Holdings, LLC

Chapter 11

On November 27, 2019, Keystone filed a motion for relief from the automatic stay (the "RFS Motion") [doc. 126]. In the RFS Motion, Keystone indicated that it has a secured claim totaling \$2,193,167.02. Keystone also identified two other liens against the Property: (A) a \$60,000 lien in favor of one of Debtor's principals pursuant to a settlement approved by the Court; and (B) a \$69,032.73 tax lien. On December 18, 2019, the Court entered an order granting the RFS Motion, holding that there is no equity in the Property. The Court also noted that, because Keystone indicated it would reject the Plan and the Plan did not include an impaired, non-insider consenting class, the Property did not appear to be necessary to an effective reorganization. On December 19, 2019, the Court entered an order granting the RFS Motion [doc. 136].

On December 30, 2019, Debtor and one of its principals filed a complaint against Keystone in state court (the "State Court Action") [1:20-ap-01006-VK, doc. 1]. Debtor is represented by D'Attaray Law in the State Court Action. Through the State Court Action, Debtor asserts multiple causes of action under California law. On January 21, 2020, Keystone removed the State Court Action to this Court.

On January 3, 2020, Levene Neale filed a motion to withdraw as Debtor's counsel (the "Motion") [doc. 139]. According to Levene Neale, there is a conflict between Levene Neale and Debtor that has rendered Levene Neale's representation of Debtor impossible.

On January 23, 2020, Keystone filed an opposition to the Motion (the "Opposition") [doc. 142]. In the Opposition, Keystone contends that Debtor is attempting to "game the system" by invoking the automatic dismissal provision of Local Bankruptcy Rule ("LBR") 2091-1(d), which prohibits limited liability companies like Debtor from appearing without counsel. Keystone argues that Debtor is attempting to remove this Court's jurisdiction over the removed State Court Action by dismissing this bankruptcy case. Keystone requests that the Court deny the Motion until Debtor complies with the Leonardi Agreement by dismissing a state court action against Mr. Leonardi and that, subsequently, the Court should convert this case to one under chapter 7. On January 30, 2020, Levene Neale filed a reply [doc. 144], stating that Levene Neale is not involved with the State Court Action or any other state court matters, and that Keystone cannot enforce compliance with the Leonardi Agreement.

II. ANALYSIS

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

CONT... Coast to Coast Holdings, LLC

Chapter 11

Pursuant to the California Rule of Professional Conduct ("CRPC") 1.16(b)(4), a lawyer may withdraw from representing a client if:

- (4) the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively....

Pursuant to CRPC 1.16(d):

A lawyer shall not terminate a representation until the lawyer has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel, and complying with paragraph (e).

Courts have considered the following factors when evaluating a motion to withdraw: "(1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case." *CE Res., Inc. v. Magellan Grp., LLC*, 2009 WL 3367489, at *2 (E.D. Cal. Oct. 21, 2015); *see also Deal v. Countrywide Home Loans*, 2010 WL 3702459, at *2 (N.D. Cal. Sept. 15, 2010); and *Beard v. Shuttermart of Cal., Inc.*, 2008 WL 410694, at *2 (S.D. Cal. Feb. 13, 2008).

Here, there is cause to withdraw based on Levene Neale's assertion that there is an irreconcilable conflict with its client. Keystone does not dispute that there is cause to withdraw, but contends that the Court should deny withdrawal at this time to prevent dismissal of Debtor's bankruptcy case under LBR 2091-1(d).

However, Keystone has not articulated why dismissal of this action will prejudice any party, including Keystone. The Court granted the RFS Motion, allowing Keystone to proceed with foreclosure in state court. In addition, as noted by the Court in connection with the RFS Motion, Debtor is unlikely to confirm the Plan for lack of an impaired consenting class. Moreover, Keystone has not explained why conversion to a chapter 7 case would benefit unsecured creditors; the Court previously held that there is no equity in the Property and Debtor does not have any other significant assets that may be liquidated by a chapter 7 trustee.

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

CONT... **Coast to Coast Holdings, LLC**

Chapter 11

Further, there is no good reason this Court should adjudicate the State Court Action. The State Court Action involves California law, and Keystone is as able to defend itself before the state court as it would before this Court. Finally, as noted by Debtor, to the extent the Leonardi Agreement requires Debtor to dismiss its action against Mr. Leonardi (Debtor preserved its right to pursue Mr. Leonardi for vandalism), Keystone was not a party to the Leonardi Agreement and does not have standing to enforce the Leonardi Agreement. Given that there is no reasonable prospect of reorganization and a chapter 7 case would not yield a distribution for unsecured creditors, dismissal of this case will not prejudice creditors. If the Court grants the Motion and Debtor does not have replacement counsel, the Court will dismiss this case pursuant to LBR 2091-1(d).

III. CONCLUSION

The Court will grant the Motion.

Levene Neale must submit an 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

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

1:19-10448 Linda Moraga

Chapter 7

#11.00 Motion of chapter 7 Trustee objecting to the debtor's amended homestead exemption

Docket 69

Tentative Ruling:

Sustain pursuant to 11 U.S.C. § 522(g)(1).

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

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

Party Information

Debtor(s):

Linda Moraga

Represented By
Daniel King

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, February 6, 2020

Hearing Room 301

2:00 PM

1:19-11482 Kimball West Small

Chapter 7

#12.00 Motion for order authorizing Trustee to operate real property
and to employ property manager, effective December 10, 2019

Docket 50

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)

Represented By
David Seror
Jessica L Bagdanov

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

1:19-12082 Robert M. Gerstein

Chapter 7

#13.00 Motion for order:

- (1) Authorizing sale of estate's right, title and interest in real property free and clear of liens of the Internal Revenue Service, Greg Himes, and the Orantes Law Firm, P.C.;
- (2) Approving overbid procedure;
- (3) Approving payment of commissions; and
- (4) Waiving the Rule 6004(h) stay

Docket 101

Tentative Ruling:

Grant.

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)

Represented By
Carmela Pagay

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

Thursday, February 6, 2020

Hearing Room 301

2:00 PM

1:19-12646 Nora Los, LLC

Chapter 11

#14.00 Motion of KBP Dumont LLC, for extension of the deadline to file a complaint under Section 523(c) of the Bankruptcy Code, to the extent applicable

Docket 39

***** VACATED *** REASON: Case dismissed on 2/4/2020. The motion is moot.**

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, February 11, 2020

Hearing Room 301

9:30 AM

1:00-00000

Chapter

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

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

1:15-10157 Roy Guzman and Barbara J Jankovich

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

fr. 10/8/19; 11/12/19; 12/10/19;

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

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

1:15-10931 James Tomas and Imelda Tomas

Chapter 13

#48.00 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 105

*** VACATED *** REASON: Voluntary dismissal of motion filed 1/16/20

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**

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

1:15-10960 Christopher Douglas Hibbard

Chapter 13

#49.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 54

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Douglas Hibbard

Represented By
Michael Jay Berger

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

1:15-11825 Donald M. Baarns and Lisa A. Baarns

Chapter 13

#50.00 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 refunds

Docket 53

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, February 11, 2020

Hearing Room 301

10:30 AM

1:15-11825 Donald M. Baarns and Lisa A. Baarns

Chapter 13

#51.00 Trustee's motion for order modifying the plan to increase the plan payment pursuant to 11 U.S.C. sec 1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. sec 1307(c)(6)

Docket 51

Tentative Ruling:

Grant. Pursuant to 11 U.S.C. §§ 1329(a) and 1325(b), the plan payment will increase to \$1,645.88 per month.

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
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, February 11, 2020

Hearing Room 301

10:30 AM

1:15-13062 Hector Flores and Martha Flores

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 refunds

Docket 88

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, February 11, 2020

Hearing Room 301

10:30 AM

1:15-13338 Marcial Paredes Malpica

Chapter 13

#53.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

fr. 1/14/20

Docket 133

***** VACATED *** REASON: Order approving voluntary dismissal
entered 1/23/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marcial Paredes Malpica

Represented By
Michael F Chekian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

1:16-10126 Angela Cordero Britton

Chapter 13

#54.00 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; 12/10/19;

Docket 73

***** VACATED *** REASON: Notice of withdrawal filed 12/16/19**

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, February 11, 2020

Hearing Room 301

10:30 AM

1:16-10774 Michel A. Contreras, IV and Carmen Contreras

Chapter 13

#55.00 Trustee's Motion to Dismiss Case for Failure to Submit All Tax Refunds
fr. 12/10/19; 1/14/20

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, February 11, 2020

Hearing Room 301

10:30 AM

1:16-10787 Javier Flores

Chapter 13

#56.00 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 52

***** VACATED *** REASON: Entry made in error**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Javier Flores

Represented By
Phillip Myer

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

1:16-10925 Josue Soncuya Villanueva

Chapter 13

#57.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 12/10/19;

Docket 101

***** VACATED *** REASON: Withdrawal of motion filed 1/28/20. {Dkt.
105]**

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, February 11, 2020

Hearing Room 301

10:30 AM

1:16-11663 Robert Lazar Levitan and Catherine Palmerino Levitan

Chapter 13

#58.00 Trustee's Motion for Order Modifying the Plan to Increase the Plan Payment Pursuant to 11 U.S.C. Sec 1329(a) and the Percentage to be Paid to Unsecured Creditors, or in the Alternative, Dismissing the Chapter 13 Petition Due to Debtors' Failure to Make Debtors' Best Efforts to Repay Creditors Pursuant to 11 U.S.C. Sec 1307(c)(6)

Docket 68

Tentative Ruling:

The Court will continue this hearing to **March 10, 2020 at 10:30 a.m.**

On January 28, 2020, the debtors filed an opposition to the motion (the "Opposition") [doc. 58], an amended schedule I [doc. 71] and a declaration of current/post-petition income and expenses [doc. 72]. By **February 25, 2020**, the chapter 13 trustee must file a reply to the Opposition addressing the issues raised in the Opposition.

In the Opposition, the debtors contend that they cannot afford an increase in their plan payment as requested in the motion because, since 2018, their income has been reduced, and their expenses have been higher than anticipated. In the Opposition, one of the expenses the debtors identify is tuition for their son to attend Notre Dame High School, which is a private Catholic high school. The debtors represent that they paid \$13,475.00 for tuition for Fall 2017 through Spring 2018 and \$14,479.00 for tuition for Fall 2018 through Spring 2019.

Regarding the debtors' expense for religious school tuition, in a prior chapter 13 case, in connection with an objection to plan confirmation [Mark Efreem Rosenberg, 1:17-bk-13413-VK], the Court addressed this issue. The following is the analysis from the Court's ruling in that prior case:

Pursuant to 11 U.S.C. § 707(b)(2)(A)(ii)(IV),

[T]he debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed \$1,925 per year per child, to attend a private or public elementary or secondary school if the debtor

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

CONT...

Robert Lazar Levitan and Catherine Palmerino Levitan

Chapter 13

provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

"Generally, private school tuition is not a reasonably necessary expense." *Id.*; see also *Webb*, 262 B.R. at 690; *Univest-Coppell Village, Ltd. v. Nelson*, 204 B.R. 497 (E.D.Tex.1996). "When deciding whether private school education is reasonably necessary, bankruptcy courts examine the totality of the circumstances to determine whether the debtor's plan reflects a good faith effort to maximize repayment to creditors." *Id.* "Bankruptcy courts have considered both the circumstances of the private schooling and the terms of the debtor's proposed Chapter 13 plan." *Id.* "In particular, bankruptcy courts have examined whether debtors have chosen private school education only where a compelling circumstance exists, or have compensated for such an expense by eliminating other reasonably necessary expenses such as health insurance." *Id.*

In the Reply, the Debtor argues that the tuition expense is a reasonably necessary expense for a devout, Orthodox Jewish family. The Debtor contends that a Jewish education is not a preference; it is an imperative for the preservation of traditional rabbinic Judaism for future generations. Debtor further argues that he has made other sacrifices so that he can afford religious school tuition for his children.

There is no binding precedent in the Ninth Circuit regarding whether parochial school tuition is a reasonably necessary expense. In *In re Cleary*, 357 B.R. 369 (Bankr. Ct. S.C. 2006), the court examined this issue and in relevant part noted,

Prior to the enactment of BAPCPA the courts were split on the subject of reasonableness of

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

CONT...

Robert Lazar Levitan and Catherine Palmerino Levitan

Chapter 13

private school tuition as a deduction from income to arrive at disposable income. The majority of cases reject private school tuition as a reasonably necessary expense; at least in the absence of educational necessity or special needs. Earlier decisions expressed the "view that a debtor's creditors should not pay tuition for the debtor's children." *In re McNulty*, 142 B.R. 106 (Bankr.D.N.J.1992); *See also In re Jones*, 55 B.R. 462 (Bankr.D.Minn.1985) (Expressing the view, no longer held in many circles, that the public education was of high quality.). The fulcrum was to balance "creditor's rights against the appropriate basic needs of the debtors and their dependents." *Watson*[, 403 F.3d] at 8.

The public policy notion that private school tuition is a luxury expense for the purposes of calculating available income under either the chapter 7 means test or for the disposable income analysis in confirming a chapter 13 plan is swept aside by BAPCPA. An allowable expense is that for "each dependent child less than 18 years of age, not to exceed [\$1,925.00] per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonably necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I)." § 707(b)(2)(A)(ii)(IV). For some purposes at least, Congress has set forth the public policy that private school tuition can be a reasonable and necessary expense.

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

CONT...

Robert Lazar Levitan and Catherine Palmerino Levitan

Chapter 13

Cleary, 357 B.R. at 373. Pursuant to 11 U.S.C. § 707(b)(2)(A)(ii)(IV), the Debtor is entitled to spend \$1,925.00 annually for each of his three older children to attend a parochial school. That would be \$481.25 per month. The Debtor is spending \$1,414.58 per month. Thus, the Court needs to determine whether the remaining \$933.33 is a reasonably necessary expense.

In *Cleary*, the court found that the debtor was not limited to the expense ceiling for private school tuition. 357 B.R. at 374. The court stated,

The Debtor and his family have shown long term enrollment at parochial schools. All of the children attend private school, save one—who plans to return to private school next year. The Debtor's wife attended private school. The Debtor and his wife have strongly held religious convictions. The Debtor's wife would not work outside the home (and did not do so for many years) except to provide additional income to pay for private school tuition. In fact, Mrs. Cleary's pay check is reduced by the amount of tuition for the couple's children who attend the elementary school where she works. The family's sacrifice of other basic expenses to fund private school tuition is noteworthy and, in this case, the deciding factor for the Court in approving the necessity and reasonableness of the expense for private school tuition. *See In re Grawey*, 2001 WL 34076376 (Bankr.C.D.Ill.2001)(private school tuition and belt-tightening in the context of the dischargeability of student loans—sacrifices other basic necessities such as health care insurance). Debtor, if his testimony and

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

CONT...

Robert Lazar Levitan and Catherine Palmerino Levitan

Chapter 13

schedules are truthful, could file a chapter 7 petition and it is very likely that he would lose no assets to administration for creditors. He is curing a small arrearage on his home loan through the chapter 13 plan, but the amount is *de minimis*. Debtor is giving up furniture secured by purchase money loans. For these reasons the Court finds that private school tuition is a reasonable and necessary expense of the debtor.

Here, the Debtor has demonstrated long-term commitment to educating his children at parochial schools and deeply held religious convictions. The Debtor filed a declaration of Rabbi Eliezer Eidlitz regarding the importance of Jewish day school education for preserving Judaism [doc. 77]. Further, the Debtor has compensated by eliminating other reasonably necessary expenses. The Debtor has scheduled an expense for clothing, laundry and dry cleaning of only \$75.00 per month for six people. The Debtor has stated his family's food expense, at \$1,250.00, even though he could claim more. The Debtor has scheduled medical and dental expenses of \$0.00 and a health insurance expense of \$0.00 per month for six people. The Debtor has claimed an expense for entertainment of only \$75.00 per month, a small emergency allocation of only \$100.00 per month and \$0.00 per month for home repair allocation. Further, the Debtor has increased the distribution to unsecured creditors by putting forward a 60-month plan and receiving contributions from his family to increase his income [doc. 86, Exh. 5]. The Second Amended Plan provides a 23% distribution to unsecured creditors.

In examining the totality of the circumstances, it appears that the Debtor has made a good faith effort to maximize repayment to creditors, and parochial school tuition is a reasonably necessary expense of the Debtor.

Although the Court will not limit the Debtor's expenses for

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

CONT...

Robert Lazar Levitan and Catherine Palmerino Levitan

Chapter 13

private school to the statutory limit in 11 U.S.C. § 707(b)(2)(A)(ii)(IV), the *entire* \$933.33 is not a reasonably necessary expense. The Debtor is paying more for parochial school than the debtors in any of the cases cited by the Debtor. The Court recognizes that the Debtor has spent less in some areas in order to afford parochial school education. The Trustee has a standard no-look food allowance of \$250.00 per person per month [*see* doc. 79, Declaration of Mark Efrem Rosenberg, ¶ 12c.]. For a family of six, that would equal \$1,500.00 per month. That is \$250.00 more than the Debtor scheduled as an expense for food. Further, a reasonable budget for a family of six for clothing, laundry and dry cleaning would be \$175.00 per month, which is \$100.00 more than the Debtor scheduled as an expense. Accordingly, the Court finds that \$350.00 of the \$933.33 overage is reasonable and necessary, and the Debtor must commit an additional \$583.33 in disposable income to the Second Amended Plan. The Court will sustain the Creditor's Second Objection in part on this point.

If the chapter 13 trustee is objecting to the debtors' religious school expense, in the reply, the chapter 13 trustee should take into account the standards set forth in *In re Mark Efrem Rosenberg*, 1:17-bk-13413-VK, as discussed above.

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, February 11, 2020

Hearing Room 301

10:30 AM

1:16-12502 Julio Cesar Arias

Chapter 13

#59.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julio Cesar Arias

Represented By
Todd L Turoci

Trustee(s):

Elizabeth (SV) 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 11, 2020

Hearing Room 301

10:30 AM

1:17-10158 Bryan David Blair

Chapter 13

#60.00 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 1/16/20**

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-10463 Shawn Adam Johnson and Taniesah Evans

Chapter 13

#61.00 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. 12/10/19

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-10475 Princess Fletcher

Chapter 13

#62.00 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. 12/10/19

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

#63.00 Trustee's Motion for Order Modifying the Plan to Increase the Plan Payment Pursuant to 11 U.S.C. Sec 1329(a) and the Percentage to be Paid to Unsecured Creditors, or in the Alternative, Dismissing the Chapter 13 Petition Due to Debtors' Failure to Make Debtors' Best Efforts to Repay Creditors Pursuant to 11 U.S.C. Sec 1307(c)(6)

Docket 103

Tentative Ruling:

Grant. Pursuant to 11 U.S.C. §§ 1329(a) and 1325(b), the plan payment will increase to \$6,412.89 per month.

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

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-10681 Sandra Murray

Chapter 13

#64.00 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 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Murray

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 11, 2020

Hearing Room 301

10:30 AM

1:17-11041 Jasmine Bone

Chapter 13

#65.00 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. 12/10/19;

Docket 44

***** VACATED *** REASON: Motion withdrawn 02/20/2020**

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-11488 Dana Anthony Bambo and Carla Lombardo Bambo

Chapter 13

#66.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments
fr. 7/2/19; 9/10/19; 11/12/19; 1/14/20

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-11488 Dana Anthony Bambo and Carla Lombardo Bambo

Chapter 13

#67.00 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. 12/10/19;

Docket 50

***** VACATED *** REASON: Voluntary dismissal of motion filed 2/3/20**

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-12163 Cynthia Ann Donahue

Chapter 13

#68.00 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 refunds

Docket 49

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#69.00 Trustee's motion to dismiss case for failure to submit all tax refunds
fr. 12/10/19

Docket 38

*** VACATED *** REASON: Motion withdrawn 12/18/19 - jc

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

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

fr. 12/10/19;

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-12779 Henry Chukwu Okonkwo

Chapter 13

#71.00 Trustee's motion to dismiss case for failure to submit all tax refunds
fr. 12/10/19

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-12779 Henry Chukwu Okonkwo

Chapter 13

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

fr. 12/10/19;

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

#73.00 Trustee's Motion to dismiss case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax refunds

Docket 30

***** VACATED *** REASON: Motion withdrawn 1/30/20**

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

#74.00 Trustee's motion to dismiss case for failure to submit all tax refunds
fr. 12/10/19;

Docket 25

***** VACATED *** REASON: Motion withdrawn 1/3/20**

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

#75.00 Trustee's Motion for Order Modifying the Plan to Increase the Plan Payment Pursuant to 11 U.S.C. Sec 1329(a) and the Percentage to be Paid to Unsecured Creditors, or in the Alternative, Dismissing the Chapter 13 Petition Due to Debtors' Failure to Make Debtors' Best Efforts to Repay Creditors Pursuant to 11 U.S.C. Sec 1307(c)(6)

Docket 27

***** VACATED *** REASON: Withdrawal of motion filed 2/6/20 [Dkt.40]**

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-13138 John Orlanes Case and Lourdes Halili Case

Chapter 13

#76.00 Trustee's motion to dismiss case for failure to submit all tax refunds
fr. 12/10/19;

Docket 51

***** VACATED *** REASON: Motion withdrawn 12/18/19 - jc**

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-13190 Seferino Carlin

Chapter 13

#77.00 Trustee's motion to dismiss case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax refunds

Docket 38

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-13190 Seferino Carlin

Chapter 13

#78.00 Trustee's motion for order modifying the plan to increase the plan payment pursuant to 11 U.S.C. §1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. §1307(c)(6)

Docket 36

Tentative Ruling:

Grant. Pursuant to 11 U.S.C. §§ 1329(a) and 1325(b), the plan payment will increase to \$1,145.00 per month.

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

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, February 11, 2020

Hearing Room 301

10:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#79.00 Trustee's Motion to dismiss case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax refunds

Docket 142

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
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

1:18-10661 Andres Salcedo, Jr.

Chapter 13

#80.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments
fr. 1/14/20

Docket 53

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, February 11, 2020

Hearing Room 301

10:30 AM

1:18-10798 Narkell Hobbs-James

Chapter 13

#81.00 Trustee's motion to dismiss case for failure to submit all tax returns
fr. 12/10/19;

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

1:18-12645 David D Miller

Chapter 13

#82.00 Trustee's Motion to dismiss case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax refunds

Docket 36

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
Courtroom 301 Calendar**

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

#83.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 12/10/19

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

1:19-10022 Gus Albert Bolona and Deirdre Marie Bolona

Chapter 13

#84.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 12/10/19

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

Tuesday, February 11, 2020

Hearing Room 301

10:30 AM

1:19-11127 Mary Ann Noto

Chapter 13

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

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Ann Noto

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, February 11, 2020

Hearing Room 301

11:00 AM

1:14-11327 Linda L Johnson

Chapter 13

#86.00 Debtor's motion for waiver of financial management course certificate

Docket 89

Tentative Ruling:

The Court will continue this hearing to **March 10, 2020 at 11:00 a.m.**

Pursuant to Local Bankruptcy Rule 3017-1(x), all motions in a chapter 13 case, except for a few exceptions not applicable here, must be served on the chapter 13 trustee, the debtor (and the debtor's attorney, if any) and all creditors. Here, the debtor did not serve any creditors. **By February 18, 2020**, the debtor must file and serve notice of the continued hearing, the motion and deadline for opposition (14 days prior to the hearing) on all creditors.

Appearances on February 11, 2020 are excused.

Party Information

Debtor(s):

Linda L Johnson

Represented By
Thomas B Ure
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 11, 2020

Hearing Room 301

11:00 AM

1:15-13338 Marcial Paredes Malpica

Chapter 13

#87.00 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 136

Tentative Ruling:

On October 6, 2015, Marcial Paredes Malpica ("Debtor") filed a chapter 13 petition. On September 22, 2016, Debtor's chapter 13 plan was confirmed [doc. 103].

On December 9, 2019, the chapter 13 trustee (the "Trustee") filed a motion to dismiss Debtor's case for failure to make plan payments ("Motion to Dismiss") [doc. 133]. On December 23, 2019, Debtor filed an opposition to the Motion to Dismiss [doc. 134]. On January 14, 2020, the Court held a hearing on the Motion to Dismiss. Debtor's counsel did not appear.

On January 15, 2020, 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. 136], 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 January 28, 2020.

On January 20, 2020, Debtor filed a voluntary request for dismissal [doc. 139]. On January 23, 2020, the Court entered an order dismissing Debtor's chapter 13 case [doc. 141].

On January 20, 2020, Debtor's counsel timely filed his response ("Response") [doc. 140]. In his Response, Debtor's counsel states that he failed to calendar the January 14, 2020 hearing properly. Because the Motion to Dismiss has been resolved, the Court will discharge the OSC.

Appearances on February 11, 2020 are excused.

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

Tuesday, February 11, 2020

Hearing Room 301

11:00 AM

CONT... Marcial Paredes Malpica

Chapter 13

Party Information

Debtor(s):

Marcial Paredes Malpica

Represented By
Michael F Chekian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, February 11, 2020

Hearing Room 301

11:00 AM

1:16-10774 Michel A. Contreras, IV and Carmen Contreras

Chapter 13

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

fr. 1/14/20

Docket 103

Tentative Ruling:

In light of the stipulation between the chapter 13 trustee and the debtors, filed on February 7, 2020 [doc. 109], which resolves the chapter 13 trustee's motion to dismiss, the Court will discharge the OSC.

Appearances on February 11, 2020 are excused.

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, February 11, 2020

Hearing Room 301

11:00 AM

1:16-11116 Rodolfo Cortes and Doris Cortes

Chapter 13

#89.00 Order to show cause why debtors' counsel should not be sanctioned for failure to represent the debtors in connection with a motion for relief from stay

Docket 45

Tentative Ruling:

The Court will continue this hearing to **March 10, 2020 at 9:30 a.m.**

On April 14, 2016, Rodolfo Cortes and Doris Cortes ("Debtors") filed a chapter 13 petition. On April 28, 2016, Debtors filed a "Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys" ("RARA") [doc. 16]. Among other things, the RARA provides that after Debtors' bankruptcy case is filed, their attorney, Glenn Ward Calsada, agrees to respond timely to all motions filed in this case, including motions for relief from stay.

On November 26, 2019, The Bank of New York Mellon filed a motion for relief from the automatic stay (the "RFS Motion") [doc. 43]. Debtors did not timely file a response. On January 22, 2020, the Court held a hearing on the RFS Motion, Mr. Calsada did not appear. However, Debtors did. The Court continued the hearing to February 19, 2020 in order for Debtors to file a response.

On January 22, 2020, the Court issued an *Order to Show Cause Why Debtors' Counsel Should Not be Sanctioned for Failure to Represent the Debtors in Connection with a Motion for Relief from Stay* [doc. 45], on the grounds that Debtors' counsel failed to appear at the hearing on the RFS Motion as required by Local Bankruptcy Rule 3015-1(u)(1) and the RARA. Debtors' counsel was ordered to explain his failure to appear and file and serve on Debtors a written response to the OSC no later than January 31, 2020.

On January 25, 2020, Debtors' counsel timely filed his response ("Response") [doc. 51]. In his Response, Debtors' counsel states that Debtors did not contact him regarding the RFS Motion prior to the January 22, 2020 hearing. Debtors' counsel states that if Debtors had contacted him, he would have appeared. On January 24, 2020, Debtor's counsel filed a response to the RFS Motion on behalf of Debtors [doc.

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

Tuesday, February 11, 2020

Hearing Room 301

11:00 AM

CONT... **Rodolfo Cortes and Doris Cortes**
48].

Chapter 13

If Debtors' counsel or an appearance attorney appears at the continued hearing on the RFS Motion, then the Court may discharge the OSC. However, if no appearance is made at the continued hearing on the RFS Motion, the Court may impose sanctions on Debtors' counsel.

Appearances on February 11, 2020 are excused.

Party Information

Debtor(s):

Rodolfo Cortes

Represented By
Glenn Ward Calsada

Joint Debtor(s):

Doris Cortes

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, February 11, 2020

Hearing Room 301

11:00 AM

1:18-10661 Andres Salcedo, Jr.

Chapter 13

#90.00 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 56

Tentative Ruling:

On March 14, 2018, Andres Salcedo, Jr. ("Debtor") filed a chapter 13 petition. On August 13, 2018, Debtor's chapter 13 plan was confirmed [doc. 38].

On November 25, 2019, the chapter 13 trustee (the "Trustee") filed a motion to dismiss Debtor's case for failure to make plan payments ("Motion to Dismiss") [doc. 53]. On January 14, 2020, the Court held a hearing on the Motion to Dismiss. Debtor's counsel did not appear.

On January 15, 2020, 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. 56], 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 January 28, 2020.

On January 28, 2020, Debtor's counsel timely filed his response ("Response") [doc. 60]. In his Response, Debtor's counsel states that prior to that hearing, his office had reached out to the Debtor regarding the Motion to Dismiss, and Debtor has been unresponsive. Debtor's counsel also states that since that hearing, he has reached out to Debtor, but Debtor has been unresponsive. On January 28, 2020, Debtor's counsel withdrew Debtor's opposition to the Motion to Dismiss [doc. 59]. Based on the representations made in the Response and because Debtor's opposition has been withdrawn, the Court will discharge the OSC.

Appearances on February 11, 2020 are excused.

Party Information

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

Tuesday, February 11, 2020

Hearing Room 301

11:00 AM

CONT... Andres Salcedo, Jr.

Chapter 13

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, February 11, 2020

Hearing Room 301

11:00 AM

1:18-11680 Alba Interiano

Chapter 13

#91.00 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; 12/10/19

Stip and notice of settlement filed 1/15/20 doc # 125

Docket 88

***** VACATED *** REASON: Order approving stipulation entered 1/23/20 [Dkt.128]**

Tentative Ruling:

- NONE LISTED -

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, February 11, 2020

Hearing Room 301

11:00 AM

1:19-11998 Joseph Lisi and Cynthia Lisi

Chapter 13

#92.00 Motion re: objection to claim number 4 by claimant Heriberto Perez

fr, 12/10/19

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, Exhibit 1. Through the State Court Complaint, Mr. Perez alleges that Debtors were the "mutually agreed upon monitor" for their two year old granddaughter, Emma Victoria Perez ("Emma"). Opposition to Objection to Claim [doc. 28], Exhibit 2. Mr. Perez further alleges that, pursuant to a family court order, Debtors' daughter, Magdalena Lisi ("Magdalena"), was prohibited from having unsupervised visits with Emma based on, among other things, Magdalena's use of drugs and alcohol. *Id.*, Exhibits 2-3.

According to the State Court Complaint, on May 27, 2016, Debtors allowed Magdalena to have unsupervised visitation time with Emma, at which time Magdalena, while heavily intoxicated, lost control of her vehicle. *Id.*, Exhibit 2. Emma died as a result of the injuries sustained from the collision. *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 the allegations from the State Court Complaint.

On October 18, 2019, Debtors filed an objection to Mr. Perez's claim (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 Mr. Perez's daughter. Debtors also argue that Mr. Perez did not attach any documentation in support of his proof of claim.

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

Tuesday, February 11, 2020

Hearing Room 301

11:00 AM

CONT... Joseph Lisi and Cynthia Lisi

Chapter 13

On November 25, 2019, Mr. Perez filed an opposition to the Objection (the "Opposition") [doc. 28]. Mr. Perez asserts that there is a confidential family court order designating Debtors as monitors during Magdalena's supervised visits with Emma. Mr. Perez also asserts that Debtors owed a duty because they agreed to undertake supervision of Emma. Aside from the family court order requiring that Magdalena's visits be supervised, Mr. Perez also attaches a string of text messages between Mr. Perez and Debtors, through which the parties communicated about Emma's visits. Opposition, Exhibits 3-4. 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

A. Debtors' Lack of Documentation Argument

As a preliminary matter, the Court will not disallow a claim based on a lack of documentation attached to the proof of claim. *See In re Campbell*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005) ("[W]hen a debtor objects to a creditor's proof of claim that does not conform with Rule 3001(c) by including copies of the documentation on which it is based, the bankruptcy court should resolve the issues by reference to the usual burdens of proof associated with claims litigation."). Moreover, Mr. Perez attached documentation in support of his claim to the Opposition. In any event, the Court continued the hearing on the Objection to assess if Mr. Perez has a plausible claim against the estate; the Court is not weighing the evidence currently before the Court or otherwise adjudicating the issues related to Mr. Perez's claim.

B. Whether Debtors Had a Duty to Supervise the Child

"To state a claim for wrongful death, a plaintiff must plead (1) the tort (negligence or other wrongful act), (2) the resulting death, and (3) the damages, consisting of the pecuniary loss suffered by the heirs." *Whooley v. Tamalpais Union High Sch. Dist.*, 399 F.Supp.3d 986, 1002-03 (N.D. Cal. 2019) (citing *Lattimore v. Dickey*, 239 Cal.App.4th 959, 968 (Ct. App. 2015)). Here, Mr. Perez's claim of wrongful death is based on negligence. Under California law—

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

Tuesday, February 11, 2020

Hearing Room 301

11:00 AM

CONT...

Joseph Lisi and Cynthia Lisi

Chapter 13

The elements of negligence are: (1) defendant's obligation to conform to a certain standard of conduct for the protection of others against unreasonable risks (duty); (2) failure to conform to that standard (breach of the duty); (3) a reasonably close connection between the defendant's conduct and resulting injuries (proximate cause); and (4) actual loss (damages).

Id., at 998–99 (internal quotations omitted).

Debtors contend that Mr. Perez has not stated a claim against the estate because Debtors did not owe a duty to Mr. Perez. However, the pertinent question is whether Debtors owed a duty to *Emma*. As to that issue, Mr. Perez contends that a confidential order from family court designated Debtors as supervisors during Magdalena's visits with Emma. Mr. Perez has not provided this order to the Court; as a result, the Court cannot assess whether a duty arose from any such order.

Nevertheless, even without the order, Mr. Perez has stated a cognizable claim against Debtors. Generally, there is "no duty to act to protect others from the conduct of third parties." *Delgado v. Trax Bar & Grill*, 36 Cal.4th 224, 235 (2005). However, "a volunteer who, having no initial duty to do so, undertakes to provide protective services to another, will be found to have a duty to exercise due care in the performance of that undertaking if" certain conditions are met. *Margaret W. v. Kelley R.*, 139 Cal.App.4th 141, 162 (Ct. App. 2006). Under California law—

A negligent undertaking claim of liability to third parties requires evidence that: (1) the actor undertook, gratuitously or for consideration, to render services to another; (2) the services rendered were of a kind the actor should have recognized as necessary for the protection of third persons; (3) the actor failed to exercise reasonable care in the performance of the undertaking; (4) the actor's failure to exercise reasonable care resulted in physical harm to the third persons; and (5) either (a) the actor's carelessness increased the risk of such harm, or (b) the actor undertook to perform a duty that the other owed to the third persons, or (c) the harm was suffered because either the other or the third persons relied on the actor's undertaking.

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

Tuesday, February 11, 2020

Hearing Room 301

11:00 AM

CONT... Joseph Lisi and Cynthia Lisi

Chapter 13

O'Malley v. Hosp. Staffing Sols., 20 Cal.App.5th 21, 228 (Ct. App. 2018), *reh'g denied* (Feb. 15, 2018), *review denied* (Apr. 18, 2018).

Even if there is a special relationship based on, for example, an undertaking to protect a third party, "the existence of a duty still requires that the harm be reasonably foreseeable." *Margaret W.*, 139 Cal.App.4th at 153.

What is apparent from all these cases analyzing defendants' liability for the criminal conduct of a third party is that foreseeability is the crucial factor and that—no matter whether a heightened or lesser degree of foreseeability was required and no matter whether the actual crime committed or only similar conduct needed to be foreseen—*foreseeability must be measured by what the defendant actually knew.*

Id., at 156 (emphasis added).

Here, Debtors' declarations include testimony that they "did not become aware that Magdalena developed a drug and alcohol abuse problem *until Magdalena was over the age of 18.*" Declaration of Joseph Lisi, ¶ 18; Declaration of Cynthia Lisi, ¶ 18 (emphasis added). Given that the accident occurred when Magdalena was over the age of 18, Debtors' testimony does not establish that they did not have knowledge about Magdalena's drug and alcohol abuse at the relevant times. Moreover, there is currently no evidence regarding the extent of Debtors' knowledge about the family court order requiring that all of Magdalena's visits be supervised, but Debtors do acknowledge that they spoke to social workers about Magdalena and Emma. Declaration of Joseph Lisi, ¶ 29; Declaration of Cynthia Lisi, ¶ 29. Further, the text exchanges between Mr. Perez and Debtors indicate that the parties were in constant communication about Emma's visits; notably, in a text message sent by Mr. Perez to Mr. Lisi prior to the accident, Mr. Perez states—

Joe [yo]u guys agreed to b[e] with Maggie and Emma at all times. If you or Cindy can't do that let me know so we could get someone else to monitor Maggie's visits with [E]mma.

Opposition, Exhibit 4. In light of this record, Mr. Perez has stated a plausible claim against the estate based on a negligent undertaking theory. Even without a court order

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

Tuesday, February 11, 2020

Hearing Room 301

11:00 AM

CONT... Joseph Lisi and Cynthia Lisi

Chapter 13

designating Debtors as Emma’s monitors, Debtors may have voluntarily agreed to supervise Emma. If Debtors had actual knowledge sufficient to make Magdalena’s unsupervised actions foreseeable, Debtors may be held liable under the authorities above.

Of course, the Court does not have a complete record and, to demonstrate sufficiently that Debtors had actual knowledge, the parties likely will have to proceed to trial. At this time, the Court is only assessing if the record states a plausible claim against the estate. [FN1]. The Court does not intend to preclude adjudication of any of the issues herein by another court.

Given that this Court does not have the power to preside over a trial or otherwise liquidate Mr. Perez’s claim, 28 U.S.C. § 157(b)(5), the parties should discuss whether they prefer a withdrawal of the reference to District Court or relief from the automatic stay to pursue this action in state court. Alternatively, the parties may elect to stay this matter and attend mediation prior to proceeding in a different forum.

III. CONCLUSION

The parties should be prepared to discuss how they intend to proceed.

FOOTNOTES

1. The cases cited by Debtors involve fact intensive inquiries about foreseeability and the actual knowledge held by families of violent actors before particularly egregious conduct, such as sniping random passersby from a rooftop or escaping a facility and stabbing people in a nearby park. *See Wise v. Superior Court*, 222 Cal.App.3d 1008 (Ct. App. 1990); and *Rice v. Center Point, Inc.*, 154 Cal.App.4th 949 (Ct. App. 2007). In those cases, neither the specific conduct nor the victims were held to be foreseeable. Those facts are not analogous to a case where the parents of the perpetrator allegedly undertook supervision of the victim and may have been aware of the perpetrator’s addiction and propensity for driving under the influence.

Party Information

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

Tuesday, February 11, 2020

Hearing Room 301

11:00 AM

CONT... Joseph Lisi and Cynthia Lisi

Chapter 13

Debtor(s):

Joseph Lisi

Represented By
David S Hagen

Joint Debtor(s):

Cynthia Lisi

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 11, 2020

Hearing Room 301

11:00 AM

1:19-12744 Maria Leticia Vallecillo

Chapter 13

#93.00 Motion for 2004 examination of debtor and production of documents

Docket 15

***** VACATED *** REASON: Case dismissed on 2/10/2020 [doc. 31]. The motion is moot.**

Tentative Ruling:

Party Information

Debtor(s):

Maria Leticia Vallecillo

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, February 11, 2020

Hearing Room 301

11:00 AM

1:19-12827 Cesario L. Gonzales

Chapter 13

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

Docket 16

Tentative Ruling:

On January 15, 2020, the Court issued an *Order to Show Cause Why Debtor's Counsel Should Not be Sanctioned for Failure to Appear at Confirmation Hearing* (the "OSC") [doc. 16], on the grounds that the debtor's counsel failed to appear at the confirmation hearing as required by LBR 3015-1(d). The debtor's counsel was ordered to explain his failure to appear and file and serve on the debtor a written response to the OSC no later than January 28, 2020.

The debtor's counsel timely filed a response. However, contrary to the OSC, the debtor's counsel did not serve his response on the debtor. If the debtor's counsel or an appearance attorney appears at the continued confirmation hearing on February 11, 2020 at 9:30 a.m., then the Court may discharge the OSC. However, if no appearance is made at the continued confirmation hearing, the Court may impose sanctions on the debtor's counsel.

Party Information

Debtor(s):

Cesario L. Gonzales

Represented By
Stephen Parry

Trustee(s):

Elizabeth (SV) 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 11, 2020

Hearing Room 301

11:00 AM

1:19-12851 Neil Iain Barrington Taffe

Chapter 13

#95.00 Motion for authority to sell real property under LBR 3015-1(p)

Stip to continue filed 2/10/20

Docket 18

***** VACATED *** REASON: Order approving stip entered 2/10/20.
Hearing continued to 3/10/20 at 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Neil Iain Barrington Taffe

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, February 11, 2020

Hearing Room 301

11:30 AM

1:19-10186 Kenth Ove Arnold Andersson and Kersti Christine

Chapter 13

#96.00 Debtor's second amended motion to avoid lien under 11 U.S.C. § 522(f) of Investment Retrievers

Docket 57

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):

Kenth Ove Arnold Andersson

Represented By
Louis J Esbin

Joint Debtor(s):

Kersti Christine Andersson

Represented By
Louis J Esbin

Trustee(s):

Elizabeth (SV) 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 11, 2020

Hearing Room 301

11:30 AM

1:19-11917 Brenda Medina

Chapter 13

#97.00 Debtor's motion to avoid lien with PMGI Financial, LLC., a Limited Liability Co

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):

Brenda Medina

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 18, 2020

Hearing Room 301

8:30 AM

1:19-12389 Julie Ann Bartleson

Chapter 7

#1.00 Reaffirmation agreement between debtor and Golden 1 Credit Union

Docket 11

Party Information

Debtor(s):

Julie Ann Bartleson

Represented By
Jeffrey J Hagen

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 18, 2020

Hearing Room 301

8:30 AM

1:19-12478 Alvin Abadilla Doria and Auda Cabonilas Doria

Chapter 7

#2.00 Reaffirmation agreement between debtor and JPMorgan Chase Bank, N.A.

Docket 18

Party Information

Debtor(s):

Alvin Abadilla Doria

Represented By
Raymond J Bulaon

Joint Debtor(s):

Auda Cabonilas Doria

Represented By
Raymond J Bulaon

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Tuesday, February 18, 2020

Hearing Room 301

8:30 AM

1:19-12551 Julia Fernanda Duran

Chapter 7

#3.00 Reaffirmation Agreement between Debtor and
Wells Fargo Bank NA dba Wells Fargo Auto

fr. 1/21/20

Docket 19

Party Information

Debtor(s):

Julia Fernanda Duran

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, February 19, 2020

Hearing Room 301

9:30 AM

1:19-12456 Cristian Edmundo Cruz

Chapter 7

#1.00 Motion for relief from stay [AN]

ALLSTATE INSURANCE COMPANY
VS
DEBTOR

fr. 1/15/20

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.

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):

Cristian Edmundo Cruz

Represented By

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

CONT... Cristian Edmundo Cruz

Rodney N Vosguanian

Chapter 7

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

1:17-10673 Hermann Muennichow

Chapter 7

#2.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION AS TRUSTEE OF BUNGALOW
SERIES III TRUST
VS
DEBTOR

fr. 1/15/20

Docket 60

Tentative Ruling:

Deny. In the motion, the movant contends that the Court ruled in a related adversary proceeding, 1:17-ap-01069-VK (the "Adversary Proceeding"), that the real property at issue was not property of the estate. The movant argues that cause exists based on the Court's ruling in the Adversary Proceeding.

However, in the Adversary Proceeding, the Court did not rule that the real property at issue was not property of the bankruptcy estate. Further, the Court did not make a finding that there was a transfer of the real property from community property to separate property of Ms. Muennichow.

In the Adversary Proceeding, the Court ruled that, *assuming there was a transfer* of the real property, the chapter 7 trustee did not show that any such transfer was done with fraudulent intent. Because the movant did not allege any other grounds for relief in the motion, the Court will deny the motion.

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

Party Information

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

CONT... Hermann Muennichow

Chapter 7

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

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 19, 2020

Hearing Room 301

9:30 AM

1:15-12589 David Harrison Veitch

Chapter 13

#3.00 Motion for relief from stay [RP]

NEW REZ LLC DBA SHELLPOINT MORTGAGE SERVICING
VS
DEBTOR

fr. 12/11/19; 1/15/20

Docket 37

*** VACATED *** REASON: Voluntary dismissal of motion filed 2/6/20.
{Dkt. 41}

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Harrison Veitch

Represented By
Ali R Nader

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, February 19, 2020

Hearing Room 301

9:30 AM

1:16-11116 Rodolfo Cortes and Doris Cortes

Chapter 13

#4.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 1/22/20

Docket 43

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rodolfo Cortes

Represented By
Glenn Ward Calsada

Joint Debtor(s):

Doris Cortes

Represented By
Glenn Ward Calsada

Movant(s):

THE BANK OF NEW YORK

Represented By
Ashish R Rawat
Sumit Bode
John W Lackey
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, February 19, 2020

Hearing Room 301

9:30 AM

1:18-11995 Hans Adiatar Oliver

Chapter 13

#5.00 Motion for relief from stay [RP]

NATIONS DIRECT MORTGAGE LLC
VS
DEBTOR

fr. 1/15/20

Docket 50

***** VACATED *** REASON: Order entered on 1/16/2020 [doc. 56].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hans Adiatar Oliver

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

1:20-10006 Tarsicio Chavez Bernal

Chapter 13

#6.00 Motion in Individual Case for Order Imposing a Stay or
Continuing the Automatic Stay

fr. 1/22/20

Docket 11

Tentative Ruling:

At the prior hearing, held on January 22, 2020, the Court ordered the debtor to file and serve notice of the continued hearing and the deadline to file a written response on all creditors by January 28, 2020. It appears that the debtor did not timely file and serve such notice.

In addition, the Court ordered the debtor to lodge an order within seven days of the prior hearing. The debtor has not lodged any such order.

Ruling from January 22, 2020

The Court will grant the motion on an interim basis and continue the hearing to **February 19, 2020 at 9:30 a.m.**

The notice of the motion indicates that the motion is being heard on regular notice. However, the movant did not provide 21 days notice as required by Local Bankruptcy Rule 4001-1 and 9013-1(d).

By January 29, 2020, 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 January 22, 2020 are excused.

Party Information

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

CONT... Tarsicio Chavez Bernal

Chapter 13

Debtor(s):

Tarsicio Chavez Bernal

Represented By
Leroy Bishop Austin

Movant(s):

Tarsicio Chavez Bernal

Represented By
Leroy Bishop Austin

Trustee(s):

Elizabeth (SV) 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 19, 2020

Hearing Room 301

9:30 AM

1:19-13155 Shobert Vartan

Chapter 7

#7.00 Motion for relief from stay [AN]

BRIGHT ENABULELE
VS
DEBTOR

Docket 9

***** VACATED *** REASON: No chambers copy of motion provided.
Motion is not on calendar.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

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, February 19, 2020

Hearing Room 301

9:30 AM

1:19-13079 Alisa Barseghyan

Chapter 7

#8.00 Motion for relief from stay [PP]

ACAR LEASING LTD D/B/A/ GM FINANCIAL LEASING
VS
DEBTOR

Docket 13

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):

Alisa Barseghyan

Represented By
Aris Artounians

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 19, 2020

Hearing Room 301

9:30 AM

1:19-13183 Travis Owen Bugli and Julie Bainto Bugli

Chapter 7

#9.00 Motion for relief from stay [PP]

DAILMER TRUST
VS
DEBTOR

Docket 8

*** VACATED *** REASON: Notice of voluntary dismissal of motion filed
1/30/20 [dkt.12]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Travis Owen Bugli

Represented By
Navid Kohan

Joint Debtor(s):

Julie Bainto Bugli

Represented By
Navid Kohan

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

1:19-13158 Edgar M Roman

Chapter 7

#10.00 Motion for relief from stay [RP]

NEWREZ LLC D/B/A/ SHELLPOINT MORTGAGE SERVICING
VS
DEBTOR

Case dismissed 2/11/20

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.

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.*

On December 19, 2019 at 8:54 a.m., the debtor filed his chapter 7 petition [doc. 1].

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

CONT...

Edgar M Roman

Chapter 7

On January 19, 2019 at 9:00 a.m., movant conducted a foreclosure sale of the property [Declaration of Kelli J. Espinoza ("Espinoza Decl."), doc. 19, ¶ 6]. At the time of the foreclosure sale, movant was unaware of the debtor's bankruptcy petition. Movant became aware of the debtor's petition from a facsimile received on January 19, 2019 at 11:46 a.m.; subsequent to the foreclosure sale [Espinoza Decl., ¶ 6]. Consequently, retroactive relief from the automatic stay is appropriate in this case.

Moreover, the filing of this case appears to be part of a scheme to delay, hinder or defraud creditors. The original borrower, Carlos D. Orozco, and his wife have executed ten unauthorized grant deeds transferring a fractional interest in the property to nine different people for no consideration [doc. 18, Exhs. 5-13]. The debtor received his interest from one of these unauthorized grant deeds shortly before the petition date. In addition, this is the ninth case affecting the property since 2018 [Exh. 15].

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

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

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

Party Information

Debtor(s):

Edgar M Roman

Pro Se

Trustee(s):

David Seror (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

1:16-10096 Alexander Eshaghian

Chapter 13

#11.00 Motion for relief from stay [AN]

MICHELE BIDINGER
VS
DEBTOR

Docket 99

Tentative Ruling:

Deny, for the reasons discussed below.

I. BACKGROUND

On January 13, 2016, Alexander Eshaghian ("Debtor") filed a voluntary chapter 13 petition. On June 24, 2016, Debtor's chapter 13 plan was confirmed [doc. 40].

Debtor is the owner of a medical office that has several employees. One of those employees was Michele Bidinger ("Movant"). On October 5, 2017, Movant filed a complaint with the Department of Fair Employment and Housing (the "DFEH") against Debtor for claims that allegedly arose postpetition.

On August 8, 2018, Movant filed a *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Non-Bankruptcy Forum)* (the "First RFS Motion") [doc. 78]. On September 27, 2018, the Court entered an order granting the First RFS Motion to allow Movant to file a complaint with the DFEH [doc. 86]. However, that order stated that prosecution of the complaint was stayed pending further order of the Court. *Id.*

On December 6, 2018, Movant filed a request for assignment to the Court's mediation program [doc. 88]. On December 7, 2018, the Court entered an order granting that request and ordering the matter to mediation [doc. 89]. On June 4, 2019, the mediator filed a certificate regarding the conclusion of the mediation assignment, which stated that the parties did not settle [doc. 92].

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

CONT...

Alexander Eshaghian

Chapter 13

On January 21, 2020, Movant filed a *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Non-Bankruptcy Forum)* (the "Motion") [doc. 99]. In the Motion, Movant requests relief from the automatic stay to litigate to conclusion her claim in state court.

On January 30, 2020, Debtor filed an opposition to the Motion (the "Opposition") [doc. 102]. In the Opposition, Debtor argues that, under the framework of the *Curtis* factors, Movant has not shown sufficient cause to grant the Motion. Additionally, Debtor argues that Movant is not entitled to the extraordinary relief she seeks in the Motion.

II. JUDICIAL STANDARD

11 U.S.C. § 362(a) provides, in relevant part:

Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, ***applicable to all entities***, of—

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

...

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate . . .

(Emphasis added.)

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

CONT... Alexander Eshaghian

Chapter 13

Under 11 U.S.C. § 362(d)(1), a court may grant relief from the automatic stay "for cause."

III. DISCUSSION

The automatic stay bars the commencement or continuation of any proceeding against a debtor based on a claim that arose prepetition. 11 U.S.C. § 362(a)(1). Here, Movant alleges that all claims arose postpetition. Accordingly, the automatic stay does not prevent Movant from proceeding to liquidate her claim against Debtor in state court.

The Court need not discuss the *Curtis* factors, as argued by Debtor, because they are inapplicable. The Court is not granting relief from the automatic stay for Movant to liquidate her claims; there is no automatic stay barring Movant from doing so.

Notwithstanding the foregoing, the automatic stay in Debtor's case bars "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). The automatic stay also bars "any act to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. § 362(a)(4). Although Movant may proceed in state court against Debtor to liquidate her postpetition claim, the automatic stay prevents Movant from enforcing any judgment obtained in state court against property of Debtor's estate.

IV. CONCLUSION

As noted above, the automatic stay does not bar Movant from proceeding against Debtor in state court on account of her postpetition claim. However, the automatic stay bars enforcement of any judgment obtained in state court against property of Debtor's estate.

Accordingly, Movant may proceed under applicable nonbankruptcy law to enforce her remedies to proceed to final judgment in state court, provided that the stay remains in effect with respect to enforcement of any judgment against Debtor or property of Debtor's bankruptcy estate.

Deny request for annulment as moot. For the reasons discussed above, the automatic

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

CONT... Alexander Eshaghian

Chapter 13

stay did not apply to the filing of the DFEH complaint.

Any other request for relief is denied.

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

Party Information

Debtor(s):

Alexander Eshaghian

Represented By
Richard T Baum

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

1:19-11072 Jaime C Bagamaspad and Fatima Bagamaspad

Chapter 13

#12.00 Motion for relief from stay [RP]

US BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 43

*** VACATED *** REASON: No chambers copy of motion provided.
Motion is not on calendar.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime C Bagamaspad

Represented By
Stephen L Burton

Joint Debtor(s):

Fatima Bagamaspad

Represented By
Stephen L Burton

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 301

9:30 AM

1:20-10151 Elisa Fry Leonard

Chapter 13

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

Docket 12

*** VACATED *** REASON: Case dismissed on 2/10/2020 [doc. 15]. The motion is moot.

Tentative Ruling:

Party Information

Debtor(s):

Elisa Fry Leonard

Represented By
Ryan A. Stubbe

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 301

1:30 PM

1:13-11215 Cindy M Montano

Chapter 7

Adv#: 1:19-01147 Melendrez v. Montano

#14.00 Status conference re: complaint for determination of the dischargeability of a claim

Docket 1

Tentative Ruling:

On December 21, 2017, the plaintiff filed a complaint against the defendant, requesting nondischargeability of the alleged debt owed to him pursuant to 11 U.S.C. § 523(a)(2), (a)(3), (a)(4) and (a)(6) (the "Original Complaint") [1:17-ap-01111-VK, doc. 1]. On January 10, 2019, the Court entered an order dismissing the Original Complaint for failure to prosecute (the "Dismissal Order") [1:17-ap-01111-VK, doc. 18].

The Dismissal Order has not been vacated and remains in effect. Nevertheless, on December 10, 2019, the plaintiff filed another complaint, based on the same allegations as the Original Complaint, initiating this adversary proceeding.

Pursuant to Federal Rule of Civil Procedure 41(b)—

If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule--except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19--*operates as an adjudication on the merits.*

(emphasis added). In light of the above, the Court intends to issue an Order to Show Cause why this adversary proceeding should not be dismissed in accordance with the Dismissal Order.

Party Information

Debtor(s):

Cindy M Montano

Pro Se

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

Wednesday, February 19, 2020

Hearing Room 301

1:30 PM

CONT... Cindy M Montano

Chapter 7

Defendant(s):

Cindy M Montano

Pro Se

Plaintiff(s):

Antonio Melendrez

Represented By
Michael J Armenta

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Wednesday, February 19, 2020

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

- #15.00** 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; 12/4/19

Docket 1

*** VACATED *** REASON: Continued by Stip to 3/18/20 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

Bank of America, N.A, a National

Pro Se

Aztec Foreclosure Corporation., a

Pro Se

Nationstar Mortgage LLC, A

Pro Se

Plaintiff(s):

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, February 19, 2020

Hearing Room 301

1:30 PM

CONT... **Christopher Sabin Nassif**
Christopher Sabin Nassif

Represented By
Matthew D. Resnik

Chapter 11

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

Wednesday, February 19, 2020

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

#16.00 Pretrial conference re: complaint to determine dischargeability of debt under 11 U.S.C. sec 523(a)(2), (4), (6)

fr. 4/3/19; 10/2/19

Stip to continue filed 2/6/20

Docket 1

***** VACATED *** REASON: Order approving stip entered 2/7/20.
Hearing continued to 4/29/20 at 1:30 PM.**

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
Randye B Soref

Nilay Patel

Represented By
Randye B Soref

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

Wednesday, February 19, 2020

Hearing Room 301

1:30 PM

CONT... Remon Ramzy Hanna

Chapter 7

Mark Ross, Jr.

Represented By
Randye B Soref

Raied Francis

Represented By
Randye 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, February 19, 2020

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mizrahi, an Individual et al

- #17.00** Status conference re: first amended complaint for:
1. Fraud and intentional deceit;
 2. Breach of the covenant of good faith and fair dealing;
 3. Agency by estoppel;
 4. Financial elder abuse

Docket 25

***** VACATED *** REASON: Continued to 03/19/2020 at 1:30 p.m. per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharon Mizrahi

Represented By
Shai S Oved

Defendant(s):

Sharon Mizrahi, an Individual

Pro Se

Sharon Mizrahi dba Divine Builders

Represented By
Shai S Oved

Divine Builders

Pro Se

Does 1 Through 10, Inclusive

Pro Se

Plaintiff(s):

Patricia Bartlett

Represented By
E. Samuel Johnson

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, February 19, 2020

Hearing Room 301

1:30 PM

CONT... Sharon Mizrahi

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 19, 2020

Hearing Room 301

1:30 PM

1:19-11696 Peter M. Seltzer

Chapter 11

Adv#: 1:19-01151 Kessler v. Seltzer

#18.00 Status conference re: complaint for the denial of discharge pursuant to 11 U.S.C. sec 727(a) and non-dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2), (a) (4) and (a)(6)

Docket 1

Tentative Ruling:

The Court will set the defendant's motion to dismiss for hearing at **2:30 p.m. on April 29, 2020**. The defendant must file and serve notice of the hearing. The Court also will continue this status conference to 2:30 p.m. on April 29, 2020, to be held with the hearing on the motion to dismiss.

Appearances on February 19, 2020 are excused.

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

Defendant(s):

Peter M. Seltzer

Pro Se

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies

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

Wednesday, February 19, 2020

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

#20.00 Motion to vacate the stipulation of settlement

fr. 1/15/20

Docket 52

***** VACATED *** REASON: Notice of withdrawal of motion filed 2/4/20.
[Dkt.67]**

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, February 19, 2020

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

#19.00 Motion for rule 11 sanctions against defendant and his counsel
fr. 12/4/19 (pursuant to 11/20/19 calendar); 1/15/20

Docket 49

***** VACATED *** REASON: Withdrawal of motion filed 2/5/20. [Dkt.68]**

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, February 19, 2020

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

#21.00 Status conference re: parties' dispute concerning settlement

fr. 11/20/19; 1/15/20

Docket 1

*** VACATED *** REASON: Case closed 2/7/2020 [doc. 70].

Tentative Ruling:

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, February 19, 2020

Hearing Room 301

2:30 PM

1:19-11034 John Bicz

Chapter 7

Adv#: 1:19-01125 Peterson v. Bicz

#22.00 Plaintiff's motion for default judgment under LBR 7055-1

Docket 11

***** VACATED *** REASON: Continued by stip to 3/18/20 at 2:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Bicz

Represented By
M. Jonathan Hayes

Defendant(s):

John Bicz

Represented By
M. Jonathan Hayes

Plaintiff(s):

Ben Peterson

Represented By
Shai S Oved

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 19, 2020

Hearing Room 301

2:30 PM

1:19-11643 Larry M Halpern

Chapter 7

Adv#: 1:19-01108 Business Funding Source v. Halpern

#23.00 Motion to Dismiss Adversary Proceeding for Failure to State Cause of Action

Docket 15

***** VACATED *** REASON: per order entered on 1/23/20 doc# 29**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Larry M Halpern

Represented By
David S Hagen

Defendant(s):

Larry M Halpern

Represented By
David S Hagen

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**

Thursday, February 20, 2020

Hearing Room 301

10:30 AM

1:15-11434 YKA Industries Inc a California Corporation

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Amy L. Goldman, Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith LLP, Attorneys for Chapter 7 Trustee

SLBiggs, A Division of SingerLewak, Accountants for Trustee

fr. 1/16/20

Docket 242

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee – approve fees of \$40,386.67 and reimbursement of expenses of \$272.94, 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.

Lewis Brisbois Bisgaard & Smith LLP (“Lewis Brisbois”), counsel to chapter 7 trustee – approve fees of \$148,879.50 and reimbursement of expenses of \$2,687.82, pursuant to 11 U.S.C. § 330, on a final basis. Lewis Brisbois is authorized to collect 100% of the approved fees and reimbursement of expenses. The Court will not approve \$4,196.00 in fees for the reasons stated below.

Lewis Brisbois also requested that the Court approve \$12,881.50 in fees and \$276.57 in reimbursement of expenses for services provided as general counsel to the chapter 11 trustee. The Court will approve \$11,711.50 in fees and reimbursement of expenses of \$276.57, pursuant to 11 U.S.C. § 330, on a final basis. In accordance with the chapter 7 trustee’s proposed distribution, Lewis Brisbois is not authorized to collect any of the approved fees and reimbursement of expenses. The Court will not approve \$1,170.00 in fees for the reasons stated below.

SLBiggs, A Division of SingerLewak (“SLBiggs”), accountant to chapter 7 trustee – approve fees of \$30,071.50 and reimbursement of expenses of \$372.48, pursuant to 11 U.S.C. § 330, on a final basis. The Court will not approve \$825.00 in fees for the reasons stated below. SLBiggs is authorized to collect 100% of the approved fees and

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

Thursday, February 20, 2020

Hearing Room 301

10:30 AM

CONT... YKA Industries Inc a California Corporation

Chapter 7

reimbursement of expense.

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).

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

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

Thursday, February 20, 2020

Hearing Room 301

10:30 AM

CONT... YKA Industries Inc a California Corporation
estate.

Chapter 7

In *Garcia*, the BAP upheld the bankruptcy court’s refusal to approve fees for preparation of employment applications, observing that “absent a showing by applicant to the contrary, routine employment applications remain a trustee duty.” *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained “a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee.” *Id.* at 727.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed by Lewis Brisbois while general counsel to the chapter 7 trustee for the services identified below. It appears that these fees are for services that are duplicative of those that could and should have been performed by the chapter 7 trustee, as a trustee.

Category	Timekeeper	Date	Description	Time	Rate	Fee
Asset Analysis and Recovery	AV	7/22/15	Telephone call to Amy Goldman re auction sale, off of Andrew Krayndler	0.20	\$410.00	\$82.00
Asset Analysis and Recovery	AV	7/22/15	Reviewed email from Blake Linneman re offer by Andrew Krayndler for personal property	0.30	\$410.00	\$123.00
Asset Analysis and Recovery	AV	7/22/15	Drafted reply to email from Blake Lindeman re offer by Andrew Krayndler for assets of estate	0.10	\$410.00	\$41.00
Asset Analysis and Recovery	AV	7/22/15	Reviewed further rmail from Blake Lindeman re offer by Andrew Krayndler for personal property	0.10	\$410.00	\$41.00
Asset Analysis and Recovery	AV	7/22/15	Reviewed email from Amy Goldman re offer by Andrew Krayndler for assets of estate	0.30	\$410.00	\$123.00
Asset Disposition	AV	7/20/15	Drafted email to Bryan Brannon re offer on personal property promised by Andrew Krayndler	0.10	\$410.00	\$41.00
Asset Disposition	AV	7/20/15	Reviewed email from Bryan Brannon re offer on personal property promised by Andrew Krayndler	0.10	\$410.00	\$41.00
Asset Disposition	AV	7/20/15	Drafted further email to Bryan Brannon re offer on personal property promised by Andrew Krayndler	0.10	\$410.00	\$41.00

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

Thursday, February 20, 2020

Hearing Room 301

10:30 AM

CONT... YKA Industries Inc a California Corporation

Chapter 7

Asset Disposition	AV	7/28/15	Drafted email to Blake Lindeman re sale of assets to Andrew Krayndler	0.10	\$410.00	\$41.00
Asset Disposition	AV	7/28/15	Reviewed reply email from Blake Lindeman re sale of assets to Andrew Krayndler	0.10	\$410.00	\$41.00
Asset Disposition	AV	7/29/15	Drafted email to Blake Lindeman re sale of assets to Andrew Krayndler	0.10	\$410.00	\$41.00
Asset Disposition	AV	7/29/15	Telephone call from Blake Lindeman re sale of assets to Andrew Krayndler	0.10	\$410.00	\$41.00
Asset Disposition	DK	8/3/15	Conferred with Amy Goldman re: offer from Andrew Krayndler to purchase certain personal property and estate assets	0.20	\$225.00	\$45.00
Asset Disposition	AV	8/4/15	Drafted email to Blake Lindeman re further changes in APA with Andrew Krayndler	0.10	\$410.00	\$41.00
Asset Disposition	DK	8/17/15	Reviewed and analyzed trustee's motion to approve sale of certain assets to Andrew Krayndler	0.40	\$225.00	\$90.00
Asset Disposition	AV	9/17/15	Meeting with Andrew Krayndler re payment of purchase price	0.10	\$410.00	\$41.00
Claims Administration & Objections	AV	11/2/15	Reviewed claim of Carniel Cohen to determine extent of his alleged lien against Bradley Street	1.30	\$410.00	\$533.00
Claims Administration & Objections	AV	11/2/15	Reviewed claim of Erice Krayndler for information regarding transfers and liens	0.80	\$410.00	\$328.00
Claims Administration & Objections	AV	11/2/15	Reviewed claim of Andrew Krayndler for information regarding transfers and liens	0.30	\$410.00	\$123.00
Claims Administration & Objections	DK1	11/3/15	Confer with Amy Goldman re: request for additional documents in support of Erika Krayndler's amended proof of claim filed November 2, 2015	0.10	\$225.00	\$22.50

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

Thursday, February 20, 2020

Hearing Room 301

10:30 AM

CONT... YKA Industries Inc a California Corporation

Chapter 7

Claims Administration & Objections #4	LDS	4/24/18	Analyze various claims in case including admin claims for purposes of objecting to certain claims	0.20	\$225.00	\$45.00
Fee/Employment Applications	DK1	7/16/15	Revised Trustee's application to employ chapter 7 bankruptcy counsel	0.40	\$225.00	\$90.00
Fee/Employment Applications	DK1	7/17/15	Drafted notice of application to employ chapter 7 bankruptcy counsel	0.30	\$225.00	\$67.50
Fee/Employment Applications	DK1	7/20/15	Revised and finalized application to employ chapter 7 bankruptcy counsel and notice thereof	0.40	\$225.00	\$90.00
Fee/Employment Applications	DK1	7/21/15	Analyzed application to employ accountant filed by Sam Biggs and conferred with Annie Verdries regarding primary asset of BK estate	0.20	\$225.00	\$45.00
Fee/Employment Applications	DK1	7/22/15	Email to Sam Biggs, proposed accountant, regarding error on application to employ accountant	0.10	\$225.00	\$22.50
Fee/Employment Applications	DK1	7/22/15	Review and analyze notice of application to employ Sam Biggs as accountant	0.30	\$225.00	\$67.50
Fee/Employment Applications	DK1	7/22/15	Analyzed notice of errata to correct estate asset filed by Sam Biggs	0.20	\$225.00	\$45.00
Fee/Employment Applications	DK1	7/29/15	Finalized declaration of non-opposition to application to employ chapter 7 counsel	0.20	\$225.00	\$45.00
Fee/Employment Applications	DK1	7/29/15	Drafted proposed order approving application to employ chapter 7 bankruptcy counsel	0.30	\$225.00	\$67.50
Fee/Employment Applications	DK1	8/7/15	Drafted proposed order approving employment of LBBS as trustee's chapter 7 counsel	0.20	\$225.00	\$45.00
Fee/Employment Applications	DK1	8/17/15	Drafted supplemental disclosure to trustee's application to employ general bankruptcy counsel and declaration of Annie Verdries in support thereof	0.90	\$225.00	\$202.50

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

Thursday, February 20, 2020

Hearing Room 301

10:30 AM

CONT... YKA Industries Inc a California Corporation

Chapter 7

Fee/Employment Applications	AV	8/17/15	Work on supplemental disclosure for application to employ general bankruptcy counsel by trustee	0.20	\$410.00	\$82.00
Fee/Employment Applications	DK1	9/4/15	Drafted Trustee's application to employ broker to administer Bradley Avenue property	1.80	\$225.00	\$405.00
Fee/Employment Applications	DK1	9/4/15	Drafted notice of application to employ brokers for service on all schedule creditors and interested parties	0.40	\$225.00	\$90.00
Fee/Employment Applications	DK1	9/14/15	Revised application to employ broker and finalized exhibits in support thereof	0.40	\$225.00	\$90.00
Fee/Employment Applications	DK1	9/17/15	Revised Trustee's application to employ real estate agents by including supplemental information on co-broker, Ron Rohrer or Pacific West	0.40	\$225.00	\$90.00
Fee/Employment Applications	DK1	9/21/15	Corresponded with Bill Friedman regarding draft application to employ brokers for administration of the Bradley Avenue property	0.20	\$225.00	\$45.00
Fee/Employment Applications	DK1	10/13/15	Drafted proposed order approving employment of Trustee's real estate agents	0.30	\$225.00	\$67.50
Fee/Employment Applications	DK1	10/13/15	Prepared declaration of non-opposition to application to employ real estate agents	0.10	\$225.00	\$22.50
Fee/Employment Applications	DK1	10/13/15	Prepared and drafted notice of lodgment of proposed order approving Trustee's application to employ real estate agents	0.10	\$225.00	\$22.50
Fee/Employment Applications	SLM3	8/11/17	Draft declaration of Lovee D. Sarenas re: Lewis Brisbois Bisgaard & Smith's employment as bankruptcy counsel	0.30	\$110.00	\$33.00

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed by Lewis Brisbois while general counsel to the chapter 11 trustee for the services identified below. It appears that these fees are for services that are duplicative of those that could and should have been performed by the chapter 11

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

Thursday, February 20, 2020

Hearing Room 301

10:30 AM

CONT... YKA Industries Inc a California Corporation
trustee, as a trustee.

Chapter 7

Category	Timekeeper	Date	Description	Time	Rate	Fee
Fee/Employment Applications	DK	6/29/15	Drafted application to employ general counsel for chapter 11 trustee	1.80	\$225.00	\$405.00
Fee/Employment Applications	DK	6/29/15	Corresponded with Annie Verdries re: employment as general bankruptcy counsel for chapter 11 trustee	0.10	\$225.00	\$22.50
Fee/Employment Applications	DK	6/29/15	Drafted declaration of Doah Kim and exhibits in support of application to employ counsel for chapter 11 trustee	0.30	\$225.00	\$67.50
Fee/Employment Applications	DK	6/30/15	Conferred with Annie Verdries re application to employ field agent and bankruptcy counsel prior to July 9, 2015 status conference	0.30	\$225.00	\$67.50
Fee/Employment Applications	DK	6/30/15	Revised and updated chapter 11 trustee's application to employ general bankruptcy counsel and declaration of Doah Kim in support thereof	0.70	\$225.00	\$157.50
Fee/Employment Applications	DK	7/10/15	Telephone call with Najah Shariff of USA office re:" trustee's employment of field agent	0.20	\$225.00	\$45.00
Fee/Employment Applications	DK	7/14/15	Drafted application to employ bankruptcy counsel for chapter 7 trustee, post case conversion and declaration in support thereof	1.80	\$225.00	\$405.00

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 chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be

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

Thursday, February 20, 2020

Hearing Room 301

10:30 AM

CONT... YKA Industries Inc a California Corporation
disallowed.").

Chapter 7

In accordance with the foregoing, the Court does not approve the fees billed by Lewis Brisbois, while general counsel to the chapter 7 trustee, for the services identified below:

Category	Timekeeper	Date	Description	Time	Rate	Fee
Asset Analysis and Recovery	LDS	3/28/17	Review debtor's case docket and status of case and bankruptcy filing and the order appointing trustee	0.60	\$225.00	\$135.00
Litigation	DK	1/26/16	Contact court guidelines re: setting hearings on motions to dismiss adversary proceedings	0.20	\$225.00	\$45.00
Litigation	DK	1/27/16	Telephone call with court to confirm hearing date on Carmiel Cohen's motion to dismiss adversary	0.10	\$225.00	\$22.50
Litigation	DK	2/3/16	Prepare notice of lodgment re: proposed summary judgment	0.30	\$225.00	\$67.50
Litigation	DK	2/8/16	Telephone to bankruptcy court: hearing on trustee's motion for summary judgment against Carmiel Cohen	0.10	\$225.00	\$22.50

The Court also does not approve the fees billed by SLBiggs for the services identified below because the services provided were for secretarial/clerical work:

Category	Timekeeper	Date	Description	Time	Rate	Fee
Case Review	Eric Corriveau	11/18/15	Review status of case and current docket report	0.3	\$375.00	\$112.50
Case Review	Jessica Nadler	5/23/16	Review Pacer for case activity, update file notes	0.3	\$325.00	\$97.50
Asset Recovery and Analysis	Jessica Nadler	12/9/15	Review case status on Pacer and new filings	0.6	\$325.00	\$195.00

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

Thursday, February 20, 2020

Hearing Room 301

10:30 AM

CONT... YKA Industries Inc a California Corporation

Chapter 7

Tax Preparation	Samuel Biggs	3/17/16	Review pacer regarding pleading and information on sale of real and personal property and other items	0.8	\$525.00	\$420.00
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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):

YKA Industries Inc a California

Represented By
G Bryan Brannan

Trustee(s):

Amy L Goldman (TR)

Represented By
Doah Kim
Annie Verdries
Lovee D Sarenas

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

Thursday, February 20, 2020

Hearing Room 301

1:00 PM

1:14-15621 Edward D. Roane

Chapter 11

#2.00 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; 8/22/19

Docket 1

***** VACATED *** REASON: Order closing case on interim basis entered
9/16/19. Case Closed.**

Tentative Ruling:

- NONE LISTED -

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 20, 2020

Hearing Room 301

1:00 PM

1:19-11843 14554 Friar, LLC

Chapter 11

#3.00 Status conference re: chapter 11 case

fr 9/12/19; 10/3/19

Docket 1

***** VACATED *** REASON: Case dismissed 1/24/20.**

Tentative Ruling:

- NONE LISTED -

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, February 20, 2020

Hearing Room 301

1:00 PM

1:20-10057 2300 Pisani, A Nevada Domestic LLC

Chapter 11

#4.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The debtor has not filed a January 2020 monthly operating report. In addition, although the debtor's counsel signed the status report under penalty of perjury, the debtor has not provided a declaration by its principal.

Party Information

Debtor(s):

2300 Pisani, A Nevada Domestic

Represented By
Michael R Totaro

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

Thursday, February 20, 2020

Hearing Room 301

1:00 PM

1:20-10093 Robert Alderman and Noni Alderman

Chapter 11

#5.00 U.S. Trustee's motion to dismiss or convert case under 11 U.S.C. § 1112(b)

Docket 15

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 1112(b)(1) and (b)(4)(C), (F) and (H), this case will be converted to one under chapter 7. Based upon the Court's review of the debtors' schedules of assets and liabilities and statement of financial affairs, filed on January 28, 2020, there may be assets in the debtors' 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. Moreover, the debtors may be eligible for a chapter 7 discharge.

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):

Robert Alderman

Represented By
Stephen L Burton

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

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

Thursday, February 20, 2020

Hearing Room 301

2:00 PM

1:09-26982 Tag Entertainment Corp.

Chapter 7

- #6.00** Motion of Chapter 7 Trustee for entry of order:
(A) Approving sale of the estates right, title and interest in the debtors assets pursuant to 11 U.S.C. § 363;
(B) Finding buyer qualifies as a good faith purchaser pursuant to 11 U.S.C. § 363(M);
(C) Approving overbid procedures; and
(D) Waiving Fed. R. Bankr. P. 6004(H) Stay

Docket 232

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Tag Entertainment Corp.

Represented By
Jonathan David Leventhal

Trustee(s):

Diane C Weil (TR)

Represented By
Lawrence A Diamant
Diane Weil
Edward M Wolkowitz
Anthony A Friedman
Lindsey L Smith
James A Bush
Richard S Van Dyke

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

Thursday, February 20, 2020

Hearing Room 301

2:00 PM

1:17-10378 Kandy Kiss of California, Inc. and Mary Teresa Barnes

Chapter 7

#7.00 Chapter 7 Trustee's motion for order authorizing and approving stipulation between Howard M. Ehrenberg, Chapter 7 Trustee, and Brutzkus Gubner Rozansky Seror Weber LLP for allowance of administrative expense claim and withdrawal and disallowance of secured and general unsecured claim

Docket 222

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

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

Thursday, February 20, 2020

Hearing Room 301

2:00 PM

1:18-10385 Jorge Alberto Romero II

Chapter 7

#8.00 Objection by Chapter 7 Trustee to Debtor's claimed exemption
fr. 1/9/20(stip); 1/23/20

Docket 71

*** VACATED *** REASON: Order resolving matter entered 2/19/20 [doc. 99].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Alberto Romero II

Represented By
Stella A Havkin

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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

Thursday, February 20, 2020

Hearing Room 301

2:00 PM

1:18-12354 **MidiCi Group, LLC**

Chapter 11

#9.00 Debtor's objection to claim of Aribella, Inc.
[Proof of claim no. 17]

Docket 226

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, February 20, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#10.00 Debtor's objection to claim of Shaver Enterprises, Inc..
[Proof of Claim No. 15]

Docket 230

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, February 20, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#11.00 Debtor's objection to claim of Stephen Caurro
[Proof of Claim No. 24]

Docket 229

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, February 20, 2020

Hearing Room 301

2:00 PM

1:20-10057 2300 Pisani, A Nevada Domestic LLC

Chapter 11

- #12.00** Debtor's amended motion for order authorizing:
- (1) Sale of property at 2300 Pisani Pl, Venice, CA 90291-4827 outside the ordinary course of business pursuant to section 363(b);
 - (2) Without overbids;
 - (3) For a determination of good faith purchaser pursuant to §363(m)
 - (4) Authorizing disbursement of proceeds; and
 - (5) Waiving the 14-day stay imposed by FRBP 6004

Docket 21

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

2300 Pisani, A Nevada Domestic

Represented By
Michael R Totaro

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

Wednesday, February 26, 2020

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; 11/6/19; 12/4/19; 1/8/20

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, February 26, 2020

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, February 26, 2020

Hearing Room 301

9:30 AM

1:19-12998 Nancy Jannete Mendez-Vasquez

Chapter 13

#2.00 Motion for relief from stay [RP]

SERGEY POLISHCHUK
VS
DEBTOR

fr. 1/15/20

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.

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

Party Information

Debtor(s):

Nancy Jannete Mendez-Vasquez

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 26, 2020

Hearing Room 301

9:30 AM

1:20-10083 Padma Vanjani

Chapter 7

#3.00 Motion for relief from stay [UD]

RICARDO GOMEZ
VS
DEBTOR

Docket 21

*** VACATED *** REASON: Case dismissed on 2/20/2020 [doc. 30]. The motion is moot.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Padma Vanjani

Represented By
G Bryan Brannan

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 26, 2020

Hearing Room 301

9:30 AM

1:20-10217 Ulises Duran

Chapter 7

#4.00 Motion for relief from stay [PP]

LOGI FEDERAL CREDIT UNION
VS
DEBTOR

Docket 9

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Ulises Duran

Pro Se

Movant(s):

LOGIX FEDERAL CREDIT

Represented By
Karel G Rocha

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

Wednesday, February 26, 2020

Hearing Room 301

9:30 AM

CONT... Ulises Duran

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, February 26, 2020

Hearing Room 301

9:30 AM

1:19-13075 Eduardo Palacios

Chapter 7

#5.00 Motion for relief from stay [PP]

AMERICAN HONDA FINANCE CORPORATION
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):

Eduardo Palacios

Pro Se

Movant(s):

American Honda Finance

Represented By
Vincent V Frounjian

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

Wednesday, February 26, 2020

Hearing Room 301

9:30 AM

CONT... Eduardo Palacios

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, February 26, 2020

Hearing Room 301

9:30 AM

1:19-11336 Cristian B Fuentes

Chapter 7

#6.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

Docket 23

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 November 5, 2019. Regarding the movant's awareness, movant submitted a declaration testifying that it was not notified of the debtor's bankruptcy case until November 6, 2019, which was after the sale.

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

Wednesday, February 26, 2020

Hearing Room 301

9:30 AM

CONT... Cristian B Fuentes

Chapter 7

On May 29, 2019, the debtor filed a voluntary chapter 7 petition. The debtor did not list an interest in the real property at issue in the debtor's schedules. Additionally, the debtor did not list the movant in the debtor's master mailing list. On May 27, 2019, a grant deed was allegedly executed whereby Baldev K. Singh and Baljit Singh purported to transfer a 15% interest in the real property at issue to the debtor, for no consideration [Exh. 11]. That grant deed was not recorded until November 5, 2019, the day of the foreclosure sale. The debtor never amended his or her 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.

Moreover, the filing of this case appears to be part of a scheme to delay, hinder or defraud creditors. The original borrowers, Baldev K. Singh and Baljit Singh, have executed seven unauthorized grant deeds transferring a fractional interest in the property numerous different people for no consideration [Exhs. 5-11]. The debtor received his interest from one of these unauthorized grant deeds two days before the petition date. In addition, this is the eighteenth case affecting the property since 2015 [Exh. 13].

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):

Cristian B Fuentes

Pro Se

Movant(s):

U.S. Bank National Association, as

Represented By
Jennifer C Wong

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

Wednesday, February 26, 2020

Hearing Room 301

9:30 AM

CONT... Cristian B Fuentes

Chapter 7

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Wednesday, February 26, 2020

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

#7.00 Motion for judgment on the pleadings

fr. 12/11/19; 1/22/20

Docket 31

*** VACATED *** REASON: Continued by stip to 3/18/20 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

Represented By
Dane W Exnowski

Nationstar Mortgage LLC, A

Represented By
Dane W Exnowski

Bank of America, N.A, a National

Represented By
Laura G Brys
Payam Khodadadi

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, February 26, 2020

Hearing Room 301

2:30 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, February 26, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#8.00 Debtor's motion for summary judgment and/or summary adjudication of facts

fr. 2/5/20

Docket 174

Tentative Ruling:

The Court will continue this hearing to **March 4, 2020 at 2:30 p.m.**

Appearances on February 26, 2020 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, February 26, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#9.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper.
fr. 5/14/19; 10/16/19; 11/13/19; 2/5/20

Docket 55

Tentative Ruling:

The Court will continue this hearing to **March 4, 2020 at 2:30 p.m.**

Appearances on February 26, 2020 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, February 26, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#10.00 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, 12/18/19; 2/5/20

Docket 64

Tentative Ruling:

The Court will continue this hearing to **March 4, 2020 at 2:30 p.m.**

Appearances on February 26, 2020 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, February 26, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#11.00 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; 12/10/19; 2/5/20

Docket 70

Tentative Ruling:

The Court will continue this hearing to **March 4, 2020 at 2:30 p.m.**

Appearances on February 26, 2020 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, February 26, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#12.00 Defendants' motion to dismiss

fr. 10/2/19; 10/16/19; 11/13/19; 2/5/20

Docket 12

Tentative Ruling:

The Court will continue this hearing to **March 4, 2020 at 2:30 p.m.**

Appearances on February 26, 2020 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, February 26, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #13.00** 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; 11/13/19; 2/5/20

Docket 8

Tentative Ruling:

The Court will continue this hearing to **March 4, 2020 at 2:30 p.m.**

Appearances on February 26, 2020 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, February 26, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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

Friday, February 28, 2020

Hearing Room 301

9:30 AM

1:19-11843 14554 Friar, LLC

Chapter 11

#1.00 Motion for relief from stay [RP]
[EVIDENTIARY HEARING]

EASY FINANCIAL LLC
VS
DEBTOR

fr. 11/20/19; 1/17/20

Docket 32

*** VACATED *** REASON: Case dismissed 1/24/20

Party Information

Debtor(s):

14554 Friar, LLC

Represented By
Donna Bullock

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, March 4, 2020

Hearing Room 301

9:30 AM

1:18-10849 David Perez and Cynthia Margarita Perez

Chapter 13

#1.00 Motion for relief from stay [PP]

JPMORGAN CHASE BANK, N.A.
VS
DEBTOR

fr: 1/8/20; 2/5/20

Docket 55

*** VACATED *** REASON: Order entered on 2/21/2020 [doc. 73].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Perez

Represented By
Todd J Roberts

Joint Debtor(s):

Cynthia Margarita Perez

Represented By
Todd J Roberts

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, March 4, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#2.00 Motion for relief from stay [RP]

BAYVIEW LOAN SERVICING, LLC
VS
DEBTOR

fr: 1/8/20; 2/5/20

Docket 45

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**

Wednesday, March 4, 2020

Hearing Room 301

9:30 AM

1:19-13086 Camilo E. Lopez

Chapter 7

#3.00 Motion for relief from stay [PP]

JPMORGAN CHASE BANK, N.A.
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):

Camilo E. Lopez

Represented By
Daniel King

Movant(s):

JPMorgan Chase Bank, N.A.

Represented By
Raymond Jereza

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

Wednesday, March 4, 2020

Hearing Room 301

9:30 AM

CONT... Camilo E. Lopez

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Wednesday, March 4, 2020

Hearing Room 301

9:30 AM

1:19-12844 Iraj Peymany Jooshghani

Chapter 7

#4.00 Motion for relief from stay [PP]

VW CREDIT LEASING, LTD
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):

Iraj Peymany Jooshghani

Represented By
Navid Kohan

Movant(s):

VW Credit Leasing, LTD.

Represented By
Kirsten Martinez

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

Wednesday, March 4, 2020

Hearing Room 301

9:30 AM

CONT... Iraj Peymany Jooshghani

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

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

Wednesday, March 4, 2020

Hearing Room 301

9:30 AM

1:19-12966 Wendy Lane

Chapter 7

#5.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

Docket 17

*** VACATED *** REASON: Case dismissed with a one-year bar to
refiling on 2/27/2020 [doc. 22]. The motion is moot.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wendy Lane

Pro Se

Movant(s):

Deutsche Bank National Trust

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, March 4, 2020

Hearing Room 301

9:30 AM

1:19-12912 Kulwinder P. Kaur

Chapter 7

#6.00 Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING, LLC
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 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):

Kulwinder P. Kaur

Represented By
Susan Salehi

Movant(s):

Lakeview Loan Servicing, LLC

Represented By
Daniel K Fujimoto

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

Wednesday, March 4, 2020

Hearing Room 301

9:30 AM

CONT... Kulwinder P. Kaur

Chapter 7

Caren J Castle

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Wednesday, March 4, 2020

Hearing Room 301

9:30 AM

1:19-10942 Jose Luis Pelayo

Chapter 13

#7.00 Motion for relief from stay [PP]

CAPITAL ONE AUTO FINANCE
VS
DEBTOR

Docket 28

*** VACATED *** REASON: Order entered on 2/21/2020 [doc. 32].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Luis Pelayo

Represented By
Lauren Ross

Movant(s):

Capital One Auto Finance, a division

Represented By
Cheryl A Skigin

Trustee(s):

Elizabeth (SV) 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 4, 2020

Hearing Room 301

9:30 AM

1:19-11072 Jaime C Bagamaspad and Fatima Bagamaspad

Chapter 13

#8.00 Motion for relief from stay [RP]

US BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 43

Tentative Ruling:

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

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

The 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):

Jaime C Bagamaspad

Represented By
Stephen L Burton

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

Wednesday, March 4, 2020

Hearing Room 301

9:30 AM

CONT... Jaime C Bagamaspad and Fatima Bagamaspad

Chapter 13

Joint Debtor(s):

Fatima Bagamaspad

Represented By
Stephen L Burton

Movant(s):

US Bank National Association not

Represented By
Kristin A Zilberstein
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, March 4, 2020

Hearing Room 301

9:30 AM

1:19-11311 Carrol Sue Finister

Chapter 13

#9.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL TRUST ASSOCIATION
VS
DEBTOR

Docket 25

Tentative Ruling:

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

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

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):

Carrol Sue Finister

Represented By
Julie J Villalobos

Movant(s):

U.S. Bank National Trust

Represented By

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

Wednesday, March 4, 2020

Hearing Room 301

9:30 AM

CONT... Carrol Sue Finister

Kelsey X Luu

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 4, 2020

Hearing Room 301

9:30 AM

1:20-10319 Jose Ramon Cano

Chapter 13

#10.00 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 up to the date of the continued hearing. The Court will continue this hearing to **April 29, 2020 at 9:30 a.m.**

No later than March 11, 2020 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 March 2020 and April 2020 deed of trust payments in the amount of \$2,353.07 (as stated in his current Schedule J) as to the real property located at 9270 Kewen Avenue, Sun Valley, California; and (2) his March 2020 and April 2020 plan payments in the amount of \$1,335.79 as stated in the debtor's proposed chapter 13 plan [doc. 2]. **No later than April 22, 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 March 4, 2020 are excused.

Party Information

Debtor(s):

Jose Ramon Cano

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, March 4, 2020

Hearing Room 301

1:30 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

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

- #11.00** 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); 08/21/19 (stip); 11/6/19; 1/8/20

Order appr stip to continue ent 2/28/20

Docket 78

***** VACATED *** REASON: Continued to 06/10/20 at 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

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

Wednesday, March 4, 2020

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, March 4, 2020

Hearing Room 301

1:30 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

Adv#: 1:18-01113 VitaVet Labs, Inc. v. Gashtili

- #12.00** 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; 10/23/19; 1/22/20(stip)

Docket 4

***** VACATED *** REASON: Continued by Stip to 4/29/20 at 1:30 p.m. -
jc**

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, March 4, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01154 Goldman v. S&A Polacheck & Associates, Inc.

- #13.00** Status conference re: Complaint for:
1. Avoidance of voidable and fraudulent transfers; and
 2. Recovery of avoided transfers for the benefit of the bankruptcy 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: 4/30/20.

Deadline to complete one day of mediation: 5/15/20.

Deadline to file pretrial motions: 6/15/20.

Deadline to complete and submit pretrial order in accordance with Local Bankruptcy Rule 7016-1: 7/1/20.

Pretrial: 7/15/20 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), 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, March 4, 2020

Hearing Room 301

1:30 PM

CONT... Exotic Euro Cars, Inc.

Chapter 7

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

S&A Polacheck & Associates, Inc.

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

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, March 4, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01155 Goldman v. Mandalay Corp., a Delaware Corporation

#14.00 Status Conference re: Complaint

Docket 1

*** VACATED *** REASON: First amended complaint filed 1/30/20;
Status conference reset to 3/25/20 at 1:30 pm. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

Mandalay Corp., a Delaware

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

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, March 4, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01156 Goldman v. Kumar et al

- #15.00** Status conference re: complaint for:
1. Avoidance of voidable and fraudulent transfers; and
 2. Recovery of avoided transfers for the benefit of the bankruptcy estate

Docket 1

Tentative Ruling:

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on April 29, 2020.**

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 **April 15, 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 March 4, 2020 is excused.

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

Dr. Kain Kumar

Pro Se

Sharmini Kumar

Pro Se

BWC Associates, Inc.

Pro Se

Plaintiff(s):

Amy Goldman

Represented By

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

Wednesday, March 4, 2020

Hearing Room 301

1:30 PM

CONT... Exotic Euro Cars, Inc.

Chapter 7

Todd A Frealy

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, March 4, 2020

Hearing Room 301

1:30 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:20-01006 Coast to Coast Holdings, LLC a Wyoming Limited Lia v. Keystone Real

#16.00 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 **1:30 p.m. on March 18, 2020**, to assess if the debtor's bankruptcy case is converted or dismissed.

Appearances on March 4, 2020 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):

Keystone Real Estate Lending Fund,

Represented By
Hamid R Rafatjoo

First American Title Insurance

Pro Se

DOES 1 to 100, inclusive

Pro Se

Plaintiff(s):

Coast to Coast Holdings, LLC a

Pro Se

Oscar Torres

Pro Se

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

Wednesday, March 4, 2020

Hearing Room 301

1:30 PM

1:19-10537 Lynn Patricia Wolcott

Chapter 7

Adv#: 1:19-01127 Hooshim v. Wolcott

- #17.00** 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

fr. 12/18/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on April 8, 2020**, to be held with the hearing on the plaintiff's motion for default judgment [doc. 13].

Appearances on March 4, 2020 are excused.

Party Information

Debtor(s):

Lynn Patricia Wolcott

Represented By
Faith A Ford

Defendant(s):

Lynn Patricia Wolcott

Pro Se

Plaintiff(s):

Benjamin Hooshim

Represented By
Andrew Edward Smyth

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

Wednesday, March 4, 2020

Hearing Room 301

1:30 PM

CONT... Lynn Patricia Wolcott

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, March 4, 2020

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

#18.00 Status conference re: complaint for determination of dischargeability and objecting to debtor's discharge pursuant to § 523 and 727 of the bankruptcy code

fr. 12/11/19

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on April 15, 2020**, to be held with the hearing on the plaintiffs' motion for default judgment [doc. 12].

Appearances on March 4, 2020 are excused.

Party Information

Debtor(s):

Jose Luis Gonzalez Romero

Represented By
Francis Guilardi

Defendant(s):

Gabriela Cristina Martinez Trejo

Pro Se

Jose Luis Gonzalez Romero

Pro Se

Joint Debtor(s):

Gabriela Cristina Martinez Trejo

Represented By
Francis Guilardi

Plaintiff(s):

Wrisney Tan

Pro Se

Robert Rossi

Pro Se

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

Wednesday, March 4, 2020

Hearing Room 301

1:30 PM

CONT... Jose Luis Gonzalez Romero

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, March 4, 2020

Hearing Room 301

1:30 PM

1:19-13091 Olga Leyva

Chapter 7

Adv#: 1:20-01007 Federal Home Loan Mortgage Corporation v. Guzman et al

#19.00 Status conference re: notice of removal from Los Angeles
Superior courthouse

Docket 1

Tentative Ruling:

The Court will remand this matter to state court.

I. BACKGROUND

A. Debtor's Bankruptcy Filing

On December 12, 2019, Olga Leyva ("Debtor") filed a voluntary chapter 7 petition. Although Debtor indicated in her petition that she lives at 14035 Astoria Street, #130, Sylmar, California 91342 (the "Sylmar Property"), Debtor identified her mailing address as 12522 Filmore Street, #104, Pacoima, California 91331 (the "Pacoima Property").

On December 20, 2019, Debtor filed her schedules and statements [Bankruptcy Docket, doc. 8]. In her schedule A/B, Debtor indicated that she does not have an interest in any real property. In her schedule D, Debtor did not include any secured creditors. In her schedule G, Debtor indicated that she does not have any executory contracts or unexpired leases. In her Statement of Financial Affairs ("SOFA"), Debtor stated that she had lived at her current address in the last three years. Debtor also stated that she was not a party in any lawsuit, court action or administrative proceeding within one year of filing her petition.

B. The Motion for Relief from the Automatic Stay to Proceed with the UD Action

On December 24, 2019, Federal Home Loan Mortgage Corporation ("Federal Home") filed a motion for relief from the automatic stay to proceed with an unlawful detainer action in state court (the "UD Action") as to the Sylmar Property (the "RFS Motion")

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

Wednesday, March 4, 2020

Hearing Room 301

1:30 PM

CONT...

Olga Leyva

Chapter 7

[Bankruptcy Docket, doc. 9]. In a declaration attached to the RFS Motion, an attorney representing Federal Home stated that one of the defendants in the UD Action, Juan Nungaray, was deemed a vexatious litigant in an order entered by a United States District Court (the "Vexatious Litigant Order"). Declaration of Agop Gary Arakelian ("Arakelian Declaration"), ¶ 18, Exhibit E. In the Vexatious Litigant Order, entered on November 20, 2019, the District Court stated—

The recent remand was the third time Defendant Juan Nungaray attempted to remove this case despite an absence of subject matter jurisdiction in this Court. Due to these removals, the unlawful detainer action filed on December 12, 2018 has still not proceeded to trial.

...

The Court agrees that Nungaray has removed the case multiple times for the purely vexatious reasons of delay and avoidance of a judgment on the merits. Under the circumstances, the Court finds that an... order would bar further removal of this case by anyone without a prior order of the federal court and would bar Nungaray from removing cases without prior order of the federal court given the high likelihood that he may attempt to replicate his delay tactics in the future.

...

The Court declares Juan Nungaray to be a vexatious litigant. The Clerk is not to file any notice of removal of a state court case by Nungaray without a prior order of a judge of this Court. The Court further orders that the Clerk not file any future notice of removal of [the UD Action], regardless of who files the removal, without a prior order of a judge of this Court.

Id. On December 9, 2019, shortly after entry of the Vexatious Litigant Order, Debtor had filed an answer in the UD Action asserting an interest in the Sylmar Property and referring to the Sylmar Property as her property. Arakelian Declaration, ¶ 19, Exhibit F. By that time, Mr. Nungaray had removed the UD Action four different times and obtained at least seven continuations of the trial in the UD Action. Arakelian Declaration, ¶¶ 13- 18. Three days later, Debtor filed her chapter 7 petition.

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

Wednesday, March 4, 2020

Hearing Room 301

1:30 PM

CONT...

Olga Leyva

Chapter 7

On January 22, 2020, the chapter 7 trustee submitted a report of no distribution, designating Debtor's case a no-asset case. On January 23, 2020, the Court entered an order granting the RFS Motion [Bankruptcy Docket, doc. 18].

C. The Removal of the UD Action to this Court

On January 28, 2020, Debtor removed the UD Action to this Court, initiating this adversary proceeding. On January 29, 2020, the Court entered an Order to Show Cause (the "OSC") [doc. 2], requiring Debtor to serve a copy of the OSC on all other parties and to file a status report at least 14 days prior to the status conference. The defendants have not filed proof of service of the OSC or a timely status report. Neither party filed a response to the OSC.

II. ANALYSIS

A. The Removal Violated the Vexatious Litigant Order

In the Vexatious Litigant Order, the District Court explicitly prohibited any party from removing the UD Action without obtaining approval from a District Court judge. Neither Debtor nor any of the other defendants provided evidence of any such approval from a District Court judge. As such, this action will be remanded in accordance with the Vexatious Litigant Order.

B. Remand of this Matter to State Court is Appropriate

Even if the Vexatious Litigant Order did not mandate remand, the Court would remand this action to state court. "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." 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

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

Wednesday, March 4, 2020

Hearing Room 301

1:30 PM

CONT...

Olga Leyva

Chapter 7

- 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, the factors weigh heavily in favor of remanding this matter to state court. First, there is no effect on the administration of the estate. Debtor did not schedule the Sylmar Property as an asset of the estate and did not identify any liability related to the Sylmar Property. Debtor also did not indicate any leasehold or possessory interest in the Sylmar Property; in fact, it appears Debtor is receiving her mail at a different residential address. To the extent Debtor has any legitimate interest in the Sylmar Property, the chapter 7 trustee has submitted a report of no distribution and stated that there is no property available for distribution. As such, the UD Action will have no impact on this estate.

Moreover, the UD Action involves state law and there are no bankruptcy issues to adjudicate. As to comity, "[c]omity dictates that California courts should have the right to adjudicate the exclusively state law claims involving California-centric plaintiffs and California-centric transactions." *Enron*, 296 B.R. at 509. Here, the

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

Wednesday, March 4, 2020

Hearing Room 301

1:30 PM

CONT...

Olga Leyva

Chapter 7

matter involves California-centric transactions. In addition, there is no jurisdictional basis other than 28 U.S.C. § 1334.

Next, this matter is "non-core." Core proceedings include all actions "arising under" title 11 or "arising in" a case under title 11. *In re Marshall*, 600 F.3d 1037, 1053 (9th Cir. 2010) *aff'd sub nom. Stern v. Marshall*, 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011). This action neither arises under title 11 nor arises in a case under title 11, in that this action can exist independently of Debtor's bankruptcy case. Nor is this action "inextricably intertwined" with administration of the bankruptcy estate. *In re ACI-HDT Supply Co.*, 205 B.R. 231, 236-37 (B.A.P. 9th Cir. 1997); *see also In re Harris*, 590 F.3d 730, 739 (9th Cir. 2009).

Finally, there is a high likelihood of forum shopping and prejudice to Plaintiff. Given the Vexatious Litigant Order and the other facts above, it appears the defendants in the UD Action, particularly Mr. Nungaray, are using the removal process as a tool for delay. The Court will order the immediate remand of this matter to state court.

III. CONCLUSION

The Court will remand this matter to state court.

The Court will prepare the Order.

Party Information

Debtor(s):

Olga Leyva Pro Se

Defendant(s):

Jennifer Guzman Pro Se

Juan R Nungaray Pro Se

Leonor Nungaray Pro Se

Olga Leyva Pro Se

DOES 1 to 10 Inclusive Pro Se

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

Wednesday, March 4, 2020

Hearing Room 301

1:30 PM

CONT... Olga Leyva

Chapter 7

Plaintiff(s):

Federal Home Loan Mortgage Pro Se

Trustee(s):

David Keith Gottlieb (TR) Pro Se

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01128 Miller, Chapter 7 Trustee v. Yaspan

#20.00 Defendant's Motion to Dismiss Adversary Proceeding
Pursuant to Fed. R. Bankr. P. 7012

Docket 14

***** VACATED *** REASON: Hearing vacated per order entered 2/5/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Represented By
Robert M Yaspan
David D Samani

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Larry W Gabriel

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, March 4, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01128 Miller, Chapter 7 Trustee v. Yaspan

#21.00 Status conference re: complaint for breach of fiduciary duty

fr. 1/8/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on March 25, 2020**, to assess whether the defendant files an answer or other response, to the amended complaint. Prior to the continued status conference, the parties do not need to file an updated status report.

Appearances on March 4, 2020 are excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Larry W Gabriel

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, March 4, 2020

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 Debtor's motion to quash subpoena for documents and deposition subpoena for Johanna Scott

Docket 29

Tentative Ruling:

After reviewing the motions to quash [docs. 28 and 29], the oppositions to those motions [docs. 40 and 41] and the replies to those oppositions [docs. 42 and 43], the Court has determined that the parties must file a written stipulation identifying any disputed discovery issue as to each category requested for production, with contentions and points and authorities of each party as to each issue, as required by Local Bankruptcy Rule 7026-1(c)(3).

Either before or after the parties file such a stipulation, the parties are ordered to attend mediation in downtown Los Angeles with the Honorable Gregg W. Zive or the Honorable Thomas B. Donovan, both of whom are recalled United States Bankruptcy Judges assisting with mediations. To set up the mediation, the parties are directed to contact Judge Zive at (775) 326-2107 and/or Judge Donovan at (213) 894-3728.

The Court will continue all matters pending between these parties until after the parties attend mediation with one of these recalled bankruptcy judges for the Central District of California.

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, March 4, 2020

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**

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#23.00 Debtor's motion to quash subpoena for documents and deposition
subpoena for Fenton & Ross

Docket 28

Tentative Ruling:

See calendar no. 22.

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, March 4, 2020

Hearing Room 301

2:30 PM

1:19-12082 Robert M. Gerstein
Adv#: 1:19-01140 Himes v. Gerstein

Chapter 7

#24.00 Defendant's motion to dismiss for failure to state a claim

Docket 4

Tentative Ruling:

Grant.

I. BACKGROUND

On August 20, 2019, Robert M. Gerstein ("Defendant") filed a voluntary chapter 7 petition. On December 2, 2019, Greg Himes ("Plaintiff") filed a complaint against Defendant, requesting nondischargeability of the debt owed to him. On December 11, 2019, Plaintiff filed a first amended complaint (the "FAC") [doc. 3]. In the FAC, Plaintiff alleges—

In 2011, Plaintiff was asked by Defendant, who is the president of GGB Medical Management Services, Inc. ("GGB"), to design a software system to be used by UC Irvine Medical Center ("UCI") for creating invoices. At this time, UCI had issued a purchase order in the amount of \$1,090,000 to GGB, and Plaintiff obtained a retainer of \$2,000 per week to complete his work.

In 2012, GGB became erratic in its payments to Plaintiff and, on several occasions, Plaintiff suspended work until GGB paid its outstanding invoices. By March 2013, GGB stopped paying its invoices and had not paid its December 2012, January 2013 and February 2013 invoices. Unbeknownst to Plaintiff, on February 13, 2013, the City of Los Angeles had filed a tax lien against GGB in the amount of \$105,772 and, on March 4, 2013, the Internal Revenue Service had issued a Notice of Levy in the amount of \$756,932. At the same time, GGB was delinquent in its office lease payments in the amount of \$105,482.97.

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Robert M. Gerstein

Chapter 7

In January and February 2013, Plaintiff and Defendant exchanged email messages regarding the unpaid invoices. Defendant promised to pay the outstanding invoices so that Plaintiff would continue to provide services to GGB. On March 5, 2013, Defendant handwrote two company checks, payable to "Cash," and handed the checks to Plaintiff. After repeated failed attempts to cash the checks, Plaintiff sent a demand letter to Defendant.

In April 2014, Plaintiff sued Defendant in small claims court. In June 2014, the state court entered judgment in favor of Plaintiff in the amount of \$7,145. As part of his collection efforts, Plaintiff has filed a lien against all of Defendant's real property in Los Angeles County and a California UCC lien on all of Defendant's personal property.

Moreover, following GGB's eviction in June 2013, GGB moved its employees, operations and business to ORS Medical Management, Inc. ("ORS"). Documentation reflected that Defendant was the president of both GGB and ORS. The assignment of GGB's business to ORS was a fraudulent transfer. In addition, Plaintiff holds the copyright to the software that he writes and his clients are given a non-exclusive license to use the software. Plaintiff allowed GGB, but not ORS, to use this non-exclusive license.

On these allegations, Plaintiff requests nondischargeability of the debt owed to him under 11 U.S.C. § 523(a)(2)(A) and (a)(4).

On January 6, 2020, Defendant filed a motion to dismiss the FAC (the "Motion") [doc. 4]. In the Motion, Defendant asserts: (A) Plaintiff has not stated a claim under § 523(a)(2)(A) because Plaintiff has not alleged that Defendant did not intend to pay Plaintiff; (B) Plaintiff alleges that Defendant was a transferor, not a transferee, such that a fraudulent transfer claim against Defendant is inappropriate; and (C) any copyright infringement claim is against ORS, not Defendant. On February 14, 2020, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 9], asserting that the FAC includes sufficient allegations of fraud. In the Opposition, Plaintiff appears to argue that his claim under § 523(a)(2)(A) is based on the following allegations: (A) Defendant's unfulfilled promises to pay Plaintiff's invoices; (B) Defendant's transfer

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Robert M. Gerstein

Chapter 7

of checks with insufficient funds; (C) the fraudulent conveyance of GGB's assets to ORS; and (D) ORS's use of the copyright held by Plaintiff.

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 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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Robert M. Gerstein

Chapter 7

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. 11 U.S.C. § 523(a)(2)(A)

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

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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Robert M. Gerstein

Chapter 7

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

Here, as noted above, Plaintiff appears to base his claim under § 523(a)(2)(A) on the following: (A) that Defendant did not honor his promise to pay Plaintiff; (B) that Defendant wrote bad checks; (C) that Defendant fraudulently conveyed GGB's assets to ORS; and (D) that ORS infringed on Plaintiff's copyright.

i. Allegations Related to Promises to Pay Plaintiff's Invoices

Regarding Plaintiff's first basis, Plaintiff has not adequately alleged that Defendant made his promises with fraudulent intent. Although intent may be alleged generally, Plaintiff does not specify *which* statements Defendant made with intent not to honor those statements. The FAC must establish that Defendant possessed fraudulent intent *at the time* the allegedly false representations or omissions occurred. *See In re Lee*, 536 B.R. 848, 855 (Bankr. N.D. Cal. 2015) ("The alleged misrepresentation must have occurred at the inception of the debt as an inducement for the debt.").

Here, although Plaintiff references several instances where Defendant promised to pay Plaintiff, those promises occurred after Plaintiff performed the services for which he was owed money. The FAC does not include sufficient allegations that Defendant initially *induced* Plaintiff to enter into their agreement, prior to Plaintiff performing his services, with an intent to defraud Plaintiff or with the knowledge that Defendant would not pay certain invoices. Plaintiff may amend the FAC to specify which representations or omissions Defendant made to induce Plaintiff to perform services for Defendant.

ii. Allegations Related to Issuance of Checks

Plaintiff also appears to allege that Defendant's issuance of checks without sufficient funds establishes a claim under § 523(a)(2)(A). Courts disagree as to whether writing a check without insufficient funds qualifies as a "representation" for purposes of § 523(a)(2)(A). *See, e.g. In re Indzheyana*, 2012 WL 6212698, at *6 (Bankr. C.D. Cal. Dec. 13, 2012) (summarizing the "great deal of confusion" in the Ninth Circuit as to this issue).

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Robert M. Gerstein

Chapter 7

Nevertheless, whether the checks constitute a representation or not, Plaintiff has not adequately alleged that Defendant issued the checks with fraudulent intent or with knowledge that Defendant did not have sufficient funds in his bank account. In addition, by the time Defendant issued the checks, Plaintiff already had incurred the damages he requests by providing the services for which Plaintiff billed Defendant. As such, aside from the unclear allegations as to intent, Plaintiff has not adequately alleged that the checks without insufficient funds caused Plaintiff's damages. Plaintiff may amend the FAC to provide adequate allegations regarding intent, causation and damages.

iii. Allegations Based on Fraudulent Transfer

It is unclear from the FAC if Plaintiff is asserting a separate fraudulent transfer claim or if Plaintiff is attempting to base his § 523(a)(2)(A) claim on a fraudulent transfer. It also is unclear if Plaintiff is attempting to proceed under 11 U.S.C. § 548 or California law on fraudulent transfers. Either way, there are several issues with Plaintiff's allegations. First, an avoidance of the transfer to ORS would result in a reversion of assets to GGB, *not* to Defendant's bankruptcy estate. Second, even if there was a possibility of recovering property for the benefit of the estate, Plaintiff does not have standing to pursue such avoidance actions. *See In re Parmetex, Inc.*, 199 F.3d 1029, 1031 (9th Cir. 1999).

Moreover, although Plaintiff may use fraudulent transfers as a basis for the "actual fraud" portion of § 523(a)(2)(A), Plaintiff is not relieved from alleging causation and damages. *See Husky Int'l Elecs., Inc. v. Ritz*, 136 S.Ct. 1581, 194 L.Ed.2d 655 (2016) (holding that fraudulent transfers may qualify as "actual fraud" for purposes of § 523(a)(2)(A)). Plaintiff has not adequately alleged causation or damages in the FAC. First, under California law, Plaintiff is likely limited to non-monetary damages as remedies for a fraudulent transfer. *See* Cal. Civ. Code § 3439.07 (setting forth available remedies of creditors). However, even if Plaintiff is entitled to a monetary judgment under a different theory not stated in the FAC, Plaintiff has not alleged any facts that would show how Plaintiff was damaged by the subject transfers. For instance, Plaintiff has made no allegations regarding the value of the allegedly transferred assets.

Finally, pursuant to Plaintiff's own allegations, Defendant is neither the transferor

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Robert M. Gerstein

Chapter 7

(identified as GGB in the FAC) or the transferee (ORS). Plaintiff has not referenced any theory of recovery that would allow Plaintiff to hold *Defendant* liable for transfers to which he was not a party. As such, Plaintiff has not stated a claim for relief based on a fraudulent conveyance. Plaintiff may amend the FAC to include additional allegations or theories that may result in nondischargeability of a debt owed to Plaintiff based on the allegedly fraudulent transfer.

iv. Allegations Based on Copyright Infringement by ORS

Finally, Plaintiff appears to allege that ORS's alleged copyright infringement also should be a basis for nondischargeability under § 523(a)(2)(A). However, the allegations in the FAC refer to *ORS* as the entity responsible for infringing Plaintiff's copyright. The FAC is devoid of any allegations that *Defendant* inappropriately used Plaintiff's copyright. Plaintiff is free to pursue any copyright infringement claims against ORS in the appropriate forum. This Court is not the appropriate forum for a proceeding between two nondebtor entities that will have no impact on Defendant's estate. As such, the Court will dismiss this claim without prejudice to Plaintiff pursuing any copyright infringement claims against ORS before a different court.

C. 11 U.S.C. § 523(a)(4)

A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997). Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); *see also In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) ("The definition of 'fiduciary capacity' under § 523(a)(4) is governed by federal law."). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796.

Under § 523(a)(4), the "scope of the term 'fiduciary capacity' is a question of federal law," but "the Ninth Circuit has considered state law to ascertain whether the requisite trust relationship exists." *In re Honkanen*, 446 B.R. 373, 379 (B.A.P. 9th Cir. 2011); *Ragsdale*, 780 F.2d at 796. "A trust under California law may be formed by express

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... **Robert M. Gerstein**

Chapter 7

agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420.

Here, although Plaintiff references 11 U.S.C. § 523(a)(4), the FAC does not include any allegations regarding whether Defendant qualified as a fiduciary under the definitions above. The FAC also does not include any allegations regarding embezzlement or larceny, nor would any claims for embezzlement or larceny apply to the general allegations in the FAC because the FAC is based mostly on unpaid services, not any transfer of Plaintiff's funds by Defendant. The Court will dismiss this claim.

III. CONCLUSION

The Court will dismiss Plaintiff's copyright infringement claim against ORS without prejudice to Plaintiff filing the claim before a different, appropriate forum. The Court will otherwise dismiss the FAC with leave to amend.

If Plaintiff elects to proceed with this action, Plaintiff must file and serve a second amended complaint no later than **March 31, 2020**. Defendant must file and serve a response to the second amended complaint no later than **April 14, 2020**.

The Court will prepare the Order.

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Defendant(s):

Robert M. Gerstein

Pro Se

Plaintiff(s):

Greg Himes

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Robert M. Gerstein

Carmela Pagay

Chapter 7

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

1:19-12082 Robert M. Gerstein

Chapter 7

Adv#: 1:19-01140 Himes v. Gerstein

#25.00 Status conference re: first amended complaint

fr. 2/5/20

Docket 3

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Defendant(s):

Robert M. Gerstein

Pro Se

Plaintiff(s):

Greg Himes

Pro Se

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
Courtroom 301 Calendar**

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#26.00 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, 12/18/19; 2/5/20; 2/26/20

Docket 64

Tentative Ruling:

The Court will continue this hearing to **March 18, 2020 at 2:30 p.m.**

Appearances on March 4, 2020 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, March 4, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#27.00 Debtor's motion for summary judgment and/or summary adjudication of facts

fr. 2/5/20; 2/26/20

Docket 174

Tentative Ruling:

The Court will continue this hearing to **March 18, 2020 at 2:30 p.m.**

Appearances on March 4, 2020 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, March 4, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#28.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper.
fr. 5/14/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20

Docket 55

Tentative Ruling:

The Court will continue this hearing to **March 18, 2020 at 2:30 p.m.**

Appearances on March 4, 2020 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, March 4, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#29.00 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; 12/10/19; 2/5/20; 2/26/20

Docket 70

Tentative Ruling:

The Court will continue this status conference to **March 18, 2020 at 2:30 p.m.** in order for the parties to update the Court on their efforts to schedule a mediation with a recalled United States Bankruptcy Judge for the Central District of California. *See* calendar no. 22.

Appearances on March 4, 2020 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, March 4, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#30.00 Defendants' motion to dismiss

fr. 10/2/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20

Docket 12

Tentative Ruling:

The Court will continue this hearing to **March 18, 2020 at 2:30 p.m.** Below is the Court's ruling.

Appearances on March 4, 2020 are excused.

After reviewing the supplemental briefing [docs. 26 and 27], the Court will grant in part and deny in part the motion for the reasons discussed below.

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)

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

...

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,

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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. Defendants defrauded Plaintiff by failing to withhold his payroll taxes in lawful and appropriate amounts, failing to pay those withheld taxes to government authorities as required by law on Plaintiff's behalf and by issuing fraudulent tax records on which Plaintiff relied to report and pay his annual income taxes.

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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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. 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.

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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. 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 (the "Reply") [doc. 22].

On November 13, 2019, the Court held a hearing on defendants' *Motion to Dismiss Pursuant to Rules 8, 9, and 12* (the "Motion") [doc. 12]. Prior to the hearing, the Court issued a tentative ruling, see below (the "Tentative Ruling"). After listening to

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... **Kenneth C. Scott**

Chapter 13

oral argument at the hearing, the Court ordered the parties to submit briefing and continued the hearing to February 5, 2020.

On December 16, 2019, Plaintiff filed a supplemental brief (the "Plaintiff's Supplemental Brief") [doc. 26]. In Plaintiff's Supplemental Brief, Plaintiff requests that the Court reconsider the Tentative Ruling on the following causes of action in the FAC: (A) waiting time penalties under Cal. Lab. Code § 203; (B) statute of limitations under Cal. Lab. Code §§ 226(f) and 1198.5(k); (C) declaratory relief concerning ownership of the funds (third cause of action); (D) annulment of transfers in fraud of creditors (fourth cause of action); (E) breach of contract (twelfth cause of action); (F) conversion (thirteenth cause of action); (G) injunctive relief under the UCL. In addition, Plaintiff argues that the Court must dismiss an entire cause of action rather than strike a portion of the allegations in the FAC. On January 6, 2020, Debtor filed a reply to Plaintiff's Supplemental Brief (the "Debtor's Supplemental Brief") [doc. 27].

II. DISCUSSION

Based on the Motion, the Opposition, the Reply, the Plaintiff's Supplemental Brief and the Debtor's Supplemental Brief, the Court will issue the following ruling. 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.

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.

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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).

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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 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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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, 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.

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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;
 - (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

(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. Except as discussed below, each of the claims in the FAC contain a short and plain statement showing why Plaintiff believes he is entitled to relief. Further, the FAC contains a prayer for relief.

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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"). Under CLC § 202, an employer must pay an employee who resigns his or her wages within 72 hours. If the employer fails to timely pay those wages, the employer is liable for waiting time penalties under CLC § 203(a). The wages shall continue as a penalty from the due date at the same rate until paid, but not more than 30 days. Here, Plaintiff resigned on June 17, 2017. This is within the three-year period. 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 §§

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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's claims for penalties under CLC §§ 1102.5(f), 98.6(b)(3) and 226(e) are barred by the applicable statute of limitations. 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. The Court will dismiss these claims without leave to amend.

Plaintiff's claims for penalties under CLC §§ 1198.5(k) and 226(f) are not barred by applicable statute of limitations. Plaintiff alleges that on August 6, 2018, Plaintiff demanded a copy of his personnel file and a copy of his complete payroll and time records. Plaintiff's causes of action under CLC §§ 1198.5(b)(1) and 226(b) would not have accrued until at the earliest Plaintiff's demand for his records or at the latest when Defendants failed to comply by the deadlines set forth in the statutes. Using either date, the period is within the applicable one-year statute of limitations. The Court will not 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.

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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... **Kenneth C. Scott**

Chapter 13

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.

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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... **Kenneth C. Scott**
statement under FRCP 12(a)(4).

Chapter 13

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.

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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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 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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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). Because Debtor filed his petition under chapter 13, 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.

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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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 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.

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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.

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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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. Specifically, Plaintiff states that "[j]udicial intervention is required to determine the rights and obligations of each of the parties, including but not limited to [Debtor] and MPPI, as to whether MPPI owned at least \$17,247.00 in cash maintained in a "business bank account" as of the [p]etition [d]ate herein and on relevant dates thereafter according to proof, or whether those funds were part of [Debtor's] bankruptcy estate in this proceeding." FAC, ¶ 65.

The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides in pertinent part:

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. Slatterback 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)).

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

After Plaintiff filed the Objection to Exemption, the Court determined that the funds were property of the bankruptcy estate because, as of the petition date, Debtor was the 100% shareholder of a subchapter S corporation, MPPI, and as such, all MPPI's profits flow directly through to Debtor as the sole shareholder. All 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, *i.e.* the Funds. The Court also determined that Debtor was entitled to an exemption of the Funds. Additionally, the parties did not dispute that, on the petition date, the Funds were held in a business account.

This request for declaratory relief is essentially asking the Court to reconsider its ruling in the Exemption Order. However, 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.

In the Plaintiff's Supplemental Brief, Plaintiff argues that by dismissing this cause of action, Plaintiff will be prejudiced. As the Court stated in its ruling on the Objection to Exemption [1:18-bk-13024-VK, doc. 150], allowing Debtor his claim of exemption does not prevent Plaintiff from obtaining a court determination that the *distribution* of the Funds from MPPI to Debtor was improper or from otherwise holding Debtor and/or MPPI liable to Plaintiff. Nothing in this ruling contradicts those statements.

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 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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

Plaintiff alleges this cause of action against Defendants. If Plaintiff is moving under CUVTA, as he indicated in the Opposition, he may be able to state a claim for relief under FRCP 12(b)(6) as to MPPI and Debtor, but not as to Scott.Psy.D.

FRCP 8(a)(2) requires that a pleading stating a claim for relief contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The function of this pleading requirement is to "give the defendant fair notice of what the...claim is and the grounds upon which it rests." *Bell Atl. Corp.*, 550 U.S. at 555.

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... **Kenneth C. Scott**

Chapter 13

The FAC does not state the legal basis for the cause of action against Defendants. As such, Defendants have not been provided with fair notice regarding Plaintiff's claim against them and the grounds upon which it rests, as required by FRCP 8(a)(2).

In the Plaintiff's Supplemental Brief, Plaintiff argues that he should not be required to amend the FAC because he has alleged sufficient facts. In practice, "a complaint...must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Twombly*, 550 U.S. at 562, 127 S.Ct. 1955. Without knowing the legal basis of the claim, the Court cannot assess whether Plaintiff has alleged sufficient factual allegations respecting all material elements necessary to sustain recovery. Additionally, under CUVTA, Plaintiff has not alleged sufficient factual allegations against Scott Psy.D. The Court will dismiss this claim with leave to amend.

In the Debtor's Supplemental Brief, Debtor argues that, for purposes of a fraudulent transfer, the payment of a dividend cannot be the basis of a transfer for no consideration. Debtor is incorrect. There is case law supporting the assertion that a dividend payment, in certain circumstances, can be avoided as a fraudulent conveyance. *See In re TC Liquidations LLC*, 463 B.R. 257, 278 (Bankr. E.D.N.Y. 2011) (distribution of dividends to shareholders of S corporation for payment of the shareholders tax obligations were avoided as fraudulent conveyances under 11 U.S.C. § 548(a)(1)(A)).

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."

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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.

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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)

In the thirteenth cause of action, Plaintiff makes two separate statements for his claim 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. Plaintiff claims that he has suffered economic damages in the amount of back pay he should have received had he been paid all wages earned in a timely manner, plus interest thereon. The second 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. Zerín*, 53 Cal. App. 4th 445, 451 (Ct. App. 1997). Under California law the elements of conversion are plaintiff's ownership or right to

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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). Regarding his first statement, in support of his position, Plaintiff cites *Voris v. Lampert*, 7 Cal. 5th 1141, 446 P.3d 284 (2019), *reh'g denied* (Oct. 23, 2019). In *Voris*, the plaintiff worked with the defendant to launch three startup companies, partly in return for a promise of later payment of wages. After a falling out, the plaintiff was fired, and he was never paid the promised compensation. The plaintiff sued the three companies, invoking breach of contract and statutory remedies for the nonpayment of wages, and won. The plaintiff was unable to collect on his judgments and sought to hold the defendant personally liable for the unpaid wages based on conversion. The *Voris* court held that conversion was not an appropriate remedy.

In *Voris*, the California Supreme Court stated in relevant part:

Voris argues, the nonpayment of wages should be treated as a conversion of property, not as a failure to satisfy a " 'mere contractual right of payment.' " (*Sanowicz, supra*, 234 Cal.App.4th at p. 1041, 184 Cal.Rptr.3d 517.) But to accept this argument would require us to indulge a similar fiction: namely, that once Voris provided the promised services, certain identifiable monies in his employers' accounts became Voris's personal property, and by failing to turn them over at the agreed-upon time, his employers converted Voris's property to their own use.

Voris contends that there is precedent for this view. . . Voris directs our attention to the Court of Appeal's decision in *Department of Industrial Relations v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 64 Cal.Rptr.2d 457 (*UI Video Stores*). There, in a brief two-paragraph discussion, the court approved a conversion action brought by the Division of Labor Standards Enforcement (DLSE) of the Department of Industrial Relations. DLSE had sued Blockbuster on behalf of Blockbuster employees to recover money that was unlawfully deducted from their paychecks to pay for uniforms, in violation of the applicable wage order. The parties settled, and as part

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

of the settlement agreement Blockbuster mailed individual checks to the employees in the amount of the wrongful deductions. But a number of checks were returned as undelivered, and DLSE ordered Blockbuster to deposit those checks in California's unpaid wage fund. When Blockbuster refused, DLSE filed a second complaint, alleging that Blockbuster's refusal amounted to an unlawful conversion of the checks to its own use. The Court of Appeal reversed a grant of summary judgment in the defendant's favor, apparently accepting DLSE's argument that it had the right to immediate possession of the checks, in its capacity as an agent of the state and trustee for the employees. (*Id.* at pp. 1094–1096, 64 Cal.Rptr.2d 457.)

Although *UI Video Stores* involved a conversion action *related to* wrongfully withheld wages, it did not concern a conversion claim *for* the nonpayment of wages. The act of conversion that the court recognized in *UI Video Stores* was the defendant's misappropriation of certain checks that it had cut and mailed to employees as part of the settlement agreement—checks that at least arguably became the property of the employees at that time. The defendant's failure to pay wages in the first instance was not remedied through a conversion claim, but rather through DLSE's enforcement action under the Labor Code. Whether the employees could have sustained a conversion action for the unpaid uniform reimbursements themselves is a matter that was not at issue in *UI Video Stores*, and which the court did not address.

For reasons already explained, the nature of the underlying wage claim in *UI Video Stores*, like the nature of the wage claim in this case, is not one that fits easily with traditional understandings of the conversion tort. Unlike the cases involving failure to turn over commissions, for example, which were earmarked for a specific person before being misappropriated and absorbed into another's coffers, a claim for unpaid wages simply seeks the satisfaction of a monetary claim against the employer, without regard to the provenance of the monies at issue. In this way, a claim for unpaid

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

wages resembles other actions for a particular amount of money owed in exchange for contractual performance—a type of claim that has long been understood to sound in contract, rather than as the tort of conversion.

Voris, 7 Cal. 5th at 1153–56. The *Voris* court went on to state in a footnote:

We do not suggest that any and all claims related to wages necessarily fall outside the bounds of the law of conversion, merely because they relate to wages. The label of monies as "wages" or "commissions" or "fees"—or any other form of compensation for that matter—is not determinative, provided that the claim otherwise satisfies the elements of the conversion tort. (Cf. dis. opn., *post*, 7 Cal.5th at p. 1163, 250 Cal.Rptr.3d at pp. 797-798, 446 P.3d at pp. 299-300.) Take, for instance, an employer that pays wages but then removes the money from an employee's account, or that diverts withheld amounts from their intended purposes; that employer may well have committed conversion. (Cf. *U.S. v. Whiting* (7th Cir. 2006) 471 F.3d 792 [employer committed criminal conversion under federal statute by holding money deducted from employees' paychecks in the company's general operating account instead of delivering it to the employees' 401(k) plans or paying the employees' health insurance premiums; once employees had been paid, the deductions belonged to the employees and no longer belonged to the employer].) But absent a similar scenario, the ordinary failure to pay wages does not give rise to conversion.

Voris, 7 Cal. 5th at 1156, n.11.

Here, some of Plaintiff's allegations, *i.e.*, deductions for general overhead expenses, are analogous to the claims in *UI Video Stores*. However, some of Plaintiff's allegations, *i.e.*, deductions for payroll taxes, are analogous to the claims in *U.S. v. Whiting*, 471 F.3d 792 (7th Cir. 2006), where the employer committed conversion by diverting withheld amount from their intended purpose, rather than the underlying wage claim in *UI Video Stores*, where the employer deducted monies from the employees' paychecks for uniforms.

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

Plaintiff alleges that Defendants committed conversion by diverting withheld amounts from their intended purpose. Specifically, Plaintiff alleges that MPPI and/or Debtor deducted monies from his paycheck for payroll taxes, which should have been paid to the taxing authorities, but MPPI or Debtor failed to do so, *i.e.*, MPPI and/or Debtor converted the monies to their own use rather than paying the monies to the taxing authorities. The court in *Voris* specifically stated that in circumstances like the one Plaintiff is alleging here, there may be a claim for conversion. If the allegations in the FAC are true, as the Court must accept at this stage, Plaintiff has alleged sufficient allegations to state a claim for relief that is plausible on its face.

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. However, pursuant to FRCP 8(d)(2), if a party makes alternative statements, the pleading is sufficient if any one of them is sufficient. Because Plaintiff's first statement of the claim is sufficient, the Court will not dismiss this claim.

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)

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,

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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)

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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' 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

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

(emphasis added). "The UCL statutory standing requirements differ from standing requirements in federal court." *Freeman v. ABC Legal Servs., Inc.*, 877 F. Supp. 2d 919, 923–24 (N.D. Cal. 2012). Under California law, "[t]o 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, in federal court, a plaintiff must also meet the requirements for standing under Article III to pursue injunctive relief under the UCL. *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.*

"Even if [the UCL] permits a plaintiff to pursue injunctive relief in California state courts . . . even though he or she currently suffers no individualized injury as a result of a defendant's conduct, 'a plaintiff whose cause of action [under the UCL] is perfectly viable in state court under state law may nonetheless be foreclosed from litigating the same cause of action in federal court, if he cannot demonstrate the requisite injury' to establish Article III standing." *Id.* (quoting *Lee v. Am. Nat'l Ins. Co.*, 260 F.3d 997, 1001–02 (9th Cir. 2001)).

In *Hangarter*, a plaintiff insured brought suit against her insurer and its parent company for discontinuing total disability benefits. One of the plaintiff's claims was for injunctive relief under the UCL. The appellate court concluded that the plaintiff lacked Article III standing to seek injunctive relief against the defendants for violation of the UCL, because the plaintiff currently had no contractual relationship with the defendants, and therefore, was not threatened personally by their future conduct.

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

Several courts have applied these standards in the context of wage and hour disputes, and have concluded that a former employee lacks standing to seek prospective injunctive relief because a former employee cannot show a real or immediate threat of irreparable injury by the former employer's employment practices. *See, e.g., Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 864–65 (9th Cir. 2017); *Davis v. Farmers Ins. Exch.*, 245 Cal. App. 4th 1302, 1326–27, 200 Cal. Rptr. 3d 315, 335 (2016), *as modified on denial of reh'g* (Apr. 21, 2016); *Oyarzo v. Tuolumne Fire Dist.*, No. 1:11-CV-01271-SAB, 2014 WL 37247, at *3 (E.D. Cal. Jan. 6, 2014), *aff'd in part, vacated in part, remanded sub nom. on other grounds Oyarzo v. Turner*, 641 F. App'x 700 (9th Cir. 2015); *Milligan v. Am. Airlines, Inc.*, 327 F. App'x 694 (9th Cir. 2009) ("Milligan is not an American employee. She therefore cannot show that she faces a 'real or immediate threat of irreparable injury' by American's employment practices. The fact that Milligan brought a class-action claim does not alter this analysis."); *Richards v. Ernst & Young LLP*, C08–4988 JF (HRL), 2010 WL 682314 (N.D. Cal. Feb. 24, 2010) (finding the plaintiff "lacks 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.").

However, there is some case law that suggests that "[a] former employee currently seeking to be reinstated or rehired may have standing to seek injunctive relief against a former employer." *Bayer*, 861 F.3d at 865; *see also Pitre v. Wal-Mart Stores, Inc.*, No. SACV171281DOCDFMX, 2017 WL 11093619, at *5 (C.D. Cal. Nov. 8, 2017). Here, Plaintiff is a former employee of MPPI, but Plaintiff has requested an order reinstating his employment with Defendants. As such, Plaintiff may have Article III standing to pursue injunctive relief under the UCL.

Nevertheless, "injunctive relief [under the UCL] is available to prevent threatened injury and is not a remedy designed to right completed wrongs." *Madrid v. Perot Sys. Corp.*, 130 Cal. App. 4th 440, 464–65, 30 Cal. Rptr. 3d 210, 228 (2005). "It should neither serve as punishment for past acts, nor be exercised in the absence of any evidence establishing the reasonable probability the acts will be repeated in the

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott
future." *Id.*

Chapter 13

Here, Plaintiff's requests for injunctive relief appear to be remedies designed to right Defendants' alleged wrongs. All Plaintiff's requests address Defendants' conduct in the past in order to collect his purported unpaid wages, not Defendants' conduct in the future to prevent unfair employment practices as required by the UCL. Plaintiff has not alleged that any conduct he requests the Court enjoin is likely to be repeated in the future. Accordingly, 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) and 226(e) 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 he filed a complaint with the California Board of Psychology against

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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

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

Wednesday, March 4, 2020

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** 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; 11/13/19; 2/5/20; 2/26/20

Docket 8

Tentative Ruling:

The Court will continue this status conference to **March 18, 2020 at 2:30 p.m.** in order for the parties to update the Court on their efforts to schedule a mediation with a recalled United States Bankruptcy Judge for the Central District of California. *See* calendar no. 22.

Appearances on March 4, 2020 are excused.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shiridel

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

Wednesday, March 4, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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**

Thursday, March 5, 2020

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); 12/12/19

Docket 114

***** VACATED *** REASON: Continued by stip to 3/26/20 at 1:00 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes
Roksana D. Moradi

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#2.00 Confirmation hearing re: second amended chapter 11 plan

fr. 12/5/19/ 1/23/20

Docket 124

Tentative Ruling:

See calendar no. 3.

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, March 5, 2020

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; 10/10/19; 12/5/19; 1/23/20

Docket 1

Tentative Ruling:

In its status report [doc. 170], the debtor indicates that it intends to file a motion to amend its petition for the purpose of making an election to proceed under subchapter V of chapter 11. Rather than file a motion, pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 1009(a), the debtor may amend its petition "as a matter of course at any time before the case is closed." *See also In re Progressive Sols., Inc.*, 2020 WL 975464 (Bankr. C.D. Cal. Feb. 21, 2020). Any party in interest may object to the designation no later than 30 days after the amendment to the petition. FRBP 1020(b).

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, March 5, 2020

Hearing Room 301

1:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#4.00 U.S. Trustee's motion under 11 U.S.C. § 1112(b) to dismiss or convert case

Docket 145

Tentative Ruling:

The Court will dismiss this case.

I. BACKGROUND

On January 16, 2019, Coast to Coast Holdings, LLC ("Debtor") filed a voluntary chapter 11 petition. In its schedule A/B [doc. 13], Debtor listed real property located at 1140 Henry Ridge Motorway, Topanga, California 90290 (the "Property") and valued the Property at \$2.9 million. The Property was Debtor's sole significant asset; aside from the Property, Debtor scheduled a claim against the resident of the Property, Joseph Leonardi, for unlawful detainer and past due rent.

In Debtor's schedule D, Debtor identified two secured claims against the Property: (A) a deed of trust in favor of Keystone Real Estate Lending Fund ("Keystone") in the amount of \$1,939,724.94; and (B) property taxes owed to the Los Angeles County Tax Collector in the amount of \$39,331.42. In its Statement of Financial Affairs, Debtor indicated that it had not generated any income in 2018 or 2019.

On August 13, 2019, Debtor filed a motion to approve a compromise between Debtor and its principals, on the one hand, and Mr. Leonardi, on the other hand (the "Compromise Motion") [doc. 88]. On September 11, 2019, the Court entered an order granting the Compromise Motion [doc. 105].

On November 27, 2019, Keystone filed a motion for relief from the automatic stay (the "RFS Motion") [doc. 126] to proceed with its remedies in state court. In the RFS Motion, Keystone stated it has a claim in the amount of \$2,13,167.02. Keystone also acknowledged that Debtor's principal, Jeff Turner, has a secured claim in the amount of \$60,000 and that the Los Angeles County Tax Collector has a current claim of \$69,032.73. Keystone identified the value of the Property as \$2.4 million.

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

CONT... Coast to Coast Holdings, LLC

Chapter 11

On December 19, 2019, the Court entered an order granting the RFS Motion [doc. 136]. On December 24, 2019, a foreclosure sale was conducted, at which time Keystone credit bid its claim and took title and possession of the Property. Declaration of Hamid D. Rafatjoo [doc. 155], ¶ 14.

On January 3, 2020, Levene, Neale, Bender, Yoo & Brill L.L.P ("Levene Neale") filed a motion to withdraw as Debtor's counsel (the "Motion to Withdraw") [doc. 139]. Keystone opposed the Motion to Withdraw, on the basis that withdrawal of Levene Neale would lead to dismissal of this case pursuant to Local Bankruptcy Rule 2091-1(d). On February 6, 2020, the parties appeared for a hearing on the Motion to Withdraw. At that time, the Court granted the Motion to Withdraw but agreed not to automatically dismiss this case, until Keystone filed a motion to convert this case to a chapter 7 case.

On the same day, the U.S. Trustee (the "UST") filed a motion to dismiss this case (the "Motion to Dismiss") [doc. 145], on the basis that Debtor has not timely filed its monthly operating reports. On February 13, 2020, Keystone filed a motion to convert this case to a chapter 7 case (the "Motion to Convert") [doc. 155]. In the Motion to Convert, Keystone notes that Debtor filed a state court action against Keystone (the "State Court Action") and requests conversion and liquidation of Debtor's assets in a chapter 7 case in lieu of proceeding in state court. Keystone also agreed to negotiate a carve out arrangement with the chapter 7 trustee if this case is converted. Further, Keystone removed the State Court Action to this Court [1:20-ap-01006-VK].

On February 20, 2020, the UST filed an opposition to the Motion to Convert (the "Opposition") [doc. 157]. In the Opposition, the UST asserts that, because Keystone took title and possession of the Property, there are no assets to liquidate in a chapter 7 case. The UST also notes that Keystone does not provide any specific information about the specifics of a carve out and whether there would be any meaningful distribution to unsecured creditors after a chapter 7 trustee recovered his or her administrative fees. On February 27, 2020, Keystone filed a reply to the Opposition, stating that it intends to negotiate a carve out that would provide a distribution to general unsecured creditors.

On February 20, 2020, Keystone filed an opposition to the Motion to Dismiss [doc.

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

CONT... Coast to Coast Holdings, LLC

Chapter 11

158], and on February 25, 2020, the UST filed a reply to this opposition [doc. 159]. In these filings, the parties reiterate their arguments in support of and in opposition to the Motion to Convert.

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. . .

(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.

. . .

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

CONT...

Coast to Coast Holdings, LLC

Chapter 11

(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....

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).

Here, the parties do not dispute that there is cause to dismiss or convert this case. Debtor has failed to meet its obligations, such as timely filing monthly operating reports. Moreover, Debtor is not and has not been receiving any income and the estate no longer has title to or possession of the Property; consequently, there is substantial diminution of the estate and no reasonable likelihood of rehabilitation.

The parties dispute whether dismissal or conversion is in the best interest of creditors and the estate. Based on the record above, dismissal is in the best interest of creditors. First, Keystone now has title to and possession of the Property. As such, it is unclear how a chapter 7 trustee would facilitate or oversee the sale of property that is no longer property of the estate. Keystone also has not addressed why this Court would have authority over the sale of a property that is no longer property of the estate.

In addition, as noted by the UST, Keystone has not provided any details regarding the type of carve out Keystone is prepared to offer for payment to unsecured creditors.

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

CONT... Coast to Coast Holdings, LLC

Chapter 11

Thus, there is no guarantee that Keystone will proffer a carve out sufficient to pay unsecured creditors. Further, Debtor has no other assets for liquidation; Debtor's only other asset was a claim against Mr. Leonardi which has been settled by order of this Court. The main remaining dispute is between Debtor and Keystone.

Rather than incur chapter 7 administrative fees and costs, it is more prudent to have Keystone pursue its rights in state court. Given the likely futility of a chapter 7 case, the Court will dismiss this case. Upon dismissal of this case, the Court also will not have jurisdiction over the State Court Action. As such, the Court also will remand the State Court Action to state court.

III. CONCLUSION

The Court will dismiss this case and remand the State Court Action.

The chapter 7 trustee must submit an 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

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#5.00 Keystone Real Estate Lending Fund, L.P.'s Motion pursuant to 11 U.S.C. section 1112(b) and Federal Rules of Bankruptcy Procedure 1017(f) and 9014 to convert chapter 11 case to chapter 7

Docket 155

Tentative Ruling:

See calendar no. 4.

Party Information

Debtor(s):

Coast to Coast Holdings, LLC

Pro Se

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

#6.00 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; 12/5/19; 2/6/20

Docket 1

Tentative Ruling:

- NONE LISTED -

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, March 5, 2020

Hearing Room 301

1:00 PM

1:19-11843 14554 Friar, LLC

Chapter 11

#7.00 Order to show cause why debtor's counsel should not disgorge fees

Docket 52

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a), 329(b) and 330(a)(3), the Court will order Donna Bullock to disgorge the \$2,500 she received as compensation for legal services provided as counsel to the debtor and debtor in possession in this case.

I. BACKGROUND

On July 22, 2019, 14554 Friar, LLC (the "Debtor") filed a voluntary chapter 11 petition. 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). The Debtor's petition was signed by the Debtor's proposed bankruptcy counsel, Donna Bullock.

According to the Debtor's Disclosure of Compensation of Attorney for Debtor(s) [doc. 9, p. 45], Leonid Kamenetsky paid Ms. Bullock \$2,500 as compensation for legal services provided in this chapter 11 case. However, Ms. Bullock **never** filed an application to be employed as counsel to the Debtor, as a debtor in possession.

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]. The Order set a case status conference for September 12, 2019 and ordered the Debtor to file a case status report 14 days prior to the September 12, 2019 status conference. Contrary to the Order, the Debtor belatedly filed a status report on September 12, 2019, the day of the status conference [doc. 25]. Contrary to the Order, that status report was not served on any of the Debtor's creditors.

Because of this belated filing, the Court continued the status conference to October 3, 2019. At the continued status conference on October 3, 2019, the Court set a bar date of December 16, 2019 and ordered the Debtor to serve notice of the bar date by October 15, 2019 and to lodge the order setting the bar date within seven days. The Debtor **never** served notice of the bar date or lodged the bar date order.

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

CONT... 14554 Friar, LLC

Chapter 11

On October 30, 2019, Easy Financial LLC ("Easy Financial"), one of the Debtor's secured creditors, filed a motion for relief from the automatic stay regarding the Debtor's main asset, i.e., certain commercial real property (the "RFS Motion") [doc. 32]. One of the grounds for relief asserted by Easy Financial was that, pursuant to 11 U.S.C. § 362(d)(3), the Debtor failed within 90 days after the petition date to file a plan of reorganization or to commence the required monthly interest payments.

In preparing the RFS Motion, Easy Financial searched the California Secretary of State website for the Debtor [Declaration of David I. Brownstein, doc. 50, ¶ 4]. Apparently, Debtor registered with the California Secretary of State on July 17, 2019, i.e., five days prior to filing its chapter 11 petition. *Id.* at ¶ 5 and Exh. A. Additionally, the grant deed transferring the commercial real property from the prior entity, Friar Street Property, LLC, to the Debtor was recorded within two hours of the Debtor filing its chapter 11 petition [doc. 32, Exh. J].

Because the Debtor was created less than a week prior to filing its chapter 11 petition, the Debtor has no unsecured creditors. Additionally, none of the lienholders listed in schedule D as the Debtor's secured creditors made any loans or provided any goods or services *to the Debtor*.

The hearing on the RFS Motion was set for November 20, 2019 and the deadline for opposition was November 6, 2019. On November 13, 2019, the Debtor, again belatedly, filed an opposition [doc. 34]. The Court set the matter for an evidentiary hearing.

On December 26, 2019, the Debtor and Easy Financial filed a stipulation requesting a continuance of the evidentiary hearing to February 28, 2020 [doc. 43]. Prior to the continued evidentiary hearing on February 28, 2020, on motion of the United States Trustee, the Debtor's case was dismissed [doc. 54].

On December 26, 2019, the United States Trustee (the "UST") filed a motion to dismiss or convert the Debtor's case to one under chapter 7 (the "Motion to Dismiss") [doc. 42]. In the Motion to Dismiss, the UST noted that the Debtor had not filed monthly operating reports for August 2019, October 2019, November 2019 and December 2019, and that the Debtor had not paid the United States trustee quarterly fees for the third and fourth quarters of 2019 and the first quarter of 2020. Additionally, the UST noted that, in violation of Local Bankruptcy Rule 9011-2(a),

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

CONT... 14554 Friar, LLC

Chapter 11

the Debtor had not employed counsel.

On January 23, 2020, the Court held a hearing on the Motion to Dismiss. The Debtor did not file a response to the Motion to Dismiss. However, Ms. Bullock and the Debtor's principal appeared at the hearing and opposed the Motion to Dismiss.

At that hearing, the Court granted the Motion to Dismiss and, because of the Debtor's failure to comply with the requirements of being a debtor in possession, dismissed the Debtor's bankruptcy case.

After that hearing, the Court issued an *Order to Show Cause Why Debtor's Counsel Should Not Disgorge Fees* (the "OSC") [doc. 52]. The OSC ordered any response to be filed by February 20, 2020. Ms. Bullock has not timely filed a response.

II. DISCUSSION

Pursuant to 11 U.S.C. § 329(a)—

- (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
- (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—
 - (1) the estate, if the property transferred—
 - (A) would have been property of the estate; or
 - (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

CONT...

14554 Friar, LLC

Chapter 11

(2) the entity that made such payment.

Pursuant to 11 U.S.C. § 330(a)(3)—

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or 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;
- (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;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Under Local Bankruptcy Rule ("LBR") 2014-1(b)(1)(E)—

A timely application for employment is a prerequisite to compensation from the estate. Therefore, 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.

(emphasis added).

"[A] bankruptcy court has broad and inherent authority to deny any and all compensation when an attorney fails to meet the requirements of [§§ 327, 329, 330, 331]." *In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997).

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

CONT... 14554 Friar, LLC

Chapter 11

The Court has discretion to order the return of excess compensation when compensation received by the debtor's counsel exceeds the reasonable value of services rendered. 11 U.S.C. § 329(b); *see also In re Spickelmier*, 469 B.R. 903, 914 (Bankr. D. Nev. 2012) (finding that counsel for the debtor demonstrated "a lack of competence and diligence" which did "not deserve to be compensated").

"Services charged by a debtor's attorney which are of poor quality and/or which do not comply with the attorney's ethical duties are not reasonable and provide grounds for disgorgement of fees for purposes of § 329(b)." *In re Smith*, 436 B.R. 476, 483 (Bankr. N.D. Ohio 2010). "Improper conduct on the part of...attorneys has frequently been penalized by withholding compensation or reimbursement or both." *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 844 (Bankr. C.D. Cal. 1991) (citing *In re Rancho Motor Inn, Inc.*, 527 F.2d 1044, 1047 (9th Cir. 1975)).

First, Ms. Bullock failed to file an application to be employed as debtor in possession counsel, as required by LBR 2014-1(b)(1)(E). Second, Ms. Bullock's services have been "of poor quality and... [did] not comply with [Mr. Bullock's] ethical duties." *Smith*, 436 B.R. at 483.

Once Ms. Bullock decided to appear on behalf of the Debtor, she was required to act diligently and competently on behalf of her client. Instead, Ms. Bullock failed to file monthly operating reports as required by the United States Trustee guidelines and failed to file timely numerous pleadings, including the status report, the Opposition, a response to the Motion to Dismiss and a response to the OSC. Ms. Bullock also failed to serve notice of the bar date and lodge a bar date order as ordered by the Court at the October 3, 2019 status conference, and she apparently did not properly guide the Debtor to comply with the requirements of a single asset real estate case.

The Debtor has been prejudiced by Ms. Bullock's actions. The Court dismissed the Debtor's case, in part, because of the poor quality of Ms. Bullock's legal services. Consequently, Ms. Bullock must disgorge the fees she received in this case.

III. CONCLUSION

The Court will order Ms. Bullock to disgorge the \$2,500 she received from Mr. Kamenetsky as compensation for legal services provided in this case.

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

CONT... 14554 Friar, LLC

Chapter 11

The Court will prepare the order.

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, March 5, 2020

Hearing Room 301

1:00 PM

1:19-13011 5019 Partners, LLC

Chapter 11

#8.00 Order to show cause why debtor's counsel should not disgorge fees

Docket 16

Tentative Ruling:

On December 4, 2019, the debtor filed a voluntary chapter 11 petition. At the initial chapter 11 case status conference, held on January 24, 2020, the Court ordered that the debtor's bankruptcy case be dismissed [doc. 19].

On January 24, 2020, the Court issued an *Order to Show Cause Why Debtor's Counsel Should Not Disgorge Fees* (the "OSC") [doc. 16]. The OSC ordered that any response be filed and served on the debtor by February 20, 2020.

On February 11, 2020, the debtor filed another chapter 11 petition, initiating case 1:20-bk-10320-VK (the "Second Case").

On February 21, 2020, Dana M. Douglas filed a response to the OSC (the "Response") [doc. 24]. In the Response, Ms. Douglas represents, under penalty of perjury, that she "refunded the full value of the \$7500 fee received in the prior case." [Declaration of Dana M. Douglas, ¶ 5]. Ms. Douglas further states that "[w]hen Debtor elected to continue to utilize [Ms. Douglas'] services for [the Second Case], Debtor tendered \$7500 which [Ms. Douglas] received and accepted for its full value with no offset for any prior services." *Id.*

Based on the representations in the Response, the Court will discharge the OSC. However, in connection with the Second Case, the Court will evaluate whether \$7,500 is reasonable compensation for the services provided by Ms. Douglas in that case.

Appearances on March 5, 2020 are excused.

Party Information

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

CONT... 5019 Partners, LLC

Chapter 11

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

1:20-10093 Robert Alderman and Noni Alderman

Chapter 11

#9.00 Status conference re: chapter 11 case

Docket 1

*** VACATED *** REASON: Case converted to one under chapter 7 [doc. 36].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Alderman

Represented By
Stephen L Burton

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

1:20-10333 Bayridge Holding

Chapter 7

#10.00 Order to show cause re: dismissal with a 180-day bar to refiling

Docket 7

Tentative Ruling:

On December 23, 2019, Prudential Equity Group ("Prudential") filed a voluntary chapter 7 petition (the "First Case") [1:19-bk-13179]. Prudential indicated it owns real property located at 18280 Hombre Lane, Murrieta, California (the "Property"). On January 6, 2020, the Court issued an Order to Show Cause why the First Case should not be dismissed for failure to retain counsel pursuant to Local Bankruptcy Rule ("LBR") 9011-2(a) (the "First OSC") [1:19-bk-13179, doc. 7].

On January 16, 2020, the Court held a hearing on the First OSC. Prudential appeared without counsel. At that time, the Court informed Zoraida Molina, who appeared on behalf of Prudential, that Prudential must retain counsel to proceed with a bankruptcy case.

On January 22, 2020, the Court entered an order dismissing the First Case based on Prudential's failure to retain counsel [1:19-bk-13179, doc. 14]. On the same day, Prudential filed another chapter 7 petition (the "Second Case") [1:20-bk-10155-VK]. The petition was filed and signed by Ms. Molina. Once again, Prudential was not represented by counsel.

On January 24, 2020, the Court issued an Order to Show Cause why the Second Case should not be dismissed for failure to retain counsel pursuant to LBR 9011-2(a) (the "Second OSC") [1:20-bk-10155-VK, doc. 4]. In the Second OSC, the Court instructed Prudential to file a disclosure of compensation of attorney for Prudential by February 3, 2020, or the case would be dismissed with a 180-day bar.

By the February 3, 2020 deadline, Prudential did not file a response to the Second OSC or disclosure of compensation of an attorney. On February 6, 2020 at 1:00 p.m., the Court held a hearing on the Second OSC. No one appeared on behalf of Prudential. On February 7, 2020, the Court entered an order dismissing the Second Case with a 180-day bar to refiling [1:20-bk-10155-VK, doc. 10].

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

Thursday, March 5, 2020

Hearing Room 301

1:00 PM

CONT... Bayridge Holding

Chapter 7

On February 12, 2020, Bayridge Holding dba Prudential Equity Group ("Debtor") filed this chapter 7 petition. In its petition, Debtor represents that it owns the Property. The petition was filed and signed by Hector Carrillo. Debtor is not represented by counsel.

On February 18, 2020, the Court issued an Order to Show Cause why this case should not be dismissed with a 180-day bar to refiling (the "OSC") [doc. 7]. The Court instructed Debtor to file a disclosure of compensation by February 28, 2020. Debtor did not timely file a disclosure of compensation or any response to the OSC.

Consequently, pursuant to 11 U.S.C. §§ 105(a), 349(a) and 362(d)(1), the Court will dismiss this case with a 180-day bar, retroactively annul the automatic stay to the filing of Debtor's petition and order that the automatic stay will not apply to the Property during the first 180 days of any future bankruptcy case filed by Debtor, Prudential, Mr. Carrillo and/or Ms. Molina.

The Court will prepare the Order.

Party Information

Debtor(s):

Bayridge Holding	Pro Se
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Trustee(s):

Amy L Goldman (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, March 5, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#11.00 Debtor's objection to claim of Benjamin L. Bailey
[Proof of claim no.12]

Docket 231

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, March 5, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#12.00 Debtor's objection to claim of Poladov, LLC
[Proof of claim no. 6]

Docket 233

Tentative Ruling:

The Court will continue this hearing to **April 16, 2020 at 2:00 p.m.**

The debtor did not serve the claimant at the correct address with notice of the hearing. The notice of hearing [doc. 291] indicates that the debtor served the claimant at 333 Nelson Street SW, Unit **434**, Atlanta, GA 30313. However, the claimant's address, according to proof of claim 6, is 333 Nelson Street SW, Unit **4343**, Atlanta, GA 30313.

By March 12, 2019, the debtor must serve notice of the continued hearing and the deadline to serve a written response on the claimant Poladov, LLC at the address listed in proof of claim 6.

Appearances on March 5, 2020 are excused.

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, March 5, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#13.00 Debtor's objection to claim of Santa Monica Beach Holdings, LLC.
[Proof of claim no. 26]

Docket 232

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, March 5, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#14.00 Debtor's Objection of Sorelle Impresa [Proof of claim no 16]

Docket 234

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, March 5, 2020

Hearing Room 301

2:00 PM

1:18-12472 David Forman

Chapter 7

#15.00 Debtor's motion for order to vacate discharge

Docket 20

Tentative Ruling:

Deny.

I. BACKGROUND

On October 4, 2018, David Forman ("Debtor") filed a voluntary chapter 7 petition. On January 22, 2019, Debtor received a discharge [doc. 11]. On January 23, 2019, Debtor's case was closed.

On August 21, 2019, Debtor filed a motion to reopen his case (the "First Motion to Reopen") [doc. 14] to enter into a reaffirmation agreement with Select Portfolio Servicing ("SPS"). On August 23, 2019, the Court entered an order denying the First Motion to Reopen [doc. 15] on the basis that, pursuant to 11 U.S.C. § 524(c)(1), a reaffirmation agreement must be made before a discharge is granted.

On January 28, 2020, Debtor filed another motion to reopen his case (the "Second Motion to Reopen") [doc. 17]. In the Second Motion to Reopen, Debtor stated that he intended to move to vacate his discharge to be able to enter into a reaffirmation agreement with SPS. On January 30, 2020, the Court entered an order reopening Debtor's case [doc. 18].

On February 6, 2020, Debtor filed the Motion [doc. 20]. Debtor contends the Court may vacate his discharge pursuant to its equitable powers under 11 U.S.C. § 105(a).

II. ANALYSIS

Bankruptcy courts do "not have the inherent equitable power to revoke a discharge outside the framework of § 727(d)." *In re Markovich*, 207 B.R. 909, 913 (B.A.P. 9th Cir. 1997); *see also In re Mi Jung Hong*, 2014 WL 465562 (Bankr. C.D. Cal. Feb. 5, 2014). Under § 727(d), "the trustee, a creditor, or the United States trustee" have

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

Thursday, March 5, 2020

Hearing Room 301

2:00 PM

CONT...

David Forman

Chapter 7

standing to request revocation of a discharge. 11 U.S.C. § 727(d). In addition, the statute provides only four circumstances that would lead to revocation of a debtor's discharge—

- (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;
- (2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;
- (3) the debtor committed an act specified in subsection (a)(6) of this section;
or
- (4) the debtor has failed to explain satisfactorily—
 - (A) a material misstatement in an audit referred to in section 586(f) of title 28; or
 - (B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.

11 U.S.C. § 727(d)(1)-(4).

In addition to § 727(d), courts have held that vacating a discharge for a debtor to enter into a reaffirmation agreement also runs afoul of 11 U.S.C. § 524(c)(1): "The weight of case law authority is that the bankruptcy courts do not have the equitable power to vacate discharges to allow debtors to enter into reaffirmation agreements because this would be inconsistent with the statutory deadline that reaffirmation agreements must be made before the entry of discharge set forth in 11 U.S.C. § 524(c)(1)." *Mi Jung Hong*, 2014 WL 465562 at *4 (collecting cases). "The equity powers of the

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

Thursday, March 5, 2020

Hearing Room 301

2:00 PM

CONT...

David Forman

Chapter 7

bankruptcy court cannot be used to override specific statutory provisions in the Code." *Markovich*, 207 B.R. at 913.

Here, the Court does not have the power to employ its equitable authority under 11 U.S.C. § 105(a) if the Court's actions will conflict with other statutory provisions. In this case, vacating Debtor's discharge to allow Debtor to proceed with a reaffirmation agreement will run afoul of both § 524(c)(1) and § 727(d). Under § 524(c)(1), Debtor's receipt of a discharge operated as a statutory deadline for entering into reaffirmation agreements. As to § 727(d), Debtor does not have standing to request, and this Court does not have the *sua sponte* power to enter, an order vacating Debtor's discharge. Moreover, completing a reaffirmation agreement is not one of the four statutory reasons to vacate a debtor's discharge. Consequently, the Court will deny the Motion.

III. CONCLUSION

The Court will deny the Motion.

The Court will prepare the order.

Party Information

Debtor(s):

David Forman

Represented By
Daniel King

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Tuesday, March 10, 2020

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 10, 2020

Hearing Room 301

9:30 AM

1:16-11116 Rodolfo Cortes and Doris Cortes

Chapter 13

#0.01 Order to show cause why debtors' counsel should not be sanctioned for failure to represent the debtors in connection with a motion for relief from stay

fr. 2/11/20

Docket 45

Tentative Ruling:

On February 19, 2020, the Court held a continued hearing on the motion for relief from stay. Mr. Calsada, the debtors' counsel, appeared at that hearing. Because Mr. Calsada has been working with the debtors to resolve the motion for relief from stay, the Court will discharge this OSC.

Appearances on March 10, 2020 are excused.

Party Information

Debtor(s):

Rodolfo Cortes

Represented By
Glenn Ward Calsada

Joint Debtor(s):

Doris Cortes

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, March 10, 2020

Hearing Room 301

9:30 AM

1:19-10681 Jan Bidasha

Chapter 13

#6.01 Hearing re Novastar, LLC's objection to confirmation of debtor's second amended 13 Plan

Docket 63

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a), 349 and 1307(c), the Court may dismiss this case with a two-year bar to refiling.

I. BACKGROUND

A. Chapter 13 Petition and Schedules

On March 24, 2019, Jan Bidasha (the "Debtor") filed a voluntary chapter 13 petition. In her petition [doc. 1], the Debtor represents that she lives at 17438 Kinzie, Northridge, California (the "Northridge Property"). In her statement of financial affairs ("SOFA") [doc. 35], the Debtor represents that she has lived at the Northridge Property during the three years prior to filing her chapter 13 petition.

In her schedule A/B [doc. 27], the Debtor indicates that she owns real property located at 2750 Artesia Blvd., #460, Redondo Beach, California (the "Redondo Beach Property"). In her schedule D [doc. 29], the Debtor listed two claims secured by the Redondo Beach Property, one in favor of Bank of America and the other in favor of Novastar, LLC ("Novastar"). In the Debtor's second amended chapter 13 plan [doc. 58], the Debtor represents that Novastar holds a third deed of trust against the Redondo Beach Property. However, in the Debtor's schedules, the second lienholder against the Redondo Beach Property is not disclosed.

In her schedule I [doc. 33], the Debtor represents that she receives \$5,515.34 in income per month, which includes \$1,600.00 from rental income. However, in her schedule G [doc. 31], the Debtor did not identify any unexpired leases.

In her schedule J [doc. 34], the Debtor represents that her monthly expenses total

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

Tuesday, March 10, 2020

Hearing Room 301

9:30 AM

CONT... Jan Bidasha

Chapter 13

\$5,289.93. This includes a \$3,200 monthly expense for a "live in caretaker." Because of the Debtor's claimed expenses, the Debtor represents that her net monthly income is \$225.41.

B. State Court Litigation

In 2014, the Debtor filed a state court lawsuit against Novastar and other defendants [doc. 63, Exh. 1]. After Novastar prevailed in that lawsuit, the state court awarded Novastar attorneys' fees and costs. *Id.*

Subsequently, Novastar filed a state court action against the Debtor, among others [doc. 46, Exh. 1]. In that state court complaint (the "Complaint"), Novastar represents that in 2014, the Debtor executed a promissory note in the principal amount of \$90,000, with 12.90% interest, with all principal and unpaid interest due on the maturity date of May 1, 2015. This note is secured by a deed of trust on the Redondo Beach Property.

Novastar alleges that the Debtor represented in the loan documents that she did not live in the Redondo Beach Property and that Novastar would hold a second deed of trust. Novastar further represents that is discovered, after the loan was made, that the Debtor was living in the Redondo Beach Property and that Novastar's lien is subordinate to a second lien against the Redondo Beach Property, in favor of the City of Redondo Beach.

Additionally, Novastar claims that the Debtor used the proceeds of its loan to purchase real property located at 11227 Collett Avenue, Granada Hills, California (the "Granada Hills Property"). Novastar also alleges that the debtor transferred the Granada Hills Property to her son-in-law for insufficient consideration. In the Complaint, Novastar seeks an equitable lien against the Granada Hills Property.

On June 24, 2019, Novastar filed a motion for relief from stay to proceed with that state court action (the "RFS Motion") [doc. 46]. In July 2019, the Court granted relief from stay for that litigation to proceed [doc. 51].

C. Proofs of Claim

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

Tuesday, March 10, 2020

Hearing Room 301

9:30 AM

CONT...

Jan Bidasha

Chapter 13

On May 29, 2019, Novastar filed proof of claim 4-1 (the "Claim"), asserting a claim secured by the Redondo Beach Property in the amount of \$516,711.90. According to the Claim, Novastar's note matured in 2015, which was prepetition. The Claim consists of the principal balance of the note, interest and attorneys' fees.

On March 2, 2020, the debtor filed an objection to the Claim (the "Objection") [doc. 74]. Even though the Court previously granted relief from stay for the state court litigation to proceed, the Objection concerns the same litigation. The hearing on the Objection is set for April 14, 2020.

Three other creditors have filed proofs of claim in the Debtor's case. The Franchise Tax Board and Verizon filed unsecured claims in the amounts of \$1,020.71 and \$764.08, respectively [Claims 1-1 and 2-1]. Bank of America, N.A. filed a secured claim against the Redondo Beach Property, based on a first deed of trust, in the amount of \$133,043.95 [Claim 3-1].

D. Chapter 13 Plan and the Debtor's Dilatory Conduct

To date, the Court has held four plan confirmation hearings, *i.e.*, on June 11, 2019, September 10, 2019, November 12, 2019 and February 11, 2020. Because the debtor failed to provide proper notice and to provide required documentation to the chapter 13 trustee, the Court continued each of these hearings.

In the Debtor's second amended chapter 13 plan (the "Plan") [doc. 58], the Debtor proposes to pay \$225.00 per month for 36 months. Plan payments are allocated to the Debtor's attorneys' fees, the Franchise Tax Board's claim, arrears to Bank of America, N.A., as the first deed of trust holder, and fees of the chapter 13 trustee. The Plan does not provide for any payments to be made to Novastar, or to the other small unsecured creditor. The chapter 13 trustee and Novastar have filed objections to confirmation of the Plan.

II. DISCUSSION

Pursuant to 11 U.S.C. § 1307(c):

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

Tuesday, March 10, 2020

Hearing Room 301

9:30 AM

CONT...

Jan Bidasha

Chapter 13

[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 F.3d 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).

Here, there is cause to dismiss the Debtor's case; it appears that that the Debtor did not file this case in good faith, and that this is a two-party dispute, between the Debtor and Novastar. Rather than going forward with the pending litigation in state court, which has the expertise to hear that litigation, and before which trial was set, the Debtor filed her chapter 13 petition. Subsequently, the Debtor has dragged this case out, on the basis of a chapter 13 plan that pays nothing to Novastar. In light of the foregoing, it appears that dismissal of this chapter 13 case is in the best interest of creditors and the estate.

III. CONCLUSION

For the foregoing reasons, pursuant to 11 U.S.C. §§ 105(a), 349 and 1307(c), the Court may dismiss this case with a two-year bar to refiling.

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

Tuesday, March 10, 2020

Hearing Room 301

9:30 AM

CONT... Jan Bidasha

Chapter 13

Party Information

Debtor(s):

Jan Bidasha

Represented By
Neil C Evans

Trustee(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**

Tuesday, March 10, 2020

Hearing Room 302

9:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#33.01 Hearing re: H. Samuel Hopper's objection to confirmation of debtor's third amended chapter 13 plan

fr. 1/14/20

Docket 166

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Movant(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, March 10, 2020

Hearing Room 301

10:30 AM

1:15-12329 Rene Dashiell

Chapter 13

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

Docket 43

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rene Dashiell

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 10, 2020

Hearing Room 301

10:30 AM

1:15-13159 John Charles Salvatore Vitale and Grettell Vanessa Vitale Chapter 13

#52.00 Trustee's motion to dismiss case for failure to submit all tax refunds
fr. 10/8/19; 12/10/19; 1/14/20

Docket 57

***** VACATED *** REASON: Voluntary withdrawal of motion on 3/4/20
[doc. 67].**

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, March 10, 2020

Hearing Room 301

10:30 AM

1:16-11663 Robert Lazar Levitan and Catherine Palmerino Levitan

Chapter 13

#53.00 Trustee's motion for order modifying the plan to increase the plan payment pursuant to 11 U.S.C. sec 1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. sec 1307(c)(6)

fr. 2/11/20

Docket 68

***** VACATED *** REASON: Withdrawal of motion filed 3/3/20. [Dkt. #74]**

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, March 10, 2020

Hearing Room 301

10:30 AM

1:16-12502 Julio Cesar Arias

Chapter 13

#54.00 Trustee's Motion to dismiss case for failure to make plan payments

fr. 2/11/20

Docket 33

*** VACATED *** REASON: Case dismissed on 3/4/20 [doc. 44].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julio Cesar Arias

Represented By
Todd L Turoci

Trustee(s):

Elizabeth (SV) 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 10, 2020

Hearing Room 301

10:30 AM

1:16-12985 Tanya Monge

Chapter 13

#55.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 1/14/20

Docket 70

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tanya Monge

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, March 10, 2020

Hearing Room 301

10:30 AM

1:16-13377 Nahed Talei

Chapter 13

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

Docket 97

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nahed Talei

Represented By
Michael F Frank

Trustee(s):

Elizabeth (SV) 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 10, 2020

Hearing Room 301

10:30 AM

1:17-10038 Oganesh Pashayan and Anahit Pashayan

Chapter 13

#57.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 11/12/19; 1/14/20

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, March 10, 2020

Hearing Room 301

10:30 AM

1:17-10230 Brenda Jurado Hill

Chapter 13

#58.00 Trustee's motion to dismiss case for failure to submit all tax refunds
fr. 1/14/20

Docket 26

***** VACATED *** REASON: Order entered on 3/6/2020 [doc. 30].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brenda Jurado Hill

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, March 10, 2020

Hearing Room 301

10:30 AM

1:17-10629 Jonas B. Magcase

Chapter 13

#59.00 Trustee's motion to dismiss case for failure to submit all tax refunds

Docket 61

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jonas B. Magcase

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, March 10, 2020

Hearing Room 301

10:30 AM

1:17-10880 LaFaye Francisco

Chapter 13

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

Docket 86

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, March 10, 2020

Hearing Room 301

10:30 AM

1:17-11891 Christine Mettlen

Chapter 13

#61.00 Trustee's motion to dismiss case for failure to submit all tax refunds
fr. 1/14/20

Docket 29

***** VACATED *** REASON: Motion withdrawn 01/16/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christine Mettlen

Represented By
James G. 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 10, 2020

Hearing Room 301

10:30 AM

1:17-12779 Henry Chukwu Okonkwo

Chapter 13

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

fr. 12/10/19; 2/11/20

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, March 10, 2020

Hearing Room 301

10:30 AM

1:17-12779 Henry Chukwu Okonkwo

Chapter 13

#63.00 Trustee's motion to dismiss case for failure to submit all tax refunds

fr. 12/10/19; 2/11/20

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, March 10, 2020

Hearing Room 301

10:30 AM

1:17-12788 Gerardo Paz and Araceli Diane Paz

Chapter 13

#64.00 Trustee's motion for order modifying the plan to lincrase the plan payment pursuant to 11 U.S.C. sec 1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. sec 1307(c)(6)

STIP filed on 3/5/20 doc # 59

Docket 56

***** VACATED *** REASON: Order entered on 3/6/2020 [doc. 60].**

Tentative Ruling:

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, March 10, 2020

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

#65.00 Trustee's motion for order modifying the plan to lincrase the plan payment pursuant to 11 U.S.C. sec 1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. sec 1307(c)(6)

Docket 38

Tentative Ruling:

In light of the debtor's opposition to the motion [doc. 42] and the pending motion to modify plan [doc. 43], the Court will continue this hearing to April 14, 2020 at 10:30 a.m.

Appearances on March 10, 2020 are excused.

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, March 10, 2020

Hearing Room 301

10:30 AM

1:17-13138 John Orlanes Case and Lourdes Halili Case

Chapter 13

#66.00 Trustee's motion for order modifying the plan to lincrase the plan payment pursuant to 11 U.S.C. sec 1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. sec 1307(c)(6)

Docket 58

***** VACATED *** REASON: Motion withdrawn 3/5/20 - jc**

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, March 10, 2020

Hearing Room 301

10:30 AM

1:17-13189 Ulysses Juarez

Chapter 13

#67.00 Trustee's motion to dismiss case for failure to submit all tax refunds

fr. 1/14/20

Docket 56

*** VACATED *** REASON: Voluntary withdrawal of motion on 3/4/20
[doc. 60].

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, March 10, 2020

Hearing Room 301

10:30 AM

1:18-10384 Mark Anthony Bivins

Chapter 13

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

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Anthony Bivins

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 10, 2020

Hearing Room 301

10:30 AM

1:18-10798 Narkell Hobbs-James

Chapter 13

#69.00 Trustee's motion to dismiss case for failure to submit all tax returns

fr. 12/10/19; 2/11/20

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

Tuesday, March 10, 2020

Hearing Room 301

10:30 AM

1:18-11288 Neli Maria Negrea

Chapter 13

#70.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 1/14/20

Docket 89

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

Tuesday, March 10, 2020

Hearing Room 301

10:30 AM

1:18-11928 Manuel Antonio Elias, Jr.

Chapter 13

#71.00 Trustee's motion to dismiss case for failure to submit all tax refunds

fr. 1/14/20

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Antonio Elias Jr.

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, March 10, 2020

Hearing Room 301

10:30 AM

1:18-11928 Manuel Antonio Elias, Jr.

Chapter 13

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

fr. 1/14/20

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Antonio Elias Jr.

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, March 10, 2020

Hearing Room 301

10:30 AM

1:18-12662 Brian Jeffrey Minor

Chapter 13

#73.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 11/12/19; 1/14/20

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, March 10, 2020

Hearing Room 301

10:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

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

fr. 12/10/19; 2/11/20

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, March 10, 2020

Hearing Room 301

10:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#75.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 1/14/20

Docket 56

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, March 10, 2020

Hearing Room 301

10:30 AM

1:19-10589 Paul Anthony Matulewicz

Chapter 13

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

Docket 59

Tentative Ruling:

- NONE LISTED -

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, March 10, 2020

Hearing Room 301

10:30 AM

1:19-11127 Mary Ann Noto

Chapter 13

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

fr. 2/11/20

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Ann Noto

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, March 10, 2020

Hearing Room 301

11:00 AM

1:14-11327 Linda L Johnson

Chapter 13

#78.00 Debtor's motion for waiver of financial management course certificate

fr. 2/11/20

Docket 89

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):

Linda L Johnson

Represented By
Thomas B Ure
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 10, 2020

Hearing Room 301

11:00 AM

1:14-11478 Romulo Gramata Bernardino and Ladinila Aspiras

Chapter 13

#79.00 Opposition to response to notice of final cure payment filed by creditor US Bank, NA et al., and request for complete accounting of loan and reconciliation of payments

Appr stip to cont hrg ent 3/9/20

Docket 162

***** VACATED *** REASON: Appr stip to cont hrg ent 3/9/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Romulo Gramata Bernardino

Represented By
Kevin T Simon

Joint Debtor(s):

Ladinila Aspiras Bernardino

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, March 10, 2020

Hearing Room 301

11:00 AM

1:16-12502 Julio Cesar Arias

Chapter 13

#80.00 Order to show cause whe debtor's counsel should not be sanctioned for failure to appear at hearing on trustee's motion to dismiss

Docket 38

Tentative Ruling:

On August 26, 2016, Julio Cesar Arias ("Debtor") filed a chapter 13 petition. On December 5, 2016, Debtor's chapter 13 plan was confirmed [doc. 21].

On December 31, 2019, the chapter 13 trustee filed a motion to dismiss Debtor's case for failure to make plan payments ("Motion to Dismiss") [doc. 33]. On February 11, 2020, the Court held a hearing on the Motion to Dismiss. Debtor's counsel did not appear.

On February 12, 2020, 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. 38], 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 a written response to the OSC no later than February 25, 2020.

On February 24, 2020, Debtor's counsel timely filed his response ("Response") [doc. 42]. In his Response, Debtor's counsel states that prior to that hearing, his office had reached out to Debtor regarding the Motion to Dismiss, and Debtor has been unresponsive. On February 24, 2020, Debtor's counsel withdrew Debtor's opposition to the Motion to Dismiss [doc. 41]. Based on the representations made in the Response and because Debtor's opposition has been withdrawn, the Court will discharge the OSC.

Appearances on March 10, 2020 are excused.

Party Information

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

Tuesday, March 10, 2020

Hearing Room 301

11:00 AM

CONT... Julio Cesar Arias

Chapter 13

Debtor(s):

Julio Cesar Arias

Represented By
Todd L Turoci

Trustee(s):

Elizabeth (SV) 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 10, 2020

Hearing Room 301

11:00 AM

1:18-12252 Leon Gerald Williams

Chapter 13

#81.00 Application to allow late filed claim

Docket 46

Tentative Ruling:

Grant.

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

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

Party Information

Debtor(s):

Leon Gerald Williams

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, March 10, 2020

Hearing Room 301

11:00 AM

1:19-10186 Kenth Ove Arnold Andersson and Kersti Christine

Chapter 13

#82.00 Debtors' motion re: objection to claim number 7 by
Claimant Citibank (South Dakota) NA

fr. 1/14/20

Docket 58

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):

Kenth Ove Arnold Andersson

Represented By
Louis J Esbin

Joint Debtor(s):

Kersti Christine Andersson

Represented By
Louis J Esbin

Trustee(s):

Elizabeth (SV) 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 10, 2020

Hearing Room 301

11:00 AM

1:19-12658 Dan S Watanabe

Chapter 13

#83.00 Debtor's motion re: objection to claim number 3,4,5 by
Claimant Bank of America, NA. and for Account Ending in 2212

fr. 1/14/20

Docket 36

Tentative Ruling:

The deadline for filing a proof of claim in the debtor's case was December 30, 2019.

On December 8, 2019, the debtor filed an objection to proof of claims 3, 4 and 5 filed by Bank of America, N.A. ("BofA") and to a prospective claim regarding account ending in 2212 to be filed by BofA (the "Objection") [doc. 32]. On January 27, 2020, the debtor and BofA filed a stipulation resolving the debtor's objections to proof of claims 3, 4 and 5 (the "Stipulation") [doc. 45]. On the same day, the Court entered an order approving the Stipulation [doc. 44].

The Stipulation resolved the Objection, except for the debtor's objection to a prospective claim regarding account ending in 2212 to be filed by BofA. However, BofA has not filed such a proof of claim, and the deadline for filing a proof of claim has passed. Accordingly, the Court will deny the balance of the Objection as moot.

The Court will prepare the order.

Appearances on March 10, 2020 are excused.

Party Information

Debtor(s):

Dan S Watanabe

Represented By
Randolph L Neel

Trustee(s):

Elizabeth (SV) 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 10, 2020

Hearing Room 301

11:00 AM

1:19-12851 Neil Iain Barrington Taffe

Chapter 13

#84.00 Motion for authority to sell real property under LBR 3015-1(p)
fr. 2/11/20 (stip)

Docket 18

Tentative Ruling:

Deny. Debtor has not cited any authority allowing the Court to approve the proposed sale of real property, located in Las Vegas, Nevada, for an amount which is less than the amount owed to the beneficiary under the deed of trust, without the secured creditor's consent.

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

Party Information

Debtor(s):

Neil Iain Barrington Taffe

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, March 10, 2020

Hearing Room 301

11:00 AM

1:19-13096 Ana Isabel Jara

Chapter 13

#85.00 Debtor's motion for order vacating dismissal and reinstating the automatic stay

Docket 32

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):

Ana Isabel Jara

Represented By
Daniela P Romero

Trustee(s):

Elizabeth (SV) 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 10, 2020

Hearing Room 301

11:00 AM

1:20-10039 Fernando Corona Hidalgo

Chapter 13

#86.00 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 15

***** VACATED *** REASON: Withdrawal of motion filed 2/27/20 [Dkt.20]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fernando Corona Hidalgo

Represented By
Michael D Luppi

Trustee(s):

Elizabeth (SV) 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 10, 2020

Hearing Room 301

11:30 AM

1:19-12887 Natalie Necole Osling

Chapter 13

#87.00 Motion for order determining value of collateral

Docket 22

Tentative Ruling:

Grant relief to bifurcate senior lienholder's claim subject to completion of chapter 13 plan. The claim of this senior lienholder, Northrop Grumman Federal Credit Union, in the amount of \$16,268.00 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):

Natalie Necole Osling

Represented By
Gerald S Kim

Trustee(s):

Elizabeth (SV) 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 10, 2020

Hearing Room 301

11:30 AM

1:19-13032 Loreta Zukauskiene

Chapter 13

#88.00 Debtor's motion to avoid lien under 11 U.S.C. sec 522(f) and,
if applicable, for turnover of property with Wawanesa Insurance Company

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):

Loreta Zukauskiene

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 10, 2020

Hearing Room 301

11:30 AM

1:19-13168 Francisco V Batiller and Edna P Batiller

Chapter 13

#89.00 Motion for order determining value of collateral with
Speedy Cash Installment Loans

Docket 13

Tentative Ruling:

Grant relief to bifurcate senior lienholder's claim subject to completion of chapter 13 plan. The claim of this senior lienholder, Speedy Cash Installment Loans, in the amount of \$1,050.00 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):

Francisco V Batiller

Represented By
Elena Steers

Joint Debtor(s):

Edna P Batiller

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, March 10, 2020

Hearing Room 301

11:30 AM

1:20-10173 Sally Beltran

Chapter 13

#90.00 Debtor's Motion to value collateral held by ONEMAIN FINANCIAL GROUP, LLC

Stip resolving motion filed 2/10/20

Docket 13

***** VACATED *** REASON: Order approving stipulation entered
2/11/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sally Beltran

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**

Thursday, March 12, 2020

Hearing Room 301

10:30 AM

1:15-10741 Emil Soorani, M.D.

Chapter 7

#1.00 Trustee's final report and applications for compensation

Amy L Goldman, Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith LLP, Attorneys for Chapter 7 Trustee

Havkin and Shrago, Attorneys for Debtor

SLBiggs, A Division of SingerLewak, Accountant's for Trustee

Docket 296

Tentative Ruling:

The Court will continue this hearing to **March 26, 2020 at 10:30 a.m.**

Appearance on March 12, 2020 are excused.

Party Information

Debtor(s):

Emil Soorani, M.D.

Represented By
Richard P Ross
Anthony A Friedman

Trustee(s):

Amy L Goldman (TR)

Represented By
Annie Verdries
Doah Kim
Lovee D Sarenas

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

Thursday, March 12, 2020

Hearing Room 301

10:30 AM

1:17-11495 Steven Nia

Chapter 7

#2.00 Trustee's final report and applications for compensation

David K. Gottlieb, Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith LLP, Attorneys for Trustee

Menchaca & Company LLP, Accountant for Trustee

Docket 237

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$6,250.00 and reimbursement of expenses of \$71.86, pursuant to 11 U.S.C. § 330, on a final basis. The trustee is authorized to collect the remaining balance of \$2,023.10 in fees and \$71.39 in reimbursement of expenses.

Lewis Brisbois Bisgaard & Smith LLP (“Lewis Brisbois”), counsel to chapter 7 trustee – approve fees of \$37,275.00 and reimbursement of expenses of \$518.97, pursuant to 11 U.S.C. § 330, on a final basis. In accordance with the chapter 7 trustee’s proposed disbursement [doc. 237], Lewis Brisbois is authorized to collect the remaining balance of \$0.00 in fees and \$49.50 in reimbursement of expenses.

Menchaca & Company LLP (“Menchaca”), accountant to chapter 7 trustee – approve fees of \$1,500.00, pursuant to 11 U.S.C. § 330, on a final basis. Menchaca is authorized to collect 100% of the approved fees.

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.

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

Thursday, March 12, 2020

Hearing Room 301

10:30 AM

CONT... Steven Nia

Chapter 7

Debtor(s):

Steven Nia

Represented By
Steven R Fox
Lewis R Landau

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Scott Lee
Amy L Goldman
Lovee D Sarenas

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

Thursday, March 12, 2020

Hearing Room 301

10:30 AM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#3.00 Application for compensation of final fees and expenses for
A.O.E. Law & Associates APC, Debtor's Attorney

Docket 159

Tentative Ruling:

A.O.E. Law & Associates, APC ("Applicant"), counsel to the debtor and the debtor-in-possession – approve fees in the amount of \$13,395 and reimbursement of expenses in the amount of \$153.99, pursuant to 11 U.S.C. § 330, for the period between September 14, 2019 and January 31, 2020, 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):

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, March 12, 2020

Hearing Room 301

10:30 AM

1:19-10785 Attilio E Armeni

Chapter 11

#4.00 Application for compensation of second and final fees for
AOE Law & Associates, Debtor's Attorney

Docket 133

Tentative Ruling:

A.O.E. Law & Associates, APC ("Applicant"), counsel to the debtor and the debtor-in-possession – approve fees in the amount of \$13,955 and reimbursement of expenses in the amount of \$220.30, pursuant to 11 U.S.C. § 330, for the period between August 24, 2019 and February 20, 2020, 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):

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, March 12, 2020

Hearing Room 301

1:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#5.00 Order to show cause why debtor's counsel should not be ordered to disgorge fees

Docket 136

Tentative Ruling:

The Court intends to continue this hearing to a later date to assess the motion in light of whether the debtor's case is dismissed or converted.

In the meantime, the Court will enter an order that the debtor's counsel is not to receive any further payments on her prior fees - which were allowed on an interim basis - pending further order of the Court.

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, March 12, 2020

Hearing Room 301

1:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#6.00 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; 11/14/19; 11/21/19; 1/9/20

Docket 1

Tentative Ruling:

In the debtor's declaration, filed on February 27, 2020 [doc. 150], the debtor requests that the Court dismiss this case. If the debtor agrees to pay the allowed fees and expenses of the chapter 11 examiner and all allowed unsecured claims in full, **and provides for such payment to be made, prior to the dismissal of the case**, the Court thereafter will dismiss this case with a 180-day bar.

If the debtor does not provide for payment of the allowed fees and expenses of the chapter 11 examiner and all allowed unsecured claims in full, prior to the dismissal of the case, based on the chapter 11 examiner's initial report ("Examiner Report") [doc. 149], pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1), the Court will convert this case to one under chapter 7.

In the Examiner Report, the chapter 11 examiner states that the debtor appears to have an interest in several previously undisclosed real properties. A chapter 7 trustee can investigate the estate's interests in these real properties, and the use of the proceeds from the debtor's prepetition sale of real property, and determine if any such interests can be liquidated for the benefit of creditors, and any sale proceeds can be recovered.

1/9/20 Ruling

Based on, among other things, the debtor's flawed and inaccurate disclosures, which are discussed below, pursuant to 11 U.S.C. §§ 105(a) and 1104(c)(1), the Court will order the appointment of a chapter 11 examiner to investigate, among other things, the debtor's assets, liabilities and prepetition transfers.

Exhibits to the Disclosure Statement Inconsistent with Filed Schedules

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

Thursday, March 12, 2020

Hearing Room 301

1:00 PM

CONT... **Richard Philip Dages**

Chapter 11

To the debtor's disclosure statement [doc. 117], the debtor attached a schedule A/B ("Exhibit B") [Exh. B] and a schedule E/F ("Exhibit C", and together with Exhibit B, the "Attachments") [Exh. C]. The Attachments are not consistent with the debtor's most recently filed schedule A/B ("Amended Schedule A/B") [doc. 28], filed on August 17, 2018, and schedule E/F ("Schedule E/F") [doc. 1], filed on July 10, 2018.

In his Amended Schedule A/B, the debtor lists an interest in real property located in North Hills, California (the "North Hills Property"), valued at \$810,000. In Exhibit B, the debtor values the North Hills Property at \$835,000. The debtor does not list an interest in any other real property.

In his Amended Schedule A/B, the debtor represents that, as of the petition date, he had \$900 in his bank account. In Exhibit B, the debtor represents that he had \$1,000.

Below is a chart listing the nonpriority unsecured creditors the debtor enumerated in his Schedule E/F, compared to Exhibit C to the proposed disclosure statement.

Schedule E/F [doc. 1]	Exhibit C [doc. 117]
<ul style="list-style-type: none"> • Capital One • Credit One Bank NA • First Premier Bank • Syncb/low • TD Auto Finance • TD Bank USA/targetcred • Thd/cbna 	<ul style="list-style-type: none"> • DCFS Trust • Franchise Tax Board • LA County Treasurer & Tax Collector • LVNV Funding • Merrick Bank c/o Resurgent Capital • Midland Funding LLC • Mr. Cooper • Synchrony Bank

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

Thursday, March 12, 2020

Hearing Room 301

1:00 PM

CONT... Richard Philip Dages

Chapter 11

All of the creditors listed in Exhibit C have filed proofs of claim in the debtor's case. With the exception of DCFS Trust (which the debtor appears to have called TD Auto Finance in his Schedule E/F) and Mr. Cooper, none of the creditors listed in Exhibit C were listed in the debtor's master mailing list. As such, it does not appear that these creditors received notice of the debtor's chapter 11 case. The Court is concerned that there may be additional creditors that did not receive notice of this chapter 11 case.

To date, the debtor has not filed an amended master mailing list.

Undisclosed Sale of Real Property Two Months Prior to the Petition Date

On November 14, 2019, the debtor filed his 2018 federal tax return with the Court (the "2018 Tax Return") [doc. 119]. The 2018 Tax Return indicates that, in May 2018, two months prior to the debtor filing his chapter 11 petition, from the sale of real property located at 15170 Greenrock, Lancaster, California (the "Greenrock Property"), the debtor received proceeds in the amount of \$39,660.

Item 18 of the statement of financial affairs ("SOFA") states, "[w]ithin 2 years before you filed for bankruptcy, did you sell, trade or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs?" In his original SOFA [doc. 1], filed on July 10, 2018, and his amended SOFAs [docs. 15 and 26], filed on July 25, 2018 and August 14, 2018, the debtor responded "no" to item 18.

In his Amended Schedule A/B, the debtor represents that, as of the petition date, he had \$900 in his bank account. What did the debtor do with the significant proceeds from the sale of the Greenrock Property - which he received two months prior to the petition date?

Undisclosed Interests in Real Property

As discussed in calendar no. 1, the 2018 Tax Return indicates that, in addition to the North Hills Property, the debtor was collecting rents from real properties located at 40536 N 171st East, Lancaster, California (the "Lancaster Property") and 13640 Norris Ave., Sylmar, California (the "Sylmar Property"). However, the Lancaster Property is not listed in the debtor's original schedules and statements [doc. 1] or in the debtor's

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

Thursday, March 12, 2020

Hearing Room 301

1:00 PM

CONT... Richard Philip Dages

Chapter 11

numerous subsequent amendments [docs. 15, 23, 26 and 28].

In his statement of financial affairs, the debtor identifies the Sylmar Property as the address for his business, Helping Hands Homes. However, the debtor did not include an interest in the Sylmar Property in his Amended Schedule A/B or set forth a lease for the Sylmar Property in his schedule G [doc. 1].

Are there secured creditors holding liens against the Lancaster Property and/or the Sylmar Property which did not receive notice of this chapter 11 case?

On March 18, 2019, a creditor, who was not listed in the debtor's schedules or master mailing list, filed a motion for relief from stay (the "RFS Motion") based on an unlawful detainer action regarding real property located at 13350 Dyer Street, Sylmar, California (the "Dyer Street Property") [doc. 66]. In his chapter 11 petition, the debtor identified the Dyer Street Property as his residence.

On March 27, 2019, the debtor filed an opposition to the RFS Motion (the "Opposition") [doc. 68]. In the Opposition, the debtor states that, prepetition, he entered into an agreement to lease the Dyer Street Property for seven years, commencing on June 30, 2018, *i.e.* ten days prior to filing this chapter 11 case. The debtor did not list this lease agreement in his schedule G [doc. 1] or in any of the numerous amended schedules and statements [docs. 15, 23, 26 and 28].

On June 13, 2019, the Court entered an order granting the RFS Motion [doc. 80]. Since the RFS Motion was granted, the debtor has not filed a notice of change of address. Does the debtor still reside at the Dyer Street Property, and if not, where is the debtor residing?

Incomplete Statement of Financial Affairs

Item 4 of the SOFA states, "[d]id you have any income from employment or from operating a business during this year or the two previous calendar years?" Item 4 explicitly requests that the debtor disclose his or her *gross income*.

In his original SOFA [doc. 1], filed on July 10, 2018, and his most recently filed SOFA [doc. 26], filed on August 14, 2018, the debtor responded "no" to item 4. As evidenced by his 2017 tax returns [doc. 48] and the 2018 Tax Return, as well as his disclosures in Schedule I, the debtor's response to item 4 is clearly inaccurate.

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

Thursday, March 12, 2020

Hearing Room 301

1:00 PM

CONT... Richard Philip Dages

Chapter 11

Engagement of an Accountant without Court Approval

In his October 2019 monthly operating report [doc.122], the debtor listed a \$450.00 "personal expense" to "Farzan." According to the fee summary attached to the Tax Return [doc. 119], the debtor engaged Farzan & Farzan AAC for the preparation of his 2018 tax return and paid \$450 for this service. The debtor has not obtained Court approval for the employment of any accountant.

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, March 12, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#7.00 Debtor's objection to claim of BK Investment & Management, Inc..
[Proof of claim no. 14]

Docket 225

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, March 12, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#8.00 Debtor's objection to claim of Michael Heiland
[Proof of claim no. 20]

Docket 219

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, March 12, 2020

Hearing Room 301

2:00 PM

1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

#9.00 Trustee's motion for order disallowing claim No. 6

Docket 116

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):

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**

Thursday, March 12, 2020

Hearing Room 301

2:00 PM

1:19-11643 Larry M Halpern

Chapter 7

#10.00 Application by David Seror, Chapter 7 Trustee, for order approving employment of Brutzkus Gubner as Trustee's general counsel effective January 17, 2020

Docket 58

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):

Larry M Halpern

Represented By
David S Hagen

Trustee(s):

David Seror (TR)

Represented By
David Seror
Jorge A Gaitan

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

Thursday, March 12, 2020

Hearing Room 301

2:00 PM

1:19-11643 Larry M Halpern

Chapter 7

#11.00 Motion by Chapter 7 Trustee for turnover of estate property and for order authorizing the Trustee to access and safeguard the property

Docket 61

Tentative Ruling:

Pursuant to Federal Rule of Bankruptcy Procedure 7001(1), in order to obtain turnover from the debtor's daughter, who owns a 50% interest in the subject property, the chapter 7 trustee would be required to initiate an adversary proceeding.

Because an adversary proceeding is required to obtain the requested turnover **and** to sell the nondebtor co-owner's interest in the subject property, and given the conditions described in the motion regarding the non-debtor co-owner's lack of cooperation, the presence of other occupants in the subject property and the deteriorated condition of the subject property, on what basis does the chapter 7 trustee project that any return to **holders of unsecured claims** will be generated from a sale of this property? *See* 11 U.S.C. § 542(a) ("[A]n entity... in possession, custody, or control... of property that the trustee may use, sell, or lease... shall deliver to the trustee... such property or the value of such property, *unless such property is of inconsequential value or benefit to the estate.*") (emphasis added).

Party Information

Debtor(s):

Larry M Halpern

Represented By
David S Hagen

Trustee(s):

David Seror (TR)

Represented By
David Seror
Jorge A Gaitan

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

Tuesday, March 17, 2020

Hearing Room 301

8:30 AM

1:19-12675 Gevork Ter-Minasyan and Anush Harutunyan

Chapter 7

**#1.00 Reaffirmation Agreement Between
Debtor and Nissan-Infiniti LT**

Docket 17

Party Information

Debtor(s):

Gevork Ter-Minasyan

Represented By
Elena Steers

Joint Debtor(s):

Anush Harutunyan

Represented By
Elena Steers

Trustee(s):

David Seror (TR)

Pro Se

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

Tuesday, March 17, 2020

Hearing Room 301

8:30 AM

1:19-12784 David Bergantino

Chapter 7

#2.00 Reaffirmation Agreement Between
Debtor and BMW Bank of North America

Docket 10

***** VACATED *** REASON: Continued to 4/21/20 at 8:30 a.m. - jc**

Party Information

Debtor(s):

David Bergantino

Represented By
Steven A Wolvek

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Tuesday, March 17, 2020

Hearing Room 301

8:30 AM

1:19-12937 Catherine M Surina

Chapter 7

**#3.00 Reaffirmation Agreement Between
Debtor and WELLS FARGO AUTO**

Docket 18

Party Information

Debtor(s):

Catherine M Surina

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, March 17, 2020

Hearing Room 301

8:30 AM

1:19-13056 Cruz A Cortez

Chapter 7

#4.00 Reaffirmation Agreement Between
Debtor and Santander Consumer USA Inc.

Docket 16

Party Information

Debtor(s):

Cruz A Cortez

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Tuesday, March 17, 2020

Hearing Room 301

8:30 AM

1:19-13081 Lanh Tang

Chapter 7

**#5.00 Reaffirmation Agreement Between Debtor
and Toyota Motor Credit Corporation**

Docket 17

Party Information

Debtor(s):

Lanh Tang

Represented By
Kenneth W Moffatt

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Tuesday, March 17, 2020

Hearing Room 301

8:30 AM

1:19-13190 Jody Frank

Chapter 7

#6.00 Reaffirmation Agreement Between Debtor
and TD Auto Finance LLC (2017 Fiat 500)

Docket 10

Party Information

Debtor(s):

Jody Frank

Represented By
Todd J Roberts

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 18, 2020

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, 12/18/19; 1/22/20

Docket 36

*** VACATED *** REASON: Withdrawal of motion filed 3/10/20. [Dkt. 112]

Tentative Ruling:

- NONE LISTED -

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
Courtroom 301 Calendar**

Wednesday, March 18, 2020

Hearing Room 301

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), 12/18/19; 1/22/20

Docket 44

*** VACATED *** REASON: Voluntary dismissal of motion filed 3/9/20

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

1:19-12734 Scott Edward Winslow

Chapter 13

#3.00 Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING, LLC
VS
DEBTOR

Docket 29

Tentative Ruling:

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

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

Upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C).

The Court will **NOT** waive the 14-day stay prescribed by FRBP 4001(a)(3).

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

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

Telephonic Hearing Only. CourtCall, the Court's telephonic provider, has amended pricing for its services and is offering discounted rates to attorneys through April 30 and FREE access for parties who do not have an attorney (pro se parties). Telephonic appearances may be arranged by contacting CourtCall at (888) 88-COURT (866-582-6878). Additional details are available by visiting their website: <https://courtcall.com>.

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

CONT... Scott Edward Winslow

Chapter 13

Party Information

Debtor(s):

Scott Edward Winslow

Represented By
Anil Bhartia

Movant(s):

Lakeview Loan Servicing, LLC

Represented By
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

1:19-12734 Scott Edward Winslow

Chapter 13

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

fr. 11/20/19; 1/22/20

Docket 8

Tentative Ruling:

Deny.

Pursuant to the order granting the motion on an interim basis [doc. 24], the debtor was required to file a declaration no later than March 4, 2020, demonstrating that he made his required post-petition deed of trust payments through February 20, 2020. The debtor did not timely file such a declaration.

The Court will prepare the order.

Telephonic Hearing Only. CourtCall, the Court's telephonic provider, has amended pricing for its services and is offering discounted rates to attorneys through April 30 and FREE access for parties who do not have an attorney (pro se parties). Telephonic appearances may be arranged by contacting CourtCall at (888) 88-COURT (866-582-6878). Additional details are available by visiting their website: <https://courtcall.com>.

Party Information

Debtor(s):

Scott Edward Winslow

Represented By
Anil Bhartia

Movant(s):

Scott Edward Winslow

Represented By
Anil Bhartia

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

Wednesday, March 18, 2020

Hearing Room 301

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, March 18, 2020

Hearing Room 301

9:30 AM

1:19-13155 Shobert Vartan

Chapter 7

#5.00 Motion for relief from stay [AN]

BRIGHT ENABULELE
VS
DEBTOR

Docket 9

Tentative Ruling:

The Court will continue this hearing to **April 1, 2020 at 9:30 a.m.**

Appearances on March 18, 2020 are excused.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Movant(s):

Bright Enabulele

Represented By
Levi Reuben Uku

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 18, 2020

Hearing Room 301

9:30 AM

1:20-10026 Joseph Wanamaker

Chapter 7

#6.00 Motion for relief from stay [AN]

SANJAY PALTA
VS
DEBTOR

Docket 33

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 retains the right to file a proof of claim under 11 U.S.C. § 501 and/or and adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.

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

The Court will deny the movant's request to annual the automatic stay. The movant's declaration does not state that any actions taken after January 9, 2020, were done without knowledge of the debtor's 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.

Telephonic Hearing Only. CourtCall, the Court's telephonic provider, has amended pricing for its services and is offering discounted rates to attorneys through April 30 and FREE access for parties who do not have an attorney (pro se parties). Telephonic

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

CONT... Joseph Wanamaker

Chapter 7

appearances may be arranged by contacting CourtCall at (888) 88-COURT (866-582-6878). Additional details are available by visiting their website: <https://courtcalls.com>.

Party Information

Debtor(s):

Joseph Wanamaker

Represented By
Stephen M Goodman

Movant(s):

The Affiliati Network, Inc.

Represented By
Brett B Curlee

Sanjay Palta

Represented By
Brett B Curlee

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

1:15-12563 Reza Fateh Manesh

Chapter 7

#7.00 Motion for relief from stay [AN]

REZA POUR...[LA SUPERIOR COURT, COUNTY OF LOS ANGELES]
VS
DEBTOR

Docket 159

Tentative Ruling:

The Court will continue this hearing to **April 15, 2020 at 9:30 a.m.**

Appearances on March 18, 2020 are excused.

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, March 18, 2020

Hearing Room 301

9:30 AM

1:20-10264 Leslie Susette Morales

Chapter 7

#8.00 Motion for relief from stay [PP]

LOGIX FEDERAL CREDIT UNION
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.

Telephonic Hearing Only. CourtCall, the Court's telephonic provider, has amended pricing for its services and is offering discounted rates to attorneys through April 30 and FREE access for parties who do not have an attorney (pro se parties). Telephonic appearances may be arranged by contacting CourtCall at (888) 88-COURT (866-582-6878). Additional details are available by visiting their website: <https://courtcall.com>.

Party Information

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

CONT... Leslie Susette Morales

Chapter 7

Debtor(s):

Leslie Susette Morales

Pro Se

Movant(s):

LOGIX FEDERAL CREDIT

Represented By
Reilly D Wilkinson

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 18, 2020

Hearing Room 301

9:30 AM

1:20-10333 Bayridge Holding

Chapter 7

#9.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY FSB
VS
DEBTOR

Docket 10

Tentative Ruling:

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

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

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

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

Any other request for relief is denied. On March 10, 2020, the Court entered an order that, among other things, dismissed this case with a 180-day bar to the debtor refiling under any chapter of the Bankruptcy Code and annulled the automatic stay retroactively to the filing of the debtor's petition [doc. 13].

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

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

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

CONT... Bayridge Holding

Chapter 7

Telephonic Hearing Only. CourtCall, the Court's telephonic provider, has amended pricing for its services and is offering discounted rates to attorneys through April 30 and FREE access for parties who do not have an attorney (pro se parties). Telephonic appearances may be arranged by contacting CourtCall at (888) 88-COURT (866-582-6878). Additional details are available by visiting their website: <https://courtcall.com>.

Party Information

Debtor(s):

Bayridge Holding

Pro Se

Movant(s):

Wilmington Savings Fund Society,

Represented By
Erin M McCartney

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

1:20-10131 Flora Young-Jones

Chapter 13

#10.00 Motion for relief from stay [PP]

FIRST CITY CREDIT UNION
VS
DEBTOR

Docket 19

Tentative Ruling:

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

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

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

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

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

Telephonic Hearing Only. CourtCall, the Court's telephonic provider, has amended pricing for its services and is offering discounted rates to attorneys through April 30 and FREE access for parties who do not have an attorney (pro se parties). Telephonic appearances may be arranged by contacting CourtCall at (888) 88-COURT (866-582-6878). Additional details are available by visiting their website: <https://courtcall.com>.

Party Information

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

CONT... Flora Young-Jones

Chapter 13

Debtor(s):

Flora Young-Jones

Represented By
David Samuel Shevitz

Movant(s):

First City Credit Union

Represented By
Karel G Rocha

Trustee(s):

Elizabeth (SV) 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 18, 2020

Hearing Room 301

9:30 AM

1:18-10288 Adaure Chinyere Egu

Chapter 13

#11.00 Motion for relief from [RP]

THE BANK OF NEW YORK MELLON...
VS
DEBTOR

STIP FILED 3/4/20 DOC #72

Docket 70

***** VACATED *** REASON: Order entered on 3/4/2020 [doc. 74].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adaure Chinyere Egu

Represented By
Jeffrey J Hagen

Movant(s):

The Bank of New York Mellon,

Represented By
Robert P Zahradka

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

1:19-10874 Caridad Salas Hileman

Chapter 13

#12.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC dba CHAMPION MORTGAGE COMPANY
VS
DEBTOR

Docket 53

Tentative Ruling:

The Court will continue this hearing to **April 1, 2020 at 9:30 a.m.**

Appearances on March 18, 2020 are excused.

Party Information

Debtor(s):

Caridad Salas Hileman

Represented By
Ryan A. Stubbe

Movant(s):

NATIONSTAR MORTGAGE LLC

Represented By
Arnold L Graff

Trustee(s):

Elizabeth (SV) 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 18, 2020

Hearing Room 301

9:30 AM

1:19-11419 Benjamin Valencia

Chapter 13

#13.00 Motion for relief from stay [RP]

SELECT PORTFOLIO SERVICING INC...
VS
DEBTOR

Docket 38

Tentative Ruling:

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

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

Telephonic Hearing Only. CourtCall, the Court's telephonic provider, has amended pricing for its services and is offering discounted rates to attorneys through April 30 and FREE access for parties who do not have an attorney (pro se parties). Telephonic appearances may be arranged by contacting CourtCall at (888) 88-COURT (866-582-6878). Additional details are available by visiting their website: <https://courtcall.com>.

Party Information

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

CONT... Benjamin Valencia

Chapter 13

Debtor(s):

Benjamin Valencia

Represented By
Sydell B Connor

Movant(s):

Select Portfolio Servicing Inc as

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, March 18, 2020

Hearing Room 301

9:30 AM

1:20-10145 Lalla Aicha Haidara

Chapter 13

#14.00 Motion for relief from stay [RP]

TRIUMPH CAPITAL PARTNERS LLC
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 14-day stay prescribed by FRBP 4001(a)(3) is waived.

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

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

Telephonic Hearing Only. CourtCall, the Court's telephonic provider, has amended pricing for its services and is offering discounted rates to attorneys through April 30 and FREE access for parties who do not have an attorney (pro se parties). Telephonic

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

CONT... Lalla Aicha Haidara

Chapter 13

appearances may be arranged by contacting CourtCall at (888) 88-COURT (866-582-6878). Additional details are available by visiting their website: <https://courtcall.com>.

Party Information

Debtor(s):

Lalla Aicha Haidara

Pro Se

Movant(s):

Triumph Capital Partners LLC

Represented By
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

1:20-10321 Mehdi Haerikhorshid

Chapter 13

#15.00 Motion for relief from stay [RP]

TRIUMPH CAPITAL PARTNERS LLC
VS
DEBTOR

Docket 9

Tentative Ruling:

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

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

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

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

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

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

Wednesday, March 18, 2020

Hearing Room 301

9:30 AM

CONT... **Mehdi Haerikhorshid**
notified.

Chapter 13

Telephonic Hearing Only. CourtCall, the Court's telephonic provider, has amended pricing for its services and is offering discounted rates to attorneys through April 30 and FREE access for parties who do not have an attorney (pro se parties). Telephonic appearances may be arranged by contacting CourtCall at (888) 88-COURT (866-582-6878). Additional details are available by visiting their website: <https://courtcall.com>.

Party Information

Debtor(s):

Mehdi Haerikhorshid

Represented By
Steven L. Kimmel

Movant(s):

Triumph Capital Partners LLC

Represented By
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, March 18, 2020

Hearing Room 301

1:30 PM

1:13-11215 Cindy M Montano

Chapter 7

Adv#: 1:19-01147 Melendrez v. Montano

#16.00 Status conference re: complaint for determination of the dischargeability of a claim

fr. 2/19/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 are excused.

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

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

Wednesday, March 18, 2020

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

#17.00 Motion for judgment on the pleadings

fr. 12/11/19; 1/22/20; 2/26/20

Stip to continue filed 3/9/20

Docket 31

***** VACATED *** REASON: Order approving stip entered 3/10/20.
Hearing continued to 4/29/20 at 1:30 PM.**

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

Represented By

Dane W Exnowski

Nationstar Mortgage LLC, A

Represented By

Dane W Exnowski

Bank of America, N.A, a National

Represented By

Laura G Brys

Payam Khodadadi

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, March 18, 2020

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, March 18, 2020

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

- #18.00** 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; 12/4/19; 2/19/20

Stip to continue filed 3/9/20

Docket 1

***** VACATED *** REASON: Order approving stip entered 3/10/20.
Hearing continued to 4/29/20 at 1:30 PM.**

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

Plaintiff(s):

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, March 18, 2020

Hearing Room 301

1:30 PM

CONT... Christopher Sabin Nassif
Robin Nassif

Represented By
Matthew D. Resnik

Chapter 11

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

Wednesday, March 18, 2020

Hearing Room 301

1:30 PM

1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:19-01009 Goldman v. Pavehzadeh et al

- #19.00** Pretrial 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, 11/20/19, 1/22/19

CROSS CLAIM

Shahnam Ebrahimi
vs
Houshang Pavehzadeh

FIRST AMENDED COUNTER-CLAIM

Shahnam Ebrahimi
vs
Amy Goldman

Docket 1

*** VACATED *** REASON: Continued by Stip to 4/29/20 at 1:30 p.m. -
jc

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, March 18, 2020

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, March 18, 2020

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mizrahi, an Individual et al

#20.00 Status Conference re First Amended Complaint for:

1. Fraud and Intentional Deceit;
2. Breach of the Covenant of Good Faith and Fair Dealing;
3. Agency by Estoppel; and
4. Financial Elder Abuse

fr. 10/2/19; 11/6/19(stip); 12/4/19

Docket 25

***** VACATED *** REASON: Hearing continued to 4/15/20 at 1:30 p.m
per order**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharon Mizrahi

Represented By
Shai S Oved

Defendant(s):

Sharon Mizrahi, an Individual

Pro Se

Sharon Mizrahi dba Divine Builders

Represented By
Shai S Oved

Divine Builders

Pro Se

Does 1 Through 10, Inclusive

Pro Se

Plaintiff(s):

Michael Frias

Represented By
Ezedrick S Johnson III

Patricia Bartlett

Represented By

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

Wednesday, March 18, 2020

Hearing Room 301

1:30 PM

CONT... Sharon Mizrahi

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, March 18, 2020

Hearing Room 301

1:30 PM

1:19-12150 Houchik Boyadjian

Chapter 7

Adv#: 1:19-01132 Sridhar Equities, Inc., as assignee v. Boyadjian et al

#21.00 Status conference re: amended complaint for non dischargeability

fr. 1/15/20

Docket 25

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 are excused.

Party Information

Debtor(s):

Houchik Boyadjian Pro Se

Defendant(s):

Houchik Boyadjian Pro Se

DOES 1 through 100, inclusive Pro Se

Plaintiff(s):

Corrdary LLC Represented By
Catherine Schlomann Robertson

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 18, 2020

Hearing Room 301

1:30 PM

1:19-12563 Norman Preligera Calalang

Chapter 7

Adv#: 1:20-01005 Tizo Design, Inc. v. Calalang et al

#22.00 Status Conference re: Complaint to
Determine Dischargeability of Debt

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 are excused.

Party Information

Debtor(s):

Norman Preligera Calalang

Represented By
Lauren Ross

Defendant(s):

Norman Preligera Calalang

Pro Se

Deona Pagsisihan Calalang

Pro Se

Joint Debtor(s):

Deona Pagsisihan Calalang

Represented By
Lauren Ross

Plaintiff(s):

Tizo Design, Inc.

Represented By
Michael F Chekian

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 18, 2020

Hearing Room 301

1:30 PM

1:19-13139 Alvin Zapanta Magcalas

Chapter 13

Adv#: 1:20-01001 Image 2000, Inc. v. Magcalas

#23.00 Status Conference re: Complaint for
Nondischargeability of a Debt and for Damages

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 are excused.

Party Information

Debtor(s):

Alvin Zapanta Magcalas

Represented By
Jeffrey N Wishman

Defendant(s):

Rosario Hernandez Magcalas

Pro Se

Joint Debtor(s):

Rosario Hernandez Magcalas

Represented By
Jeffrey N Wishman

Plaintiff(s):

Image 2000, Inc.

Represented By
Michael S Wildermuth

Trustee(s):

Elizabeth (SV) 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 18, 2020

Hearing Room 301

1:30 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:20-01006 Coast to Coast Holdings, LLC a Wyoming Limited Lia v. Keystone Real

#23.01 Status conference re: notice of removal of
civil action under 28 U.S.C. §1452(a)

fr. 3/4/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 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):

Keystone Real Estate Lending Fund,

Represented By
Hamid R Rafatjoo

First American Title Insurance

Pro Se

DOES 1 to 100, inclusive

Pro Se

Plaintiff(s):

Coast to Coast Holdings, LLC a

Pro Se

Oscar Torres

Pro Se

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

Wednesday, March 18, 2020

Hearing Room 301

2:30 PM

1:19-11034 John Bicz

Chapter 7

Adv#: 1:19-01125 Peterson v. Bicz

#24.00 Plaintiff's motion for default judgment under LBR 7055-1

fr. 2/19/20

Docket 11

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 are excused.

Party Information

Debtor(s):

John Bicz

Represented By
M. Jonathan Hayes

Defendant(s):

John Bicz

Represented By
M. Jonathan Hayes

Plaintiff(s):

Ben Peterson

Represented By
Shai S Oved

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 18, 2020

Hearing Room 301

2:30 PM

1:19-11034 John Bicz

Chapter 7

Adv#: 1:19-01125 Peterson v. Bicz

#25.00 Status conference re: complaint to determine dischargeability
of debt under 11 USC sec 523

fr. 12/18/19; 2/5/20;

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 are excused.

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

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 18, 2020

Hearing Room 301

2:30 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

Adv#: 1:18-01113 VitaVet Labs, Inc. v. Gashtili

#26.00 Motion For Summary Judgment

Docket 31

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 are excused.

Party Information

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

Defendant(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

Movant(s):

VitaVet Labs, Inc.

Represented By
Michael H Raichelson

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, March 18, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#27.00 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, 12/18/19; 2/5/20; 2/26/20; 3/4/20

Docket 64

Tentative Ruling:

The Court will continue this hearing to **April 1, 2020 at 2:30 p.m.**

Appearances on March 18, 2020 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, March 18, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#28.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper.
fr. 5/14/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20; 3/4/20

Docket 55

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 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, March 18, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#29.00 Debtor's motion for summary judgment and/or summary adjudication of facts

fr. 2/5/20; 2/26/20; 3/4/20

Docket 174

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 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, March 18, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#30.00 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; 12/10/19; 2/5/20; 2/26/20; 3/4/20

Docket 70

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 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, March 18, 2020

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 Debtor's motion to quash subpoena for documents and deposition subpoena for Johanna Scott

fr. 3/4/20

Docket 29

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 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, March 18, 2020

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, March 18, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#32.00 Debtor's motion to quash subpoena for documents and deposition subpoena for Fenton & Ross

fr. 3/4/20

Docket 28

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 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, March 18, 2020

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, March 18, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#33.00 Defendants' motion to dismiss

fr. 10/2/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20; 3/4/20

Docket 12

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 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, March 18, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #34.00** 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; 11/13/19; 2/5/20; 2/26/20; 3/4/20

Docket 8

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on April 1, 2020.**

Appearances on March 18, 2020 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, March 18, 2020

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**

Thursday, March 19, 2020

Hearing Room 301

1:00 PM

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; 3/14/19; 4/4/19; 9/19/19

Docket 1

***** VACATED *** REASON: Final decree order entered 10/4/19 [Dkt.
255]**

Tentative Ruling:

Party Information

Debtor(s):

ColorFX, Inc.

Represented By
Lewis R Landau

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

Thursday, March 19, 2020

Hearing Room 301

1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#2.00 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; 12/5/19

Docket 190

Tentative Ruling:

The Court will continue this hearing to **April 2, 2020 at 1:00 p.m.**

Appearances on March 19, 2020 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, March 19, 2020

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;7/18/19;
10/17/19; 12/5/19

Docket 1

Tentative Ruling:

The Court will continue this hearing to **April 2, 2020 at 1:00 p.m.**

Appearances on March 19, 2020 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, March 19, 2020

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#4.00 Confirmation hearing re: second amended chapter 11 plan
fr. 12/5/19/ 1/23/20; 3/5/20

STIP TO CONT FILED 3/16/20

Docket 124

Tentative Ruling:

The Court will continue this hearing to **April 9, 2020 at 1:00 p.m.**

Appearances on March 19, 2020 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, March 19, 2020

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#5.00 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; 12/5/19; 1/23/20; 3/5/20

STIP TO CONT FILED 3/16/20

Docket 1

Tentative Ruling:

The Court will continue this hearing to **April 9, 2020 at 1:00 p.m.**

Appearances on March 19, 2020 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, March 19, 2020

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#6.00 Confirmation hearing re amended chapter 11 plan of reorganization

Docket 106

Tentative Ruling:

The Court will continue this hearing to **April 2, 2020 at 1:00 p.m.**

Appearances on March 19, 2020 are excused.

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, March 19, 2020

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#7.00 Status conference re: chapter 11 case

fr. 5/23/19; 9/19/19; 11/14/19; 1/16/20; 1/23/20

Docket 1

Tentative Ruling:

The Court will continue this hearing to **April 2, 2020 at 1:00 p.m.**

Appearances on March 19, 2020 are excused.

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, March 19, 2020

Hearing Room 301

1:00 PM

1:20-10217 Ulises Duran

Chapter 7

#8.00 U.S. Trustee's Motion to dismiss case pursuant to 11 U.S.C. §§ 707(a) and 727(a)(8)

Docket 14

***** VACATED *** REASON: Case dismissed 3/3/20. [Dkt. 22]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ulises Duran

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Thursday, March 19, 2020

Hearing Room 301

1:00 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#9.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The Court will continue this hearing to **April 2, 2020 at 1:00 p.m.**

Appearances on March 19, 2020 are excused.

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

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

Thursday, March 19, 2020

Hearing Room 301

2:00 PM

1:10-17214 Darin Davis

Chapter 7

#10.00 Order to show cause why the court should not sanction Ray B. Bowen Jr. pursuant to Federal Rule of Bankruptcy Procedure 9011

Docket 409

***** VACATED *** REASON: Continued to 6/18/20 at 2:00 p.m. - jc**

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, March 19, 2020

Hearing Room 301

2:00 PM

1:10-17214 Darin Davis

Chapter 7

#11.00 Darin Davis' Motion for attorney's fees and costs incurred to defend Asphalt Professionals, Inc.'s Appeal of this Court's Order sustaining objection to proofs of claim

Docket 385

Tentative Ruling:

The Court will continue this hearing to **April 2, 2020 at 2:00 p.m.**

Appearances on March 19, 2020 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
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, March 19, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#12.00 Debtor's Objection to Claim of Stickman Family Enterprises, Inc..
Claim no. 31

fr. 1/23/20

Docket 221

***** VACATED *** REASON: Withdrawal of claim filed on 3/5/2020 [doc. 329].**

Tentative Ruling:

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, March 19, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

**#13.00 Debtor's Objection to Claim of Claimant Amiciza LLC
Proof of claim no. 22**

Docket 228

Tentative Ruling:

The Court will continue this hearing to **April 2, 2020 at 2:00 p.m.**

Appearances on March 19, 2020 are excused.

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, March 19, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#14.00 Debtor's objection to claim of Eugene Anya
claim number 10

Docket 224

Tentative Ruling:

The Court will continue this hearing to **April 2, 2020 at 2:00 p.m.**

Appearances on March 19, 2020 are excused.

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, March 19, 2020

Hearing Room 301

2:00 PM

1:20-10057 2300 Pisani, A Nevada Domestic LLC

Chapter 11

- #15.00** Debtor's amended motion for order authorizing:
(1) Sale of property at 2300 Pisani Pl, Venice, CA 90291-4827
outside the ordinary course of business pursuant to section 363(b);
(2) Without overbids;
(3) For a determination of good faith purchaser pursuant to §363(m)
(4) Authorizing disbursement of proceeds; and
(5) Waiving the 14-day stay imposed by FRBP 6004

fr. 2/20/20

Docket 21

Tentative Ruling:

The Court will continue this hearing to **April 2, 2020 at 2:00 p.m.**

Appearances on March 19, 2020 are excused.

Party Information

Debtor(s):

2300 Pisani, A Nevada Domestic

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 19, 2020

Hearing Room 301

2:00 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#16.00 Debtor's Motion for authority to use cash collateral on an interim basis

Docket 12

Tentative Ruling:

The Court will continue this hearing to **April 2, 2020 at 2:00 p.m.**

Appearances on March 19, 2020 are excused.

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

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

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

1:16-11116 Rodolfo Cortes and Doris Cortes

Chapter 13

#1.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 1/22/20; 2/19/20

Docket 43

Tentative Ruling:

The debtors have submitted evidence that they have made the postpetition payments specifically referenced in the motion [doc. 56]. Because debtors have demonstrated that they made these payments, the Court will deny the motion.

If movant believes there is any remaining postpetition delinquency, movant may file a new motion which provides an updated accounting.

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

Party Information

Debtor(s):

Rodolfo Cortes

Represented By
Glenn Ward Calsada

Joint Debtor(s):

Doris Cortes

Represented By
Glenn Ward Calsada

Movant(s):

THE BANK OF NEW YORK

Represented By
Ashish R Rawat

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

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

CONT... Rodolfo Cortes and Doris Cortes

Chapter 13

Sumit Bode
John W Lackey
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, March 25, 2020

Hearing Room 301

9:30 AM

1:20-10094 Jonathan Hidalgo

Chapter 13

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

fr. 2/5/20;

Docket 11

Tentative Ruling:

Unless the debtor provides for the prompt conversion of this case to one under chapter 7, the Court will deny the motion.

Pursuant to the order granting the motion on an interim basis (the "Interim Order") [doc. 22], no later than March 23, 2020, the debtor had to file a declaration demonstrating that he timely made his required postpetition deed of trust payments on his residential and commercial real properties, his postpetition homeowner's association payments and his postpetition chapter 13 plan payments. On March 23, 2020, the debtor filed a declaration [doc. 31]. That declaration does not demonstrate that the debtor fully complied with the Interim Order.

Pursuant to 11 U.S.C. § 362(c)(3)(C)(i)(III), the debtor has not provided clear and convincing evidence that his financial or personal affairs have improved since the prior case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. Accordingly, if the case remains as one under chapter 13, the Court cannot grant the motion.

However, 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).

Although the debtor has not shown a substantial change in financial or personal

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

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

CONT...

Jonathan Hidalgo

Chapter 13

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. If the debtor is willing to convert this case to one under chapter 7, the Court will grant the motion.

February 5, 2020 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 **March 25, 2020 at 9:30 a.m. No later than February 12, 2020**, 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).

On January 31, 2020, Pensco Trust Company Custodian fbo Alan L Brooks, IRA ("Pensco"), a secured creditor, filed a timely opposition to the motion [doc. 20]. Pensco argues that the debtor has not overcome the presumption of bad faith as required by 11 U.S.C. § 362(c)(3)(C).

In his immediately preceding case, the debtor was not represented by counsel. In the pending case, the debtor has retained counsel, which is a change in the debtor's personal and financial affairs. The Court will continue this hearing in order to assess the debtor's ability to perform under his proposed chapter 13 plan.

The debtor must timely pay his: (A) February 2020 and March 2020 plan payments in the amount of \$4,798.00 (as stated in the debtors' proposed chapter 13 plan) to the chapter 13 trustee [doc. 15]; (B) February 2020 and March 2020 deed of trust payments in the amount of \$3,000.00 (as stated in his current schedule J) as to his residential real property [doc. 14]; (C) February 2020 and March 2020 deed of trust payments in the amount of \$1,523.72 (as stated in Pensco's opposition) as to his commercial real property [doc. 20]; and (D) February 2020 and March 2020 homeowner's association ("HOA") payments on his residential real property in the amount of \$380 (as stated in his current schedule J). **No later than March 23, 2020**, the debtor must file a declaration to demonstrate that he timely made his required post-petition deed of trust, HOA and chapter 13 plan payments.

In addition, the debtor's schedule I [doc. 14] indicates rental income in the amount of \$3,000 per month. However, the debtor's schedule G [doc. 14] indicates that the debtor has no unexpired leases. **By February 12, 2020**, the debtor must amend his

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

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

CONT... Jonathan Hidalgo

Chapter 13

schedule G to include any unexpired leases.

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

Party Information

Debtor(s):

Jonathan Hidalgo

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, March 25, 2020

Hearing Room 301

9:30 AM

1:20-10438 Raymond Tsarukyan

Chapter 7

#3.00 Motion for relief from stay [UD]

M&O PROPERTIES, LTD.
VS
DEBTOR

Docket 9

*** VACATED *** REASON: Case was dismissed on 3/16/2020 [doc. 12].
The motion is moot.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raymond Tsarukyan

Represented By
Ruben Salazar

Movant(s):

M&O Properties, Ltd.

Represented By
James R Selth

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

1:19-10051 Rockin Artwork, LLC

Chapter 7

#4.00 Motion for relief from stay [RP]

HMC ASSETS, LLC
VS
DEBTOR

Order appr stip to cont ent 3/10/20

Docket 196

***** VACATED *** REASON: Order approving stip entered 3/10/20.
Hearing continued to 4/8/20 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rockin Artwork, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

Movant(s):

HMC Assets, LLC solely as

Represented By
Amelia B. Valenzuela

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, March 25, 2020

Hearing Room 301

9:30 AM

1:18-11680 Alba Interiano

Chapter 13

#5.00 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
VS
DEBTOR

Docket 132

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):

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**

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

1:19-10345 Amir Ali Barani

Chapter 13

#6.00 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
VS
DEBTOR

Docket 38

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Amir Ali Barani

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**

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

1:17-13313 Pedro Mejia Lopez

Chapter 13

#7.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

Docket 54

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pedro Mejia Lopez

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

1:18-10982 Gabriel Medina

Chapter 13

#8.00 Motion for relief from stay [RP]

STRUNZO DEVELOPMENT CORPORATION
VS
DEBTOR

Docket 106

Tentative Ruling:

On April 9, 2018, the debtor filed a voluntary chapter 13 petition. On November 27, 2018, the Court entered an order confirming the debtor's amended chapter 13 plan [doc. 86]. The debtor's confirmed chapter 13 plan does not provide for payments to movant on account of its lien against the real property. According to movant, the debtor has not made *any* postpetition deed of trust payments to movant. The debtor does not dispute this.

On September 15, 2018, movant filed a motion for relief from stay on the real property at issue (the "First RFS Motion") [doc. 66]. In response to the First RFS Motion, the debtor disputed the validity of movant's deed of trust and requested time to file an adversary proceeding [doc. 70].

On December 10, 2018, the debtor filed a complaint against movant seeking to invalidate movant's lien, initiating adversary proceeding 1:18-ap-01126-VK (the "Adversary Proceeding"). On February 19, 2020, the Court entered final judgment in the Adversary Proceeding in favor of movant [Adversary Proceeding, doc. 63].

On March 4, 2020, the movant filed another motion for relief from the automatic stay with respect to the real property at issue (the "Motion") [doc. 106]. On March 11, 2020, the debtor filed an opposition to the Motion arguing, among other things, that the debtor did not sign the note associated with movant's deed of trust and that the debtor will file a motion to convert his case to one under chapter 11.

The Court resolved the debtor's arguments regarding the validity and extent of movant's lien in connection with the Adversary Proceeding. That judgment is final. Further, pursuant to 11 U.S.C. § 1307(d), after a chapter 13 plan is confirmed, the

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

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

CONT...

Gabriel Medina

Chapter 13

case cannot be converted to one under chapter 11. Moreover, postpetition deed of trust payments are not being made to movant.

Accordingly, the Court will grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

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

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

The 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):

Gabriel Medina

Represented By
Anthony Obehi Egbase
Sedoo Manu

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

1:20-10503 Uthum Ruwanpura De Silva

Chapter 13

#9.00 Amended motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 16

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):

Uthum Ruwanpura De Silva

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

1:20-10526 Chinweike Okonkwo

Chapter 13

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

Docket 9

Tentative Ruling:

Grant.

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

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

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

Wednesday, March 25, 2020

Hearing Room 301

9:30 AM

1:20-10546 Luis Lugo Duenez and Maria Dolores Duenez

Chapter 13

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

Docket 8

Tentative Ruling:

Grant.

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

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

Party Information

Debtor(s):

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**

Wednesday, March 25, 2020

Hearing Room 301

1:30 PM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:18-01077 The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

#12.00 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;
12/20/19; 1/30/20

Cross-claim

David Seror, solely 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 will continue this status conference to **2:30 p.m. on April 29, 2020**, to be held with the hearing on Lincoln National's motion to dismiss [doc. 106].

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

Wednesday, March 25, 2020

Hearing Room 301

1:30 PM

CONT... Hermann Muennichow

Chapter 7

Appearances on March 25, 2020 are excused.

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

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

Wednesday, March 25, 2020

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01128 Miller, Chapter 7 Trustee v. Yaspan

#13.00 Status conference re: complaint for breach of fiduciary duty

fr. 1/8/20; 3/4/20

Docket 1

Tentative Ruling:

The Court will set the defendant's motion to dismiss for hearing at **2:30 p.m. on May 6, 2020**. The defendant must file proof of service of notice of the hearing on all required parties.

Appearances on March 25, 2020 are excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Larry W Gabriel

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, March 25, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01155 Goldman v. Mandalay Bay, LLC, A Nevada Limited Liability Comp

#14.00 Status conference re: first amended complaint for:
(1) Avoidance of voidable and fraudulent transfers; and
(2) Recovery of avoided transfers for the benefit of
the bankruptcy estate

Docket 5

***** VACATED *** REASON: Order approving stip entered 3/3/20.
Hearing continued to 4/29/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

Mandalay Bay, LLC, A Nevada

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Carmela Pagay

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

Wednesday, March 25, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01156 Goldman v. Kumar et al

- #15.00** Status conference re: complaint for:
1. Avoidance of voidable and fraudulent transfers; and
2. Recovery of avoided transfers for the benefit of the bankruptcy estate

fr. 3/4/20

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: 6/30/20.

Deadline to complete one day of mediation: 7/15/20.

Deadline to file pretrial motions: 7/31/20.

Deadline to complete and submit pretrial order in accordance with Local Bankruptcy Rule 7016-1: 8/12/20.

Pretrial: 8/26/20 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), 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

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

Wednesday, March 25, 2020

Hearing Room 301

1:30 PM

CONT... Exotic Euro Cars, Inc.

Chapter 7

against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

Dr. Kain Kumar

Pro Se

Sharmini Kumar

Pro Se

BWC Associates, Inc.

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

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, March 25, 2020

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

#16.00 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);
11/20/19 (stip); 1/22/20(stip)

Docket 1

Tentative Ruling:

In their stipulation, the parties indicate that the plaintiff has obtained a default against defendant Armand Zaharian. Because Mr. Zaharian is not a debtor entitled to a discharge, the claims for nondischargeability are not applicable to Mr. Zaharian, and the Court will not grant a motion for default judgment against Mr. Zaharian.

The Court will otherwise continue this status conference to **1:30 p.m. on May 6, 2020**. No later than **April 22, 2020**, the parties must file a joint status report updating the Court about the status of finalizing their settlement agreement.

Appearances on March 25, 2020 are excused.

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

Defendant(s):

Armand Zaharian

Pro Se

Elizabeth Y. Zaharian

Pro Se

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

Wednesday, March 25, 2020

Hearing Room 301

1:30 PM

CONT... Elizabeth Y. Zaharian

Chapter 11

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, March 25, 2020

Hearing Room 301

1:30 PM

1:19-10448 Linda Moraga

Chapter 7

Adv#: 1:19-01122 Zamora, Chapter 7 Trustee v. Moraga

- #17.00** 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

fr. 12/11/19; 2/5/20;

Docket 1

*** VACATED *** REASON: Order dismissing proceeding entered
3/19/20 [Dkt.9]

Tentative Ruling:

- NONE LISTED -

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

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, March 25, 2020

Hearing Room 301

1:30 PM

1:19-12677 John Stephen Travers

Chapter 7

Adv#: 1:20-01010 Ace Industrial Supply, Inc. v. Travers

#18.00 Status conference re: complaint to determine dischargeability

Docket 1

Tentative Ruling:

The Court will set the defendant's motion to dismiss for hearing at **2:30 p.m. on May 6, 2020**. The defendant must file proof of service of notice of the hearing on all required parties.

Appearances on March 25, 2020 are excused.

Party Information

Debtor(s):

John Stephen Travers

Represented By
Robert M Aronson

Defendant(s):

John Stephen Travers

Pro Se

Plaintiff(s):

Ace Industrial Supply, Inc.

Represented By
Jeffery J Daar

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 25, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01019 Miller, Chapter 7 Trustee v. Ride on Autos. a California corporation

#19.00 Application for right to attach order and for issuance of writ of attachment

Stip to continue filed 3/16/20

Docket 6

***** VACATED *** REASON: Order approving stip entered 3/18/20.**

Hearing continued to 4/29/20 at 2:30 pm

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Ride on Autos. a California

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Cathy Ta
Claire K Wu

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, March 25, 2020

Hearing Room 301

2:30 PM

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

Chapter 7

#20.00 Motion for summary judgment pursuant to FRBP Rule 7056

Docket 152

Tentative Ruling:

The Court will continue this matter to **2:30 p.m. on June 10, 2020**, to assess whether the Bankruptcy Appellate Panel of the Ninth Circuit affirms this Court's decision in *Albini v. Zuckerman*, Adv. No. 1:18-ap-01081-VK.

Appearances on March 25, 2020 are excused.

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

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

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

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman Chapter 7

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
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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, March 25, 2020

Hearing Room 301

2:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 7

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

#21.00 Defendants Sunderland McCutchan, Inc.'s and Edward McCutchan's Motion to impose sanctions upon plaintiff Richard Abel for violation of federal Rules of civil Procedure, Rule 11

Docket 159

Tentative Ruling:

Deny.

I. BACKGROUND

On May 4, 2018, Robert Zuckerman ("Debtor") filed a voluntary chapter 11 petition. On August 2, 2018, Richard Abel ("Plaintiff") filed a complaint against Sunderland/McCutchan, Inc., Sunderland/McCutchan LLP and B. Edward McCutchan, Jr. (together, the "McCutchan Defendants"), among others (the "Complaint"). From the filing of the Complaint until the present, Plaintiff has been self-represented.

As to the McCutchan Defendants, Plaintiff alleged that, by operation of a state court assignment order (the "Assignment Order") and a recorded judgment lien (the "Judgment Lien"), Plaintiff was entitled to \$8,135 deposited into an account managed by the McCutchan Defendants (the "Account"). Plaintiff also requested turnover of these funds from the McCutchan Defendants pursuant to 11 U.S.C. § 542.

On August 30, 2018, the McCutchan Defendants filed a motion to dismiss the claims against them (the "First Motion to Dismiss") [doc. 7], asserting that: (A) the funds were transferred to the McCutchan Defendants in open court and Plaintiff did not object; (B) the funds were owed to the McCutchan Defendants and did not belong to Debtor, such that turnover was not applicable; and (C) Plaintiff did not have standing to request turnover under 11 U.S.C. § 542.

On September 13, 2018, before the Court assessed the First Motion to Dismiss, Plaintiff filed a first amended complaint (the "FAC") [doc. 11]. In the FAC, Plaintiff

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

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

added additional factual allegations to the prior claims from the Complaint, but no longer requested turnover from the McCutchan Defendants under 11 U.S.C. § 542. Instead, Plaintiff added a claim against the McCutchan Defendants for avoidance of a preferential transfer pursuant to 11 U.S.C. § 547(b). On October 10, 2018, the McCutchan Defendants filed another motion to dismiss (the "Second Motion to Dismiss") [doc. 24]. In the Second Motion to Dismiss, the McCutchan Defendants asserted that: (A) some of Plaintiff's claims against certain defendants were time barred; (B) Plaintiff did not have standing to assert the § 547(b) claim; and (C) reasserting that the funds did not belong to Debtor.

On February 20, 2019, the Court held a hearing on the Second Motion to Dismiss. At that time, the Court issued a ruling granting in part and denying in part the Second Motion to Dismiss [doc. 68]. In this ruling, the Court rejected the McCutchan Defendants' argument that Plaintiff's claims were time barred. As to the McCutchan Defendants' argument that Plaintiff lacked standing, the Court noted that there was a pending motion to convert Debtor's case to a chapter 7 case. As such, the Court stated that, if the case converted to chapter 7 case, the chapter 7 trustee would have sole authority to pursue the claim under 11 U.S.C. § 547(b); otherwise, if the case remained a chapter 11 case, the Court instructed Plaintiff to file a motion for authority to pursue the claim under § 547(b). Finally, as to Plaintiff's claims for declaratory relief regarding ownership of the funds in the Account, the Court held that Plaintiff had not adequately alleged that Debtor had a right to the funds such that the Assignment Order or the Judgment Lien attached to the funds.

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]. As to the McCutchan Defendants, Plaintiff alleged that the Assignment Order and Judgment Lien attached to the funds because they were originally in Debtor's attorney's account. Plaintiff also requested that, in the event the Trustee decided not to pursue the claim under 11 U.S.C. § 547(b), the Court grant Plaintiff permission to pursue the claim. Finally, Plaintiff asserted that the Assignment Order and Judgment Lien would attach to any recovery by the Trustee.

On April 22, 2019, the McCutchan Defendants filed a motion to dismiss the SAC (the

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

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

"Third Motion to Dismiss") [docs. 82]. The McCutchan Defendants argued that the funds were paid as sanctions and, as a result, belonged to the McCutchan Defendants, not Debtor. As such, the McCutchan Defendants believed that that neither the Assignment Order nor the Judgment Lien attached to the funds.

On June 5, 2019 and September 11, 2019, the Court held hearings on the Third Motion to Dismiss. In its ruling on the Third Motion to Dismiss [doc. 135], the Court dismissed Plaintiff's allegations related to 11 U.S.C. § 547(b). However, the Court denied the Third Motion to Dismiss 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 had 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 was about ownership of non-estate funds between two nondebtor parties, the Court issued an Order to Show Cause why this Court had subject matter jurisdiction over the remaining dispute (the "OSC") [doc. 141].

On November 13, 2019, the Court held a hearing on the OSC. At that time, the Court issued a ruling [doc. 150] holding that the Court did not have subject matter jurisdiction over the remaining dispute between Plaintiff and the McCutchan Defendants.

On January 14, 2020, the McCutchan Defendants filed a motion to impose sanctions against Plaintiff (the "Motion") [docs. 159, 160, 161]. In the Motion, the McCutchan Defendants assert that Plaintiff should be sanctioned because: (A) the Court dismissed all claims against the McCutchan Defendants; (B) Plaintiff made inconsistent allegations about ownership of the funds; and (C) Plaintiff did not object to the state court's award of sanctions to the McCutchan Defendants and has not otherwise alleged a legitimate entitlement to the funds. The McCutchan Defendants also attached a letter to Plaintiff asking him to dismiss all claims against the McCutchan Defendants with prejudice or risk a motion for sanctions filed before this Court.

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

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

On March 9, 2020, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 190]. Plaintiff argues that the McCutchan Defendants did not comply with the safe harbor provision of Federal Rule of Bankruptcy Procedure 9011(c)(1)(A) and that the McCutchan Defendants are representing themselves *pro se*, and are thus not entitled to attorneys' fees. Plaintiff also asserts that the Motion is untimely and without merit and requests an award of \$211.32 for costs incurred opposing the Motion.

On March 13, 2020, the McCutchan Defendants filed a reply to the Opposition (the "Reply") [doc. 197]. In the Reply, the McCutchan Defendants argue that this Court "clearly" did not have subject matter jurisdiction and that Plaintiff never pled diversity of citizenship or a claim in excess of \$75,000 to establish subject matter jurisdiction. The McCutchan Defendants also assert that the Motion is timely and otherwise reiterate their bases for sanctioning Plaintiff.

II. ANALYSIS

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 9011(b)—

By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

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

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

Pursuant to FRBP 9011(c)—

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated

(A) By Motion

A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(2) Nature of sanction; limitations

A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

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

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

- (A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

- (B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

"An award of sanctions for a violation of FRBP 9011 or its counterpart in the FRCP, Rule 11, is an exceptionally serious matter, and is reserved for those rare situations in which a claim or defense is asserted without any evidentiary support or legal basis, or for improper purposes, such as to harass or delay an opponent, or cause undue expense." *In re Quinones*, 543 B.R. 638, 646 (Bankr. N.D. Cal. 2015). "We accord the district court's determination whether to impose sanctions deference, because 'the district court is better situated than the court of appeals to marshal the pertinent facts and apply [the law].'" *Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288, 291 (9th Cir. 1995) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402-03 (1990)). "Courts must apply an objective test in assessing whether the rule has been violated." *Yagman v. Republic Ins.*, 987 F.2d 622, 628 (9th Cir. 1993).

As a preliminary matter, the parties dispute whether the McCutchan Defendants complied with the safe harbor provision of FRBP 9011(c)(1)(A). Although the McCutchan Defendants sent a letter, dated December 30, 2019, describing the conduct they believe violates FRBP 9011, it is unclear if the McCutchan Defendants sent Plaintiff a copy of the Motion that was filed with the Court. In addition, the parties dispute whether the Motion is timely under *Quinones*, 543 B.R. 638. Given that *Quinones* involves motions filed after a decision on the merits, which is not the situation in this dismissal for lack of subject matter jurisdiction, *Quinones* does not prevent the McCutchan Defendants from filing a motion under FRBP 9011. Either way, the McCutchan Defendants have not stated a basis for sanctioning Plaintiff under FRBP 9011.

First, contrary to the McCutchan Defendants' contention, the Court did not dismiss all of Plaintiff's claims. Rather, the Court held that, although Plaintiff made sufficient allegations as to his declaratory relief claims against the McCutchan Defendants, this Court does not have subject matter jurisdiction to adjudicate the remaining dispute

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

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

between the McCutchan Defendants and Plaintiff. The McCutchan Defendants appear to misunderstand the effect of the Court's holding. Pursuant to this Court's ruling, Plaintiff may proceed with his remaining claims against the McCutchan Defendants in a forum with jurisdiction. This Court has not and will not adjudicate the merits of Plaintiff's remaining claims against the McCutchan Defendants, and, as a result, the Court cannot hold that the claims are frivolous or otherwise subject to FRBP 9011.

In addition, the McCutchan Defendants' argument in the Reply that Plaintiff proceeded with his claims despite the Court lacking jurisdiction is inaccurate. Whether this Court has subject matter jurisdiction depends on whether the claims against the McCutchan Defendants would have any impact on Debtor's estate. That there was neither diversity jurisdiction nor a claim over \$75,000 has an impact on this Court's jurisdiction. Given that Plaintiff initially anticipated recovering the subject transfer into the estate, the Court had subject matter jurisdiction over the claims. However, given the nature of the remaining claims, the Court held it no longer had jurisdiction over the matter. Thus, the Court will not penalize Plaintiff based on this jurisdictional argument.

Moreover, the McCutchan Defendants appear to argue that Plaintiff repeatedly pursued claims for which he did not have standing. However, Plaintiff did not repeat the same allegations in the Complaint, the FAC and the SAC. In response to the First Motion to Dismiss, wherein the McCutchan Defendants argued Plaintiff did not have standing to file a claim against them under 11 U.S.C. § 542, Plaintiff filed the FAC and removed his claim under that statute. Instead, Plaintiff attempted to pursue a claim under 11 U.S.C. § 547(b).

In its ruling on the Second Motion to Dismiss, the Court held that Plaintiff did not have standing to pursue his § 547(b) claim. However, the Court did not dismiss this claim with prejudice. Instead, the Court informed Plaintiff that, depending on the outcome of the request to convert Debtor's chapter 11 case, Plaintiff may be able to move for authority to pursue a claim under § 547(b). After conversion of Debtor's case to a chapter 7 case, Plaintiff did not pursue a claim under § 547(b); instead, Plaintiff requested leave to obtain permission from the Trustee to pursue a claim under § 547(b). In light of these changes, contrary to the McCutchan Defendants' assertion, Plaintiff did not repeat the same arguments regarding standing.

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

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

CONT... **Robert Edward Zuckerman**

Chapter 7

Further, that Plaintiff may have made inconsistent allegations about the ownership of funds is not a basis for sanctions under FRBP 9011. Pursuant to Federal Rule of Civil Procedure 8(d), parties are allowed to plead in the alternative. *See* Fed. R. Civ. P. 8(d) (2) ("A party may set out 2 or more statement of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient."); *and* Fed. R. Civ. P. 8(d)(3) ("A party may state as many separate claims or defenses as it has, *regardless of consistency.*") (emphasis added).

Finally, the Court will not make any findings regarding the merits of Plaintiff's remaining claims against the McCutchan Defendants. The McCutchan Defendants may make their arguments regarding the merits of the claims in the appropriate forum.

In light of the above, the McCutchan Defendants did not have a legal or factual basis for filing the Motion. The McCutchan Defendants based the Motion on an inaccurate representation of this proceeding's history and this Court's past rulings. Consequently, pursuant to FRBP 9011(c)(1)(A), the Court will award Plaintiff the costs he incurred opposing the Motion in the total amount of \$211.32.

III. CONCLUSION

The Court will deny the Motion. The McCutchan Defendants must pay and file proof of payment of the \$211.32 award to Plaintiff no later than **April 25, 2020**.

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

B. Edward McCutchan Jr. an

Represented By

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

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

	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
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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, March 25, 2020

Hearing Room 301

2:30 PM

1:18-11150 Robert Edward Zuckerman

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; 6/5/19;
8/28/19; 9/4/19; 9/11/19; 11/13/19; 1/22/20

Docket 75

Tentative Ruling:

The Court will continue this matter to **2:30 p.m. on June 10, 2020**, to be held with the continued hearing on the plaintiff's motion for summary judgment.

Appearances on March 25, 2020 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, March 25, 2020

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**

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

1:18-11471 Atif Sheikh

Chapter 7

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

#23.00 Motion for approval of stipulation for judgment between plaintiff and defendants

fr. 11/6/19; 1/22/20 (stip)

Docket 17

Tentative Ruling:

On January 2, 2020, the parties filed a stipulation to continue this matter to provide the plaintiff an opportunity to brief the issues requested by the Court (the "Stipulation") [doc. 22]. On January 6, 2020, the Court entered an order approving the Stipulation and continuing the hearing for approximately two months.

As of March 20, 2020, the plaintiff has not filed a brief addressing the issue of whether the parties' settlement complies with authorities like *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). What is the status of the plaintiff's brief?

11/6/2019 Tentative:

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

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

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

CONT...

Atif Sheikh

Chapter 7

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 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

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

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

CONT... Atif Sheikh

Chapter 7

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**

Wednesday, March 25, 2020

Hearing Room 301

2:30 PM

1:18-11471 Atif Sheikh

Chapter 7

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

#24.00 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; 11/13/19; 1/22/20

Docket 1

Tentative Ruling:

See calendar no. 23.

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, March 25, 2020

Hearing Room 301

2:30 PM

1:19-12150 Houchik Boyadjian

Chapter 7

Adv#: 1:19-01132 Corrdary LLC v. Boyadjian et al

#25.00 Motion to dismiss adversary proceeding

Docket 7

*** VACATED *** REASON: Moot based on amended complaint filed
1/22/20 [doc. 25].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Houchik Boyadjian Pro Se

Defendant(s):

Houchik Boyadjian Pro Se

DOES 1 through 100, inclusive Pro Se

Plaintiff(s):

Corrdary LLC Represented By
Catherine Schlomann Robertson

Trustee(s):

David Keith Gottlieb (TR) Pro Se

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

Thursday, March 26, 2020

Hearing Room 301

10:30 AM

1:15-10741 Emil Soorani, M.D.

Chapter 7

#0.10 Trustee's final report and applications for compensation

Amy L Goldman, Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith LLP, Attorneys for Chapter 7 Trustee

Havkin and Shrago, Attorneys for Debtor

SLBiggs, A Division of SingerLewak, Accountant's for Trustee

fr. 3/10/20

Docket 296

Tentative Ruling:

The Court will continue this hearing to **April 2, 2020 at 10:30 a.m.**

Appearance on March 26, 2020 are excused.

Party Information

Debtor(s):

Emil Soorani, M.D.

Represented By
Richard P Ross
Anthony A Friedman

Trustee(s):

Amy L Goldman (TR)

Represented By
Annie Verdries
Doah Kim
Lovee D Sarenas

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

Thursday, March 26, 2020

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); 12/12/19; 3/5/20

Stip to continue filed 3/9/20.

Docket 114

***** VACATED *** REASON: Order approving stip entered 3/10/20.
Hearing continued to 4/9/20 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes
Roksana D. Moradi

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

Thursday, March 26, 2020

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); 12/12/19;
1/23/20

Stip to continue filed 3/9/20

Docket 1

***** VACATED *** REASON: Order approving stip entered 3/10/20.
Hearing continued to 4/9/20 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes

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

Thursday, March 26, 2020

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 8/29/19/ 1/23/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

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 26, 2020

Hearing Room 301

1:00 PM

1:20-10093 Robert Alderman and Noni Alderman

Chapter 7

#4.00 U.S. Trustee's Motion to Disgorge Compensation Pursuant to 11 U.S.C. § 329

Stip to continue filed 3/20/20

Docket 41

***** VACATED *** REASON: Order approving stip entered 3/23/20.
Hearing continued to 4/30/20 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Alderman

Represented By
Stephen L Burton

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Thursday, March 26, 2020

Hearing Room 301

1:00 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#5.00 U.S. Trustee's Motion To Dismiss Or Convert Case Under 11 U.S.C. § 1112(b)

Docket 16

***** VACATED *** REASON: Voluntary dismissal of motion fld 3/16/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

1:12-16879 Elmer Barrientos and Marlene Barrientos

Chapter 7

#6.00 Debtor's Motion to Determine Secured Status of Claim

Docket 27

Tentative Ruling:

Although the debtors served Cenlar FSB at the right address, the debtors indicate that they served Prospect Mortgage, LLC at 15201 Ventura Bl., #D210, Sherman Oaks, CA 91403. The correct address for service of process is 15301 Ventura Bl., #D210, Sherman Oaks, CA 91403.

The Court will continue this hearing to **2:00 p.m. on April 29, 2020**. No later than April 8, 2020, the debtors must serve Prospect Mortgage at the correct address of 15301 Ventura Bl., #D210, Sherman Oaks, CA 91403.

Appearances on March 26, 2020 are excused.

Party Information

Debtor(s):

Elmer Barrientos

Represented By
James T King

Joint Debtor(s):

Marlene Barrientos

Represented By
James T 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**

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

1:17-10378 Kandy Kiss of California, Inc. and Mary Teresa Barnes

Chapter 7

#7.00 Chapter 7 Trustee's Motion for Order Authorizing Compromise of Controversy Re Province, Inc. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure

Docket 228

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

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

1:17-13142 Amir Elosseini

Chapter 11

#8.00 Debtor's Motion for Order Approving Compromise of Controversy

Docket 192

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):

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, March 26, 2020

Hearing Room 301

2:00 PM

1:18-11620 Antoine R Chamoun

Chapter 7

#9.00 Motion to Withdraw as Counsel for Debtor

Docket 63

Tentative Ruling:

On February 27, 2020, the Court entered an order instructing the debtor's counsel to file and serve this motion and notice of the motion on the debtor at the correct address at 21534 Devonshire Street, Unit 163, Chatsworth, California 91311 no later than March 5, 2020. Counsel did not timely file proof of service of the motion and the notice of the motion at the correct address.

The Court will continue this hearing to **2:00 p.m. on April 16, 2020**. No later than **March 26, 2020**, counsel must file and serve the motion and notice of the new hearing on the debtor at the address above, by United States mail, postage prepaid.

Appearances on March 26, 2020 are excused.

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

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**

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#10.00 Debtor's Motion to "Designate" and Thereby Disqualify the Ballots of Vivavet Labs, Inc. Pursuant to 11 U.S.C. §1126(e) as Not Having Been Cast in Good Faith

Docket 215

Tentative Ruling:

For the reasons stated below, the Court will deny the motion.

I. BACKGROUND

A. Debtor's Bankruptcy Case

On August 22, 2018, Integrated Dynamic Solutions, Inc. ("Debtor") filed a voluntary chapter 11 petition. On December 12, 2019, the Court entered an order [doc. 208] approving of the adequacy of Debtor's second amended disclosure statement (the "Disclosure Statement") [doc. 196]. The hearing on Debtor's second amended chapter 11 plan of reorganization (the "Plan") [doc. 197] is set for March 26, 2020.

On April 16, 2019, Vitavet Labs, Inc. ("Creditor") filed amended proof of claim 6-2, asserting a total claim in the amount of \$1,475,281.89. Of that amount, Creditor asserts that \$1,428,188.69 is secured by three properties owned by Debtor's principal and an account receivable, and \$47,903.20 is unsecured (the "Claim"). The Claim is based on an arbitration award and state court judgment confirming that award [doc. 215, Exh. C].

On March 20, 2018, Debtor's principal, Nasrollah Gashtili, filed his own chapter 11 petition, initiating bankruptcy case 1:18-bk-10715-VK. During the pendency of his bankruptcy case, Mr. Gashtili sold the three properties referenced in the Claim and paid a portion of the proceeds to Creditor. Accordingly, the only collateral securing Creditor's claim is the account receivable.

Creditor did not make a 11 U.S.C. § 1111(b)(2) election prior to the conclusion of the hearing on the Disclosure Statement. Accordingly, in the Plan, a portion of the Claim

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... **Integrated Dynamic Solutions, Inc.**

Chapter 11

is treated as secured in class two and a portion is treated as unsecured in class 3. Both classes are impaired. Creditor is the only creditor in class two. There are several other creditors in class three.

On January 17, 2020, Debtor filed a ballot summary and the ballots received by Debtor [doc. 216]. On both its class two and class three ballots, Creditor voted to reject the Plan (the "Ballots"). Based on these votes, class two and class three have rejected the Plan.

B. The Motion

On January 17, 2020, Debtor filed a *Motion to "Designate" and Thereby Disqualify the Ballots of Vitavet Labs, Inc. Pursuant to 11 U.S.C. § 1126(e) as Not Having Been Cast in Good Faith* (the "Motion") [doc. 215]. In the Motion, Debtor argues that principals of Creditor have said on multiple occasions to multiple individuals that their goals are to cause Debtor to go out of business and to have Mr. Gashtili imprisoned. Debtor contends that such statements made repeatedly and over a period of time, demonstrate both malice and bad faith, either of which is sufficient to result in the disqualification of the Ballots.

To the support the allegations in the Motion, Debtor filed four declarations, one by Mr. Gashtili, one by Fatemeh Kiani, Mr. Gashtili's estranged spouse, one by Lindsey Green, an attorney who represented Ms. Kiani at a judgment debtor examination conducted on October 5, 2018, and one by Andrew Goodman, an attorney who represents Mr. Gashtili in his personal bankruptcy case. In Mr. Gashtili's declaration, in relevant part, he testifies as to the following:

In 2015, shortly after Debtor filed a complaint in state court against Creditor, Matt Simpson, who worked for Creditor, sent Mr. Gashtili an email requesting to meet with him [Declaration of Nasrollah Gashtili ("Gashtili Decl."), ¶ 4]. At that meeting, Mr. Simpson told Mr. Gashtili that upon the return of Creditor's attorney, Creditor would be filing a counterclaim against Debtor in the state court action. *Id.* at ¶ 5. At that same meeting, Mr. Simpson told Mr. Gashtili that Debtor should drop the lawsuit because Blake would never agree to settle, that he would make sure to put Debtor out business and would try to put Mr. Gashtili

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT...

Integrated Dynamic Solutions, Inc.

Chapter 11

in jail. *Id.* Mr. Gashtili told Mr. Simpson that he was willing to negotiate, but Mr. Simpson demanded that Mr. Gashtili dismiss the state court complaint. *Id.* When Mr. Gashtili refused, Mr. Simpson stated "f*** you" and left the meeting. *Id.*

On March 14, 2016, Debtor filed a complaint in state court against Automated Systems America, Inc. ("ASAI"). *Id.* at ¶ 9. On October 24, 2017, Mr. Gashtili met with Larry Washor, an attorney who represented ASAI. *Id.* at ¶ 11. At that meeting, Mr. Washor told Mr. Gashtili that Mr. Washor was in constant contact with counsel for Creditor, that he had been told that Mr. Gashtili committed criminal fraud, that Debtor would soon be out of business and that Mr. Gashtili would be in jail. *Id.* at ¶ 12.

On December 12, 2017, Mr. Gashtili met with Philip Landsman, an attorney representing Creditor. *Id.* at ¶ 14. At that meeting, Mr. Landsman told Mr. Gashtili that Creditor's goal was not just to collect as much money as possible from Mr. Gashtili and Debtor, but also to destroy Debtor and send Mr. Gashtili to jail. *Id.* at ¶ 13.

After Mr. Gashtili filed his personal bankruptcy case, he had another encounter with Mr. Simpson in the hallway outside the Courtroom. *Id.* at ¶ 14. Mr. Simpson told Mr. Gashtili that he was a "m***** f*****," that Mr. Gashtili is hiding money and that Creditor will find the money and send Mr. Gashtili to jail for fraud. *Id.*

There are other instances of inappropriate behavior as well, including an instance where on the lawyers told Mr. Gashtili that he would lose all his "cases" because he was not a "real American." *Id.* at ¶ 15.

In Ms. Kiani's declaration, in relevant part, she testifies that on October 5, 2018, she attended a deposition regarding her financial affairs at the law office of Stella Havkin, an attorney who was representing Creditor [Declaration of Fatemeh Kiani, ¶¶ 3-4]. The parties in attendance at the deposition were Mr. Green, Mr. Simpson, Ms. Havkin, Michael Raichelson, Creditor's current attorney, and a court reporter. *Id.* at ¶ 5. During a break in the deposition, Ms. Kiani observed and personally heard a

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

conversation between Mr. Green and Mr. Simpson. *Id.* at ¶ 6. Mr. Simpson told Mr. Green that the dispute between Debtor and Creditor was not about money and that Mr. Gashtili has and will go to jail. *Id.* at ¶ 8.

In Mr. Green's declaration, in relevant part, he testifies that at the October 5, 2018 deposition, he spoke with Mr. Simpson [Declaration of Lindsey Green, ¶ 4]. Mr. Green asked Mr. Simpson why Creditor was unable to reach a settlement with Debtor. *Id.* Mr. Simpson replied that the dispute was not about money and that he believed that Mr. Gashtili should go to jail. *Id.* at ¶ 5.

In Mr. Goodman's declaration, in relevant part, he testifies that on August 22, 2018, he had a conversation with Mr. Simpson [Declaration of Andrew Goodman, ¶ 2]. Mr. Simpson told Mr. Goodman that if Debtor filed a bankruptcy petition, Creditor would never settle. *Id.* Mr. Simpson stated that Creditor would file multiple lawsuits against Mr. Gashtili, Debtor and Ms. Kiani in an attempt to make sure that Debtor went out of business and Mr. Gashtili goes to jail for fraudulent transfer of assets. *Id.* Debtor filed its bankruptcy petition later that day. *Id.* at ¶ 4.

On March 12, 2020, Creditor filed an opposition to the Motion (the "Opposition") [doc. 225]. In the Opposition, Creditor argues that the Motion ignores the fact that the Plan goes against Creditor's economic self-interest by impermissibly stripping Creditor's lien from the account receivable and by making no payments to Creditor for two years. Creditor contends that the Motion fails to mention any time that Creditor has taken affirmative steps intended to harm other creditors, such as purchasing other unsecured claims, or to put Debtor out of business.

To support the Opposition, Creditor filed four declarations, one by Blake Kirschbaum, Creditor's sole owner and principal, one by Ms. Havkin, one by Mr. Raichelson and one by Mr. Landsman.

In Mr. Kirschbaum's declaration, he testifies, in relevant part, that Mr. Simpson was neither a principal of Creditor nor employed by Creditor at the time Creditor cast the Ballots [Declaration of Blake Kirschbaum ("Kirschbaum Decl."), ¶ 4]. Mr. Kirschbaum testifies that Mr. Simpson and Creditor parted ways in April 2019. *Id.* Mr. Kirschbaum testifies that Creditor cast the Ballots more than nine months after Mr. Simpson left the company, and Mr. Simpson played no part in Mr. Kirschbaum's

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

decision to reject the Plan. *Id.* Mr. Kirschbaum testifies that his decision to reject the Plan on behalf of Creditor was based on Creditor's own self-economic interest. *Id.* at ¶¶ 3, 6.

In Ms. Havkin's declaration, in relevant part, she testifies that she represented Creditor at the October 5, 2018 deposition [Declaration of Stella Havkin, ¶ 2]. Ms. Havkin testifies that she does not recall any recess during the examination wherein Mr. Green was alone with Mr. Simpson and she does not recall any conversations between Mr. Green and Mr. Simpson wherein Mr. Simpson stated that the dispute was not about money and that Mr. Gashtili should go to jail. *Id.* at ¶ 3. Ms. Havkin further testifies that it is not her custom or practice to allow attorneys to speak to her client's representative directly during breaks in examination outside of her presence. *Id.* Mr. Raichelson testifies as to the same in his declaration [Declaration of Michael Raichelson ("Raichelson Decl."), ¶ 6].

Mr. Raichelson also testifies that at a deposition on January 30, 2020, he questioned Mr. Gashtili about the allegation that an attorney told him he would lose all his cases because he was not a real American, and that Mr. Gashtili testified that the attorney who allegedly made this statement was Mr. Washor [Raichelson Decl., ¶ 7, Exh. A]. Mr. Kirschbaum testifies that Mr. Washor has never represented Creditor. [Kirschbaum Decl., ¶ 5].

In Mr. Landsman's declaration, he testifies, in relevant part, that he represented Creditor in its judgment collection efforts in the state court [Declaration of Philip Landsman, ¶ 2]. Mr. Landsman testifies that he met with Mr. Gashtili on December 12, 2017, for a judgment debtor examination. *Id.* Mr. Landsman testifies that he did not tell Mr. Gashtili, before, during or after the judgment debtor examination, that Creditor's goal was to destroy Debtor and send Mr. Gashtili to jail. *Id.*

On March 19, 2020, Debtor filed a reply to the Opposition (the "Reply") [doc. 228]. In the Reply, Debtor states that it is seeking a designation only of Creditor's vote in class three. Debtor believes that designation of Creditor's class two vote is irrelevant.

II. DISCUSSION

The Bankruptcy Code provides that "[o]n request of a party in interest, and after

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... **Integrated Dynamic Solutions, Inc.**

Chapter 11

notice and a hearing, the court may designate any entity whose acceptance or rejection of [a] plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title." 11 U.S.C. § 1126(e). As the Ninth Circuit Court of Appeals has explained:

In this context, designate means disqualify from voting. The Bankruptcy Code does not further define the rather murky term "good faith." That job has been left to the courts.

The Supreme Court brought some clarity to this area when it decided *Young v. Higbee Co.*, 324 U.S. 204, 65 S.Ct. 594, 89 L.Ed. 890 (1945). In *Young*, the Court was discussing the predecessor to § 1126(e) when it declared that if certain persons "had declined to accept [the] plan in bad faith, the court, under section 203 could have denied them the right to vote on the plan at all." *Id.* at 210– 11, 65 S. Ct. at 598 (footnote omitted). It went on to explain that the provision was intended to apply to those "whose selfish purpose was to obstruct a fair and feasible reorganization in the hope that someone would pay them more than the ratable equivalent of their proportionate part of the bankrupt assets." *Id.* at 211, 65 S. Ct. at 598. In other words, the section was intended to apply to those who were **not attempting to protect their own proper interests, but who were, instead, attempting to obtain some benefit to which they were not entitled.** *See also Insinger Machine Co. v. Federal Support Co. (In re Federal Support Co.)*, 859 F.2d 17, 19 (4th Cir.1988). . . . Other courts have further illuminated the area.

If a person seeks to secure some untoward advantage over other creditors for some ulterior motive, that will indicate bad faith. *See In re Marin Town Ctr.*, 142 B.R. 374, 378–79 (N.D.Cal.1992). But that does not mean that creditors are expected to approach reorganization plan votes with a high degree of altruism and with the desire to help the debtor and their fellow creditors. Far from it.

If a selfish motive were sufficient to condemn reorganization policies of interested parties, very few, if any, would pass muster. On the other hand, pure malice,

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT...

Integrated Dynamic Solutions, Inc.

Chapter 11

"strikes" and blackmail, and the purpose to destroy an enterprise in order to advance the interests of a competing business, all plainly constituting bad faith, are motives which may be accurately described as ulterior.

In re Pine Hill Collieries Co., 46 F.Supp. 669, 671 (E.D.Pa.1942). That is to say, we do not condemn mere enlightened self interest, even if it appears selfish to those who do not benefit from it. *See id.* . . . That self interest can extend even further without being an ulterior motive. It has been held that a creditor commits no wrong when he votes against a plan of a debtor who has a lawsuit pending against the creditor, for that will not, by itself, show bad faith. *See Federal Support Co.*, 859 F.2d at 20; *see also In re A.D.W., Inc.*, 90 B.R. 645, 651 (Bankr.D.N.J.1988); *In re Landau Boat Co.*, 8 B.R. 432, 436 (Bankr.W.D.Mo.1981). It has also been held that no bad faith is shown when a creditor chooses to benefit his interest as a creditor as opposed to some unrelated interest. *See In re Landing Assocs., Ltd.*, 157 B.R. 791, 803 (Bankr.W.D.Tex.1993); *In re Peter Thompson Assocs., Inc.*, 155 B.R. 20, 22 (Bankr.D.N.H.1993). And the mere fact that a creditor has purchased additional claims for the purpose of protecting his own existing claim does not demonstrate bad faith or an ulterior motive. "As long as a creditor acts to preserve what he reasonably perceives as his fair share of the debtor's estate, bad faith will not be attributed to his purchase of claims to control a class vote." *In re Gilbert*, 104 B.R. 206, 217 (Bankr.W.D.Mo.1989).

Courts, on the other hand, have been sensitive to situations where a company, which was not a preexisting creditor, has purchased a claim for the purpose of blocking an action against it. They have seen that as an indication of bad faith. *See In re Keyworth*, 47 B.R. 966, 971-72 (D.Colo.1985). The same has been true where creditors were associated with a competing business and desired to destroy the debtor's business in order to further their own. *See In re MacLeod Co., Inc.*, 63 B.R. 654, 655 (Bankr.S.D.Ohio 1986); *see also In re Allegheny Int'l, Inc.*, 118 B.R. 282, 289 (Bankr.W.D.Pa.1990). And when the

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT...

Integrated Dynamic Solutions, Inc.

Chapter 11

debtor had claims against itself purchased by an insider or affiliate for the purpose of blocking a plan, or fostering one, that was seen as a badge of bad faith. *See In re Holly Knoll Partnership*, 167 B.R. 381, 389 (Bankr.E.D.Pa.1994) (fostering); *In re Applegate Property, Ltd.*, 133 B.R. 827, 834–35 (Bankr.W.D.Tex.1991) (blocking).

In short, the concept of good faith is a fluid one, and no single factor can be said to inexorably demand an ultimate result, nor must a single set of factors be considered. It is always necessary to keep in mind the difference between a creditor's self interest as a creditor and a motive which is ulterior to the purpose of protecting a creditor's interest. Prior cases can offer guidance, but, when all is said and done, the bankruptcy court must simply approach each good faith determination with a perspicacity derived from the data of its informed practical experience in dealing with bankrupts and their creditors.

In re Figter Ltd., 118 F.3d 635, 638–40 (9th Cir. 1997) (emphasis added).

"Courts have consistently held that the right of creditors to vote on a plan is a critical feature of Chapter 11, and the party seeking to disallow a vote bears a heavy burden." *In re Indianapolis Downs, LLC.*, 486 B.R. 286, 296 (Bankr. D. Del. 2013); *see also In re DBSD North America, Inc.*, 634 F.3d 79, 102 (2nd Cir. 2011) ("[A] party seeking to designate another's vote bears the burden of proving that it was not cast [or solicited] in good faith.") (citation omitted); *In re Charles St. African Methodist Episcopal Church*, 480 B.R. 66, 68 (Bankr. D. Mass. 2012) ("the burden of proving good faith is on the party seeking designation") (citation omitted). "Designation of a creditor's vote is a drastic remedy, and, as a result, designation of votes is the exception, not the rule." *Indianapolis Downs, LLC.*, 486 B.R. at 296.

Based on the above authorities, even assuming all the statements referenced in the Motion were made, Debtor has not met its heavy burden of proving that the Ballots were not cast in good faith. Debtor provided no evidence that by rejecting the Plan, Creditor is attempting to obtain a benefit to which it is not entitled or to secure an untoward advantage over other creditors for an ulterior motive.

The Motion references statements made by Mr. Washor, an attorney for ASAI. Debtor provided no evidence that Mr. Washor ever represented Creditor. Accordingly, any

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

statements made by him cannot be attributable to Creditor's intent.

The Motion also references statements made by Mr. Simpson. Creditor provided evidence that Mr. Simpson was not involved in the decision-making process regarding the Ballots, and had not been employed by Creditor for nine months prior to that decision. Debtor did not provide contradictory evidence.

In the Reply, Debtor argues that although Mr. Simpson was not employed by Creditor at the time it cast the Ballots, his statements are evidence of Creditor's intent. While it may be true that his statements could have evidenced Creditor's intent at prior times, those statements are not evidence of *Creditor's intent when casting the Ballots*. Mr. Simpson was not involved Creditor's decision to reject the Plan. The only person involved in Creditor's decision to reject the Plan was Mr. Kirschbaum. Accordingly, the relevant inquiry regarding Creditor's intent at the time of casting the Ballots would be that of Mr. Kirschbaum's; not Mr. Simpson. None of the statements referenced in the Motion were alleged to be made by Mr. Kirschbaum.

Regarding the other instances of inappropriate behavior referenced in the Motion, Creditor provided evidence that Mr. Gashtili testified that Mr. Washor made the statement regarding him not being a "real American;" not an attorney representing Creditor. Debtor did not dispute this evidence.

Regarding the statements referenced in the Motion alleged to be made by Mr. Landsman, those statements were made in 2017. Although the statements, which Mr. Landsman denies making, could have been evidence of Creditor's intent in 2017, it is hard to see how those statements would be relevant to Creditor's intent in casting the Ballots *three years later*. The statements were made before Debtor even filed its chapter 11 petition.

This case is not analogous to the cases where courts have designated ballots. Creditor has not purchased claims for the purpose of blocking the Plan, and Creditor is not associated with a competing business that would like to destroy Debtor's business to further its own interest. The two cases cited by Debtor in the Motion, *In re Figter Ltd.*, 118 F.3d 635 (9th Cir. 1997) and *In re Fagerdala*, 891 F.3d 848 (9th Cir. 2018), are both cases involving creditors who purchased unsecured claims. Additionally, the courts in those cases declined to designate the ballots. Debtor did not cite to any case

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Integrated Dynamic Solutions, Inc. Chapter 11

where a court designated a ballot based only on the creditor's hostility toward the debtor, and the Court could not find one.

The court in *In re Pine Hill Collieries Co.*, 46 F.Supp. 669 (E.D. Pa. 1942), states that pure malice constitutes bad faith. That does not appear to be the case here. Mr. Kirschbaum testified that Creditor voted to reject the Plan based on its own economic self-interest. As the Court explains in the tentative ruling on the confirmation of the Plan, calendar number 11, the Plan is not confirmable based in part on Creditor's treatment under the Plan. Creditors are entitled to vote on chapter 11 plans based on their own self-interest, and it appears that is what Creditor has done. Designating a ballot is a drastic remedy, and it does appear that such a drastic remedy is appropriate at this time.

III. CONCLUSION

For the foregoing reasons, the Court will deny the Motion.

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

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 26, 2020

Hearing Room 301

2:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#11.00 Confirmation Hearing Re: 2nd Amended Chapter 11 Plan of Reorganization

Docket 197

Tentative Ruling:

The Court will deny confirmation of the *Debtor's Proposed Plan of Reorganization Dated November 1, 2019* (the "Plan") [doc. 197].

A. Background

On August 22, 2018, Integrated Dynamic Solutions, Inc. ("Debtor") filed a voluntary chapter 11 petition. Pre-petition, on July 30, 2014, Debtor and Automated Systems America, Inc. ("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 was 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 the remaining \$2,000,000.00 is to be paid in monthly installments of \$16,666.67 for 120 months (the "ASAI Receivable"). *Id.* Accordingly, the last payment will be made in September 2024. ASAI has remained current on these payments.

On April 16, 2019, Vitavet Labs, Inc. ("VitaVet") filed amended proof of claim 6-2, asserting a total claim in the amount of \$1,475,281.89. Of that amount, VitaVet asserts that \$1,428,188.69 is secured by the ASAI Receivable and three real properties owned by Debtor's principal, Nasrollah Gashtili, and \$47,903.20 is unsecured (the "VitaVet Claim"). The VitaVet Claim is based on an arbitration award and state court judgment confirming that award [doc. 215, Exh. C].

On March 20, 2018, Mr. Gashtili filed his own chapter 11 petition, initiating bankruptcy case 1:18-bk-10715-VK. During the pendency of his bankruptcy case, Mr. Gashtili sold the three real properties referenced in the VitaVet Claim and paid a portion of the proceeds to VitaVet. Accordingly, the only collateral securing VitaVet's claim is the ASAI Receivable.

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

On September 6, 2018, Debtor filed an emergency motion for an order authorizing interim and final use of cash collateral (the "First CC Motion") [doc. 18]. VitaVet 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 [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."

Doc. 105, Exh. A.

On December 19, 2018, Debtor filed a second motion for use of cash collateral (the "Second CC Motion") [doc. 88]. On February 1, 2019, the Court entered an order granting in part, and denying in part the Second CC Motion [doc. 130]. Specifically, the Court continued to prohibit Debtor from using the \$16,666.67 received each month from ASAI. As the Court noted in its ruling on the Second CC Motion [doc. 118], the ASAI Receivable is subject to VitaVet's judgment lien on personal property.

On January 8, 2019, ASAI filed proof of claim 8-1, asserting an unsecured claim in the amount of \$16,000,000 based on state court litigation between Debtor and ASAI (the "ASAI Claim"). On January 22, 2020, the Court entered an order approving a stipulation between Debtor and ASAI for relief from the automatic stay under 11 U.S.C. § 362 to proceed with that state court litigation.

On October 31, 2019, Debtor filed the Plan. On December 12, 2019, the Court entered an order [doc. 208] approving the adequacy of Debtor's second amended disclosure statement (the "Disclosure Statement") [doc. 196].

B. The Plan

The Plan provides for Debtor to assume the Agreement and to use the ASAI

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

Receivable to fund the Plan. According to Debtor's most recently filed monthly operating report for February 2020, the cash collateral DIP account contains \$276,382.11. The Plan is a 108-month plan. The monthly payments from ASAI on account of the ASAI Receivable will end in month 55 of the plan.

Under the Plan, on month one, Debtor will make a one-time payment of \$120,000 to Mr. Gashtili. Starting on month two continuing through month 108, Debtor will pay Mr. Gashtili monthly compensation. Mr. Gashtili's monthly compensation varies during the duration of the Plan, at a high of \$26,000 per month and a low of \$14,000 per month. During the pendency of Debtor's bankruptcy case, Debtor has paid Mr. Gashtili monthly compensation in the amount of \$10,000. In total, by month 24 of the Plan, Mr. Gashtili will receive \$706,000 from Debtor.

Under the Plan, all classes are impaired. Class 1 consists of a secured claim filed by Gordan T. Graves. The treatment of that claim is consistent with the parties' plan treatment stipulation, which was approved by the Court [doc. 106]. Class 1 voted to accept the Plan.

Class 2 consists of VitaVet's secured claim. VitaVet did not make a 11 U.S.C. § 1111(b)(2) election prior to the conclusion of the hearing on the Disclosure Statement. Accordingly, in the Plan, \$907,000 of the VitaVet Claim is treated as secured in class 2 and \$356,723 is treated as unsecured in class 3. VitaVet is the only creditor in class 2. Under the Plan, Debtor proposes to make monthly payments to VitaVet on account of its secured claim. The monthly payments start in month 25 and continue through month 108. Debtor proposes to pay \$2,500 per month for months 25 to 36, then \$5,000 per month for months 37 to 48, then \$15,000 per month for months 49 to 90, then \$30,000 per month for months 91 to 107, then a final payment of \$25,034.60 in month 108. Under the Plan, VitaVet does not retain its lien on the ASAI Receivable. Class 2 voted to reject the Plan.

Class 3 consists of unsecured claims totaling \$16,517,230.54. This amount includes the ASAI Claim and the deficiency of VitaVet's claim. There are several other creditors in class 3. Under the Plan, Debtor proposes to pay members of class 3 their pro rata share of \$31,500. Debtor proposes to make quarterly payments in the amount of \$1,500 starting in month 30 and continuing through month 87, and one final payment of \$1,500 in month 99. Class 3 voted to reject the Plan.

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

Class 4 consists of Mr. Gashtili's equity interest in Debtor. Under the Plan, Mr. Gashtili will retain his 100% equity interest in Debtor in exchange for contributing \$15,000 in new value.

The Plan provides for Debtor to receive a discharge pursuant to 11 U.S.C. § 1141(d) upon the effective date of the Plan. If Debtor materially defaults under the Plan and the default is not cured, affected creditors may sue to enforce the terms of the Plan or seek to dismiss or convert the case to one under chapter 7.

On January 17, 2020, Debtor filed *Debtor's Confirmation Brief in Support of Reorganization Plan Filed October 31, 2019* (the "Brief") [doc. 218]. On February 27, 2020, VitaVet filed an objection to the Plan (the "Objection") [doc. 223] and a declaration in support of the Objection [doc. 224]. On March 19, 2020, Debtor filed a reply to the Objection [doc. 227].

C. 11 U.S.C. § 1129

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, the member in class 2 will receive aggregate payments in the amount of \$1,255,034.60

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

and all members of class 3 will receive a pro rata share of \$31,500.

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:

(A) With respect to a class of secured claims, the plan provides—

(i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(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,

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT...

Integrated Dynamic Solutions, Inc.

Chapter 11

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. . . .

D. Indubitable Equivalent

Although the Plan proposes to make deferred cash payments to VitaVet, which appears to trigger the provisions of 11 U.S.C. § 1129(b)(2)(A)(i), the Plan does not provide for VitaVet to retain its lien on the ASAI Receivable. As such, the Plan is not fair and equitable under that provision. Instead, Debtor argues that the Plan is fair and equitable as to class 2 because VitaVet will receive the indubitable equivalent of its claim in accordance with § 1129(b)(2)(A)(iii).

Under 11 U.S.C. § 1129(b)(2)(A)(iii), a plan is "fair and equitable" if, with respect to a class of secured claims, it provides "for the realization by such holders of the indubitable equivalent of such claims." "In more basic terms, if a reorganization plan is to bind an unconsenting creditor, the creditor should hold at least the same value of

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

claims under the plan as it would hold without the plan: an ‘indubitable equivalence.’”
In re Wiersma, 227 F. App'x 603, 606–07 (9th Cir. 2007).

“The Ninth Circuit has recognized two components of an indubitably equivalent substitute: It must both ‘compensate for present value’ and ‘insure the safety of the principal.’” *Wiersma*, 227 F. App'x 603 at 607(citing *Crocker Nat'l Bank v. Am. Mariner Indus., Inc. (In re Am. Mariner Indus., Inc.)*, 734 F.2d 426, 433 (9th Cir.1984) (abrogated on other grounds)). Where the plan changes a secured creditor's rights in the collateral, providing the indubitable equivalent requires that the plan provide substitute collateral or other assurances that the creditor's risk is not increased. *In re Arnold & Baker Farms*, 85 F.3d 1415, 1422 (9th Cir.1996) (citation omitted).

“This principle has been well recognized in the context of using cash collateral post-confirmation to fund a Chapter 11 reorganization.” *In re Souza*, No. 12-13341, 2012 WL 8441318, at *6 (Bankr. E.D. Cal. Nov. 26, 2012); *see e.g., In re Griswold Bldg., LLC*, 420 B.R. 666, 705–06 (Bankr. E.D. Mich. 2009) (“Debtors propose to use the Lender's cash collateral to pay claims that have a lower priority under the Bankruptcy Code than the claims of the Lender, without providing any replacement collateral for the Lender. It is hard to see how that is fair and equitable.”).

Here, VitaVet has a security interest in the ASAI Receivable. The Plan proposes to use the ASAI Receivable to pay administrative and tax claims under the Plan and in Mr. Gashtili’s bankruptcy case, without providing some additional protection to VitaVet. Although the deferred payments starting in month 25 of the Plan and continuing through month 108 may compensate VitaVet for the present value of its collateral over the life of the Plan, the payments do not insure the safety of the principal.

As the Court has noted previously, the ASAI Receivable is a finite sum of money. The monthly payments from ASAI will end in month 55 of the Plan. Debtor proposes to use \$400,000 of those funds before VitaVet receives any compensation on account of its secured claim. Although Debtor will make deferred payments, Debtor is not offering to provide replacement collateral that is equivalent to the value of the funds already collected and segregated in the cash collateral DIP account and the future funds to be paid by ASAI during months 1 through 55 of the Plan. Leaving VitaVet without security in the event that Debtor defaults under the Plan is not the indubitable equivalent of having a lien on a current and paying receivable. Under the Plan,

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... **Integrated Dynamic Solutions, Inc.**

Chapter 11

VitaVet's risk is increased. As a result, Debtor has not carried its burden of proof that the Plan is fair and equitable.

E. Absolute Priority Rule

Under the Plan, Debtor's principal retains his equity interest, so class 3—unsecured creditors classified senior to the debtor's members—must be paid the full present value of their claim. The unsecured class 3 claims will not be paid in full under the Plan as of the effective date.

"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." *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 654 (9th Cir. 1997). "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." *Id.* "The burden is clearly on the proponent of the plan to satisfy all the requirements of the new value exception." *In re Tucson Self-Storage, Inc.*, 166 B.R. 892, 899 (B.A.P. 9th Cir. 1994).

1. 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.

Although there is no bright line rule, a review of several cases provides a general overview of what courts consider "substantial." For instance, in *Ambanc*, the Ninth Circuit Court of Appeals held that a contribution that was 0.5% of the total unsecured debt was a *de minimis* contribution that did not satisfy the substantiality element. *Ambanc*, 115 F.3d at 655. In reaching this conclusion, the Court of Appeals relied on three cases where courts held that contributions between 1.56% and 3.8% were insufficient to satisfy the substantiality requirement. *See 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); *Matter of Snyder*, 967 F.2d 1126, 1131 (7th Cir. 1992) (holding that "the disparity between the

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... **Integrated Dynamic Solutions, Inc.**

Chapter 11

contribution and the unsecured debt," 2.2% of approximately \$1,000,000 unsecured claims, was "so extreme ... there [was] no need to proceed any further"); and *In re Olson*, 80 B.R. 935, 937 (Bankr. C.D. Ill. 1987) (finding that a \$5,000 contribution was not substantial because it represented 1.56% of \$320,000 in unsecured debt).

Other courts have held similarly. For instance, in *In re H.H. Distributions, L.P.*, 400 B.R. 44, 52-53 (Bankr. E.D. Pa. 2009), the court aggregated cases and held that a contribution totaling "slightly less than 3% of the unsecured debt" was not substantial. The court referenced multiple cases in reaching this conclusion. See, e.g. *In re Haskell Dawes, Inc.*, 199 B.R. 867, 876-77 (Bankr. E.D. Pa. 1996) (holding that a 5.1% contribution was insubstantial); and *In re Sovereign Group 1985-27, Ltd.*, 142 B.R. 702, 710 (E.D. Pa. 1992) (holding that a 3.6% contribution was insubstantial).

Here, the allowed claims in class 3 total \$16,517,230.54. A payment of \$15,000 constitutes 0.09% of those allowed claims. Debtor argues that the amount of unsecured debt should be considered \$207,600.54 because the ASAI Claim is not liquidated and is subject to offset by Debtor's claims against ASAI in the state court litigation. However, Debtor has not filed an objection to the ASAI Claim. Accordingly, at this time, the ASAI Claim is an *allowed claim*. As such, the Court cannot disregard the claim for purposes of this calculation as Debtor requests. Under the above authorities, a 0.09% payment is not substantial.

2. 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).

Here, in the Brief, Debtor argues that the value received must be equal to Debtor's nonexempt assets. Debtor cites to *In re Juarez*, 603 B.R. 610 (9th Cir. B.A.P. 2019). *Juarez* is not applicable to this case. *Juarez* involved an individual debtor; not a corporation.

Regarding corporate debtors, determining whether the new value is reasonably

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... **Integrated Dynamic Solutions, Inc.**

Chapter 11

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). Debtor has not provided a valuation of its business as a going concern, and in the Disclosure Statement, Debtor provides a calculation only of its *liquidation* value.

Additionally, the Supreme Court of the United States "requires that the quantum of new value be market tested; otherwise the parties and the court cannot know whether the amount of new value proposed in the debtor's plan is the most available." *In re NNN Parkway 400 26, LLC*, 505 B.R. 277, 281 (Bankr. C.D. Cal. 2014) (citing *Bank of America Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle Street P'ship*, 526 U.S. 434, 456-57, 119 S.Ct. 1411, 1424, 143 L.Ed.2d 607 (1999)). Debtor has not provided a market tested valuation under *LaSalle*. Accordingly, Debtor has not met its burden with respect to this requirement.

F. Feasibility

In the Objection, VitaVet argues that the Plan is not feasible. Because the Court is denying confirmation of the Plan (as discussed above), the Court will not rule on whether the Plan is feasible. To satisfy other standards for confirmation, Debtor must amend the Plan, and any such feasibility analysis will necessarily change based on that amendment.

G. Bad Faith

In the Objection, VitaVet argues, among other things, that the Plan was filed in bad faith. In the Reply, Debtor refutes VitaVet's allegations. Because the Plan fails to satisfy other prerequisites to confirmation, at this time, the Court declines to rule on whether Debtor filed the Plan in bad faith.

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

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 26, 2020

Hearing Room 301

2:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#12.00 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; 12/5/19

Docket 1

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, March 26, 2020

Hearing Room 301

2:00 PM

1:19-11696 Peter M. Seltzer

Chapter 7

#13.00 Motion by Diane C. Weil, Chapter 7 Trustee, for Issuance of an Order to Show Cause Why Debtor Should Not Be Held in Contempt for Violation of this Court's Conversion Order

Docket 119

***** VACATED *** REASON: Continued to 4/9/20 per order (doc # 138)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson
Kathleen C Hipps

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

1:19-11950 Farzan Bassala

Chapter 7

#14.00 Trustee's Motion for Order:
(1) Authorizing Sale of All Physical and Intangible Assets of Dream Pet Spa, Inc., and Bubbles Pet Spa Subject to Lalau Industries' Security Interest, as Noted in Proof of Claim No 3-1 (A) Outside the Ordinary Course of Business; (B) Free and Clear of Remaining Liens, Claims and Encumbrances; (C) Subject to Overbid; and (D) For Determination of Good Faith Purchaser Under 11 U.S.C. Section 363(m)

Docket 42

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Farzan Bassala

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

1:19-11950 Farzan Bassala

Chapter 7

#15.00 Trustee's Motion for Order:
(1) Authorizing Sale of Real Property Located at 6316 Wynne Ave.,
Tarzana, CA 91335 (A) Outside the Ordinary Course of Business;
(B) Free and Clear of Liens, Claims and Encumbrances; (C) Subject
to Overbid; and (D) For Determination of Good Faith Purchaser
Under 11 U.S.C. Section 363(m); Memorandum of Points and Authorities

Docket 39

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Farzan Bassala

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

1:20-10007 Jason Scott Fontaine

Chapter 7

#16.00 Debtor's Motion to Avoid Lien Under 11 U.S.C. §522(f) with Jennifer Hoult

Docket 11

Tentative Ruling:

I. BACKGROUND

Prepetition, on November 15, 2019, creditor Jennifer Hoult obtained a writ of execution (the "Writ") against Jason Scott Fontaine ("Debtor"). Motion [doc. 11], Exhibit 3. On January 2, 2020, Debtor filed a voluntary chapter 7 petition. On January 5, 2020, Ms. Hoult was sent notice of Debtor's bankruptcy case through her counsel [doc. 7].

In his schedule A/B [doc. 9], Debtor listed an interest in several checking and savings accounts. In his schedule C, filed on January 16, 2020, Debtor claimed exemptions in his accounts under California Code of Civil Procedure § 703.140(b) (5).

On January 7, 2020, the Los Angeles County Sheriff's Department (the "Sheriff") sent a notice of levy to Debtor (the "Notice of Levy"). Motion, Exhibit 3. On January 8, 2020, Bank of America sent notices to Debtor that his accounts were being levied and that the accounts would be frozen. Motion, Exhibit 2. Bank of America also informed Debtor that it was holding \$10,303.19 pending a determination by the chapter 7 trustee as to ownership of the funds. *Id.* On January 17, 2020, the Sheriff sent a notice of Debtor's bankruptcy to Ms. Hoult. Motion, Exhibit 3.

On January 24, 2020, Debtor filed the Motion [doc. 11]. In the Motion, Debtor requests avoidance of the lien in favor of Ms. Hoult because it impairs his exemption in the accounts. Debtor also requests turnover of the \$10,303.19 held by Bank of America on account of the Notice of Levy.

On February 10, 2020, Ms. Hoult filed an opposition to the Motion (the "Opposition") [doc. 17]. In the Opposition, Ms. Hoult contends that she levied the

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Jason Scott Fontaine

Chapter 7

funds prior to obtaining notice of Debtor's bankruptcy. Ms. Hoult also argues that the Motion should be denied because Debtor's case is a bad faith filing and the U.S. Trustee allegedly is assessing that issue. To date, a motion to dismiss Debtor's case has not been filed. Debtor did not timely file a reply to the Opposition.

II. ANALYSIS

Here, neither party has provided relevant law regarding whether the execution lien at issue may be avoided under 11 U.S.C. § 522(f) or if, as discussed below, an execution lien arose at all. Pursuant to California Code of Civil Procedure ("CCP") § 697.710, "[a] levy on property under a writ of execution creates an execution lien on the property from the time of levy until the expiration of two years after the date of issuance of the writ unless the judgment is sooner satisfied."

"When a writ of execution is levied upon, an execution lien arises. An execution lien is an avoidable judicial lien." *In re Coy*, 552 B.R. 199, 203 (Bankr. C.D. Cal. 2016). "Upon levy (*i.e.*, upon recordation of the notice of levy and writ of execution), an execution lien is created by operation of law." *Id.*, at 204 (citing CCP § 697.710) (emphasis added); *see also Diamond Heights Vill. Ass'n, Inc. v. Fin. Freedom Senior Funding Corp.*, 196 Cal.App.4th 290, 302 (Ct. App. 2011) ("An execution lien does not arise when a writ of execution is issued by the court, but rather when the levying officer levies the property (constructively seizes it) by recording a copy of the writ of execution and notice of levy.").

Here, the parties have not provided a complete record to the Court. As such, it is unclear when the Notice of Levy and the Writ were recorded. The only information we have is that the Notice of Levy was delivered to Debtor postpetition, on January 7, 2020. To the extent the Notice of Levy also was *recorded* postpetition, the lien would not arise until after the petition date.

Generally, "the nature and extent of exemption is determined as of the date that the bankruptcy petition is filed." *In re Chiu*, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001). "Because lien avoidance is part and parcel of the exemption scheme, the right to avoid a judicial lien must also be determined as of the petition date." *Id.* Although, as explained by *Chiu*, exemption rights are determined as of the petition date, some courts have held that liens arising postpetition may be avoided if the underlying debt

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT...

Jason Scott Fontaine

Chapter 7

arose prepetition and the debtor had a right to his or her exemption as of the petition date. *See, e.g. In re Vaughan*, 311 B.R. 573 (B.A.P. 10th Cir. 2004); *In re Corio*, 371 Fed. App'x 352 (3d Cir. Mar. 24, 2010) (relying on *Vaughan*); and *In re Feathers*, 2015 WL 1598087 (N.D. Cal. Apr. 7, 2015) (relying on *Vaughan*). These cases referenced 11 U.S.C. § 522(c) to reach their conclusion. Pursuant to 11 U.S.C. § 522(c)—

Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

- (1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);
- (2) a debt secured by a lien that is—
 - (A)
 - (i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and
 - (ii) not void under section 506(d) of this title; or
 - (B) a tax lien, notice of which is properly filed;
- (3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or
- (4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT...

Jason Scott Fontaine

Chapter 7

Education Act of 1965 (20 U.S.C. 1001)).

In *Feathers*, the Securities and Exchange Commission (the "SEC") had a pending action against the debtor at the time the debtor filed his chapter 7 petition. *Feathers*, 2015 WL 1598087 at *1. Postpetition, the district court entered judgment in favor of the SEC and, subsequently, the SEC obtained a judgment of nondischargeability under 11 U.S.C. § 523(a)(19). *Id.*

After the debtor received his discharge and the debtor's case was closed, the SEC recorded an abstract of judgment, thereby attaching a judicial lien to the debtor's real property. *Id.* The debtor then reopened his bankruptcy case and moved for avoidance of the SEC's lien. *Id.* The bankruptcy court held that the debtor could avoid the lien *despite the fact that the judicial lien was recorded postpetition. Id.*, at *1-2. As part of its assessment, the court found:

Reviewed in the context of § 522 as a whole, other provisions "set forth limitations as to when exemptions may or may not trump a creditor's claim or lien rights, but they focus on the nature and timing of the claim, rather than the time when the lien affixed." *Id.* The general rule is that exempt property will not be liable for pre-petition debts but § 522(c) sets forth four exceptions. None of these exceptions apply to the SEC's claim. Further, the fact that Congress created certain exceptions, implies that only those exceptions and no others were intended.

Id., at *2. After holding that the timing of the lien attachment was not relevant to the question before the court, the court held that the SEC's lien could be avoided under § 522(f) because "[t]he plain language of Bankruptcy Code § 522(c) makes clear that property exempted during a bankruptcy case may not be required to satisfy debts that arose prior to the bankruptcy case." *Id.*

Here, the parties do not dispute that the judgment in favor of Ms. Hoult was entered prepetition; that the Writ, attached to the Motion, was executed prepetition reflects as much. Moreover, to date, no party in interest has objected to the validity of Debtor's claims of exemption. "Unless a party in interest objects, the property claimed as exempt... is exempt." 11 U.S.C. § 522(l). Objections are timely if filed within 30

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Jason Scott Fontaine

Chapter 7

days after the § 341(a) meeting of creditors is concluded, or within 30 days after the schedule of property claimed exempt is amended by the debtor, whichever is later. Federal Rule of Bankruptcy Procedure 4003(b)(1). As such, there may be cause to avoid the execution lien under the authorities above.

However, the major difference between this case and *Feathers* is that, in *Feathers*, the automatic stay did not prevent entry of the judgment in favor of the SEC (and, as a result, the postpetition recordation of the abstract of judgment) because there was an exception to the automatic stay under 11 U.S.C. § 362(b)(25). Here, Ms. Hoult has not set forth an applicable exception to the automatic stay.

"[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). "For voidness purposes, it makes no difference whether the stay violator was aware of the stay when he or she violated the stay. Regardless, all acts and judicial proceedings undertaken in violation of the stay are void." *In re Carter*, 2016 WL 1704719, at *4 (B.A.P. 9th Cir. Apr. 22, 2016), *aff'd*, 695 F. App'x 307 (9th Cir. 2017) (internal citations omitted).

Neither party has discussed whether the automatic stay served to void any of the postpetition actions taken in this case, such as the levy of funds and, assuming the Notice of Levy was recorded postpetition, the creation of an execution lien. If the execution lien was created postpetition, as discussed above, and if no applicable exception to the automatic stay applies, then the lien is void and there is no lien to avoid via § 522(f). Either way, assuming an exception to the automatic stay does not apply, Ms. Hoult has an obligation to order the return of any funds that were taken from Debtor's accounts postpetition. *See, e.g. In re Hernandez*, 483 B.R. 713 (B.A.P. 9th Cir. 2012).

In light of the above, the parties should provide supplemental briefing as to the following: (A) when the Notice of Levy was recorded; and (B) whether the execution lien and/or any transfer of funds from Debtor's accounts are void by operation of 11 U.S.C. § 362.

III. CONCLUSION

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

Thursday, March 26, 2020

Hearing Room 301

2:00 PM

CONT... Jason Scott Fontaine

Chapter 7

The Court will continue this matter to **2:00 p.m. on May 6, 2020** for the parties to provide supplemental briefing as discussed above. The parties must file and serve their supplemental briefs no later than **April 15, 2020**. Any replies to the opposing party's supplemental brief must be filed and served no later than **April 22, 2020**.

Party Information

Debtor(s):

Jason Scott Fontaine

Represented By
Leonard Pena

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Wednesday, April 1, 2020

Hearing Room 301

9:30 AM

1:19-13155 Shobert Vartan

Chapter 7

#1.00 Motion for relief from stay [AN]

BRIGHT ENABULELE
VS
DEBTOR

fr. 3/18/20

Docket 9

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.

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 nonbankruptcy action.

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

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Movant(s):

Bright Enabulele

Represented By

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

Wednesday, April 1, 2020

Hearing Room 301

9:30 AM

CONT... Shobert Vartan

Levi Reuben Uku

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, April 1, 2020

Hearing Room 301

9:30 AM

1:19-11419 Benjamin Valencia

Chapter 13

#2.00 Motion for relief from stay [RP]

SELECT PORTFOLIO SERVICING INC.
VS
DEBTOR

fr. 3/18/20

Docket 38

Tentative Ruling:

Grant relief from stay pursuant to 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* was part of a scheme to delay, hinder and defraud creditors.

Among other things, on October 28, 2019, the Court confirmed the debtor's chapter 13 plan, which necessitated a determination that "the action of the debtor in filing the petition was in good faith." *See* 11 U.S.C. § 1325(a)(7).

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 order will be binding and effective in any bankruptcy case by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing of the Motion, **upon recording a copy of the order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.**

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

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

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

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

Wednesday, April 1, 2020

Hearing Room 301

9:30 AM

CONT... Benjamin Valencia
notified.

Chapter 13

Telephonic Hearing Only. CourtCall, the Court's telephonic provider, has amended pricing for its services and is offering discounted rates to attorneys through April 30 and FREE access for parties who do not have an attorney (pro se parties). Telephonic appearances may be arranged by contacting CourtCall at (888) 88-COURT (866-582-6878). Additional details are available by visiting their website: <https://courtcall.com>.

Party Information

Debtor(s):

Benjamin Valencia

Represented By
Sydell B Connor

Movant(s):

Select Portfolio Servicing Inc as

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, April 1, 2020

Hearing Room 301

9:30 AM

1:19-10874 Caridad Salas Hileman

Chapter 13

#3.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC dba CHAMPION MORTGAGE COMPANY
VS
DEBTOR

fr. 3/18/20

Docket 53

Tentative Ruling:

In order to consider further briefing concerning the issues discussed below, the Court will continue this hearing to **April 29, 2020 at 9:30 a.m.**

I. BACKGROUND

On April 12, 2019, Caridad Salas Hileman (the "Debtor") filed a voluntary chapter 13 petition. On the same day, the Debtor filed her schedules and statements, which are signed under penalty of perjury [doc. 1]. On her petition, the Debtor indicated that her residence was 14658 Haynes Street, Van Nuys, California (the "California Property").

In her schedule C [doc. 1], under Cal. Code. Civ. P. § 704.730, the Debtor claimed a \$75,000 homestead exemption in the California Property. In her statement of financial affairs [doc. 1], the Debtor indicated that she had not lived anywhere else during the last three years.

Between 2009 and 2018, the Debtor has filed five prior chapter 13 petitions [1:18-bk-12541-VK; 1:17-bk-11167-VK; 1:13-bk-16139-AA; 1:10-bk-14174-MT; 1:09-bk-26160-MT]. In each of these chapter 13 cases, the Debtor indicated that her residence was the California Property.

On her schedule A/B [doc. 1], the Debtor indicated that she holds interests in the California Property and in another improved real property, located at 291 S. 16th Avenue, Show Low, Arizona (the "Arizona Property"). The Debtor valued the

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

Wednesday, April 1, 2020

Hearing Room 301

9:30 AM

CONT... Caridad Salas Hileman

Chapter 13

Arizona Property at \$160,000 and indicated that Wells Fargo Bank, N.A. ("Wells Fargo") holds a secured claim, in the amount of \$142,027.27, against the Arizona Property [Schedule D, doc. 1]. In her master mailing list, Debtor included Wells Fargo [doc. 1].

On April 12, 2019, the Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 as to all creditors (the "Continue Stay Motion") [doc. 6]. No creditor filed an opposition to that Motion. On May 22, 2019, the Court granted the Continue Stay Motion [doc. 23].

On April 12, 2019, the Debtor filed her chapter 13 plan (the "Plan") [doc. 2]. On September 4, 2019, the Debtor filed and served notice of her § 341(a) meeting of creditors and the confirmation hearing on the Plan. The first confirmation hearing was set for October 8, 2019 [doc. 38]. The Debtor served that notice and the Plan on Wells Fargo and the lienholder secured by the California Property.

The deadline for filing a proof of claim in the Debtor's bankruptcy case was June 21, 2019. On October 22, 2019, Nationstar Mortgage LLC *dba* Champion Mortgage Company ("Movant") filed a notice of appearance and request for special notice [doc. 44]. Prior to this, it appears that Movant was not receiving notices regarding the Debtor's bankruptcy case.

On December 9, 2019, the Debtor filed a declaration setting forth postpetition, preconfirmation payments on deeds of trust secured by the California Property and the Arizona Property [doc. 45]. In that declaration, the Debtor indicated that, on account of the Arizona Property, she paid Wells Fargo \$1,200 per month from May 2019 through December 2019. This declaration was served on Movant via NEF.

On December 10, 2019, the Court held a continued confirmation hearing on the Plan. On December 31, 2019, the Court entered an order confirming the Plan [doc. 49].

Under the Plan, the Debtor is to maintain and make any current contractual installment payments to Wells Fargo directly. The Plan provides for payments to cure prepetition arrearages to Wells Fargo in the amount of \$0.00. The Plan also provides that the dollar amount of arrearage stated on a proof of claim controls over any contrary amount listed in the Plan. No creditor filed a proof of claim regarding the

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

Wednesday, April 1, 2020

Hearing Room 301

9:30 AM

CONT... **Caridad Salas Hileman**
Arizona Property.

Chapter 13

The Debtor provided for the cure of the prepetition arrearages on the California Property in class 2, which is for claims secured solely by property that is the Debtor's principal residence. The Debtor provided for the claim secured by the Arizona Property in class 4, which is for secured claims *other than claims secured by the Debtor's principal residence*.

On February 19, 2020, Movant filed a motion for relief from stay as to the Arizona Property (the "Motion") [doc. 53]. In the Motion, Movant states that it is the holder of the promissory note and deed of trust on the Arizona Property [Exh. 3]. According to the assignment of deed of trust attached to the Motion, in 2017, Wells Fargo assigned the note and deed of trust to Movant.

The note is a reverse mortgage that provides for no monthly payments an account of the loan [Exhs. 1 and 2]. However, immediate payment in full of all outstanding principal and accrued interest is due if a borrower dies and the Arizona Property is not the principal residence of at least one surviving borrower. The borrowers under the note are the Debtor and Albert F. Hileman. Attached to the Motion is the death certificate of Albert F. Hileman. The death certificate indicates that Mr. Hileman died on May 1, 2017 [Exh. 4].

In the Motion, Movant argues that cause exists to grant relief from the automatic stay because the loan is due and payable in full, *i.e.*, Mr. Hileman died and the Arizona Property is not the Debtor's principal residence.

On March 4, 2020, the Debtor filed an opposition to the Motion (the "Opposition") [doc. 57]. In the Opposition, contrary to her chapter 13 petition, her schedules, her statement of financial affairs and the Plan, the Debtor testifies that she currently resides in the Arizona Property, as her principal residence, and that she has done so since prior to confirmation of the Plan [Declaration of Caridad Salas Hileman, ¶ 9]. The Debtor also testifies that her sister, along with other tenants, lives in the California Property. *Id.* at ¶ 10.

II. DISCUSSION

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

Wednesday, April 1, 2020

Hearing Room 301

9:30 AM

CONT...

Caridad Salas Hileman

Chapter 13

A. Section 1327(a)

Under Chapter 13, "[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a). "[S]ubsection 1327(a) bar[s] post-confirmation relief from [the] stay based on grounds arising before confirmation." *Ellis v. Parr (In re Ellis)*, 60 B.R. 432, 434 (9th Cir. BAP 1985). Therefore, a creditor must voice concerns, such as worries about adequate protection and the necessity of certain assets for a successful reorganization, before the confirmation. Once confirmation occurs, the creditor may not raise any issue that it could have raised before confirmation. *Anaheim Sav. & Loan Ass'n v. Evans (In re Evans)*, 30 B.R. 530, 531–32 (9th Cir. BAP 1983).

In re Barry, 201 B.R. 820, 823 (C.D. Cal. 1996); see also *In re Hileman*, 451 B.R. 522, 524 (Bankr. C.D. Cal. 2011). On the other hand, based on a default in post-confirmation payments, relief from stay is permitted under § 1327(a). *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985).

If a party did not receive notice sufficient to satisfy its due process rights, "[a] confirmed plan does not have preclusive effect." *In re Richter*, 525 B.R. 735, 750–51 (Bankr. C.D. Cal. 2015); *Ellett v. Stanislaus*, 506 F.3d 774, 777 (9th Cir. 2007) ("[A] claim cannot be considered to have been provided for by the plan if a creditor does not receive proper notice of the proceedings." (internal quotation marks omitted)).

"The threshold for due process though is low: [d]ue process merely requires 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.'" *Richter*, 525 B.R. at 750–51 (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). In the context of a plan, this means "a creditor need only get ordinary notice of [the] Chapter 13 plan to be bound by its terms." *Espisona v. United Student Aid Funds, Inc.*, 553 F.3d 1193, 1204 (9th Cir.2008), *aff'd*, 559 U.S. 260, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010).

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

Wednesday, April 1, 2020

Hearing Room 301

9:30 AM

CONT... Caridad Salas Hileman

Chapter 13

Here, it appears that the Debtor did not provide notice of the deadline for filing a proof of claim or the deadline to object to the Plan to Movant; rather, the Debtor provided notice of both to Wells Fargo. However, more than a month prior to the continued hearing on confirmation of the Plan, Movant had *actual* notice of the chapter 13 case, yet Movant did not file an objection to confirmation of the Plan.

Pursuant to §1327(a), if Movant is bound by the Plan, Movant is barred from relief from the automatic stay on grounds arising preconfirmation. Issues regarding the Debtor's obligation (if any) to pay Movant's secured claim in full under the Plan could have been raised pre-confirmation. As such, if Movant had sufficient notice of the Plan, Movant would be barred from seeking relief from stay on these grounds.

If Movant is bound by the Plan, and the Debtor is not in default under the confirmed Plan, there is not cause to grant relief from the automatic stay. *See In re Garrett*, 185 B.R. 620, 623 (Bankr.N.D.Ala.1995) ("The terms of the plan as confirmed fix the legal rights of the parties and the only cause for relief from the stay after the confirmation is the debtor's material failure to adhere to the payment terms set forth in the plan.").

On the other hand, if Movant did not receive adequate notice of the Plan, then Movant is not bound and may pursue relief from stay based on the Debtor's default under the note.

Neither party has addressed the effect of the confirmed Plan on the grounds for relief in the Motion, nor whether Movant was provided adequate notice of the Debtor's bankruptcy case. Accordingly, in order for the parties to submit supplemental briefing, the Court will continue this hearing.

III. CONCLUSION

For the reasons discussed above, the Court will continue this hearing to **April 29, 2020 at 9:30 a.m. No later than April 15, 2020**, Movant must file a supplemental brief discussing whether it received adequate notice of the Debtor's bankruptcy case such that it is bound by the terms of the Plan. **No later than April 22, 2020**, the Debtor must file any response to that supplemental brief.

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

Wednesday, April 1, 2020

Hearing Room 301

9:30 AM

CONT... Caridad Salas Hileman

Chapter 13

Party Information

Debtor(s):

Caridad Salas Hileman

Represented By
Ryan A. Stubbe

Movant(s):

NATIONSTAR MORTGAGE LLC

Represented By
Arnold L Graff

Trustee(s):

Elizabeth (SV) 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 1, 2020

Hearing Room 301

1:30 PM

1:13-11215 Cindy M Montano

Chapter 7

Adv#: 1:19-01147 Melendrez v. Montano

#4.00 Status conference re: complaint for determination of the dischargeability of a claim

fr. 2/19/20; 3/18/20

Docket 1

*** VACATED *** REASON: Notice of voluntary dismissal filed 3/16/20.
[Dkt.12]

Tentative Ruling:

- NONE LISTED -

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

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

Wednesday, April 1, 2020

Hearing Room 301

1:30 PM

1:19-10112 Coast to Coast Holdings, LLC

Chapter 11

Adv#: 1:20-01006 Coast to Coast Holdings, LLC a Wyoming Limited Lia v. Keystone Real

#5.00 Status conference re: notice of removal of
civil action under 28 U.S.C. §1452(a)

fr. 3/4/20; 3/18/20

Docket 1

***** VACATED *** REASON: Order Remanding case to State Court
entered 3/16/20**

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):

Keystone Real Estate Lending Fund,

Represented By
Hamid R Rafatjoo

First American Title Insurance

Pro Se

DOES 1 to 100, inclusive

Pro Se

Plaintiff(s):

Coast to Coast Holdings, LLC a

Pro Se

Oscar Torres

Pro Se

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

Wednesday, April 1, 2020

Hearing Room 301

1:30 PM

1:19-12150 Houchik Boyadjian

Chapter 7

Adv#: 1:19-01132 Sridhar Equities, Inc., as assignee v. Boyadjian et al

#6.00 Status conference re: amended complaint for non dischargeability

fr. 1/15/20; 3/18/20

Docket 25

Tentative Ruling:

On January 16, 2020, the Court entered an order granting the plaintiff's request to amend the original complaint (the "Amendment Order") [doc. 18]. As such, the Court will strike the defendant's opposition to the plaintiff's request to amend the original complaint, which was filed almost one month after entry of the Amendment Order [doc. 30].

On February 11, 2020, the defendant filed an answer to the amended complaint [doc. 29]. At the same time, the defendant filed a motion for leave to amend her answer [doc. 28]. It is unclear if the defendant is requesting leave to file another answer or if the defendant is requesting leave to file the answer she already filed. If the defendant is requesting the latter, the defendant does not need leave from the Court to respond to the amended complaint. If the defendant is requesting leave to file another amended answer, the Court will allow the defendant to file an amended answer no later than **April 17, 2020**.

Parties should be prepared to discuss the following:

Deadline to complete discovery: 7/31/20.

Deadline to file pretrial motions: 8/31/20.

Deadline to complete and submit pretrial order in accordance with Local Bankruptcy Rule 7016-1: 9/9/20.

Pretrial: 9/23/20 at 1:30 p.m.

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

Wednesday, April 1, 2020

Hearing Room 301

1:30 PM

CONT... Houchik Boyadjian

Chapter 7

In accordance with Local Bankruptcy Rule 7016-1(a)(3), 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):

Houchik Boyadjian	Pro Se
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Defendant(s):

Houchik Boyadjian	Pro Se
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DOES 1 through 100, inclusive	Pro Se
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Plaintiff(s):

Corrdary LLC	Represented By Catherine Schlomann Robertson
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Trustee(s):

David Keith Gottlieb (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, April 1, 2020

Hearing Room 301

1:30 PM

1:19-12563 Norman Preligera Calalang

Chapter 7

Adv#: 1:20-01005 Tizo Design, Inc. v. Calalang et al

#7.00 Status Conference re: Complaint to
Determine Dischargeability of Debt

fr. 3/18/20

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)).

Parties should be prepared to discuss the following:

Deadline to complete discovery: 5/15/20.

Deadline to file pretrial motions: 6/1/20.

Deadline to complete and submit pretrial order in accordance with Local Bankruptcy Rule 7016-1: 6/24/20.

Pretrial: 7/8/20 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

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

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

Wednesday, April 1, 2020

Hearing Room 301

1:30 PM

CONT... Norman Preligera Calalang

Chapter 7

Party Information

Debtor(s):

Norman Preligera Calalang

Represented By
Lauren Ross

Defendant(s):

Norman Preligera Calalang

Pro Se

Deona Pagsisihan Calalang

Pro Se

Joint Debtor(s):

Deona Pagsisihan Calalang

Represented By
Lauren Ross

Plaintiff(s):

Tizo Design, Inc.

Represented By
Michael F Chekian

Trustee(s):

David Seror (TR)

Pro Se

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

Wednesday, April 1, 2020

Hearing Room 301

1:30 PM

1:19-13139 Alvin Zapanta Magcalas

Chapter 13

Adv#: 1:20-01001 Image 2000, Inc. v. Magcalas

#8.00 Status Conference re: Complaint for
Nondischargeability of a Debt and for Damages

fr. 3/18/20

Docket 1

***** VACATED *** REASON: Order entered dismissing adversary
complaint 3/27/20 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alvin Zapanta Magcalas

Represented By
Jeffrey N Wishman

Defendant(s):

Rosario Hernandez Magcalas

Pro Se

Joint Debtor(s):

Rosario Hernandez Magcalas

Represented By
Jeffrey N Wishman

Plaintiff(s):

Image 2000, Inc.

Represented By
Michael S Wildermuth

Trustee(s):

Elizabeth (SV) 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 1, 2020

Hearing Room 301

2:30 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

Adv#: 1:18-01113 VitaVet Labs, Inc. v. Gashtili

#9.00 Motion For Summary Judgment

fr. 3/18/20

Docket 31

Tentative Ruling:

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

I. BACKGROUND

A. State Court Proceedings

Nasrollah Gashtili ("Debtor") owns Integrated Dynamic Solutions, Inc. ("IDS") [Debtor's Statement of Uncontroverted Facts ("SUF"), doc. 44, ¶ 2]. Debtor is the sole shareholder, board member, director and principal of IDS. *Id.* As such, Debtor directs IDS' actions and personally benefits from IDS' business. *Id.*

In June 2014, Vitavet Labs, Inc. ("Plaintiff") met with Debtor and IDS as part of Plaintiff's search for a website and software developer [SUF, ¶ 1]. Debtor represented to Plaintiff that IDS was Microsoft Gold certified [SUF, ¶ 3]. At the time of that representation, Debtor knew this representation was false and that IDS was not Microsoft Gold certified [SUF, ¶ 4]. In deciding whether to engage IDS to create its website and software, Plaintiff relied on Debtor's false representation regarding IDS' certification and would not have engaged IDS if Plaintiff had known that IDS was not Microsoft Gold certified [SUF, ¶ 6].

Plaintiff engaged IDS to develop a website and related software per specifications contained in a consulting agreement, dated January 15, 2015 (the "Consulting Agreement"), and a related statement of work ("SOW") [SUF, ¶ 7]. IDS was required to complete the project by June 15, 2015 [SUF, ¶ 8]. IDS did not complete the work

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

Nasrollah Gashtili

Chapter 11

by that date. *Id.* Instead, on August 13, 2015, IDS delivered the software to Plaintiff [SUF, ¶ 9]. The software delivered to Plaintiff did not work satisfactorily and did not meet the requirements of the Consulting Agreement. *Id.*

Pursuant to the Consulting Agreement, Plaintiff was to pay IDS \$170,000.00 for the work performed by IDS [SUF, ¶ 11]. However, Plaintiff paid IDS only \$90,000.00. *Id.* On August 13, 2015, Plaintiff demanded the return of the work, which it owned pursuant to the Consulting Agreement, from Debtor and IDS [SUF, ¶ 10]. IDS refused to return the work to Plaintiff until it paid the remaining \$80,000.00 provided for in the Consulting Agreement [SUF, ¶ 12].

Consequently, on August 17, 2015, IDS filed a complaint against Plaintiff in the Superior Court of California, County of Los Angeles seeking, among other things, recovery of the \$80,000.00 (the "State Court Action") [SUF, ¶ 13]. Subsequently, Plaintiff filed a cross-complaint against Debtor and IDS, and Plaintiff sought a preliminary injunction. *Id.* The state court granted that request and entered a preliminary injunction requiring IDS to turn over the work to Plaintiff [SUF, ¶ 14].

Rather than turning over the work to Plaintiff, IDS appealed the preliminary injunction [SUF, ¶ 15]. The appellate court upheld the preliminary injunction. *Id.* However, Debtor and IDS continued to refuse to comply with the preliminary injunction until the remittitur from the appeal was issued [SUF, ¶ 16]. After the remittitur was issued, Debtor and IDS turned the work over to Plaintiff [SUF, ¶ 17]. However, the work turned over to Plaintiff was incomplete and unusable. *Id.* Ultimately, the state court held Debtor in civil contempt for not turning the work over to Plaintiff [SUF, ¶ 18].

On May 9, 2016, pursuant to the terms of the Consulting Agreement, the State Court Action was sent to arbitration [SUF, ¶ 19]. From August 14, 2017 through August 17, 2017, JAMS arbitrator Richard Chernick held an evidentiary hearing [SUF, ¶ 20]. At that hearing, each side offered documentary evidence, called witnesses and cross-examined opposing witnesses [doc. 33, Exh. 1, p. 3]. At the conclusion of the presentation of evidence, the parties stated that they had no further evidence to offer, and the matter was argued orally on August 18, 2017. *Id.*

On October 23, 2017, the arbitrator issued a Final Award (the "Arbitration Award")

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... Nasrollah Gashtili

Chapter 11

[SUF, ¶ 21; doc. 33, Exh. 1]. In the State Court Action, on December 12, 2017, the court confirmed the Arbitration Award (the "Judgment ") [SUF, ¶ 25; doc. 33, Exh. 2]. The Judgment is final [SUF, ¶ 27].

B. Arbitration Award and the Judgment

In relevant part, the Arbitration Award states the following:

I. INTRODUCTION AND PROCEDURAL STATEMENT

...

On August 28, 2017, an Interim Award issued substantially in favor of [Plaintiff]. . . On August 30, 2017, [Debtor] sought a clarification of the Interim Award. The Interim Award noted that the contract (lost profit) damages were, in the first instance, the responsibility of IDS only, because [Debtor] was not a party to the contract and was not found to be the *alter ego* of IDS. The conversion damages are jointly and severally the responsibility of IDS and [Debtor]. The fraud finding was limited to the sole proven misrepresentation about Microsoft Gold status. It provides a basis for fraud in the inducement in that "[Plaintiff] would have gone elsewhere if it knew of IDS's current status." Interim Award at 10. The Interim Award thereafter determined that the **"lost profit damages for breach of contract [was] proximately caused by IDS's and [Debtor's] fraudulent representations"** (*id.*, p. 14). **Between the lost profit damages and the conversion damages, "there is no other category or type [of] damages suffered by [Plaintiff]...so no separate damages for fraud are assessed."** *Id.* But [Debtor] was found responsible for both categories of damages, so the entire compensatory award should be joint and several. (emphasis added).

...

III. ANALYSIS

[Plaintiff] bears the burden of proof as to its non-fraud claims by preponderance of the evidence and, as to fraud, by clear and convincing evidence. California substantive law applies.

...

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

Nasrollah Gashtili

Chapter 11

C. Counterclaimant's Fraud Claim.

[Debtor], Kirshbaum and Simpson had extensive discussions prior to the execution of the [Consulting Agreement]. In the course of those discussions, [Debtor] represented the qualifications of IDS and [Debtor] personally to perform the proposed work successfully: . . . (vi) that IDS was Microsoft Gold certified, further indicating its qualification to undertake the project. The evidence supports the assertion that these representations were made to and relied on by [Plaintiff].

...

The Microsoft Gold representation was also false (although it might have been true in earlier time periods). [Plaintiff] established that it insisted on this certification in order to be sure its chosen developer was qualified to perform the work. Whether that is factually true or not, it is true that [Plaintiff] would have gone elsewhere if it knew IDS's current certification status. This proof meets the "clear and convincing" standard of proof.

On this very limited basis, [Plaintiff] has proven fraud in the inducement. It is entitled to damages proximately caused by this fraud. (internal citations omitted).

D. Conversion.

...

[Plaintiff's] conversion claim depends on the provision of the SOW that entitled it to demand "deliver to [Plaintiff] anytime during the term of the project upon a written request by [Plaintiff]" of the application, database, and [source] code. "In addition, a complete set of documents as well as the application, database, and code will be delivered to [Plaintiff] on the final day of this SOW." The [Consulting Agreement] makes it clear that [Plaintiff] is the sole owner of the work and work product of the project. (internal citations omitted).

[Plaintiff] demanded and was refused return of the work (broadly defined) at the time of delivery of the application on August 13, 2015.

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

Nasrollah Gashtili

Chapter 11

[Debtor] and IDS refused to turn over the work until it was paid the last contract installment. In the [State Court Action], [Plaintiff] sought and the court entered a preliminary injunction directing IDS and [Debtor] not to continue to withhold from [Plaintiff] the most current application, database, migration scripts, source code, and Technical Design Documents for the software developed by IDS and for [Plaintiff] under the parties' contract." [sic] This order was appealed and was affirmed in a published opinion. Only after the remittitur was returned to the trial court did [Debtor and IDS] purport to comply with the preliminary injunction. What they turned over was unusable because the migration scripts did not contain directions as to the order in which they must be installed. [Plaintiff] sought a contempt and only then did [Debtor] instruct Devarajan to provide the necessary instructions. Even then, the software could not be made to function fully, and the trial court threatened and ultimately imposed a civil contempt on [Debtor] personally until he caused the software to work. (The appellate court issued an alternative writ in response to the trial court's order of contempt, and the trial court dismissed the contempt in response.) Notwithstanding these efforts to obtain the contractual benefit [Plaintiff] was clearly entitled to, [IDS] and [Debtor] never fully complied with its contractual obligations. (internal citations omitted).

These facts evidence IDS's and [Debtor's] conversion of the software and related elements from and after August 13, 2015. Because [Plaintiff] has been continuously deprived of the use of the software since August 13, 2015, it is reasonable that it be entitled to seek alternate source to procure what it thought it had bargained for in the [Consulting Agreement]. (internal citations omitted).

F. Damages for Fraud.

Fraud damages for the limited misrepresentation found to be fraudulent are based on the measure of proximately caused injury. *See* Civ. Code § 3333 (damages for breach of an obligation not arising from contract are awarded in an amount "which will compensate for all the detriment

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

Nasrollah Gashtili

Chapter 11

proximately caused thereby, whether it could have been anticipated or not"). In view of the award of lost profit damages for breach of contract (above) and the damages for conversion (below), **either of which could be considered to have been "proximately caused" by IDS's and [Debtor's] fraudulent representations**, there is no other category or type of damage suffered by [Plaintiff] **that has not otherwise been compensated**, so **no separate damages for fraud are assessed**. (emphasis added).

G. Damages for Conversion.

The deprivation to [Plaintiff] of the software it contracted to purchase necessitated it to find alternative software. It was delayed in this effort (lost profits for that period) and it is required to obtain new software because it is not reasonable to assume that IDS will ever deliver workable software.

[Plaintiff] proved the cost of developing that new software in its damage model. (Ex. 136, Section 3). The projected cost, based on actual estimate from providers of software similar to that IDS agreed to deliver is \$374,532 (average bid from three providers). That is an appropriate measure of damage for the conversion. *See* Civ. Code § 3336 (conversion of personalty): the value of the property at the time of the conversion, with interest from that time, or an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would have averted; and a fair compensation for the time and money properly expended in pursuit of the property).

There is no overlap between the lost profits claim and the conversion claim; therefore both are awarded.

Pursuant to the Arbitration Award, Plaintiff established breach of contract against IDS, fraud against Debtor and IDS and conversion against Debtor and IDS. The Arbitration Award awarded a total of \$1,014,857.00 in compensatory damages, as

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... Nasrollah Gashtili

Chapter 11

follows:

- For breach of contract: \$640,325.00
- For fraud: \$0.00
- For conversion: \$374,532.00

The Arbitration Award states that because Debtor was found to be liable for fraud, he is also responsible for the breach of contract damages. Accordingly, Debtor and IDS are jointly and severally liable for the entire compensatory damage award. The Arbitration Award also states that Debtor is jointly and severally liable for \$47,410.00 in statutory costs.

The Judgment states that Plaintiff "is awarded damages in the amount of \$1,014,857.00. This award is jointly and severally the responsibility of IDS and [Debtor]. Of this amount, \$640,235.00 is based on [Plaintiff's] breach of contract claim, and \$374,532.00 is based on [Plaintiff's] fraud claim." It appears that there was a clerical error in the Judgment, i.e., the state court meant \$374,532.00 is based on Plaintiff's *conversion* claim. The Judgment also awarded Plaintiff interest, attorneys' fees and costs.

C. Adversary Proceeding

On March 20, 2018, Debtor filed a voluntary chapter 11 petition, initiating case 1:18-bk-10715-VK]. On October 29, 2018, Plaintiff filed a complaint against Debtor objecting to the discharge of the debt owed to it pursuant to the Arbitration Award under 11 U.S.C. §§ 523(a)(2) and (a)(6), initiating this adversary proceeding [doc. 1]. On October 31, 2018, Plaintiff filed a first amended complaint which also objected to Debtor receiving a discharge under § 727 (the "FAC") [doc. 4].

On December 13, 2019, Plaintiff filed a motion for summary judgment on the 11 U.S.C. § 523 claims (the "Motion") [doc. 32], a request for judicial notice [doc. 33] and a statement of unconverted facts and conclusions of law [doc. 34]. In the Motion, Plaintiff argues that the Arbitration Award has collateral estoppel effect and the finding of fraud bars the discharge of Debtor's debt to Plaintiff under 11 U.S.C. § 523(a)(2). Additionally, Plaintiff argues that the finding of conversion makes Debtor's debt to Plaintiff nondischargeable under 11 U.S.C. § 523(a)(6).

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... Nasrollah Gashtili

Chapter 11

On February 26, 2020, Debtor filed an opposition to the Motion (the "Opposition") [doc. 43] and a statement of uncontroverted facts [doc. 44]. In the Opposition, regarding the 11 U.S.C. § 523(a)(2) claim, Debtor argues: (A) there was no intent not to perform; (B) there was no justifiable reliance; (C) the arbitrator found fraud in the inducement; not actual fraud; and (D) the Arbitration Award awards \$0.00 for Plaintiff's fraud claim. Regarding the 11 U.S.C. § 523(a)(6) claim, Debtor argues although the Arbitration Award found that Debtor wrongfully converted property of Plaintiff, there was no finding that Debtor had subjective intent to injure Plaintiff. On March 4, 2020, Plaintiff filed a reply to the Opposition (the "Reply") [doc. 45].

II. DISCUSSION

A. General Motion for Summary Judgment Standard

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

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

Id. at 248-50 (internal citations omitted). Additionally, issues of law are appropriate

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... Nasrollah Gashtili

Chapter 11

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:

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

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

Nasrollah Gashtili

Chapter 11

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)).

"A confirmed arbitration award has the same force and effect as a state court judgment." *In re Briles*, 228 B.R. 462, 466 (Bankr. S.D. Cal. 1998) *aff'd*, 16 F. App'x 698 (9th Cir. 2001).

C. 11 U.S.C. § 523(a)(2)(A)

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

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... Nasrollah Gashtili

Chapter 11

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

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

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

Based on the finding of fraud in the Arbitration Award, Plaintiff has met its burden of proving that it is entitled to summary judgment on its claim under 11 U.S.C. § 523(a)(2)(A). However, based on the conversion finding in the Arbitration Award, Plaintiff is not entitled to summary judgment on its claim under 11 U.S.C. § 523(a)(6).

1. Issue Preclusion Applies to the Fraud Finding in the Arbitration Award

Through the Arbitration Award, the state court held that Debtor was liable for fraud in the inducement, a type of fraud under California law. The Arbitration Award is based on the same facts alleged in the FAC.

With respect to § 523(a)(2)(A), "Ninth Circuit case law confirms that the elements of fraud under California law match the ones under § 523(a)(2)(A)." *In re Davis*, 486 B.R. 182, 191 (Bankr. N.D. Cal. 2013) (citing to *In re Younie*, 211 B.R. 367, 373-74 (B.A.P. 9th Cir. 1997) ("The elements of § 523(a)(2)(A) 'mirror the elements of common law fraud' and match those for actual fraud under California law.")). The same elements apply to fraud in the inducement. *Parino v. BidRack, Inc.*, 838 F.Supp.2d 900, 906 (N.D. Cal. 2011) (applying California law on fraudulent in the

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... **Nasrollah Gashtili**

Chapter 11

inducement); *see also In re Nga Tuy Pham*, 2009 WL 3367046 (Bankr. N.D. Cal. 2009) ("A debt is excepted from discharge if it results from fraud in the inducement.

11 U.S.C. § 523(a)(2)[A]."). Based on these authorities, the issues are identical to the issues before this Court.

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

"In order for the determination of an issue to be given preclusive effect, it must have been necessary to a judgment." *Creative Ventures, LLC v. Jim Ward & Assocs.*, 126 Cal. Rptr. 3d 564, 580 (Ct. App. 2011). The issues present here were necessarily decided in the State Court Action. The state court could not have entered a judgment holding that Debtor is liable for fraud unless the state court decided all of the issues under § 523(a)(2)(A), including Plaintiff's justifiable reliance. In fact, the Arbitration Award specifically found that Debtor made a false misrepresentation with knowledge of its falsity, that Plaintiff relied on this misrepresentation and that Plaintiff was injured as a result. Accordingly, this element is also satisfied.

The Judgment is final and on the merits, as evidenced by the Arbitration Award, which includes detailed findings about why Debtor is liable on the various causes of action asserted in State Court Action. This element is satisfied.

The parties to this proceeding are identical to the parties from the State Court Action. In the State Court Action, Plaintiff was the defendant and cross-claimant, and Debtor was a cross-defendant. In the arbitration, Debtor was determined to be a proper party. As such, this element is also satisfied. Accordingly, the Court may give preclusive effect to the fraud finding in the Arbitration Award.

2. *The Entire Arbitration Award is Nondischargeable Under § 523(a)(2)(A)*

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... **Nasrollah Gashtili**

Chapter 11

Although the Arbitration Award regarding the fraud finding may be given preclusive effect, "only those damages proximately caused by the fraud . . . may be given preclusive effect." *In re Henkel*, 490 B.R. 759, 782 (Bankr. S.D. Ohio 2013); *see also Demerdjian v. Thompson (In re Thompson)*, 354 B.R. 174, 180 (Bankr. E.D. Tenn. 2006) ("Although the plaintiff has a claim for breach of contract, only that portion of the damages proximately caused by the fraud is nondischargeable under § 523(a)(2)(A).") (citing *Novartis Corp. v. Luppino (In re Luppino)*, 221 B.R. 693, 703–04 (Bankr. S.D.N.Y. 1998) (analysis still required on each debt to determine whether it was proximately caused by § 523(a)(2)(A) acts) (additional citations omitted)); *see also Lewis v. Lowery (In re Lowery)*, 440 B.R. 914, 925 (Bankr. N.D. Ga. 2010) ("[Issue preclusion] as to liability is not the same as [issue preclusion] as to damages, and the Court must separately analyze the damages awarded to the Plaintiff").

In the Opposition, Debtor argues that the Arbitration Award and the Judgment awarded Plaintiff \$0.00 in damages on account of the fraud claim. However, the Arbitration Award states that both damages awarded for breach of contract and conversion can be considered proximately caused by Debtor's fraud. It goes on to state that it would not award *any separate* damages for fraud because those damages were subsumed within the breach of contract and conversion awards. The Arbitration Award does not state that it was awarding \$0.00 in fraud damages because Plaintiff suffered no damage on account of Debtor's fraud.

Although breach of contract damages generally are dischargeable, if that breach of contract is accompanied by fraud, the damages may be nondischargeable. As the district court in *In re Roth*, 518 B.R. 63, 71 (S.D. Cal. 2014), *aff'd*, 662 F. App'x 540 (9th Cir. 2016) states:

A "fundamental polic[y] of bankruptcy law is to give a fresh start only to the 'honest but unfortunate debtor.'" Accordingly, simple breaches of contract are dischargeable. *See In re Riso*, 978 F.2d 1151, 1154 (9th Cir.1992). However, if a debt for an intentional breach of contract is "accompanied by" a tort, it is excepted from discharge. *Id.* (refusing to discharge a debt for a breach of contract accompanied by willful and tortious conduct). This applies equally to breaches of contract accompanied by fraud under the other subdivisions of § 523. *See Banks v. Gill Distribution Centers*,

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

Nasrollah Gashtili

Chapter 11

Inc., 263 F.3d 862, 868 (9th Cir.2001). The fraud makes nondischargeable a preexisting obligation, it does not itself create a new obligation. *In re Jercich*, 238 F.3d 1202, 1205 (9th Cir.2001). As such, the original breach of contract claim is the correct measure of the amount of the debt excepted from discharge. *See Banks*, 263 F.3d at 868.

The bankruptcy court found [the plaintiff] proved [the debtor] committed fraud by a preponderance of evidence. The alleged fraud accompanied [the debtor's] breach of contract, as [the debtor] entered the contract fraudulently. Therefore the state court judgment is the correct damage measure because it is the debt resulting from the fraud. The bankruptcy court correctly found the breach of contract damages were precluded from discharge based on [the debtor's] accompanying fraud. Accordingly, the bankruptcy court's ruling that the \$2.8 million debt is nondischargeable is affirmed.

Roth, 518 B.R. at 71.

Here, the Arbitration Award found that Debtor committed fraud by clear and convincing evidence. Debtor fraudulently induced Plaintiff to enter into the contract. Because the debt resulted from the fraud, the damages awarded for breach of contract and conversion are the correct measure of fraud damages.

In the Opposition, Debtor argues that there is no way to determine how much, if anything, the arbitrator may have awarded for Debtor's misrepresentation. However, the arbitrator clarified that although Debtor was not a party to the contract, he was liable for all breach of contract damages, because those damages were proximately caused by Debtor's fraud. The same is true for the conversion damages. If Debtor had not fraudulently induced Plaintiff into entering the Consulting Agreement, Plaintiff would not have suffered the breach of contract damages or the conversion damages. Accordingly, pursuant to 11 U.S.C. § 523(a)(2), the breach of contract damages and the conversion damages awarded in the Arbitration Award and Judgment are nondischargeable.

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... **Nasrollah Gashtili**

Chapter 11

Additionally, "[o]nce it is established that specific money or property has been obtained by fraud . . . 'any debt' arising therefrom is excepted from discharge," including treble damages. *Cohen v. de la Cruz*, 523 U.S. 213, 218, 118 S. Ct. 1212, 1216, 140 L. Ed. 2d 341 (1998). Accordingly, the interest and costs awarded against Debtor in the Judgment also are nondischargeable.

D. 11 U.S.C. § 523(a)(6)

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

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

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

Here, the Arbitration Award is silent as to whether Debtor's conduct was willful or malicious. In the Motion, Plaintiff asserts that the Arbitration Award establishes a claim under § 523(a)(6) because the arbitrator allegedly found that Debtor's conversion was a wrongful act and that Debtor knew he was harming Plaintiff by withholding the work product. However, the arbitrator never made such findings. The Arbitration Award is silent as to Debtor's subjective intent to injure Plaintiff. The portion of the Arbitration Award regarding conversion that discusses a "wrongful act"

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... Nasrollah Gashtili

Chapter 11

is when the arbitrator cites to Cal. Civ. Code § 3336; not when the arbitrator is discussing his findings regarding Debtor's conduct. As such, the Court cannot conclude that willfulness and maliciousness as defined in § 523(a)(6) were actually litigated.

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

III. CONCLUSION

The Court will grant the Motion on Plaintiff's § 523(a)(2)(A) claim. The Court will deny the Motion on Plaintiff's § 523(a)(6) claim. Any dispute regarding the application of amounts paid to Plaintiff to date, during the course of Debtor's chapter 11 case, will be adjudicated at a separate time.

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

Party Information

Debtor(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

Defendant(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

Movant(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, April 1, 2020

Hearing Room 301

2:30 PM

CONT... Nasrollah Gashtili

Chapter 11

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, April 1, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#10.00 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, 12/18/19; 2/5/20; 2/26/20; 3/4/20; 3/18/20

Docket 64

Tentative Ruling:

The parties should be prepared to discuss the status of the appeal.

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 1, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#11.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper.
fr. 5/14/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20; 3/4/20; 3/18/20

Docket 55

Tentative Ruling:

On December 16, 2019, Mr. Hopper filed an amended proof of claim [claim 3-3].
Does the debtor intend to object to the amended proof of claim? If so, when does the
debtor intend to file such an objection?

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 1, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#12.00 Debtor's motion for summary judgment and/or summary adjudication of facts

fr. 2/5/20; 2/26/20; 3/4/20; 3/18/20

Docket 174

Tentative Ruling:

The Court intends to continue this hearing until after the parties have attended mediation with a bankruptcy judge and the Court has ruled on the motions to quash [docs. 28 and 29] and the motion to compel [doc. 46]. The parties should be prepared to discuss dates for such a continued hearing.

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 1, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#13.00 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; 12/10/19; 2/5/20; 2/26/20; 3/4/20; 3/18/20

Docket 70

Tentative Ruling:

The parties should be prepared to discuss their efforts to schedule a mediation with a recalled United States Bankruptcy Judge for the Central District of California.

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 1, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#14.00 Debtor's motion to quash subpoena for documents and deposition subpoena for Johanna Scott

fr. 3/4/20; 3/18/20

Docket 29

Tentative Ruling:

Have the parties secured a date for mediation? If so, the parties should be prepared to discuss a deadline for them to file a written stipulation as required by Local Bankruptcy Rule 7026-1(c)(3), and continued hearing dates on the motions to quash.

Ruling from March 4, 2020

After reviewing the motions to quash [docs. 28 and 29], the oppositions to those motions [docs. 40 and 41] and the replies to those oppositions [docs. 42 and 43], the Court has determined that the parties must file a written stipulation identifying any disputed discovery issue as to each category requested for production, with contentions and points and authorities of each party as to each issue, as required by Local Bankruptcy Rule 7026-1(c)(3).

Either before or after the parties file such a stipulation, the parties are ordered to attend mediation in downtown Los Angeles with the Honorable Gregg W. Zive or the Honorable Thomas B. Donovan, both of whom are recalled United States Bankruptcy Judges assisting with mediations. To set up the mediation, the parties are directed to contact Judge Zive at (775) 326-2107 and/or Judge Donovan at (213) 894-3728.

The Court will continue all matters pending between these parties until after the parties attend mediation with one of these recalled bankruptcy judges for the Central District of California.

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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, April 1, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#15.00 Debtor's motion to quash subpoena for documents and deposition
subpoena for Fenton & Ross

fr. 3/4/20; 3/18/20

Docket 28

Tentative Ruling:

See calendar 14.

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, April 1, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#16.00 Defendants' motion to dismiss

fr. 10/2/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20; 3/4/20; 3/18/20

Docket 12

Tentative Ruling:

- NONE LISTED -

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, April 1, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #17.00** 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; 11/13/19; 2/5/20; 2/26/20; 3/4/20; 3/18/20

Docket 8

Tentative Ruling:

- NONE LISTED -

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

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

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, April 1, 2020

Hearing Room 301

2:30 PM

1:19-11034 John Bicz

Chapter 7

Adv#: 1:19-01125 Peterson v. Bicz

#18.00 Plaintiff's motion for default judgment under LBR 7055-1

fr. 2/19/20; 3/18/20

Docket 11

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On April 27, 2019, John Bicz ("Defendant") filed a voluntary chapter 7 petition. On October 20, 2019, Ben Peterson ("Plaintiff") filed a complaint against Defendant, requesting nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(2)(A). On November 27, 2019, after Defendant failed to file an answer to the complaint timely, the Clerk of the Court entered default against Defendant (the "Default") [doc. 9].

On November 29, 2019, Plaintiff filed a motion for default judgment (the "Motion") [doc. 11]. Through the Motion, Plaintiff requested judgment in his favor based on an attached state court judgment (the "State Court Judgment"). Declaration of Shai Oved, ¶ 2, Exhibit A. The State Court Judgment reads, in relevant part—

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff Ben Peterson recover from Defendant John Bicz, individually and doing business as JB Construction... the total sum of \$96,711.00... plus costs and reasonable attorney fees pursuant to CCP §2033.420(b) and B&P §7160 judgment against John Bicz.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, Plaintiff Ben Peterson recover costs of \$688.50 based on the stipulation of the Parties, and that Plaintiff recover attorney fees of \$10,000.00 through the date of the judgment based on the stipulation of the Parties

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

John Bicz

Chapter 7

(and avoid filing a Memorandum of Costs and/or any Attorney Fee Motion).

Id. On January 17, 2020, Plaintiff and Defendant entered into a stipulation to vacate the Default and treat the Motion as a motion for summary judgment based on the State Court Judgment (the "Stipulation") [doc. 24]. On January 29, 2020, the Court entered an order approving the Stipulation [doc. 26].

On February 26, 2020, Defendant filed an opposition to the Motion (the "Opposition") [doc. 28]. Defendant included the state court's Statement of Decision after Trial (the "Statement of Decision"), which includes the state court's findings of fact and conclusions of law in support of the State Court Judgment. Declaration of John Bicz, ¶ 5, Exhibit A. In the Statement of Decision, the state court categorized its findings of fact regarding Plaintiff's entitlement to monetary recovery into five parts: (A) Restitution; (B) Damages; (C) Statutory Damages; (D) Requests for Admissions; and (E) Contractor's Bonds. *Id.*

With respect to restitution, the state court held that Plaintiff was "entitled to disgorgement of the entire amount paid to JB Construction and/or Mr. Bicz, or the total of \$123,711" pursuant to California Business & Professions Code ("B&P") § 7031(b). *Id.* Specifically, the state court based its order of disgorgement on Defendant's failure to maintain workers' compensation insurance, which rendered Defendant's contractor's license invalid under California law. *Id.* Under the section entitled "Damages," the state court held that "Plaintiff did not establish that he is entitled to any other damages for breach of contract." *Id.* In relevant part, the state court stated—

First, the court finds that Bicz ceased working because of Peterson's failure to obtain necessary building permits and Peterson's unilateral changes to the design plan. Bicz established that once he had completed most of the framing, Mr. Peterson decided to lower the foundation in the unfinished area, to expand other rooms, both of which required new permits, substantial work by other contractors, and renewed inspections. These changes interfered with defendant's completion of his work, making it impossible for him to complete the job in a timely manner. The project has still to be approved for

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

John Biczo

Chapter 7

completion, three years later, leaving the framing exposed to the elements and deteriorating through no fault of defendant's. Further, the court finds that Peterson had an unlicensed contractor, Mr. Molina, make unsafe modifications to the design, including removing one or more beams and supports, interfering further with Biczo's completion of the job.

Given Peterson's unilateral actions to impede the job, his failure to obtain necessary inspections and building permit adjustments, and his decision to remove certain beams and posts making the project structurally unsound, defendant is not responsible for the consequential damages Peterson has incurred, including the money he paid to an unlicensed contractor, Mr. Molina, for substandard work, or for any of the potential costs associated with completing this project.

Id. Next, in a separate section entitled "Statutory Damages," the state court held—

Plaintiff seeks statutory damages pursuant to [B&P] 7160, which provides that "any person who is induced to contract for a work of improvement,..., in reliance on false or fraudulent representations or false statements knowingly made, may sue and recover from such contractor... a penalty of five hundred dollars (\$500), plus reasonable attorney's fees."

Plaintiff has proven that defendant Biczo falsely represented that he was a licensed contractor, which would include compliance with all requirements imposed on licensed contractors. Biczo's failure to have workers' compensation insurance in place resulted in an automatic suspension of his license by operation of law. [B&P] 7125.2. As his license was suspended at all material times by operation of law, his representation that he was licensed was a false statement. Plaintiff is entitled to statutory damages of \$500, plus reasonable attorney's fees to be determined upon properly noticed motion.

Id. Finally, in the last two sections, the state court held that Plaintiff may request reimbursement of expenses associated with Defendant's failure to admit to certain

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

John Bicz

Chapter 7

requests for admission later proven at trial and that, during the relevant time periods, Defendant had a contractor's bond with Business Alliance Insurance Company and Wesco. *Id.*

In the Opposition, Defendant argues that the state court's findings in the Statement of Decision do not include any findings that would preclude litigation of a claim under § 523(a)(2)(A). On March 4, 2020, Plaintiff filed a reply to the Opposition [doc. 30], asserting that issue preclusion applies to deem the entire State Court Judgment nondischargeable pursuant to *Ghomeshi v. Sabban*, 600 F.3d 1219 (9th Cir. 2010).

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.*,

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... **John Biczó**

Chapter 7

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:

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

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

John Bicz

Chapter 7

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

In re Harmon, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990)).

"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.

Here, Plaintiff is correct that *Sabban* controls. However, *Sabban* leads the Court to a different conclusion than the one reached by Plaintiff. In *Sabban*, the plaintiff sued the debtor in state court for breach of contract, negligence, fraud and violations of B&P §§ 7160 and 7031(b), based on a contracting dispute between the parties. *Sabban*, 600 F.3d at 1220. After trial, the state court awarded the plaintiff a \$500 penalty plus attorneys' fees pursuant to B&P § 7160, but declined to award additional damages under that statute. *Id.*, at 1221. Separately, the state court also awarded the plaintiff disgorgement in the amount of \$123,000 under B&P § 7031(b). *Id.*

The debtor then filed a chapter 7 petition. *Id.* Subsequently, the plaintiff filed a complaint requesting nondischargeability of the entire state court judgment pursuant to 11 U.S.C. § 523(a)(2)(A). *Id.* In a motion for summary judgment, the plaintiff asserted that the state court's judgment precluded the bankruptcy court from litigation of his claim under § 523(a)(2)(A). *Id.* The bankruptcy court held that, although the award under B&P § 7160 (the \$500 penalty and the attorneys' fees) was nondischargeable, the separate award of \$123,000, based on disgorgement under § 7031(b), was dischargeable. *Id.* The Bankruptcy Appellate Panel of the Ninth Circuit agreed. *Id.*

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

John Bicz

Chapter 7

On appeal, the Ninth Circuit Court of Appeals affirmed, holding that "the judgment against [the debtor] under § 7031(b) is dischargeable." *Id.*, at 1224. The Court of Appeals reasoned that, as to damages under B&P § 7160, which *would* be nondischargeable, "[a]ctual damages are available... but the state court specifically declined to award them...." *Id.* In addition, as to the \$123,000 awarded under B&P § 7031(b), the Court of Appeals held that B&P § 7031(b) "is not premised on the commission of fraud" and that "a plaintiff in a § 7031(b) suit need only show that the contractor was unlicensed." *Id.* As such, the Court of Appeals concluded that any award under B&P § 7031(b) was dischargeable and any award under B&P § 7160 was nondischargeable. *Id.*

There is no meaningful difference between the state court's decision in *Sabban* and the state court's decision in this case. As in *Sabban*, the state court in this case separated its award under B&P § 7031(b) from its award under B&P § 7160. As to B&P § 7160, the statute that is subject to nondischargeability under § 523(a)(2)(A), the state court awarded *only* \$500 in penalties and attorneys' fees and costs (which, through the State Court Judgment, the parties agreed would total \$10,688.50). Although actual damages are available under B&P § 7160, the state court declined to award them. The state court *separately* ordered the disgorgement of \$123,711 under B&P § 7031(b) (of which a balance of \$96,711 remains in accordance with the State Court Judgment). Under *Sabban*, the order of disgorgement is dischargeable.

Plaintiff attempts to distinguish *Sabban* on the basis that the contractor in *Sabban* completed the work and, as such, there were no additional damages. Plaintiff asserts that, contrary to *Sabban*, Defendant did not complete the work on his property and that it would cost \$60,000 for Plaintiff to finish the incomplete job. However, the Statement of Decision belies Plaintiff's contention. In the Statement of Decision, the state court explicitly held that Defendant is not liable for any damages associated with the cost to complete the work on Plaintiff's property. In fact, as noted above, the state court held that *Plaintiff* was responsible for the incomplete work on his property—

Given Peterson's unilateral actions to impede the job, his failure to obtain necessary inspections and building permit adjustments, and his decision to remove certain beams and posts making the project structurally unsound, defendant is not responsible for the consequential damages Peterson has incurred, including the money he paid to an

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT...

John Biczó

Chapter 7

unlicensed contractor, Mr. Molina, for substandard work, or for any of the potential costs associated with completing this project.

Statement of Decision, pp. 19-20. Because the state court explicitly held that Defendant is not liable for damages for incomplete work on Plaintiff's property, this Court will not hold otherwise.

Nevertheless, Plaintiff is entitled to summary judgment for the damages awarded under B&P § 7160, in the amount of \$500 in penalties and \$10,688.50 in attorneys' fees and costs. Pursuant to B&P § 7160—

Any person who is induced to contract for a work of improvement, including but not limited to a home improvement, *in reliance on false or fraudulent representations or false statements knowingly made*, may sue and recover from such contractor or solicitor a penalty of five hundred dollars (\$500), plus reasonable attorney's fees, in addition to any damages sustained by him by reason of such statements or representations made by the contractor or solicitor.

(emphasis added). In the Opposition, Defendant contends that the state court's award under B&P § 7160 is not preclusive because there is no "evidence" of misrepresentations made by Defendant and, as a result, no findings regarding Plaintiff's reliance on misrepresentations. However, the state court explicitly held that Defendant "falsely represented that he was a licensed contractor." Statement of Decision, p. 20.

Moreover, because B&P § 7160 requires a showing that a plaintiff was induced "*in reliance on false or fraudulent representations or false statements knowingly made*," the state court necessarily held that Plaintiff relied on Defendant's false representation prior to entering judgment under B&P § 7160. *See In re Cantrell*, 329 F.3d 1119, 1124-25 (9th Cir. 2003) (holding that express findings are not required where a court necessarily decided an issue prior to entering judgment); *see also In re Welch*, 2013 WL 3306195, at *2 (Bankr. D. Or. Jul. 1, 2013) (issues regarding reliance "must have been necessarily decided in the State Court proceeding to obtain the judgment of actual fraud"). Here, the state court could not have entered a judgment under B&P § 7160 without finding that Plaintiff relied on Defendant's false representations.

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

Wednesday, April 1, 2020

Hearing Room 301

2:30 PM

CONT... John Bicz

Chapter 7

In light of the above, Plaintiff is entitled to summary judgment for the award under B&P § 7160. Plaintiff is not entitled to summary judgment for the award under B&P § 7031(b). Finally, pursuant to the Statement of Decision, Plaintiff is not entitled to any additional damages for incomplete work on his property.

III. CONCLUSION

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

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

Party Information

Debtor(s):

John Bicz

Represented By
M. Jonathan Hayes

Defendant(s):

John Bicz

Represented By
M. Jonathan Hayes

Plaintiff(s):

Ben Peterson

Represented By
Shai S Oved

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 1, 2020

Hearing Room 301

2:30 PM

1:19-11034 John Bicz

Chapter 7

Adv#: 1:19-01125 Peterson v. Bicz

#19.00 Status conference re: complaint to determine dischargeability
of debt under 11 USC sec 523

fr. 12/18/19; 2/5/20; 3/18/20

Docket 1

Tentative Ruling:

In light of the Court's decision on the plaintiff's motion for summary judgment (calendar no. 18), the parties should be prepared to discuss how they intend to proceed with this adversary proceeding.

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

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Thursday, April 2, 2020

Hearing Room 301

10:30 AM

1:15-10741 Emil Soorani, M.D.

Chapter 7

#0.10 Trustee's final report and applications for compensation

Amy L Goldman, Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith LLP, Attorneys for Chapter 7 Trustee

Havkin and Shrago, Attorneys for Debtor

SLBiggs, A Division of SingerLewak, Accountant's for Trustee

fr. 3/10/20; 3/26/20

Docket 296

Tentative Ruling:

A. The Oppositions

On February 27, 2020, the debtor and his wife filed oppositions to the chapter 7 trustee's counsel's fee application (the "Oppositions") [docs. 299 and 300]. Among other things, in the Oppositions, the debtor and his wife request that the Court continue this hearing in order for them to inspect documents concerning the estate under 11 U.S.C. §§ 346, 704(a)(7) and 724(b)(2) and 28 U.S.C. § 586. Based on the standards set for in 11 U.S.C. § 330(a)(1)(A), this is not a reason for the Court to deny the fee applications or to continue this hearing. The debtor is free to file an appropriate motion with the Court to request the documents that he seeks.

The debtor and his wife also argue that the sale of real property located in Lake Tahoe, California was improper because they allege that there were issues regarding ownership of the property. However, the Court decided the estate's interest in the property in connection with the sale motion [doc. 254]. Neither the debtor nor his wife appealed that order or filed a motion for reconsideration.

The balance of the Oppositions argue that the fee application contains lumped billing, unnecessary billing, duplicate charges and charges indicating mistakes by the chapter 7 trustee's counsel or that are unrelated to this case. Further, the overall billing in this

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

Thursday, April 2, 2020

Hearing Room 301

10:30 AM

CONT... Emil Soorani, M.D.

Chapter 7

case is excessive considering the size and complexity of this case.

In response to the Oppositions, Lewis Brisbois Bisgaard & Smith LLP ("Lewis Brisbois"), counsel to chapter 7 trustee, voluntarily reduced its fees by \$550.00 because of nine entries that were inadvertently billed to this estate [doc. 301]. Accordingly, Lewis Brisbois requests approval of \$114,960.00 in fees.

B. 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).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee's duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee's counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems 'trustee services.'" This list includes, among other activities:

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

Thursday, April 2, 2020

Hearing Room 301

10:30 AM

CONT... Emil Soorani, M.D.

Chapter 7

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 and file notices and motion to abandon assets and related orders; 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 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.").

C. 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) and the arguments raised in the Oppositions, the Court approves the payment of fees and reimbursement of expenses as set forth below.

Amy L. Goldman, chapter 7 trustee – approve fees of \$29,080.60 and reimbursement of expenses of \$464.85, pursuant to 11 U.S.C. § 330, on a final basis. In accordance

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

Thursday, April 2, 2020

Hearing Room 301

10:30 AM

CONT... Emil Soorani, M.D.

Chapter 7

with the chapter 7 trustee's proposed distribution [doc. 296], the trustee is authorized to collect \$28,539.25 of the approved fees and \$464.85 in reimbursement of expenses.

SLBiggs, A Division of SingerLewak ("SLBiggs"), accountant to chapter 7 trustee – approve fees of \$17,973.50 and reimbursement of expenses of \$356.41, pursuant to 11 U.S.C. § 330, on a final basis. In accordance with the chapter 7 trustee's proposed distribution [doc. 296], SLBiggs is authorized to collect \$17,638.91 of the approved fees and \$356.41 in reimbursement of expenses.

Havkin & Shrago LLP, counsel to the chapter 11 debtor in possession – approve fees of \$10,347.50 and reimbursement of expenses of \$1,518,312, 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. In accordance with the chapter 7 trustee's proposed distribution [doc. 296], Havkin & Shrago LLP is not authorized to collect any outstanding approved fees or reimbursement of expenses.

Lewis Brisbois, counsel to chapter 7 trustee – approve fees of \$94,267.20 and reimbursement of expenses of \$3,000.41, pursuant to 11 U.S.C. § 330, on a final basis. Lewis Brisbois is authorized to collect 100% of the approved fees and reimbursement of expenses. The Court will not approve \$20,692.80 in fees for the reasons stated below.

In accordance with 11 U.S.C. §§ 328 and 330(a)(1)(A), LBR 2016-2(e)(2) and (f) and *Garcia*, the Court will not approve 18% of the fees billed by Lewis Brisbois. Overall, Lewis Brisbois' fees include fees billed for unnecessary duplication of services and services that were not reasonably likely to benefit the estate or necessary to administration of case.

Many of the fees billed by Lewis Brisbois include fees billed for providing services that could and should have been performed by the chapter 7 trustee, as trustee. Some of these services include, among other things, answering routine creditor correspondence, communicating with the real estate brokers and potential buyers of the real properties, preparing employment applications for the trustee's professionals, reviewing proofs of claim, reviewing schedules and monitoring litigation.

Additionally, some of the fees billed by Lewis Brisbois were excessive considering the complexity of the matter and size of the return to the estate, including the motion

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

Thursday, April 2, 2020

Hearing Room 301

10:30 AM

CONT... Emil Soorani, M.D.

Chapter 7

to abandon the New York real property and the investigation of the debtor's residence and life insurance policies.

Further, some of the fees billed by Lewis Brisbois were duplicative of services provided by another attorney at the firm. Accordingly, the Court will reduce the requested fees by 18%.

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

Party Information

Debtor(s):

Emil Soorani, M.D.

Represented By
Richard P Ross
Anthony A Friedman

Trustee(s):

Amy L Goldman (TR)

Represented By
Annie Verdries
Doah Kim
Lovee D Sarenas

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

Thursday, April 2, 2020

Hearing Room 301

1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#1.00 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; 12/5/19; 3/19/20

Docket 190

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, April 2, 2020

Hearing Room 301

1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#2.00 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; 12/5/19; 3/19/20;

Docket 1

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, April 2, 2020

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#3.00 Confirmation hearing re amended chapter 11 plan of reorganization
fr. 3/19/20;

Docket 106

Tentative Ruling:

Confirm Amended Chapter 11 Plan dated December 5, 2019 [doc. 106]. No later than **August 13, 2020**, 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 **August 27, 2020 at 1:00 p.m.**

The debtor must submit the confirmation 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, April 2, 2020

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; 11/14/19; 1/16/20; 1/23/20; 3/19/20;

Docket 1

Tentative Ruling:

See calendar no. 3.

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, April 2, 2020

Hearing Room 301

1:00 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#5.00 Status conference re: chapter 11 case

fr. 3/19/20

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **June 15, 2020.**

Deadline to mail notice of Bar Date: **April 13, 2020.**

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: **August 31, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on September 10, 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

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

Thursday, April 2, 2020

Hearing Room 301

1:00 PM

CONT... 5019 Partners, LLC

Chapter 11

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

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

Thursday, April 2, 2020

Hearing Room 301

2:00 PM

1:10-17214 Darin Davis

Chapter 7

#6.00 Darin Davis' Motion for attorney's fees and costs incurred to defend Asphalt Professionals, Inc.'s Appeal of this Court's Order sustaining objection to proofs of claim

fr; 3/19/20;

Docket 385

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On June 15, 2010, Darin Davis ("Debtor") filed a voluntary chapter 7 petition. 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.

On January 11, 2019, the chapter 7 trustee filed an objection to API's claims (the "Trustee's Objection") [doc. 257]. Debtor filed a joinder to the Trustee's Objection [doc. 266]. On May 9, 2019, the Court entered an order sustaining the Trustee's Objection and disallowing API's claim in full (the "Claim Order") [doc. 296]. API filed an appeal of the Claim Order (the "Claim Appeal") before the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"). On November 5, 2019, the BAP affirmed the Claim Order [doc. 378].

On May 23, 2019, Debtor filed a motion requesting attorneys' fees and costs incurred objecting to API's proofs of claim (the "First Motion") [doc. 303]. API opposed the First Motion [doc. 362]. On October 17, 2019, the Court held a hearing on the First Motion. At that time, the Court issued a ruling granting the First Motion and explaining the Court's reasoning (the "Fee Ruling") [doc. 369]. On October 28, 2019, the Court entered an order granting the First Motion (the "Fee Order") [doc. 372]. API filed an appeal of the Fee Order (the "Fee Order Appeal"). The Fee Order Appeal is currently pending before the BAP.

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

Thursday, April 2, 2020

Hearing Room 301

2:00 PM

CONT...

Darin Davis

Chapter 7

On November 15, 2019, Debtor filed a motion requesting attorneys' fees and costs incurred defending the Claim Appeal (the "Second Motion") [doc. 385]. On March 5, 2020, API filed an opposition to the Second Motion (the "Opposition") [doc. 418], reiterating the same arguments from their opposition to the First Motion. On March 12, 2020, Debtor filed a reply to the Opposition (the "Reply") [doc. 421] and a request for judicial notice (the "RJN") [doc. 422].

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).

The merits of the parties' arguments regarding Debtor's entitlement to attorneys' fees and costs are currently before the BAP. Given the pending appeal, this Court does not have jurisdiction to rule on API's substantive arguments; those arguments will be addressed by the BAP. As such, the Court's ruling is limited to a decision on the reasonableness of the fees and costs requested by Debtor.

B. 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

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

Thursday, April 2, 2020

Hearing Room 301

2:00 PM

CONT...

Darin Davis

Chapter 7

reasonably expended is multiplied by a reasonable hourly rate. *Ketchum v. Moses*, 24 Cal.4th 1122, 1131 (2001); *In re Eliapo*, 468 F.3d 592, 598 (9th Cir. 2006).

"A district court should exclude from the lodestar amount hours that are not reasonably expended because they are 'excessive, redundant, or otherwise unnecessary.'" *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 1939-40, 76 L.Ed.2d 40 (1983)). "After computing the lodestar, the court must assess whether additional considerations require adjustment of the figure, such as the novelty or complexity of the issues, the skill and experience of counsel, the quality of representation and the results obtained." *PSM Holding*, 2015 WL 11652518 at *4.

In the Opposition, API notes that certain items are redacted. However, Debtor is not requesting reimbursement of the redacted portions of the invoice attached to the Second Motion. Debtor only seeks an award of fees and costs for those unredacted amounts.

As to reasonableness, the attached billing statement reflects that, aside from researching and writing the appellate brief, Debtor's counsel filed briefs responding to API's motions to increase page limits and augment the record. In light of these additional matters before the appellate court, Debtor's request of \$16,787.50 in fees is reasonable. Debtor's request of \$2,465 to prepare this Motion also is reasonable. However, having assessed the Reply and the RJN, the Court will award a total of \$850 in estimated fees and costs associated with these filings. In addition, because the Court does not anticipate that a hearing on this matter will exceed one hour, the Court will award a total of \$425 in estimated fees and costs incurred attending the hearing. Consequently, the Court will award Debtor a total of \$20,527.50.

III. CONCLUSION

The Court will award Debtor a total of \$20,527.50 incurred defending the Claim Appeal, filing the Second Motion, the Reply and the RJN and attending the hearing on the Second Motion.

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

Party Information

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

Thursday, April 2, 2020

Hearing Room 301

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 2, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

**#7.00 Debtor's Objection to Claim of Claimant Amiciza LLC
Proof of claim no. 22**

fr. 03/19/20;

Docket 228

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, April 2, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#8.00 Debtor's objection to claim of Eugene Anya
claim number 10

fr. 03/19/20

Docket 224

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, April 2, 2020

Hearing Room 301

2:00 PM

1:20-10057 2300 Pisani, A Nevada Domestic LLC

Chapter 11

- #9.00** Debtor's amended motion for order authorizing:
- (1) Sale of property at 2300 Pisani Pl, Venice, CA 90291-4827 outside the ordinary course of business pursuant to section 363(b);
 - (2) Without overbids;
 - (3) For a determination of good faith purchaser pursuant to §363(m)
 - (4) Authorizing disbursement of proceeds; and
 - (5) Waiving the 14-day stay imposed by FRBP 6004

fr. 2/20/20; 3/19/20

Docket 21

Tentative Ruling:

In its opposition [doc. 34], Center Street Lending Corporation ("Center Street") asserts that the purchaser is not entitled to a good faith determination under 11 U.S.C. § 363(m). Does Center Street intend to cross-examine the declarants regarding this issue? If so, and given that the courthouse is currently closed to the public, the parties should be prepared to discuss how to proceed with an evidentiary hearing.

In addition, the debtor has not identified under which prong of 11 U.S.C. § 363(f) it requests approval of this sale. To the extent the debtor is asserting that the sale price is greater than the aggregate value of all liens against the property, *see* 11 U.S.C. § 363(f)(3), the Court does not have sufficient evidence to make a determination regarding the amount of Center Street's claim.

On March 15, 2020, the debtor filed a supplemental declaration [doc. 39], attaching a closing statement and asserting that the closing statement reflects that the debtor received \$1,985,000 from Center Street. However, Center Street has not had a meaningful opportunity to respond to the debtor's evidence or to provide the Court with its own evidence regarding the amount of its claim. As such, the parties also should be prepared to discuss a briefing schedule for the parties to: (A) supplement the record with proof of the amount of Center Street's claim; and (B) discuss which prong of 11 U.S.C. § 363(f) allows a sale of the property free and clear of liens, if any.

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

Thursday, April 2, 2020

Hearing Room 301

2:00 PM

CONT... 2300 Pisani, A Nevada Domestic LLC

Chapter 11

Further, in light of the fact that the property is not subject to overbid and has not been subject to postpetition marketing, the Court will not waive the 14 day stay under Federal Rule of Bankruptcy Procedure 6004(h).

Finally, the Court will deny Center Street's motion to strike the debtor's reply (the "Motion to Strike") [doc. 37]. Although the debtor did not timely file its reply, the Court continued the hearing from its original date of March 19, 2020 to April 2, 2020, providing the Court and Center Street additional time to assess the debtor's reply. The Court also will be further continuing this matter for the reasons stated above. As such, the Court will not strike the debtor's reply.

The debtor must submit an order on the Motion to Strike within seven (7) days.

Party Information

Debtor(s):

2300 Pisani, A Nevada Domestic

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 2, 2020

Hearing Room 301

2:00 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#10.00 Debtor's Motion for authority to use cash collateral on an interim basis

fr. 03/19/20;

Docket 12

Tentative Ruling:

The Court will continue this hearing to **April 30, 2020 at 2:00 p.m.**

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 4001(b), the debtor did not serve the motion and notice of the hearing on the entity with an interest in the cash collateral and the 20 largest unsecured creditors in accordance with the procedures in FRBP 9014 and 7004, *i.e.*, regarding the insured depository institution which is a secured creditor, via certified mail at the address listed on the FDIC website, addressed to an officer of the institution.

In addition, pursuant to Local Bankruptcy Rule 4001-2(a), a motion for use of cash collateral must be accompanied by mandatory court-approved form F 4001-2.STMT.FINANCE.

No later than April 9, 2020, the debtor must serve an amended motion, which is accompanied by form F 4001-2.STMT.FINANCE, and notice of the continued hearing on all parties entitled to notice under FRBP 4001(b) pursuant to the procedures in FRBP 7004(b)(3) and (h).

Appearances on April 2, 2020 are excused.

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

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

Wednesday, April 8, 2020

Hearing Room 301

9:30 AM

1:19-11072 Jaime C Bagamaspad and Fatima Bagamaspad

Chapter 13

#1.00 Motion for relief from stay [RP]

US BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 3/4/20

Docket 43

Tentative Ruling:

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

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

The 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):

Jaime C Bagamaspad

Represented By
Stephen L Burton

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

Wednesday, April 8, 2020

Hearing Room 301

9:30 AM

CONT... Jaime C Bagamaspad and Fatima Bagamaspad

Chapter 13

Joint Debtor(s):

Fatima Bagamaspad

Represented By
Stephen L Burton

Movant(s):

US Bank National Association not

Represented By
Kristin A Zilberstein
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, April 8, 2020

Hearing Room 301

9:30 AM

1:19-11311 Carrol Sue Finister

Chapter 13

#2.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL TRUST ASSOCIATION
VS
DEBTOR

fr. 3/4/20

Stip for adequate protection filed 3/20/20

Docket 25

***** VACATED *** REASON: Order entered resolving the motion [doc. 30].**

Tentative Ruling:

Party Information

Debtor(s):

Carrol Sue Finister

Represented By
Julie J Villalobos

Movant(s):

U.S. Bank National Trust

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, April 8, 2020

Hearing Room 301

9:30 AM

1:20-10094 Jonathan Hidalgo

Chapter 13

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

fr. 2/5/20; 3/25/20;

Docket 11

Tentative Ruling:

Pursuant to the second order granting the motion on an interim basis (the "Second Interim Order") [doc. 34], no later than April 1, 2020, the debtor had to file a declaration demonstrating that he timely made his required postpetition deed of trust payments on his residential and commercial real properties, his postpetition homeowner's association payments and his postpetition chapter 13 plan payments.

On April 1, 2020, the debtor filed a declaration (the "Second Declaration") [doc. 36]. The Second Declaration does not demonstrate that the debtor has made his February 2020 and March 2020 postpetition deed of trust payments as to his residential real property and his February 2020 and March 2020 postpetition homeowner's association payments. The Second Declaration demonstrates that the debtor made only one of his postpetition homeowner's association payments.

Similarly, the debtor's prior declaration, filed on March 23, 2020 (the "First Declaration") [doc. 31], does not demonstrate that he made these payments. In the First Declaration, the debtor states that he made his February 2020 deed of trust payment as to his residential real property. However, the debtor did not indicate the date he mailed the payment to the secured lienholder.

Accordingly, for the reasons set forth in the Court's tentative ruling at the prior hearing held on March 25, 2020, unless the debtor provides for the prompt conversion of this case to one under chapter 7, **or files an amended chapter 13 plan which provides that he will surrender his residential real property**, the Court will deny the motion.

March 25, 2020 Tentative Ruling

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

Wednesday, April 8, 2020

Hearing Room 301

9:30 AM

CONT...

Jonathan Hidalgo

Chapter 13

Unless the debtor provides for the prompt conversion of this case to one under chapter 7, the Court will deny the motion.

Pursuant to the order granting the motion on an interim basis (the "Interim Order") [doc. 22], no later than March 23, 2020, the debtor had to file a declaration demonstrating that he timely made his required postpetition deed of trust payments on his residential and commercial real properties, his postpetition homeowner's association payments and his postpetition chapter 13 plan payments. On March 23, 2020, the debtor filed a declaration [doc. 31]. That declaration does not demonstrate that the debtor fully complied with the Interim Order.

Pursuant to 11 U.S.C. § 362(c)(3)(C)(i)(III), the debtor has not provided clear and convincing evidence that his financial or personal affairs have improved since the prior case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. Accordingly, if the case remains as one under chapter 13, the Court cannot grant the motion.

However, 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).

Although the debtor has not shown a substantial change in financial or personal 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. If the debtor is willing to convert this case to one under chapter 7, the Court will grant the motion.

February 5, 2020 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 **March 25, 2020 at 9:30 a.m. No later than February 12, 2020**, 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).

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

Wednesday, April 8, 2020

Hearing Room 301

9:30 AM

CONT... Jonathan Hidalgo

Chapter 13

On January 31, 2020, Pensco Trust Company Custodian fbo Alan L Brooks, IRA ("Pensco"), a secured creditor, filed a timely opposition to the motion [doc. 20]. Pensco argues that the debtor has not overcome the presumption of bad faith as required by 11 U.S.C. § 362(c)(3)(C).

In his immediately preceding case, the debtor was not represented by counsel. In the pending case, the debtor has retained counsel, which is a change in the debtor's personal and financial affairs. The Court will continue this hearing in order to assess the debtor's ability to perform under his proposed chapter 13 plan.

The debtor must timely pay his: (A) February 2020 and March 2020 plan payments in the amount of \$4,798.00 (as stated in the debtors' proposed chapter 13 plan) to the chapter 13 trustee [doc. 15]; (B) February 2020 and March 2020 deed of trust payments in the amount of \$3,000.00 (as stated in his current schedule J) as to his residential real property [doc. 14]; (C) February 2020 and March 2020 deed of trust payments in the amount of \$1,523.72 (as stated in Pensco's opposition) as to his commercial real property [doc. 20]; and (D) February 2020 and March 2020 homeowner's association ("HOA") payments on his residential real property in the amount of \$380 (as stated in his current schedule J). **No later than March 23, 2020**, the debtor must file a declaration to demonstrate that he timely made his required post-petition deed of trust, HOA and chapter 13 plan payments.

In addition, the debtor's schedule I [doc. 14] indicates rental income in the amount of \$3,000 per month. However, the debtor's schedule G [doc. 14] indicates that the debtor has no unexpired leases. **By February 12, 2020**, the debtor must amend his schedule G to include any unexpired leases.

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

Party Information

Debtor(s):

Jonathan Hidalgo

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 8, 2020

Hearing Room 301

9:30 AM

CONT... Jonathan Hidalgo

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 8, 2020

Hearing Room 301

9:30 AM

1:20-10344 Arndt & Traina, Inc.

Chapter 7

#3.00 Motion for relief from stay [UD]

SYLMAR PROPERTIES
VS
DEBTOR

Docket 13

Tentative Ruling:

The Court will continue this hearing to **May 6, 2020 at 9:30 a.m.** The movant did not include as exhibits to the motion the document evidencing movant's interest in the property, the notice to quit and the unlawful detainer complaint. **No later than April 15, 2020**, the movant must file and serve an amended motion, which includes the above-mentioned documents, and notice of the continued hearing on all parties entitled to notice under Local Bankruptcy Rule 4001-1(c).

Appearances on April 8, 2020 are excused.

Party Information

Debtor(s):

Arndt & Traina, Inc.

Represented By
Mark T Young

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 8, 2020

Hearing Room 301

9:30 AM

1:20-10438 Raymond Tsarukyan

Chapter 7

#4.00 Motion for relief from stay [UD]

M&O PROPERTIES, ltd
VS
DEBTOR

Case dismissed 3/16/20

Docket 9

***** VACATED *** REASON: Case dismissed on 3/16/2020.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raymond Tsarukyan

Represented By
Ruben Salazar

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 8, 2020

Hearing Room 301

9:30 AM

1:20-10081 Maria Jose Morales Soto

Chapter 7

#5.00 Motion for relief from stay [PP]

HONDA LEASE TRUST
VS
DEBTOR

Docket 10

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Maria Jose Morales Soto

Represented By
Juan Castillo-Onofre

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Wednesday, April 8, 2020

Hearing Room 301

9:30 AM

1:20-10338 Gevorg Zhamkochyan

Chapter 7

#6.00 Motion for relief from stay [PP]

HONDA LEASE TRUST
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):

Gevorg Zhamkochyan

Represented By
Karine Karadjian

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 8, 2020

Hearing Room 301

9:30 AM

1:20-10369 Yossi Shakked and Yael Shakked

Chapter 7

#7.00 Motion for relief from stay [PP]

HONDA LEASE TRUST
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):

Yossi Shakked

Represented By
Shai S Oved

Joint Debtor(s):

Yael Shakked

Represented By
Shai S Oved

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

Wednesday, April 8, 2020

Hearing Room 301

9:30 AM

CONT... Yossi Shakked and Yael Shakked

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, April 8, 2020

Hearing Room 301

9:30 AM

1:19-11696 Peter M. Seltzer

Chapter 7

#8.00 Motion for relief from stay [PP]

ALLY FINANCIAL INC
VS
DEBTOR

Docket 133

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):

Peter M. Seltzer

Represented By
Kathleen C Hipps

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror

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

Wednesday, April 8, 2020

Hearing Room 301

9:30 AM

CONT...

Peter M. Seltzer

Jorge A Gaitan

Chapter 7

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

Wednesday, April 8, 2020

Hearing Room 301

9:30 AM

1:19-10051 Rockin Artwork, LLC

Chapter 7

#9.00 Motion for relief from stay [RP]

HMC ASSETS, LLC
VS
DEBTOR

fr. 3/25/20(stip)

Docket 196

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):

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, April 8, 2020

Hearing Room 301

9:30 AM

CONT... Rockin Artwork, LLC

Chapter 7

Movant(s):

HMC Assets, LLC solely as

Represented By
Amelia B. Valenzuela

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, April 8, 2020

Hearing Room 301

9:30 AM

1:17-10163 Johnny Romero Cordova and Maria Luisa Pavia-Cordova

Chapter 13

#10.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
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 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):

Johnny Romero Cordova

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Maria Luisa Pavia-Cordova

Represented By

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

Wednesday, April 8, 2020

Hearing Room 301

9:30 AM

**CONT... Johnny Romero Cordova and Maria Luisa Pavia-Cordova
Jeffrey J Hagen**

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 8, 2020

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

- #11.00** Status conferene re: complaint for:
1- Unjust Enrichment, 2- Breach of Fiduciary Duty,
3- Professional Negligence, 4- Fraudulent Concelament,
5- Fraudulent Misrepresentation, 6- Constructive Fraud,
7- Attorney's fees for the Tort of Another, 8- Disgorgement of fees,
9- Declaratory Judgment

Docket 1

Tentative Ruling:

The Court will set the motions to dismiss filed by the defendants [docs. 4, 6] for hearing at **2:30 p.m. on May 20, 2020**. The defendants must timely file and serve notice of these hearings on the plaintiff.

The Court also will continue this status conference to **2:30 p.m. on May 20, 2020**, to be held in connection with the hearings on the motions to dismiss.

Appearances on April 8, 2020 are excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Pro Se

Elissa Miller

Pro Se

Plaintiff(s):

Deborah Lois Adri

Pro Se

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

Wednesday, April 8, 2020

Hearing Room 301

1:30 PM

CONT... Deborah Lois Adri

Chapter 7

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, April 8, 2020

Hearing Room 301

1:30 PM

1:19-10272 Zaven Armen Pehlevanian

Chapter 7

Adv#: 1:19-01141 Pehlevanian v. Wells Fargo et al

#12.00 Status conference re: complaint for declaratory judgment
for bankruptcy relief of student loan debt

fr. 2/5/20;

Docket 1

Tentative Ruling:

Contrary to the Court's instructions given during the last status conference (at which the plaintiff appeared), the plaintiff has not filed a status report, as required by Local Bankruptcy Rule ("LBR") 7016-1(a)(2).

On April 1, 2020, defendant Navient Solutions, LLC ("Navient") filed a unilateral status report [doc. 10]. Navient did not attach a proof of service to the status report; as such, it is unclear if Navient served the plaintiff (the plaintiff does not receive electronic notice via CM/ECF). In any event, the parties should be prepared to discuss the following:

Deadline to complete discovery: 8/31/20.

Deadline to file pretrial motions: 9/14/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 10/7/20.

Pretrial: 10/21/20 at 1:30 p.m.

In accordance with LBR 7016-1(a)(3), 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 LBR 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, April 8, 2020

Hearing Room 301

1:30 PM

CONT... Zaven Armen Pehlevanian

Chapter 7

Debtor(s):

Zaven Armen Pehlevanian Pro Se

Defendant(s):

Wells Fargo Pro Se

Navient Pro Se

Plaintiff(s):

Zaven Armen Pehlevanian Pro Se

Trustee(s):

Nancy J Zamora (TR) Pro Se

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

Wednesday, April 8, 2020

Hearing Room 301

1:30 PM

1:19-12517 Hayde Rodriguez Barahona

Chapter 7

Adv#: 1:20-01016 Zamora, Chapter 7 Trustee v. Rodriguez Barahona et al

- #13.00** Status conference re: complaint to:
(1) Obtain declaratory relief as to estate's ownership interest in real property; and
(2) Authorize sale of property owned in part by non-debtor

Docket 1

Tentative Ruling:

On March 24, 2020, the chapter 7 trustee filed a motion to approve a compromise with the defendant [Bankruptcy Docket, doc. 45].

The Court will continue this status conference to **1:30 p.m. on May 6, 2020**, to assess if the Court has approved the parties' compromise. If the Court approves the parties' compromise, and the parties file a stipulation to dismiss this adversary proceeding prior to May 6, 2020, the Court will take the status conference off calendar.

Appearances on April 8, 2020 are excused.

Party Information

Debtor(s):

Hayde Rodriguez Barahona	Represented By Navid Kohan
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Defendant(s):

Hayde Rodriguez Barahona	Pro Se
Juan Manuel Barahona Garcia	Pro Se

Plaintiff(s):

Nancy J Zamora, Chapter 7 Trustee	Represented By Larry D Simons
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Trustee(s):

Nancy J Zamora (TR)	Represented By
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 8, 2020

Hearing Room 301

1:30 PM

CONT...

Hayde Rodriguez Barahona

Larry D Simons

Chapter 7

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 7

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

- #14.00** Motion for default judgment against defendants:
1. Continental Communities, LLC, a California limited liability company;
 2. Valley Circle Estates Realty Co., a California corporation;
 3. Zuckerman Building Company, a California corporation;
 4. Continental San Jacinto LLC, a California limited liability company;
 5. San Jacinto Z LLC, a California limited liability company;
 6. Rezinate San Jacinto LLC, a California limited liability company;
 7. Maravilla Center LLC, a California limited liability company; and
 8. Phoenix Holdings Fund, LLC (also known as Phoenix Holdings, LLC), a Nevada limited liability company

Docket 175

Tentative Ruling:

Deny.

I. BACKGROUND

On May 4, 2018, Robert E. Zuckerman ("Debtor") filed a voluntary chapter 11 petition. On March 18, 2019, the Court converted Debtor's case to a chapter 7 case [Bankruptcy Docket, doc. 129].

On March 27, 2019, Richard Abel ("Plaintiff") filed the operative second amended complaint (the "SAC") [doc. 75] against Debtor and Continental Communities, LLC, Valley Circle Estates Realty Co., Zuckerman Building Company, Continental San Jacinto, LLC, San Jacinto Z, LLC, Rezinate San Jacinto, LLC, Maravilla Center, LLC and Phoenix Holdings Fund, LLC (together, the "Corporate Entities"), among other defendants. As to the Corporate Entities, Plaintiff alleged that—

Debtor is an insider of the Corporate Entities and controls the Corporate Entities. Debtor and the Corporate Entities have made several loans among each other. Debtor has a right to receive profits, salaries, distributions, loan repayments, etc. from the Corporate

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Robert Edward Zuckerman

Chapter 7

Entities. In his amended schedules, Debtor indicated that four of the Corporate Entities owe Debtor large sums of money.

Plaintiff obtained a judgment lien against Debtor's property (the "Judgment Lien") and an assignment order the ("Assignment Order") from state court. Plaintiff believes all Debtor's rights to payment from the Corporate Entities belong to Plaintiff.

Plaintiff also believes that the Corporate Entities are in possession of property of the estate, and such property of the estate should be turned over pursuant to 11 U.S.C. § 542 and sold pursuant to 11 U.S.C. § 363.

The Corporate Entities did not file a response to the SAC. As such, Plaintiff obtained defaults against the Corporate Entities [docs. 106-113].

On February 25, 2020, Plaintiff filed a motion for default judgment against the Corporate Entities (the "Corporate Motion") [doc. 175]. Plaintiff did not attach any evidence to the Corporate Motion. Instead, Plaintiff references the SAC to prove up his claims.

II. ANALYSIS

Federal Rule of Civil Procedure ("FRCP") 55, incorporated by Federal Rule of Bankruptcy Procedure 7055, governs default judgments. FRCP 55(b)(2) provides as follows:

(b) Judgment. Judgment by default may be entered as follows...

...(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Robert Edward Zuckerman

Chapter 7

representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

"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 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." *Id.*, at 917-18 (internal quotation omitted).

"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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Robert Edward Zuckerman

Chapter 7

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*, 782 F.2d at 1471-72); *see also Truong Giang Corp. v. Twinstar Tea Corp.*, 2007 WL 1545173 (N.D. Cal. 2007). However, "Rule 55 gives the court considerable leeway as to what it may require as a prerequisite to the entry of a default judgment." *Televideo Systems*, 826 F.2d at 917.

A. Possibility of Prejudice to the Plaintiff

As discussed below, Plaintiff may be able to pursue some of his claims against the Corporate Entities in a different forum. As such, denial of the Corporate Motion will not significantly prejudice Plaintiff.

B. Merits of the Plaintiff's Substantive Claim

As noted above, Plaintiff has not attached any evidence to the Corporate Motion. As such, the Corporate Motion may be denied on this basis alone. However, the Court will deny the Motion because Plaintiff either has not stated a claim against the Corporate Entities or the Court does not have subject matter jurisdiction over the claim.

i. The Claims for Turnover and Sale of Estate Property

Plaintiff appears to be requesting turnover of property under 11 U.S.C. § 542 and sale of such property under 11 U.S.C. § 363. Notwithstanding the fact that the SAC is devoid of any allegations regarding whether assets allegedly held by the Corporate

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... **Robert Edward Zuckerman**

Chapter 7

Entities are property of the estate subject to turnover or sale, Plaintiff does not have standing to pursue a turnover claim or to sell property of the estate. *See* 11 U.S.C. § 542(a) (requiring delivery of property of the estate to *the trustee*); and 11 U.S.C. § 363(b)(1) (allowing *the trustee* to use, sell, or lease property of the estate). Consequently, the Court will dismiss these claims.

ii. The Claims Based on the Assignment Order and the Judgment Lien

The remaining claims against the Corporate Entities are vague. It appears Plaintiff is alleging that he has an interest in assets held by the Corporate Entities by operation of the Assignment Order and/or the Judgment Lien. Plaintiff does not specify the nature of the assets, details regarding why the Assignment Order or Judgment Lien would attach to those assets or whether the assets belong to the Corporate Entities or Debtor.

To the extent Plaintiff is alleging that the Assignment Order or Judgment Lien attached to assets held by the Corporate Entities in which Debtor and/or the estate do not have an interest, Plaintiff may pursue recovery of those assets in an appropriate forum. To the extent Plaintiff is alleging that the Judgment Lien attached to assets of the estate, Plaintiff will be treated as a secured creditor if the chapter 7 trustee decides to distribute those assets. If Plaintiff wants to enforce his state law rights as a judgment lienholder, Plaintiff may file a motion for relief from the automatic stay. Plaintiff has not otherwise stated a claim for relief in the SAC.

C. Sufficiency of the Complaint

"The second and third [*Eitel*] factors, taken together, require that [Plaintiffs] assert a claim upon which [they] may recover." *In re Sharma*, 2013 WL 1987351, at *10 (B.A.P. 9th Cir. May 14, 2013), *aff'd*, 607 F. App'x 713 (9th Cir. 2015), *citing IO Group*, 708 F.Supp.2d 989, 997 (N.D. Cal. 2010). "For default judgment based solely on the complaint, without the benefit of a prove-up hearing, the facts in the complaint must go beyond being well-pled; they must support the ultimate determination of liability." *Sharma*, 2013 WL 1987351 at *10.

For the same reasons noted above, the allegations against the Corporate Entities are insufficient. As against the Corporate Entities, the allegations either do not establish a claim relief or Plaintiff does not have standing to pursue the claims.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

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). There are no allegations regarding the amount of damages Plaintiff is requesting against the Corporate Entities. As such, this factor also weighs against entering a 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)).

Here, given the lack of clarity of the allegations against the Corporate Entities, there is a high possibility of dispute regarding the material facts. Consequently, this factor weighs in favor of denying the Corporate Motion.

F. Possibility of Excusable Neglect

"Due process requires that all interested parties be given notice reasonably calculated to apprise them of the pendency of the action and be afforded an opportunity to present their objections before a final judgment is rendered." *Elektra Entertainment Group, Inc., et al.*, 2004 WL 783123, *5 (C.D. Cal. Feb. 13, 2004) (citing *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950)).

Plaintiff served the Corporate Entities with the summons and the SAC and, subsequently, with the Corporate Motion. As such, there is not a significant risk of excusable neglect. Nevertheless, the remaining factors weigh in favor of denial of the Corporate Motion.

III. CONCLUSION

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

The Court will deny the Corporate Motion.

The Court will prepare the Order.

Party Information

Debtor(s):

Robert Edward Zuckerman	Represented By Sandford L. Frey Stuart I Koenig
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Defendant(s):

Diane C Weil, in her capacity as the	Pro Se
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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman Chapter 7

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, April 8, 2020

Hearing Room 301

2:30 PM

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

Chapter 7

#15.00 Motion for default judgment against defendant Nikki B. Allen

Docket 177

Tentative Ruling:

Deny.

I. BACKGROUND

On May 4, 2018, Robert E. Zuckerman ("Debtor") filed a voluntary chapter 11 petition. On March 18, 2019, the Court converted Debtor's case to a chapter 7 case [Bankruptcy Docket, doc. 129].

On March 27, 2019, Richard Abel ("Plaintiff") filed the operative second amended complaint (the "SAC") [doc. 75] against Debtor and Nikki B. Allen, among other defendants. As to Ms. Allen, Plaintiff alleged—

Debtor was represented by Ms. Allen in state court. During an April 10, 2018 hearing before the state court, Ms. Allen wrote a \$8,135 check from her trust account holding Debtor's funds. The check was to satisfy a sanctions award from the state court to a third party. Plaintiff believes the Judgment Lien and the Assignment Order attached to Debtor's funds in Ms. Allen's account. Plaintiff also believes any transfers from Debtor to Ms. Allen were preferential transfers.

Ms. Allen did not file a response to the SAC. As such, Plaintiff obtained a default against Ms. Allen [doc. 49].

On February 25, 2020, Plaintiff filed a motion for default judgment against Ms. Allen (the "Allen Motion") [doc. 177]. Plaintiff did not attach any evidence to the motion. Instead, Plaintiff references the SAC to prove up his claims.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

II. ANALYSIS

Federal Rule of Civil Procedure ("FRCP") 55, incorporated by Federal Rule of Bankruptcy Procedure 7055, governs default judgments. FRCP 55(b)(2) provides as follows:

(b) Judgment. Judgment by default may be entered as follows...

...(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

"Our starting point is the general rule that default judgments are ordinarily disfavored." *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). But, "[c]ourts have inherent equitable powers to dismiss actions or enter default judgments for failure to prosecute, contempt of court, or abusive litigation practices." *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir. 1987). "The 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." *Id.*, at 917-18 (internal quotation omitted).

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... **Robert Edward Zuckerman**

Chapter 7

"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*, 782 F.2d at 1471-72); *see also Truong Giang Corp. v. Twinstar Tea Corp.*, 2007 WL 1545173 (N.D. Cal. 2007). However, "Rule 55 gives the court considerable leeway as to what it may require as a prerequisite to the entry of a default judgment." *Televideo Systems*, 826 F.2d at 917.

A. Possibility of Prejudice to the Plaintiff

As discussed below, Plaintiff may be able to pursue some of his claims against Ms.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... **Robert Edward Zuckerman**

Chapter 7

Allen in a different forum. As such, denial of the Allen Motion will not significantly prejudice Plaintiff.

B. Merits of Plaintiff's Substantive Claims

As noted above, Plaintiff has not attached any evidence to the Allen Motion. As such, the Allen Motion may be denied on this basis alone. However, the Court will deny the Allen Motion because Plaintiff either has not stated a claim against Ms. Allen or the Court does not have subject matter jurisdiction over the claim.

i. The Claim for Recovery of Preferential Transfer

Plaintiff alleges that Ms. Allen received \$8,135 into a client trust account, which Ms. Allen transferred to a third party pursuant to a state court order. A transferee, for purposes of 11 U.S.C. § 547(b), "is one who has dominion over the money or other asset, the right to put the money to one's own purposes." *In re Incomnet, Inc.*, 463 F.3d 1065, 1070 (9th Cir. 2006). "The inquiry focuses on whether an entity had legal authority over the money and the right to use the money however it wished." *Id.* Courts have held that entities holding funds in trust for another are "mere conduits" without the type of dominion that would qualify the entity as a transferee. *See, e.g. In re Viola*, 469 B.R. 1, 6-7 (B.A.P. 9th Cir. 2012), *aff'd*, 583 F. App'x 669 (9th Cir. 2014).

Here, based on Plaintiff's own allegations, Ms. Allen was a "mere conduit" for the \$8,135 that was transferred to a third party, pursuant to a court order. As such, Ms. Allen did not have dominion over the funds and was not a transferee under 11 U.S.C. § 547(b). Because Plaintiff cannot state a claim against Ms. Allen for recovery of \$8,135 under a preferential transfer theory, the Court will dismiss that claim with prejudice. [FN1].

ii. The Claims Based on the Assignment Order and the Judgment Lien

In the SAC, Plaintiff alleges that his Assignment Order and Judgment Lien attached to the \$8,135 contained in Ms. Allen's client trust account. Given that Plaintiff also alleges that the funds are now in the possession of a third party, it is unclear what kind of damages Plaintiff would have against Ms. Allen.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

Nevertheless, because the Court is dismissing Plaintiff's preferential transfer claim, the Court does not have subject matter jurisdiction over the remaining allegations against Ms. Allen. The dispute between two non-debtor parties regarding whether Plaintiff's Assignment Order or Judgment Lien attached to the \$8,135 will have no impact on Debtor's estate. *See* 28 U.S.C. § 1334(b); and *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). Even if the Court has subject matter jurisdiction over this dispute, the Court elects to abstain from the dispute under 28 U.S.C. § 1334(c)(1). Consequently, the Court will dismiss these remaining allegations for lack of subject matter jurisdiction or, in the alternative, will abstain from deciding these issues. Plaintiff may pursue these claims in an appropriate forum.

C. Sufficiency of the Complaint

"The second and third [*Eitel*] factors, taken together, require that [Plaintiffs] assert a claim upon which [they] may recover." *In re Sharma*, 2013 WL 1987351, at *10 (B.A.P. 9th Cir. May 14, 2013), *aff'd*, 607 F. App'x 713 (9th Cir. 2015), *citing IO Group*, 708 F.Supp.2d 989, 997 (N.D. Cal. 2010). "For default judgment based solely on the complaint, without the benefit of a prove-up hearing, the facts in the complaint must go beyond being well-pled; they must support the ultimate determination of liability." *Sharma*, 2013 WL 1987351 at *10.

For the same reasons noted above, the allegations against Ms. Allen are insufficient. As against Ms. Allen, the allegations either do not establish a claim for preferential transfer or the Court does not have subject matter jurisdiction over the allegations.

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). As to Ms. Allen, the amount at stake appears to be \$8,135. However, Plaintiff has not alleged a basis for recovery from Ms. Allen, let alone that Ms. Allen engaged in serious conduct. As such, this factor also does not weight in favor of a default judgment.

E. Possibility of Dispute

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

"The fifth *Eitel* factor considers the possibility of dispute as to any material facts in the case." *Elektra Entertainment Group, Inc., et al.*, 2004 WL 783123, *4 (C.D. Cal. Feb. 13, 2004). "The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." *TeleVideo Systems*, at 917-918 (quoting *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir.1977)).

Here, although there may not be a high possibility of dispute as to the facts alleged in the SAC, there is a high possibility of dispute as to the legal relevance of those facts. In any event, Plaintiff may pursue the remaining claims in a different forum.

F. Possibility of Excusable Neglect

"Due process requires that all interested parties be given notice reasonably calculated to apprise them of the pendency of the action and be afforded an opportunity to present their objections before a final judgment is rendered." *Elektra Entertainment Group, Inc., et al.*, 2004 WL 783123, *5 (C.D. Cal. Feb. 13, 2004) (citing *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950)).

Plaintiff served Ms. Allen with the summons and the SAC and, subsequently, with the Allen Motion. As such, there is not a significant risk of excusable neglect. Nevertheless, the remaining factors weigh in favor of denial of the Allen Motion.

III. CONCLUSION

The Court will deny the Allen Motion. For the reasons stated above, the Court will dismiss Plaintiff's preferential transfer claim regarding the \$8,135 with prejudice. The Court will dismiss the remaining claims for lack of subject matter jurisdiction, or, in the alternative, will abstain from deciding those issues. Plaintiff may pursue those claims in an appropriate forum.

The Court will prepare the Order.

FOOTNOTES

1. To the extent Plaintiff is alleging that Debtor made other preferential transfers

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... **Robert Edward Zuckerman** **Chapter 7**
to Ms. Allen, Plaintiff has not specified any such transfers and has not alleged
any of the elements of a claim under 11 U.S.C. § 547(b).

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
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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

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, April 8, 2020

Hearing Room 301

2:30 PM

1:19-10537 Lynn Patricia Wolcott

Chapter 7

Adv#: 1:19-01127 Hooshim v. Wolcott

#16.00 Motion for default judgment against defendant

Docket 13

*** VACATED *** REASON: Order transferring case to Judge Bluebond
ented 4/3/20.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lynn Patricia Wolcott

Represented By
Faith A Ford

Defendant(s):

Lynn Patricia Wolcott

Represented By
Andrew Edward Smyth

Plaintiff(s):

Benjamin Hooshim

Represented By
Andrew Edward Smyth

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 8, 2020

Hearing Room 301

2:30 PM

1:19-10537 Lynn Patricia Wolcott

Chapter 7

Adv#: 1:19-01127 Hooshim v. Wolcott

- #17.00** 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

fr. 12/18/19

Docket 1

*** VACATED *** REASON: Order transferring case to Judge Bluebond ented 4/3/20.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lynn Patricia Wolcott

Represented By
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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

1:19-11696 Peter M. Seltzer

Chapter 11

Adv#: 1:19-01151 Kessler v. Seltzer

#18.00 Status conference re: complaint for the denial of discharge pursuant to 11 U.S.C. sec 727(a) and non-dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2), (a) (4) and (a)(6)

fr. 2/19/20

Docket 1

***** VACATED *** REASON: Rescheduled for 4/29/20 at 2:30 pm.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

Defendant(s):

Peter M. Seltzer

Pro Se

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#19.00 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, 12/18/19; 2/5/20; 2/26/20; 3/4/20;
3/18/20; 4/1/20

Docket 64

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 8, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#20.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper.
fr. 5/14/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20; 3/4/20; 3/18/20
4/1/20

Docket 55

Tentative Ruling:

April 1, 2020 Tentative Ruling

On December 16, 2019, Mr. Hopper filed an amended proof of claim [claim 3-3].
Does the debtor intend to object to the amended proof of claim? If so, when does the
debtor intend to file such an objection?

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 8, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#21.00 Debtor's motion for summary judgment and/or summary adjudication of facts

fr. 2/5/20; 2/26/20; 3/4/20; 3/18/20; 4/1/20

Docket 174

Tentative Ruling:

April 1, 2020 Tentative Ruling

The Court intends to continue this hearing until after the parties have attended mediation with a bankruptcy judge and the Court has ruled on the motions to quash [docs. 28 and 29] and the motion to compel [doc. 46]. The parties should be prepared to discuss dates for such a continued hearing.

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 8, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#22.00 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; 12/10/19; 2/5/20;
2/26/20; 3/4/20; 3/18/20; 4/1/20

Docket 70

Tentative Ruling:

April 1, 2020 Tentative Ruling

The parties should be prepared to discuss their efforts to schedule a mediation with a recalled United States Bankruptcy Judge for the Central District of California.

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 8, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#23.00 Debtor's motion to quash subpoena for documents and deposition subpoena for Johanna Scott

fr. 3/4/20; 3/18/20; 4/1/20

Docket 29

Tentative Ruling:

April 1, 2020 Tentative Ruling

Have the parties secured a date for mediation? If so, the parties should be prepared to discuss a deadline for them to file a written stipulation as required by Local Bankruptcy Rule 7026-1(c)(3), and continued hearing dates on the motions to quash.

Ruling from March 4, 2020

After reviewing the motions to quash [docs. 28 and 29], the oppositions to those motions [docs. 40 and 41] and the replies to those oppositions [docs. 42 and 43], the Court has determined that the parties must file a written stipulation identifying any disputed discovery issue as to each category requested for production, with contentions and points and authorities of each party as to each issue, as required by Local Bankruptcy Rule 7026-1(c)(3).

Either before or after the parties file such a stipulation, the parties are ordered to attend mediation in downtown Los Angeles with the Honorable Gregg W. Zive or the Honorable Thomas B. Donovan, both of whom are recalled United States Bankruptcy Judges assisting with mediations. To set up the mediation, the parties are directed to contact Judge Zive at (775) 326-2107 and/or Judge Donovan at (213) 894-3728.

The Court will continue all matters pending between these parties until after the parties attend mediation with one of these recalled bankruptcy judges for the Central District of California.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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, April 8, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#24.00 Debtor's motion to quash subpoena for documents and deposition subpoena for Fenton & Ross

fr. 3/4/20; 3/18/20; 4/1/20;

Docket 28

Tentative Ruling:

See calendar 23.

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, April 8, 2020

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 Defendants' motion to dismiss

fr. 10/2/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20; 3/4/20;
3/18/20; 4/1/20

Docket 12

Tentative Ruling:

April 1, 2020 Tentative Ruling

After reviewing the supplemental briefing [docs. 26 and 27], the Court will grant in part and deny in part the motion for the reasons discussed below.

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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

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,

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

Debtor would have been entitled to exempt value in the amount of \$17,274.

...

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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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. Defendants defrauded Plaintiff by failing to withhold his payroll taxes in lawful and appropriate amounts, failing to pay those withheld taxes to government authorities as required by law on Plaintiff's behalf and by issuing fraudulent tax records on which Plaintiff relied to report and pay his annual income taxes.

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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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. 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.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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. 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 (the "Reply") [doc. 22].

On November 13, 2019, the Court held a hearing on defendants' *Motion to Dismiss Pursuant to Rules 8, 9, and 12* (the "Motion") [doc. 12]. Prior to the hearing, the Court issued a tentative ruling, see below (the "Tentative Ruling"). After listening to oral argument at the hearing, the Court ordered the parties to submit briefing and

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

continued the hearing to February 5, 2020.

On December 16, 2019, Plaintiff filed a supplemental brief (the "Plaintiff's Supplemental Brief") [doc. 26]. In Plaintiff's Supplemental Brief, Plaintiff requests that the Court reconsider the Tentative Ruling on the following causes of action in the FAC: (A) waiting time penalties under Cal. Lab. Code § 203; (B) statute of limitations under Cal. Lab. Code §§ 226(f) and 1198.5(k); (C) declaratory relief concerning ownership of the funds (third cause of action); (D) annulment of transfers in fraud of creditors (fourth cause of action); (E) breach of contract (twelfth cause of action); (F) conversion (thirteenth cause of action); (G) injunctive relief under the UCL. In addition, Plaintiff argues that the Court must dismiss an entire cause of action rather than strike a portion of the allegations in the FAC. On January 6, 2020, Debtor filed a reply to Plaintiff's Supplemental Brief (the "Debtor's Supplemental Brief") [doc. 27].

II. DISCUSSION

Based on the Motion, the Opposition, the Reply, the Plaintiff's Supplemental Brief and the Debtor's Supplemental Brief, the Court will issue the following ruling. 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.

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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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).

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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, 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.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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;
 - (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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott
or different types of relief.

Chapter 13

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. Except as discussed below, each of the claims in the 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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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"). Under CLC § 202, an employer must pay an employee who resigns his or her wages within 72 hours. If the employer fails to timely pay those wages, the employer is liable for waiting time penalties under CLC § 203(a). The wages shall continue as a penalty from the due date at the same rate until paid, but not more than 30 days. Here, Plaintiff resigned on June 17, 2017. This is within the three-year period. 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 §§ 1102.5(f), 98.6(b)(3), 1198.5(k) and 226(e) and (f), the statute of limitations for an

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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's claims for penalties under CLC §§ 1102.5(f), 98.6(b)(3) and 226(e) are barred by the applicable statute of limitations. 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. The Court will dismiss these claims without leave to amend.

Plaintiff's claims for penalties under CLC §§ 1198.5(k) and 226(f) are not barred by applicable statute of limitations. Plaintiff alleges that on August 6, 2018, Plaintiff demanded a copy of his personnel file and a copy of his complete payroll and time records. Plaintiff's causes of action under CLC §§ 1198.5(b)(1) and 226(b) would not have accrued until at the earliest Plaintiff's demand for his records or at the latest when Defendants failed to comply by the deadlines set forth in the statutes. Using either date, the period is within the applicable one-year statute of limitations. The Court will not 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.

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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott
claim.

Chapter 13

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.

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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... **Kenneth C. Scott**
statement under FRCP 12(a)(4).

Chapter 13

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.

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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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). Because Debtor filed his petition under chapter 13, 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.

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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... **Kenneth C. Scott**

Chapter 13

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 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.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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.

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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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. Specifically, Plaintiff states that "[j]udicial intervention is required to determine the rights and obligations of each of the parties, including but not limited to [Debtor] and MPPI, as to whether MPPI owned at least \$17,247.00 in cash maintained in a "business bank account" as of the [p]etition [d]ate herein and on relevant dates thereafter according to proof, or whether those funds were part of [Debtor's] bankruptcy estate in this proceeding." FAC, ¶ 65.

The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides in pertinent part:

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. Slatterback 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)).

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

After Plaintiff filed the Objection to Exemption, the Court determined that the funds were property of the bankruptcy estate because, as of the petition date, Debtor was the 100% shareholder of a subchapter S corporation, MPPI, and as such, all MPPI's profits flow directly through to Debtor as the sole shareholder. All 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, *i.e.* the Funds. The Court also determined that Debtor was entitled to an exemption of the Funds. Additionally, the parties did not dispute that, on the petition date, the Funds were held in a business account.

This request for declaratory relief is essentially asking the Court to reconsider its ruling in the Exemption Order. However, 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.

In the Plaintiff's Supplemental Brief, Plaintiff argues that by dismissing this cause of action, Plaintiff will be prejudiced. As the Court stated in its ruling on the Objection to Exemption [1:18-bk-13024-VK, doc. 150], allowing Debtor his claim of exemption does not prevent Plaintiff from obtaining a court determination that the *distribution* of the Funds from MPPI to Debtor was improper or from otherwise holding Debtor and/or MPPI liable to Plaintiff. Nothing in this ruling contradicts those statements.

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 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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

Plaintiff alleges this cause of action against Defendants. If Plaintiff is moving under CUVTA, as he indicated in the Opposition, he may be able to state a claim for relief under FRCP 12(b)(6) as to MPPI and Debtor, but not as to Scott.Psy.D.

FRCP 8(a)(2) requires that a pleading stating a claim for relief contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The function of this pleading requirement is to "give the defendant fair notice of what the...claim is and the grounds upon which it rests." *Bell Atl. Corp.*, 550 U.S. at 555.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

The FAC does not state the legal basis for the cause of action against Defendants. As such, Defendants have not been provided with fair notice regarding Plaintiff's claim against them and the grounds upon which it rests, as required by FRCP 8(a)(2).

In the Plaintiff's Supplemental Brief, Plaintiff argues that he should not be required to amend the FAC because he has alleged sufficient facts. In practice, "a complaint...must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Twombly*, 550 U.S. at 562, 127 S.Ct. 1955. Without knowing the legal basis of the claim, the Court cannot assess whether Plaintiff has alleged sufficient factual allegations respecting all material elements necessary to sustain recovery. Additionally, under CUVTA, Plaintiff has not alleged sufficient factual allegations against Scott Psy.D. The Court will dismiss this claim with leave to amend.

In the Debtor's Supplemental Brief, Debtor argues that, for purposes of a fraudulent transfer, the payment of a dividend cannot be the basis of a transfer for no consideration. Debtor is incorrect. There is case law supporting the assertion that a dividend payment, in certain circumstances, can be avoided as a fraudulent conveyance. *See In re TC Liquidations LLC*, 463 B.R. 257, 278 (Bankr. E.D.N.Y. 2011) (distribution of dividends to shareholders of S corporation for payment of the shareholders tax obligations were avoided as fraudulent conveyances under 11 U.S.C. § 548(a)(1)(A)).

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."

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... **Kenneth C. Scott**

Chapter 13

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 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.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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)

In the thirteenth cause of action, Plaintiff makes two separate statements for his claim 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. Plaintiff claims that he has suffered economic damages in the amount of back pay he should have received had he been paid all wages earned in a timely manner, plus interest thereon. The second 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. Zerín*, 53 Cal. App. 4th 445, 451 (Ct. App. 1997). Under California law the elements of conversion are plaintiff's ownership or right to

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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). Regarding his first statement, in support of his position, Plaintiff cites *Voris v. Lampert*, 7 Cal. 5th 1141, 446 P.3d 284 (2019), *reh'g denied* (Oct. 23, 2019). In *Voris*, the plaintiff worked with the defendant to launch three startup companies, partly in return for a promise of later payment of wages. After a falling out, the plaintiff was fired, and he was never paid the promised compensation. The plaintiff sued the three companies, invoking breach of contract and statutory remedies for the nonpayment of wages, and won. The plaintiff was unable to collect on his judgments and sought to hold the defendant personally liable for the unpaid wages based on conversion. The *Voris* court held that conversion was not an appropriate remedy.

In *Voris*, the California Supreme Court stated in relevant part:

Voris argues, the nonpayment of wages should be treated as a conversion of property, not as a failure to satisfy a " 'mere contractual right of payment.' " (*Sanowicz, supra*, 234 Cal.App.4th at p. 1041, 184 Cal.Rptr.3d 517.) But to accept this argument would require us to indulge a similar fiction: namely, that once Voris provided the promised services, certain identifiable monies in his employers' accounts became Voris's personal property, and by failing to turn them over at the agreed-upon time, his employers converted Voris's property to their own use.

Voris contends that there is precedent for this view. . . Voris directs our attention to the Court of Appeal's decision in *Department of Industrial Relations v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 64 Cal.Rptr.2d 457 (*UI Video Stores*). There, in a brief two-paragraph discussion, the court approved a conversion action brought by the Division of Labor Standards Enforcement (DLSE) of the Department of Industrial Relations. DLSE had sued Blockbuster on behalf of Blockbuster employees to recover money that was unlawfully deducted from their paychecks to pay for uniforms, in violation of the applicable wage order. The parties settled, and as part

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

of the settlement agreement Blockbuster mailed individual checks to the employees in the amount of the wrongful deductions. But a number of checks were returned as undelivered, and DLSE ordered Blockbuster to deposit those checks in California's unpaid wage fund. When Blockbuster refused, DLSE filed a second complaint, alleging that Blockbuster's refusal amounted to an unlawful conversion of the checks to its own use. The Court of Appeal reversed a grant of summary judgment in the defendant's favor, apparently accepting DLSE's argument that it had the right to immediate possession of the checks, in its capacity as an agent of the state and trustee for the employees. (*Id.* at pp. 1094–1096, 64 Cal.Rptr.2d 457.)

Although *UI Video Stores* involved a conversion action *related to* wrongfully withheld wages, it did not concern a conversion claim *for* the nonpayment of wages. The act of conversion that the court recognized in *UI Video Stores* was the defendant's misappropriation of certain checks that it had cut and mailed to employees as part of the settlement agreement—checks that at least arguably became the property of the employees at that time. The defendant's failure to pay wages in the first instance was not remedied through a conversion claim, but rather through DLSE's enforcement action under the Labor Code. Whether the employees could have sustained a conversion action for the unpaid uniform reimbursements themselves is a matter that was not at issue in *UI Video Stores*, and which the court did not address.

For reasons already explained, the nature of the underlying wage claim in *UI Video Stores*, like the nature of the wage claim in this case, is not one that fits easily with traditional understandings of the conversion tort. Unlike the cases involving failure to turn over commissions, for example, which were earmarked for a specific person before being misappropriated and absorbed into another's coffers, a claim for unpaid wages simply seeks the satisfaction of a monetary claim against the employer, without regard to the provenance of the monies at issue. In this way, a claim for unpaid

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

wages resembles other actions for a particular amount of money owed in exchange for contractual performance—a type of claim that has long been understood to sound in contract, rather than as the tort of conversion.

Voris, 7 Cal. 5th at 1153–56. The *Voris* court went on to state in a footnote:

We do not suggest that any and all claims related to wages necessarily fall outside the bounds of the law of conversion, merely because they relate to wages. The label of monies as "wages" or "commissions" or "fees"—or any other form of compensation for that matter—is not determinative, provided that the claim otherwise satisfies the elements of the conversion tort. (Cf. dis. opn., *post*, 7 Cal.5th at p. 1163, 250 Cal.Rptr.3d at pp. 797-798, 446 P.3d at pp. 299-300.) Take, for instance, an employer that pays wages but then removes the money from an employee's account, or that diverts withheld amounts from their intended purposes; that employer may well have committed conversion. (Cf. *U.S. v. Whiting* (7th Cir. 2006) 471 F.3d 792 [employer committed criminal conversion under federal statute by holding money deducted from employees' paychecks in the company's general operating account instead of delivering it to the employees' 401(k) plans or paying the employees' health insurance premiums; once employees had been paid, the deductions belonged to the employees and no longer belonged to the employer].) But absent a similar scenario, the ordinary failure to pay wages does not give rise to conversion.

Voris, 7 Cal. 5th at 1156, n.11.

Here, some of Plaintiff's allegations, *i.e.*, deductions for general overhead expenses, are analogous to the claims in *UI Video Stores*. However, some of Plaintiff's allegations, *i.e.*, deductions for payroll taxes, are analogous to the claims in *U.S. v. Whiting*, 471 F.3d 792 (7th Cir. 2006), where the employer committed conversion by diverting withheld amount from their intended purpose, rather than the underlying wage claim in *UI Video Stores*, where the employer deducted monies from the employees' paychecks for uniforms.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

Plaintiff alleges that Defendants committed conversion by diverting withheld amounts from their intended purpose. Specifically, Plaintiff alleges that MPPI and/or Debtor deducted monies from his paycheck for payroll taxes, which should have been paid to the taxing authorities, but MPPI or Debtor failed to do so, *i.e.*, MPPI and/or Debtor converted the monies to their own use rather than paying the monies to the taxing authorities. The court in *Voris* specifically stated that in circumstances like the one Plaintiff is alleging here, there may be a claim for conversion. If the allegations in the FAC are true, as the Court must accept at this stage, Plaintiff has alleged sufficient allegations to state a claim for relief that is plausible on its face.

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. However, pursuant to FRCP 8(d)(2), if a party makes alternative statements, the pleading is sufficient if any one of them is sufficient. Because Plaintiff's first statement of the claim is sufficient, the Court will not dismiss this claim.

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)

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,

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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 file 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)

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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' 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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

(emphasis added). "The UCL statutory standing requirements differ from standing requirements in federal court." *Freeman v. ABC Legal Servs., Inc.*, 877 F. Supp. 2d 919, 923–24 (N.D. Cal. 2012). Under California law, "[t]o 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, in federal court, a plaintiff must also meet the requirements for standing under Article III to pursue injunctive relief under the UCL. *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.*

"Even if [the UCL] permits a plaintiff to pursue injunctive relief in California state courts . . . even though he or she currently suffers no individualized injury as a result of a defendant's conduct, 'a plaintiff whose cause of action [under the UCL] is perfectly viable in state court under state law may nonetheless be foreclosed from litigating the same cause of action in federal court, if he cannot demonstrate the requisite injury' to establish Article III standing." *Id.* (quoting *Lee v. Am. Nat'l Ins. Co.*, 260 F.3d 997, 1001–02 (9th Cir. 2001)).

In *Hangarter*, a plaintiff insured brought suit against her insurer and its parent company for discontinuing total disability benefits. One of the plaintiff's claims was for injunctive relief under the UCL. The appellate court concluded that the plaintiff lacked Article III standing to seek injunctive relief against the defendants for violation of the UCL, because the plaintiff currently had no contractual relationship with the defendants, and therefore, was not threatened personally by their future conduct.

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

Several courts have applied these standards in the context of wage and hour disputes, and have concluded that a former employee lacks standing to seek prospective injunctive relief because a former employee cannot show a real or immediate threat of irreparable injury by the former employer's employment practices. *See, e.g., Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 864–65 (9th Cir. 2017); *Davis v. Farmers Ins. Exch.*, 245 Cal. App. 4th 1302, 1326–27, 200 Cal. Rptr. 3d 315, 335 (2016), *as modified on denial of reh'g* (Apr. 21, 2016); *Oyarzo v. Tuolumne Fire Dist.*, No. 1:11-CV-01271-SAB, 2014 WL 37247, at *3 (E.D. Cal. Jan. 6, 2014), *aff'd in part, vacated in part, remanded sub nom. on other grounds Oyarzo v. Turner*, 641 F. App'x 700 (9th Cir. 2015); *Milligan v. Am. Airlines, Inc.*, 327 F. App'x 694 (9th Cir. 2009) ("Milligan is not an American employee. She therefore cannot show that she faces a 'real or immediate threat of irreparable injury' by American's employment practices. The fact that Milligan brought a class-action claim does not alter this analysis."); *Richards v. Ernst & Young LLP*, C08–4988 JF (HRL), 2010 WL 682314 (N.D. Cal. Feb. 24, 2010) (finding the plaintiff "lacks 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.").

However, there is some case law that suggests that "[a] former employee currently seeking to be reinstated or rehired may have standing to seek injunctive relief against a former employer." *Bayer*, 861 F.3d at 865; *see also Pitre v. Wal-Mart Stores, Inc.*, No. SACV171281DOCDFMX, 2017 WL 11093619, at *5 (C.D. Cal. Nov. 8, 2017). Here, Plaintiff is a former employee of MPPI, but Plaintiff has requested an order reinstating his employment with Defendants. As such, Plaintiff may have Article III standing to pursue injunctive relief under the UCL.

Nevertheless, "injunctive relief [under the UCL] is available to prevent threatened injury and is not a remedy designed to right completed wrongs." *Madrid v. Perot Sys. Corp.*, 130 Cal. App. 4th 440, 464–65, 30 Cal. Rptr. 3d 210, 228 (2005). "It should neither serve as punishment for past acts, nor be exercised in the absence of any evidence establishing the reasonable probability the acts will be repeated in the

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott
future." *Id.*

Chapter 13

Here, Plaintiff's requests for injunctive relief appear to be remedies designed to right Defendants' alleged wrongs. All Plaintiff's requests address Defendants' conduct in the past in order to collect his purported unpaid wages, not Defendants' conduct in the future to prevent unfair employment practices as required by the UCL. Plaintiff has not alleged that any conduct he requests the Court enjoin is likely to be repeated in the future. Accordingly, 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) and 226(e) 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 he filed a complaint with the California Board of Psychology against

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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

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

Wednesday, April 8, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #26.00** 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; 11/13/19; 2/5/20; 2/26/20; 3/4/20;
3/18/20; 4/1/20;

Docket 8

Tentative Ruling:

- NONE LISTED -

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, April 8, 2020

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**

Thursday, April 9, 2020

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); 12/12/19;
3/5/20; 3/26/20(stip)

Docket 114

Tentative Ruling:

Having reviewed the *Examiner's Statement of Investigation* [doc. 249], the Court cannot confirm any chapter 11 plan of reorganization because the debtor has not properly disclosed his interest in CRN, LLC in his schedules and in his approved disclosure statement [doc. 113]. Moreover, the debtor has not provided the chapter 11 examiner with requested documents regarding that entity.

In addition to the debtor's disclosure statement containing inadequate information about the debtor's interest in CRN, LLC, for the purpose of soliciting acceptances and rejections of the plan, without a credible valuation of the debtor's interest in CRN, LLC, e.g., by the chapter 11 examiner, or subject to review by the chapter 11 examiner, the Court will not be able to conclude that confirmation of a chapter 11 plan satisfies 11 U.S.C. § 1129(a)(7)(A)(ii).

Party Information

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

Thursday, April 9, 2020

Hearing Room 301

1:00 PM

CONT... Christopher Sabin Nassif

Chapter 11

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes
Roksana D. Moradi

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

Thursday, April 9, 2020

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);
12/12/19; 1/23/20; 3/26/20(stip)

Docket 1

Tentative Ruling:

Ruling from January 23, 2020

Based on, among other things, the debtor's receipts and expenses as identified in his monthly operating reports, pursuant to 11 U.S.C. §§ 105(a) and 1104(c)(1), the Court may order the appointment of a chapter 11 examiner to investigate the debtor's income and monthly expenditures from January 1, 2018 forward and whether the debtor's 2018 tax return was properly prepared.

At the prior status conference on December 12, 2019, the debtor's counsel represented that the debtor filed his 2018 personal tax return and that she would file it with the Court within a few days. On January 22, 2020, the debtor's counsel filed that tax return with the Court. That tax return indicates that the debtor prepared that tax return himself, without the assistance of an accountant.

The debtor's 2018 tax return apparently does not correspond with the debtor's monthly operating reports from 2018. Based on the debtor's monthly operating reports from 2018, during that year, the debtor deposited \$175,758.83 into the debtor in possession bank account. In contrast, the debtor's 2018 tax return indicates that his gross income for 2018 was \$30,445.00.

At the prior status conference, the debtor's counsel represented that Unlimited Financial Services provides bookkeeping services for the debtor's production company. The Court ordered the debtor to file a declaration regarding his production company and why the debtor is paying services for the company, an alleged separate entity, from estate funds. The Court also ordered the debtor to file his company's 2018

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

Thursday, April 9, 2020

Hearing Room 301

1:00 PM

CONT... Christopher Sabin Nassif Chapter 11

tax return. As of January 22, 2020, the debtor has not filed his company's tax return or a declaration.

The debtor's monthly operating reports for 2019 indicate that the debtor was paying Unlimited Financial Services \$1,577.00 each month, without Court approval or Unlimited Financial Services having being employed as an estate professional.

Tentative Ruling from 12/12/19

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, April 9, 2020

Hearing Room 301

1:00 PM

1:17-13142 Amir Elosseini

Chapter 11

#3.00 Debtor's first amended disclosure statement hearing

Docket 188

Tentative Ruling:

The debtor did not file and serve notice of the hearing on the adequacy of the debtor's disclosure statement. Accordingly, the Court will continue this hearing to **June 4, 2020 at 1:00 p.m. No later than April 16, 2020**, the debtor must file and serve notice of the continued hearing on all creditors, the chapter 11 trustee and the United States Trustee.

Appearances on April 9, 2020 are excused.

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, April 9, 2020

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, 1/24/19; 3/14/19; 4/25/19;
5/16/19; 8/8/19; 11/14/19; 2/6/20

Docket 1

Tentative Ruling:

Pursuant to the ruling at the prior chapter 11 case status conference held on February 6, 2020, the debtor was to file an updated status report by March 26, 2020. The debtor has not timely done so.

In the debtor's amended disclosure statement [doc. 188], the debtor indicates that he is receiving income in the amount of \$5,000 per month plus commission of 25% of gross revenues from new patient treatment from Beverly Hills Cancer Center. The debtor indicates that he has deposited this income into the debtor's "corporate account." That account is not reflected in the debtor's monthly operating reports.

As property of the estate, that income must be deposited into a debtor in possession account. To reflect this income, the debtor must file amended monthly operating reports.

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, April 9, 2020

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#5.00 Confirmation hearing re: second amended chapter 11 plan
fr. 12/5/19/ 1/23/20; 3/5/20; 3/19/20(stip)

Docket 124

Tentative Ruling:

Confirm Second Amended Chapter 11 Plan dated September 13, 2019 [doc. 124], *subject to granting the motion to approve compromise filed by the debtor* [doc. 179]. No later than **September 24, 2020**, 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 8, 2020 at 1:00 p.m.**

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

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, April 9, 2020

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#6.00 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; 12/5/19; 1/23/20; 3/5/20; 3/19/20(stip)

Docket 1

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, April 9, 2020

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#7.00 Status conference re: chapter 11 case

fr. 11/21/19;

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on July 9, 2020**, to assess if the debtors timely file their chapter 11 plan and disclosure statement. No later than **June 25, 2020**, the debtors must file and serve a status report, supported by evidence, updating the Court on the status of their case.

Appearances on April 9, 2020 are excused.

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**

Thursday, April 9, 2020

Hearing Room 301

1:00 PM

1:19-11902 John Christian Lukes

Chapter 11

#8.00 U.S. Trustee's Motion under 11 U.S.C. §1112(b) to dismiss or convert case

Docket 109

***** VACATED *** REASON: Withdrawal of motion filed 3/26/20
[Dkt.119]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Christian Lukes

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, April 9, 2020

Hearing Room 301

1:00 PM

1:19-12216 Cheryl Placencia

Chapter 11

#9.00 Status conference re: chapter 11 case

fr. 11/7/19; 11/21/19

Docket 1

***** VACATED *** REASON: Case dismissed.**

Tentative Ruling:

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, April 9, 2020

Hearing Room 301

1:00 PM

1:20-10661 20743 Big Rock LLC

Chapter 7

#9.10 Order to Show Cause Re: Dismissal

Docket 7

Tentative Ruling:

The Court will dismiss this case. The debtor has not filed a petition and otherwise appeared with counsel as required by LBR 9011-2(a).

The Court will prepare the order.

Party Information

Debtor(s):

20743 Big Rock LLC

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Thursday, April 9, 2020

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#9.20 Motion of Mr. Tortilla, Inc. to Approve Settlement with
Diana's Mexican Food Products, Inc.

Docket 179

Tentative Ruling:

Grant.

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

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, April 9, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

**#10.00 Debtors Objection to Claim of Terry Family Restaurant Corp.
[Proof of Claim No. 23]**

Docket 235

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, April 9, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

**#11.00 Debtors Objection to Claim of Alok Rastogi and Hemil Shah
[Proof of Claim No. 21]**

Docket 236

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, April 9, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

**#12.00 Debtors Objection to Claim of The Fang Group, LLC
[Proof of Claim No. 9]**

Docket 237

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

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

Thursday, April 9, 2020

Hearing Room 301

2:00 PM

1:19-11696 Peter M. Seltzer

Chapter 7

**#13.00 Trustee's Application for Authority to Employ Real Estate Broker
Coldwell Banker Residential Brokerage**

Docket 117

Tentative Ruling:

Grant.

On February 27, 2020 the chapter 7 trustee (the "Trustee") filed an application to employ a real estate broker (the "Application") [doc. 117]. On March 12, 2020, the debtor filed a response to the Application (the "Response") [doc. 132]. In the Response, the debtor argues: (A) a sale of the property will generate more money if the smoke and fire damages on the property is repaired; (B) prepetition, the debtor had hired a realtor and the debtor believes this realtor should handle any sale of the property; (C) there is no reason for the urgency of the sale; (D) the debtor wants to make sure that the property sells for enough to generate proceeds for the debtor to find a new residence; and (E) the debtor disputes the validity of the claim filed by Darren Kessler against the estate. The debtor also notes that he lacks representation.

Regarding the debtor's argument that his prepetition realtor should handle the proposed sale, the debtor has not provided any legal authority that would compel this Court to select the debtor's realtor instead of the Trustee's chosen professional. *See In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 889-90 (Bankr. D. Alaska 2018) (holding that "the trustee's business judgment is to be given great judicial deference" when assessing issues related to sale of estate property) (internal quotation omitted).

With respect to the debtor's concern regarding a lack of representation, the Court entered an order requiring the debtor's counsel to file a properly noticed motion to withdraw prior to terminating his representation of the debtor [doc. 142]. In opposition to the motion to withdraw, the debtor may raise any concerns regarding potential prejudice from counsel's withdrawal.

The remaining arguments made by the debtor are not relevant to approval of the Application. If and when the Trustee files a motion to sell the property, the debtor

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

Thursday, April 9, 2020

Hearing Room 301

2:00 PM

CONT... Peter M. Seltzer

Chapter 7

may address pertinent issues to the Court's approval of any such sale.

The Court will approve the Application.

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

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Kathleen C Hipps

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan

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

Thursday, April 9, 2020

Hearing Room 301

2:00 PM

1:19-11696 Peter M. Seltzer

Chapter 7

#14.00 Motion by Diane C. Weil, Chapter 7 Trustee, for Issuance of an Order to Show Cause Why Debtor Should Not Be Held in Contempt for Violation of this Court's Conversion Order

fr. 3/26/20

Docket 119

Tentative Ruling:

In her reply [doc. 141], the chapter 7 trustee (the "Trustee") notes that the debtor has made some progress towards complying with the Court's order converting the debtor's case to a chapter 7 case (the "Conversion Order") [doc. 98], and that the debtor continues to provide the Trustee with documents. In addition, the Trustee is receiving pertinent documents from other sources. As such, the Trustee requests a continuance of this matter to permit the Trustee to evaluate whether the debtor comes into compliance with the Conversion Order.

The Court will continue this hearing to **2:00 p.m. on June 4, 2020**. No later than **May 21, 2020**, the Trustee must file a status report updating the Court on the debtor's compliance. If the Trustee believes the debtor has complied with the Conversion Order and/or there is no longer a basis for this motion, the Trustee should file a notice of withdrawal of this motion.

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson
Kathleen C Hipps

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan

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

Thursday, April 9, 2020

Hearing Room 301

2:00 PM

1:19-12646 Nora Los, LLC

Chapter 11

#15.00 Order to show cause why debtor's counsel should not be held in civil contempt for failure to comply with court order.

Docket 63

Tentative Ruling:

The Court will discharge the *Order to Show Cause Why Debtor's Counsel Should Not Be Held in Civil Contempt for Failure to Comply with Court Order* (the "OSC") [doc. 63]. On March 25, 2020, the debtor's counsel filed a declaration demonstrating that he disgorged \$5,283 to Fahd Soliman as required by the disgorgement order [doc. 56].

Appearances on April 9, 2020 are excused.

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, April 9, 2020

Hearing Room 301

2:00 PM

1:19-12647 Amir & Leila, LLC

Chapter 11

#16.00 Order to Show Cause Why Debtor's Counsel Should Not
Be Held In Civil Contempt For Failure To Comply With Court Order

Docket 63

Tentative Ruling:

The Court will discharge the *Order to Show Cause Why Debtor's Counsel Should Not Be Held in Civil Contempt for Failure to Comply with Court Order* (the "OSC") [doc. 63]. On March 25, 2020, the debtor's counsel filed a declaration demonstrating that he disgorged \$5,283 to Fahd Soliman as required by the disgorgement order [doc. 56].

Appearances on April 9, 2020 are excused.

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, April 9, 2020

Hearing Room 301

2:00 PM

1:19-12651 80 Flintlock Lane, LLC

Chapter 11

#17.00 Order To Show Cause Why Debtor's Counsel Should Not Be Held In Civil Contempt For Failure To Comply With Court Order

Docket 54

Tentative Ruling:

The Court will discharge the *Order to Show Cause Why Debtor's Counsel Should Not Be Held in Civil Contempt for Failure to Comply with Court Order* (the "OSC") [doc. 54]. On March 25, 2020, the debtor's counsel filed a declaration demonstrating that he disgorged \$5,783 to Anthony Nowaid as required by the disgorgement order [doc. 48].

Appearances on April 9, 2020 are excused.

Party Information

Debtor(s):

80 Flintlock Lane, LLC

Represented By
Matthew Abbasi

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

Tuesday, April 14, 2020

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 302 Calendar**

Tuesday, April 14, 2020

Hearing Room 302

9:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#13.01 Hearing re: H. Samuel Hopper's objection to confirmation of debtor's third amended chapter 13 plan

fr. 1/14/20; 3/10/20

Docket 166

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Movant(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, April 14, 2020

Hearing Room 301

10:30 AM

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

Chapter 13

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

Docket 75

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adan Ramon Rosales

Represented By
Donald E Iwuchuku

Joint Debtor(s):

Blanca Estela Rosales

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, April 14, 2020

Hearing Room 301

10:30 AM

1:16-13377 Nahed Talei

Chapter 13

#23.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 3/10/20

Docket 97

***** VACATED *** REASON: Motion of voluntary dismissal fld 04/07/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nahed Talei

Represented By
Michael F Frank

Trustee(s):

Elizabeth (SV) 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 14, 2020

Hearing Room 301

10:30 AM

1:17-10681 Sandra Murray

Chapter 13

#24.00 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. 2/11/20

Docket 44

***** VACATED *** REASON: Motion withdrawn 2/21/20 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Murray

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, April 14, 2020

Hearing Room 301

10:30 AM

1:17-10710 Nick A Avedissian and Hripsime Avedissian

Chapter 13

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

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nick A Avedissian

Represented By
Michael Jay Berger

Joint Debtor(s):

Hripsime Avedissian

Represented By
Michael Jay Berger

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, April 14, 2020

Hearing Room 301

10:30 AM

1:17-12163 Cynthia Ann Donahue

Chapter 13

#26.00 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 refunds

fr. 2/11/20

Docket 49

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, April 14, 2020

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

#27.00 Trustee's motion for order modifying the plan to lincrease the plan payment pursuant to 11 U.S.C. sec 1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. sec 1307(c)(6)

fr. 3/10/20

Docket 38

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, April 14, 2020

Hearing Room 301

10:30 AM

1:18-10798 Narkell Hobbs-James

Chapter 13

#28.00 Trustee's motion to dismiss case for failure to submit all tax returns

fr. 12/10/19; 2/11/20; 3/10/20

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

Tuesday, April 14, 2020

Hearing Room 301

10:30 AM

1:18-11288 Neli Maria Negrea

Chapter 13

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

fr. 1/14/20; 3/10/20

Docket 89

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

Tuesday, April 14, 2020

Hearing Room 301

10:30 AM

1:18-12645 David D Miller

Chapter 13

#30.00 Trustee's Motion to dismiss case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax refunds

fr. 2/11/20

Docket 36

***** VACATED *** REASON: Motion withdrawn 2/12/20 - 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
Courtroom 301 Calendar**

Tuesday, April 14, 2020

Hearing Room 301

10:30 AM

1:18-12662 Brian Jeffrey Minor

Chapter 13

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

fr. 11/12/19; 1/14/20; 3/10/20

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, April 14, 2020

Hearing Room 301

10:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

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

fr. 12/10/19; 2/11/20; 3/10/20

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, April 14, 2020

Hearing Room 301

10:30 AM

1:19-10874 Caridad Salas Hileman

Chapter 13

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

Docket 55

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Caridad Salas Hileman

Represented By
Ryan A. Stubbe

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, April 14, 2020

Hearing Room 301

10:30 AM

1:19-10039 Keith Tatsukawa

Chapter 13

#33.10 Motion to dismiss case for failure to make plan payments

Docket 58

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, April 14, 2020

Hearing Room 301

11:00 AM

1:14-11478 Romulo Gramata Bernardino and Ladinila Aspiras

Chapter 13

#34.00 Opposition to response to notice of final cure payment filed by creditor US Bank, NA et al., and request for complete accounting of loan and reconciliation of payments

fr. 3/10/20 (stip)

Docket 162

Tentative Ruling:

On March 6, 2020, the parties filed a stipulation to continue the original hearing on this matter, asserting that "[t]he parties have resolved most of the issues and are currently in discussion to completely resolve" this matter (the "Stipulation") [doc. 171]. On March 9, 2020, the Court entered an order approving the Stipulation and continuing the hearing from March 10, 2020 to April 14, 2020 [doc. 172].

The parties have not updated the Court about the status of their attempts to resolve this matter completely. Have the parties reached an agreement? If not, do the parties require additional time to resolve this matter? If the parties are unable to resolve this matter, the Court intends to set an evidentiary hearing.

Party Information

Debtor(s):

Romulo Gramata Bernardino

Represented By
Kevin T Simon

Joint Debtor(s):

Ladinila Aspiras Bernardino

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, April 14, 2020

Hearing Room 301

11:00 AM

1:14-15266 Nabiollah Morovati

Chapter 13

#35.00 Hearing on objection to closing of chapter 13 case

Docket 67

Tentative Ruling:

On November 21, 2014, Nabiollah Morovati ("Debtor") filed a voluntary chapter 13 petition. On January 17, 2020, the chapter 13 trustee filed a *Notice of Intent to File Trustee's Final Report and Account, Obtain Discharge of Debtor, and Close Case* (the "Notice of Intent") [doc. 64]. On January 28, 2020, in response to the Notice of Intent, Sukari Hayes ("Creditor") filed an *Objection to the Closing of the Case* (the "Objection") [doc. 65].

On February 26, 2020, the Court entered an order setting a hearing on the Objection (the "Order") [doc. 67]. Pursuant to the Order, Creditor was to serve the Objection on Debtor, Debtor's counsel and the chapter 13 trustee no later than March 9, 2020. Creditor did not file proof with the Court that she complied with the Order.

Consequently, the Court will continue this hearing to **May 5, 2020 at 11:00 a.m. No later than April 17, 2020**, Creditor must file and serve the Objection and notice of the continued hearing on Debtor, Debtor's counsel and the chapter 13 trustee. That notice must indicate that any written response to the Objection must be filed and served by May 1, 2020.

If Creditor does not timely file proof of service in compliance with this ruling, the Court may overrule the Objection at the May 5, 2020 continued hearing.

Party Information

Debtor(s):

Nabiollah Morovati

Represented By
Keith F Rouse

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

Tuesday, April 14, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati

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 14, 2020

Hearing Room 301

11:00 AM

1:15-13052 Richard Alan Borden and Deborah Yudin Borden

Chapter 13

#36.00 Motion by debtor via joint debtor for an order relieving debtor Richard Alan Border of the duty to: complete and file the personal financial management course and filing certificate of compliance and application for discharge

Docket 92

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):

Richard Alan Borden

Represented By
Mark J Markus

Joint Debtor(s):

Deborah Yudin Borden

Represented By
Mark J Markus

Trustee(s):

Elizabeth (SV) 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 14, 2020

Hearing Room 301

11:00 AM

1:15-14149 Norma Castellon

Chapter 13

#37.00 Amended motion to commence loan modification management program

Docket 93

Tentative Ruling:

The debtor has not filed a response to the lender's opposition to her motion. In its opposition, the lender contends that, in 2017, the parties entered into a postpetition loan modification agreement. In light of the recent loan modification, the lender states that there is a substantial likelihood that the debtor will not be able to obtain another loan modification.

The Court will continue this hearing to **11:00 a.m. on May 5, 2020**. No later than **April 21, 2020**, the debtor must file and serve a response to the lender's opposition and address: (A) whether the debtor defaulted on the modified loan; and (B) why the debtor seeks another loan modification.

Appearances on April 14, 2020 are excused.

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, April 14, 2020

Hearing Room 301

11:00 AM

1:18-12662 Brian Jeffrey Minor

Chapter 13

#38.00 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 51

Tentative Ruling:

On October 31, 2018, Brian Jeffrey Minor ("Debtor") filed a chapter 13 petition. On May 7, 2019, Debtor's chapter 13 plan was confirmed [doc. 41].

On October 15, 2019, the chapter 13 trustee filed a motion to dismiss Debtor's case for failure to make plan payments ("Motion to Dismiss") [doc. 44]. On March 10, 2020, the Court held a continued hearing on the Motion to Dismiss. Debtor's counsel did not appear.

On March 13, 2020, 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. 51], 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 March 31, 2020.

On March 13, 2020, Debtor's counsel timely filed his response ("Response") [doc. 54]. In his Response, Debtor's counsel states that did not attend the March 10, 2020 hearing because of an inadvertent calendaring error [Declaration of Eric Ridley, ¶ 3]. Debtor's counsel states that prior to the March 10, 2020 hearing, Debtor decided to file a notice of non-opposition to the Motion to Dismiss because he cannot afford to remain current on his chapter 13 plan payments. *Id.* at ¶ 4. However, before he filed the notice of non-opposition, Debtor's counsel's law partner suffered a medical emergency. *Id.* at ¶ 5. Because of this, Debtor's counsel had to cover his law partner's hearings, appearances and other obligations, along with his own. *Id.* During this time, Debtor's counsel miscalendared or deleted both the notice of non-opposition and the appearance. *Id.* at ¶ 6. Since the March 10, 2020 hearing, Debtor's counsel has filed the notice of non-opposition [doc. 53].

Based on the representations made in the Response and because Debtor's filed a

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

Tuesday, April 14, 2020

Hearing Room 301

11:00 AM

CONT... Brian Jeffrey Minor Chapter 13

notice of non-opposition to the Motion to Dismiss, the Court will discharge the OSC.

Appearances on April 14, 2020 are excused.

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, April 14, 2020

Hearing Room 301

11:00 AM

1:19-10039 Keith Tatsukawa

Chapter 13

#39.00 Motion to dismiss case for failure to make plan payments

Docket 58

***** VACATED *** REASON: Set in error. See 10:30 am calendar.**

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, April 14, 2020

Hearing Room 301

11:00 AM

1:19-10681 Jan Bidasha

Chapter 13

#40.00 Motion re: objection to claim number 4 by claimant Novastar

Docket 76

Tentative Ruling:

The Court will continue this hearing to **June 9, 2020 at 11:00 a.m.** to be held in connection with the debtor's chapter 13 plan confirmation hearing.

Appearances on April 14, 2020 are excused.

Party Information

Debtor(s):

Jan Bidasha

Represented By
Neil C Evans

Trustee(s):

Elizabeth (SV) 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 14, 2020

Hearing Room 301

11:00 AM

1:19-11097 Patrick Alfred Fugate, JR

Chapter 13

#41.00 Motion re: objection to claim number 8 by claimant Chris Vallee

Docket 42

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):

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, April 14, 2020

Hearing Room 301

11:00 AM

1:19-12852 Elvia Eloise Lazalde

Chapter 13

#42.00 Motion re: objection to proof of claim by California Credit Union
(Claim no.10-1)

Docket 25

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):

Elvia Eloise Lazalde

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 14, 2020

Hearing Room 301

11:00 AM

1:19-12852 Elvia Eloise Lazalde

Chapter 13

#43.00 Motion re: objection to proof of claim by California Credit Union
(Claim no. 11-1)

Docket 27

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):

Elvia Eloise Lazalde

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 14, 2020

Hearing Room 301

11:00 AM

1:20-10006 Tarsicio Chavez Bernal

Chapter 13

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

Docket 30

Tentative Ruling:

On March 16, 2020, the Court issued an *Order to Show Cause Why Debtor's Counsel Should Not be Sanctioned for Failure to Appear at Confirmation Hearing* (the "OSC") [doc. 30], on the grounds that the debtor's counsel failed to appear at the confirmation hearing as required by LBR 3015-1(d). The debtor's counsel was ordered to explain his failure to appear and file and serve on the debtor a written response to the OSC no later than March 31, 2020.

The debtor's counsel timely filed a response [doc. 33]. However, contrary to the OSC, the debtor's counsel did not serve his response on the debtor.

If the debtor's counsel or an appearance attorney appears at the continued confirmation hearing on April 14, 2020 at 9:30 a.m., then the Court may discharge the OSC. However, if no appearance is made at the continued confirmation hearing, the Court may impose sanctions on the debtor's counsel.

Party Information

Debtor(s):

Tarsicio Chavez Bernal

Represented By
Leroy Bishop Austin

Trustee(s):

Elizabeth (SV) 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 14, 2020

Hearing Room 301

11:00 AM

1:20-10321 Mehdi Haerikhorshid

Chapter 13

#45.00 Motion for order compelling attorney to file disclosure of compensation and disgorgement of fees pursuant to 11 U.S.C. § 329

Docket 13

***** VACATED *** REASON: Voluntary dismissal of motion filed 3/23/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mehdi Haerikhorshid

Represented By
Steven L. Kimmel

Trustee(s):

Elizabeth (SV) 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 14, 2020

Hearing Room 301

11:30 AM

1:20-10116 Ramiro Lopez Roman and Martha Roman

Chapter 13

#46.00 Confirmation hearing re amended chapter 13 plan

Docket 30

Tentative Ruling:

If the debtors are current on their chapter 13 plan and other required post-petition payments, the Court will continue this hearing to **May 5, 2020 at 11:30 a.m.**

On January 17, 2020, the debtors filed a chapter 13 plan that includes modification of the claim of Wells Fargo Bank, N.A. ("Wells Fargo"), secured by the debtors' 2014 Toyota Camry (the "Plan") [doc. 11]. On March 10, 2020, the Court held a hearing on confirmation of the Plan and continued the hearing to April 14, 2020.

On March 19, 2020, the debtors filed an amended chapter 13 plan (the "Amended Plan") [doc.30]. The treatment of Wells Fargo's claim is the same in the Plan and the Amended Plan.

On March 31, 2020, fourteen days prior to the continued hearing on the Amended Plan, Wells Fargo filed an objection (the "Objection") [doc. 31]. In the Objection, Wells Fargo objects to the debtors' valuation of the vehicle, the interest rate set forth in the Amended Plan and the proposed monthly adequate protection payments in the Amended Plan. In the Objection, Wells Fargo contends that the value of the vehicle is \$11,000. Wells Fargo based its valuation on the "clean retail" value listed in the N.A.D.A. Guide [doc. 31, Exh. C].

On April 7, 2020, the debtors filed a reply to the Objection (the "Reply") [doc. 33]. In the Reply, the debtors argue that the Objection is untimely, that Wells Fargo's valuation of the vehicle does not consider the \$1,000 in repairs that the vehicle allegedly needs and that the appropriate date for determining the prime interest rate is the date of confirmation.

The Court will overrule the debtors' argument that the Objection was untimely. The Objection was filed fourteen days prior to the continued hearing and after the debtors filed the Amended Plan.

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

Tuesday, April 14, 2020

Hearing Room 301

11:30 AM

CONT... **Ramiro Lopez Roman and Martha Roman**

Chapter 13

When determining the prime rate under *Till v. SCS Credit Corp.*, 541 U.S. 465, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (2004), the relevant date is the date of confirmation of the plan; not the petition date as Wells Fargo argues. See *In re Field*, No. 04-00028-TLM, 2005 WL 3148287, at *4-5 (Bankr. D. Idaho Oct. 17, 2005).

Regarding the vehicle's valuation, the debtors contend that Wells Fargo's valuation should be adjusted downward to account for the age and condition of the vehicle. For this proposition, the debtors cite to *In re Ayres*, No. 09-56695 ASW, 2010 WL 652825 (Bankr. N.D. Cal. Feb. 16, 2010). In relevant part the court in *Ayres* states:

Bankruptcy Code § 506(a)(2) provides:

If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

11 U.S.C. § 506(a)(2).

Although the language of Bankruptcy Code § 506(a)(2) appears to be quite specific, the Bankruptcy Code does not articulate a specific methodology to obtain the "price a retail merchant would charge for property of that kind considering the age and condition of the property." The Ninth Circuit has not yet established a method for retail valuation under § 506(a)(2), and courts outside the Ninth Circuit have adopted a variety of methods. The two cases from within the Ninth Circuit to address the issue have calculated retail value "by adjusting the Kelley Blue Book or N.A.D .A. [sic] Guide retail value for a like vehicle by a reasonable amount in light of the evidence presented regarding the condition of the vehicle and any other relevant factors." *In re Morales*, 387 B.R. 36, 45 (Bankr.C.D.Cal.2008); accord, *In re Guerra*, 2008 WL 3200831, *3 (Bankr.E.D.Cal.2008).

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

Tuesday, April 14, 2020

Hearing Room 301

11:30 AM

CONT...

Ramiro Lopez Roman and Martha Roman

Chapter 13

[M]any courts, including the two decisions from within the Ninth Circuit which have addressed this issue, have used the "retail" value of these guides as a starting point and then adjusted the values downward to account for the vehicles [sic] mileage and condition, or other applicable factors.

Ayres, 2010 WL 652825, at *5-6.

According to *Ayres*, the debtors are correct that Wells Fargo's valuation should be adjusted based on the vehicle's condition and age. Attached to the Reply is a declaration by the debtors stating that they have made inquiries regarding the cost to repair the vehicle and have found that it would cost \$1,000 and upward. The debtors did not include any other evidence regarding the cost of the repairs. It appears that Wells Fargo has not yet had an opportunity to inspect the vehicle, in order to evaluate its current condition.

Accordingly, if the debtors are current on their chapter 13 plan and other required post-petition payments, the Court will continue this hearing to **May 5, 2020 at 11:30 a.m.** to allow time for Wells Fargo to inspect the vehicle. **By April 28, 2020**, based on the standard set forth in *Ayres*, both parties must file evidence of the vehicle's retail value.

Party Information

Debtor(s):

Ramiro Lopez Roman

Represented By
Marcus G Tiggs

Joint Debtor(s):

Martha Roman

Represented By
Marcus G Tiggs

Trustee(s):

Elizabeth (SV) 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 15, 2020

Hearing Room 301

9:30 AM

1:15-12563 Reza Fateh Manesh

Chapter 7

#1.00 Motion for relief from stay [AN]

REZA POUR...[LA SUPERIOR COURT, COUNTY OF LOS ANGELES]
VS
DEBTOR

fr. 3/18/20

Docket 159

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On July 30, 2015, Reza Fateh Manesh ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee").

A. Relevant Prepetition Events

On May 11, 1995, almost 25 years ago, Reza Pour obtained a judgment against Debtor in the amount of \$50,000 (the "1995 Judgment"). Declaration of James S. Uyeda ("Uyeda Declaration") [doc. 165], ¶ 2, Exhibit 1. Mr. Pour has twice renewed the 1995 Judgment, once in 2005 (the "2005 Renewal of Judgment") and once in 2014 (the "2014 Renewal of Judgment"). Uyeda Declaration, ¶¶ 31, 33, Exhibits 16, 18. On June 30, 1995, Mr. Pour recorded an abstract of judgment against all of Debtor's real property located in the County of Los Angeles and, on April 19, 2006, recorded an amended Abstract of Judgment. Uyeda Declaration, ¶ 3. Since its entry, Mr. Pour has attempted to collect on the 1995 Judgment. Uyeda Declaration, ¶¶ 2, 4.

In 1998, Hossein Fatehmanesh, Debtor's brother, purchased real property located at 14520 Delano Street, Van Nuys, CA 91411 (the "Delano Property"). [FN1]. After years of transfers of the Delano Property among Debtor, Mr. Fatehmanesh and Shahla Tehrani Broomand (Debtor's wife), the parties ended up in state court over a dispute

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

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT...

Reza Fateh Manesh

Chapter 7

related to the Delano Property (the "Fatehmanesh Litigation"). The Fatehmanesh Litigation resulted in a settlement agreement through which any interest Mr. Fatehmanesh had in the Delano Property terminated and title to the Delano Property was deemed to be held by Debtor and Ms. Broomand.

In 2014, Mr. Pour discovered that Debtor had used Ms. Broomand and several aliases to hold title to various real properties. Uyeda Declaration, ¶ 5. On September 9, 2014, Mr. Pour filed a complaint against Debtor and Ms. Broomand requesting a declaratory judgment that Debtor was the sole owner of the Delano Property. On September 3, 2014, days before Mr. Pour filed his complaint, Ms. Broomand executed a quitclaim deed purporting to transfer 79.4% of the Delano Property to Mr. Fatehmanesh (the "2014 Quitclaim Deed"). The parties did not immediately record the 2014 Quitclaim Deed.

On March 19, 2015, the state court entered a default judgment against Debtor and Ms. Broomand (the "Resulting Trust Judgment"), holding that, as of April 19, 2006 (when Mr. Pour recorded an Amended Abstract of Judgment against the Delano Property), Ms. Broomand held title to the Delano Property as trustee of a resulting trust for the benefit of Debtor and had no valid right, title or interest in the Delano Property. The state court also held that Debtor was the equitable owner of the Delano Property and, as a result, the Delano Property was subject to Mr. Pour's judgment lien.

Subsequently, Debtor and Ms. Broomand filed three motions to set aside the Resulting Trust Judgment. Uyeda Declaration, ¶ 9. They argued, among other things, that they had not been properly served with the complaint. *Id.* Debtor also filed a motion to quash a writ of execution obtained by Mr. Pour, arguing that the writ of execution was not properly served on Debtor. Uyeda Declaration, ¶ 15, Exhibit 9. Debtor and Ms. Broomand also repeatedly filed declarations stating they were not married. Uyeda Declaration, ¶¶ 10-13. The state court denied all three of the motions to set aside the Resulting Trust Judgment. Uyeda Declaration, ¶ 14. On July 21, 2015, eight days before the state court denied the last of the motions to set aside the Resulting Trust Judgment, the 2014 Quitclaim Deed was recorded.

B. Debtor's Bankruptcy Filing and the Turnover Litigation

On July 30, 2015, Debtor filed his chapter 7 petition. Throughout the course of his

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

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT... Reza Fateh Manesh

Chapter 7

bankruptcy case, Debtor filed multiple schedules and statements, signed under penalty of perjury, with conflicting statements about ownership of the Delano Property:

Date	Docs.	Statements
July 30, 2015	14, 16, 26, 29	<ul style="list-style-type: none"> • Stated that he does not have an interest in the Delano Property and that Ms. Broomand has a 20% separate property interest in the Delano Property. • Stated that Ms. Broomand owes the debt secured by the Delano Property. • Stated that Debtor does not receive any income, but that Ms. Broomand receives rental income. • Contrary to statements made before the state court, stated that he is married to Ms. Broomand.
October 30, 2015	48, 49	<ul style="list-style-type: none"> • Stated that he does not have any secured creditors and omitted any mention of rental income from his schedules and statements.
November 19, 2015 [FN2]	66, 68, 69, 70	<ul style="list-style-type: none"> • Stated that he owns the Delano Property in fee simple. • Identified secured debts against the Delano Property and did not indicate that Ms. Broomand is the party liable for these debts. • Stated that he receives monthly rental income from the Delano Property, not Ms. Broomand.
July 20, 2016	121	<ul style="list-style-type: none"> • Stated that he does not have any ownership interest in the Delano Property.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT...

Reza Fateh Manesh

Chapter 7

C. The Revocation of Debtor's Discharge

On February 23, 2016, the U.S. Trustee filed a complaint against Debtor requesting revocation of Debtor's discharge on the basis that Debtor concealed his ownership interest in the Delano Property and refused to turn over postpetition funds generated from the Delano Property to the Trustee [1:16-ap-01020-VK, doc. 1]. On May 31, 2016, the U.S. Trustee and Debtor entered into a stipulation to revoke Debtor's discharge [1:16-ap-01020-VK, doc. 6]. On June 2, 2016, the Court entered an order revoking Debtor's discharge [1:16-ap-01020-VK, doc. 8].

D. The Adversary Proceeding against Mr. Fatehmanesh

At the same time the Trustee requested turnover from Debtor, the Trustee filed a complaint against Mr. Fatehmanesh requesting turnover of the Delano Property and the \$15,000 from Mr. Fatehmanesh (the "Fatehmanesh Adversary") [1:15-ap-01237-VK]. Mr. Fatehmanesh insisted the estate did not have an interest in the Delano Property. On November 29, 2016, the Court held trial on the matter, taking testimony from Mr. Fatehmanesh, Debtor and the Trustee. On January 11, 2017, the Court issued a ruling in the Fatehmanesh Adversary [1:15-ap-01237-VK, doc. 35], holding that, as of the petition date, Debtor was the equitable owner of the Delano Property in accordance with the Resulting Trust Judgment. As such, the Court held that Mr. Fatehmanesh was required to turn over the Delano Property and the \$15,000, both of which were property of the estate, to the Trustee. On January 26, 2017, the Court entered judgment in favor of the Trustee (the "Turnover Judgment") [1:15-ap-01237-VK, doc. 38].

Mr. Fatehmanesh appealed the Turnover Judgment. On February 6, 2018, the Bankruptcy Appellate Panel of the Ninth Circuit affirmed the Turnover Judgment. Mr. Fatehmanesh appealed this affirmance to the Ninth Circuit Court of Appeals. On August 8, 2019, the Ninth Circuit Court of Appeals affirmed the Turnover Judgment. On August 22, 2019, Mr. Fatehmanesh filed a petition for rehearing en banc. On September 23, 2019, the Ninth Circuit Court of Appeals entered an order denying the petition for a rehearing en banc.

E. Debtor's Actions against Mr. Pour

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT...

Reza Fateh Manesh

Chapter 7

On August 12, 2016, Debtor filed a state court complaint against Mr. Pour, alleging that Mr. Pour did not properly serve the 2005 Renewal of Judgment on Debtor and that Debtor already had satisfied the 1995 Judgment. Uyeda Declaration, ¶ 34, Exhibit 19. On September 20, 2016, Mr. Pour filed a demurrer in state court, on the basis that Debtor did not have standing to bring the action because of Debtor's bankruptcy case. On March 20, 2017, the state court entered an order and judgment of dismissal (the "Dismissal Judgment"), sustaining Mr. Pour's demurrer without leave to amend. Uyeda Declaration, ¶ 34, Exhibit 20.

On August 30, 2017, Debtor filed a similar complaint against Mr. Pour before this Court (the "Pour Complaint") [1:17-ap-01080-VK, doc. 1]. Debtor again alleged he was not properly served with the 2005 Renewal of Judgment. Debtor also alleged that Mr. Pour fraudulently obtained renewals of the 1995 Judgment because Debtor had already satisfied the 1995 Judgment by paying Mr. Pour \$9,000 pursuant to an alleged settlement agreement. In the prayer for relief, Debtor sought to invalidate Mr. Pour's renewals of judgment, thereby invalidating Mr. Pour's secured claim against the estate.

On September 21, 2017, Mr. Pour filed a motion to dismiss the Pour Complaint (the "Motion to Dismiss") [1:17-ap-01080-VK, doc. 4]. On December 6, 2017, the Court held a hearing on the Motion to Dismiss. At that time, the Court issued a ruling (the "Pour Ruling") [1:17-ap-01080-VK, doc. 13], holding that: (A) this Court does not have the power to set aside the state court judgments in favor of Mr. Pour; and (B) Debtor does not have standing to pursue his claims against Mr. Pour because the claims are property of the estate. On December 21, 2017, the Court entered an order dismissing the Pour Complaint [1:17-ap-01080-VK, doc. 16].

On October 23, 2019, Debtor filed a motion for relief from the automatic stay (the "First RFS Motion") [doc. 133], asking the Court for relief to pursue his claims against Mr. Pour in state court. Once again, Debtor asserted that he had satisfied the 1995 Judgment and that Mr. Pour did not properly serve the 2005 Renewal of Judgment on Debtor. On November 13, 2019, the Court held a hearing on the First RFS Motion. At that time, the Court ruled that it would deny the First RFS Motion to provide the Trustee an opportunity to evaluate whether or not to object to Mr. Pour's claim [doc. 140]. On November 20, 2019, the Court entered an order denying the First RFS Motion [doc. 142].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT... Reza Fateh Manesh

Chapter 7

F. The Trustee's Sale of the Delano Property

On January 14, 2020, the Trustee filed a motion to sell the Delano Property (the "Motion to Sell") [doc. 144]. Mr. Fatehmanesh and Ms. Broomand opposed the Motion to Sell [doc. 148], arguing that they are the owners of the Delano Property, disputing Mr. Pour's claim against the estate and requesting a stay of the sale so Mr. Fatehmanesh and Ms. Broomand may file a quiet title action in state court. In a draft quiet title complaint attached to their opposition, Mr. Fatehmanesh and Ms. Broomand alleged, among other things, that Debtor and Ms. Broomand were not served with Mr. Pour's renewals of the 1995 Judgment.

On February 6, 2020, the Court held a hearing on the Motion to Sell. At that time, the Court issued a ruling granting the Motion to Sell (the "Sale Ruling") [doc. 152] and holding that: (A) Mr. Fatehmanesh and Ms. Broomand are barred from relitigating issues related to ownership of the Delano Property because the Court already had ruled that the Delano Property is property of the estate in connection with the Fatehmanesh Adversary; and (B) Mr. Fatehmanesh and Ms. Broomand could not challenge the judgment lien held by Mr. Pour because the state court held, in connection with the Resulting Trust Judgment, that Mr. Pour's judgment lien attached to the Delano Property. The Court also noted that "the issues of ownership of the Delano Property and the validity of Mr. Pour's judgment lien have been thoroughly litigated, and there are final judgments disposing of these issues." Sale Ruling, p. 5. The Court warned the parties that it "will not delay administration of this estate based on resurrected arguments already adjudicated by multiple courts." *Id.* On February 10, 2020, the Court entered an order approving the sale of the Delano Property [doc. 156]. Mr. Pour's judgment lien attached to the proceeds of the sale of the Delano Property. Those proceeds are currently held by the Trustee.

G. Debtor's Motion to Pursue Claims against Mr. Pour in State Court

On February 24, 2020, Debtor filed another motion for relief from the automatic stay (the "Motion") [doc. 160]. In the Motion, Debtor again argues, as he alleged in the Pour Complaint, that: (A) Mr. Pour fraudulently obtained renewals of the 1995 Judgment because Debtor already had satisfied an alleged settlement agreement between the parties by paying Mr. Pour \$9,000; and (B) Debtor was not properly

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT...

Reza Fateh Manesh

Chapter 7

served with the 2005 Renewal of Judgment (together, the "Claims"). Debtor requests relief from the automatic stay to pursue the Claims in state court and/or requests abandonment of the Claims by the estate. Debtor also requests that the Trustee hold the sale proceeds until the state court adjudicates the Claims.

On March 4, 2020, Schyna Pour, trustee of the Reza Jalali Pour Trust (the "Trust"), filed an opposition to the Motion (the "Pour Opposition") [doc. 165]. The Trust is the assignee of Mr. Pour's claim against the estate. In the Pour Opposition, the Trust argues that: (A) the state court already dismissed the Claims when it sustained a demurrer by Mr. Pour in March 2017; (B) the Claims are time barred; (C) Debtor does not dispute that the 2014 Renewal of Judgment was properly served, such that his allegations regarding the 2005 Renewal of Judgment are irrelevant; and (D) Debtor should be estopped from continuing to litigate against Mr. Pour.

The Trustee also filed a response to the Motion (the "Trustee Response") [doc. 168]. In the Trustee Response, the Trustee states that he has reviewed Mr. Pour's claim and requested additional documentation during the course of his investigation of Mr. Pour's claim. Declaration of David Seror ("Seror Declaration"), ¶ 7. Based on that review, the Trustee believes Mr. Pour has an allowed claim against the estate. Seror Declaration, ¶ 8. The Trustee also believes that Debtor's current claims against Mr. Pour do not have any value, and that the cost of administering the asset would significantly outweigh any benefit to the estate. Seror Declaration, ¶ 11. Finally, given the age of this case, the Trustee expressed concern over the delays in administration and believes the litigation Debtor hopes to pursue is "facially frivolous." Seror Declaration, ¶ 12.

On March 10, 2020, Debtor filed a reply to the Pour Opposition and the Trustee Response [doc. 169], asserting that: (A) the Trust did not properly serve Debtor with the Pour Opposition at Debtor's current address; (B) Debtor has a proper claim against Mr. Pour based on improper service of the 2005 Renewal of Judgment; and (C) the Trustee has refused to investigate whether Mr. Pour's claim is fraudulent. Debtor also includes a lengthy discussion about alleged perjury by Mr. Pour in declarations filed before the state court; these assertions are neither supported by a declaration by Debtor nor relevant to the Motion before the Court.

II. ANALYSIS

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT... Reza Fateh Manesh

Chapter 7

As a preliminary matter, Debtor contends he was not properly served with the Pour Opposition. Debtor did not file a declaration under penalty of perjury to support his statements regarding service, and it is evident from the background above that Debtor and Ms. Broomand have a long history of using alleged service defects as both a sword and a shield. Nevertheless, the Pour Opposition was properly served on Debtor at the address listed on the docket. If Debtor would like to be served at a different address, Debtor must file and serve a Notice of Change of Address. Until then, Debtor will be served at the address listed on the docket. In any event, it appears Debtor timely reviewed the Pour Opposition because Debtor timely filed a reply.

A. Abandonment of Debtor's Claim against Mr. Pour

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, by a preponderance of the evidence, that "(1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate." *In re Viet Vu*, 245 B.R. 644, 647, 650 (B.A.P. 9th Cir. 2000). "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, the Claims are both burdensome to the estate and of inconsequential value and inconsequential benefit to the estate. As noted by both the Trustee and the Trust, Debtor's challenge of the 2005 Renewal of Judgment is time barred. Pursuant to California Code of Civil Procedure § 683.170(b), "[n]ot later than 30 days after service of the notice of renewal pursuant to Section 683.160, the judgment debtor may apply by noticed motion under this section for an order of the court vacating the renewal of the judgment." (emphasis added). Debtor does not dispute that he was served with the 2014 Renewal of Judgment, but did not move to vacate the 2014

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT...

Reza Fateh Manesh

Chapter 7

Renewal of Judgment within 30 days of being served with it. As such, the Claims are unlikely to succeed and, as a result, unlikely to provide value to the estate. [FN3].

Moreover, even if the Claims are not time barred, pursuing the Claims would be burdensome to the estate. Assuming Debtor will be able to show that he paid \$9,000 to Mr. Pour, Debtor also will have to prove that Mr. Pour agreed to a \$9,000 settlement of his much larger claim. This will require a significant amount of discovery and, because it appears Debtor is relying on witness declarations instead of documentary evidence, a trial.

In any such trial, the Court believes Debtor and his witnesses will face serious credibility issues. As outlined above, Debtor has spent 25 years evading payment of Mr. Pour's claim. During that time, Debtor, Ms. Broomand and/or Mr. Fatehmanesh:

- (A) transferred the Delano Property multiple times among themselves;
- (B) secretly executed the 2014 Quitclaim Deed transferring Ms. Broomand's interest in the Delano Property just before Mr. Pour filed a complaint against Ms. Broomand and Debtor;
- (C) filed three different motions before the state court to vacate the Resulting Trust Judgment, all of which were denied;
- (D) recorded the 2014 Quitclaim Deed while their third request to vacate the Resulting Trust Judgment was pending;
- (E) falsely represented to the state court that Debtor and Ms. Broomand were not married;
- (F) filed multiple amended schedules and statements and repeatedly changing the sworn statements about Debtor's interest in the Delano Property;
- (G) refused to turn over the Delano Property and money generated therefrom to the estate, leading to the revocation of Debtor's discharge;
- (H) continued to assert that Debtor did not have an interest in the Delano Property

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT...

Reza Fateh Manesh

Chapter 7

during the Fatehmanesh Adversary, including by pursuing multiple appeals of the Turnover Judgment and increasing administrative costs of the estate;

- (I) filing a state court complaint against Mr. Pour despite having no standing to pursue such an action, which the state court dismissed;
- (J) filing a near identical complaint before this Court that was dismissed;
- (K) opposing the Motion to Sell and requesting leave to file a quiet title complaint in state court to again dispute Debtor's interest in the Delano Property; and
- (L) filing two motions for relief from the automatic stay to continue asserting that Mr. Pour fraudulently obtained renewals of the 1995 Judgment.

None of these attempts have been successful. Both the state court and this Court have repeatedly ruled against Debtor, Ms. Broomand and Mr. Fatehmanesh with respect to their arguments related to the Delano Property or the validity of Mr. Pour's secured claim. In fact, Debtor's actions led to the revocation of his discharge. Rather than benefit the estate, these parties' efforts have significantly increased the administrative fees and costs to be borne by the estate.

The Trustee Response and the Pour Opposition, as well as the Court's own record, demonstrate that Debtor's claim does not have any value and would be incredibly burdensome to the estate. As such, the Court will order the Trustee to abandon the Claims.

Because the Court is granting Debtor's request for abandonment, upon entry of the order on this Motion, the Claims will no longer be property of the estate. Thus, Debtor will not need relief from the automatic stay to proceed in state court. The Court notes that, at this time, it appears Debtor may recover surplus proceeds from the estate. Debtor's intentions to continue litigating against Mr. Pour will cost Debtor and **potentially expose Debtor to sanctions, and/or claims against Debtor of malicious prosecution, in state court.** Nevertheless, once the Claims no longer are property of the estate, the Court cannot preclude Debtor from pursuing the Claims (subject to potential sanctions, and/ or claims against Debtor of malicious prosecution) in state court.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT... Reza Fateh Manesh

Chapter 7

B. Distribution to Creditors

Pursuant to 11 U.S.C. § 502(a), "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest... objects." Under 11 U.S.C. § 704(a), the chapter 7 trustee is required to, among other things, "collect and reduce to money the property of the estate... and close such estate *as expeditiously* as is compatible with the best interests of parties in interest" and "if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper." 11 U.S.C. § 704(a)(1), (5) (emphasis added); *see also In re Hyman*, 123 B.R. 342, 347 (B.A.P. 9th Cir. 1991).

In addition, under Federal Rule of Bankruptcy Procedure 3009, "[i]n a chapter 7 case, dividends to creditors shall be paid as promptly as practicable." *See also In re Cink*, 2007 WL 601585, at *3 (Bankr. D.S.D. Feb. 21, 2007) ("[Creditors are] entitled to full payment of their allowed claims to the extent estate funds are available. Anything less is prejudicial to creditors. The statutory duty to insure an appropriate distribution lies with [the trustee].").

Debtor requests that the Court order the Trustee to stay any distribution to Mr. Pour while Debtor pursues the Claims in state court. Debtor has provided neither legal authority nor a compelling reason to persuade the Court to enter such an order.

Mr. Pour has an allowed secured claim against the estate. The Trustee, pursuant to his statutory duties, testified that he assessed Mr. Pour's claim and concluded that the claim is entitled to distribution from the proceeds of the sale of the Delano Property. In addition to the Trustee's evaluation of Mr. Pour's claim, Debtor attempted to invalidate Mr. Pour's secured claim by filing the Pour Complaint. The Court already ruled that it does not have the power to modify the state court's judgments or renewals of judgments which, as of the petition date, remained valid and enforceable. In addition, Ms. Broomand and Mr. Fatehmanesh have argued that Mr. Pour does not have a valid judgment lien against the Delano Property. However, in the Resulting Trust Judgment, the state court held that Mr. Pour's judgment lien attached to the Delano Property. Again, as of the petition date, the Resulting Trust Judgment and Mr. Pour's judgment lien remained valid and enforceable.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT...

Reza Fateh Manesh

Chapter 7

For the reasons stated above, it is unlikely that Debtor will be able to prove otherwise in state court. Given that Mr. Pour has an allowed secured claim against the estate, he is entitled to distribution from the estate. The Trustee has a statutory duty to make distributions in accordance with the Bankruptcy Code to creditors holding allowed claims. And, pursuant to the authorities above, the Trustee must strive to *expeditiously* make such distributions.

Debtor, Ms. Broomand and Mr. Fatehmanesh have delayed administration of this estate since the petition date, i.e. almost five years. The Court will not aid Debtor's efforts to further interfere with the Trustee's statutory duty to close this estate expeditiously, particularly where Debtor is unlikely to prevail on his arguments in state court. The Trustee may proceed with distribution to creditors as planned; the Court will not require that the Trustee hold the funds owed to Mr. Pour or further delay any distribution to creditors pending adjudication of the Claims.

III. CONCLUSION

The Court will order the abandonment of the Claims. The Court will not delay distribution of funds held by the Trustee to creditors, including to Mr. Pour or to his assignee, the Trust.

The Trustee must submit an order within seven (7) days.

FOOTNOTES

1. Uncited portions of this background facts are taken from the Court's ruling after trial in *Seror v. Fatehmanesh* [1:15-ap-01237-VK, doc. 35] and the Court's ruling dismissing the adversary proceeding in *Manesh v. Pour* [1:17-ap-01080-VK, doc. 13].
2. Debtor amended his schedules approximately a week and a half after the Trustee filed a motion for Debtor to turn over the Delano Property and the funds generated therefrom (the "Turnover Motion") [doc. 54]. Debtor also filed a motion to convert his case to a chapter 13 [doc. 65], which was denied.
3. In the Pour Opposition, the Trust argues that Debtor is barred from proceeding

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT...

Reza Fateh Manesh

Chapter 7

with the Claims because the state court previously sustained a demurrer on the Claims. However, the demurrer was based on an argument that Debtor did not have standing because the Claims belonged to the estate. Because the Court is abandoning the Claims, that argument no longer prevents Debtor from pursuing the Claims.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

The Trust's Evidentiary Objections to the Declaration of Reza Fateh Manesh

paras. 2, 4, 7: overrule

paras. 6, 8: sustain

para. 3: sustain as to "*He asked me to get together with Reza Pour to solve the problem with the judgment Mr. Pour had against me. I said I was able to pay the \$5,000 but could not pay the \$50,000 judgment so the only real option was bankruptcy;*" overrule as to the rest

para. 5: sustain as to "*On the date of mailing on the proof of service, August 2, 2005, Mr. Pour knew both my work address at F&F Auto Electric and my home address;*" overrule as to the rest

exs. 1, 2: sustain

The Trust's Evidentiary Objections to the Declaration of Reza Moradi

para. 2: overrule

The Trust's Evidentiary Objections to the Declaration of Tigran Gekchian

para. 2: overrule

The Trust's Evidentiary Objections to the Declaration of Hossein Fatehmanesh

para. 3: sustain as to "*I told him no I had not yet received any money.;*" overrule as to the rest

paras. 4, 5: sustain

The Trust's Evidentiary Objections to the Declaration of Vardan Toumassian

para. 4: sustain

The Trust's Evidentiary Objections to the Declaration of Golanreza Mouri

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT... Reza Fateh Manesh
para. 4: sustain

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, April 15, 2020

Hearing Room 301

9:30 AM

1:18-12689 Mary Ann Irvine

Chapter 13

#2.00 Motion for relief from stay [RP]

CITIBANK, NA
VS
DEBTOR

fr. 11/6/19; 11/6/19; 12/4/19; 1/8/20; 2/26/20

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, April 15, 2020

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, April 15, 2020

Hearing Room 301

9:30 AM

1:20-10049 Gene Zell

Chapter 7

#3.00 Motion for relief from stay [UD]

JEANNE KARAS
VS
DEBTOR

Docket 13

*** VACATED *** REASON: voluntary dismissal filed on 4/7/20 doc# 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gene Zell

Represented By
Michael Jay Berger

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 15, 2020

Hearing Room 301

9:30 AM

1:20-10498 Elena V. Tchoujtchenko

Chapter 7

#4.00 Motion for relief from stay [UD]

BARNESTON PROPERTY INVESTMENTS LLC
VS
DEBTOR

Docket 13

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Elena V. Tchoujtchenko

Represented By
Matthew D. Resnik

Movant(s):

Barneston Property Investments

Represented By
Joseph Cruz

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT... Elena V. Tchoujtchenko

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

1:20-10394 Vadim Konviser

Chapter 7

#5.00 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):

Vadim Konviser

Represented By
Blake J Lindemann

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, April 15, 2020

Hearing Room 301

9:30 AM

CONT... Vadim Konviser

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, April 15, 2020

Hearing Room 301

9:30 AM

1:20-10424 Lynn Baltasar Lim

Chapter 7

#6.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

Docket 9

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a 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 15, 2020

Hearing Room 301

9:30 AM

CONT... Lynn Baltasar Lim

Chapter 7

Debtor(s):

Lynn Baltasar Lim

Pro Se

Movant(s):

Nationstar Mortgage LLC

Represented By
Darlene C Vigil

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

1:20-10542 4122 Vantage LLC

Chapter 7

#7.00 Motion for relief from stay [RP]

HMC ASSETS, LLC
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 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):

4122 Vantage LLC

Represented By
Julie A Duncan

Movant(s):

HMC Assets, LLC, solely as

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

CONT... 4122 Vantage LLC

Chapter 7

Amelia B. Valenzuela

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

9:30 AM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#8.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Docket 82

*** VACATED *** REASON: Order ent. continuing hrg to 5/6/20 at 9:30
a.m. - jc

Tentative Ruling:

- NONE LISTED -

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

Movant(s):

Wells Fargo Bank, N.A., as Trustee ,

Represented By
Kelly M Kaufmann

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

1:30 PM

1:19-12198 Boris Pinchevskiy

Chapter 7

Adv#: 1:19-01138 Plattner et al v. Pinchevskiy

#9.00 Status conference re: complaint to determine dischargeability of debt

fr. 2/5/20;

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on May 6, 2020**, to be held with the hearing on the plaintiff's motion for default judgment [doc. 12].

Appearances on April 15, 2020 are excused.

Party Information

Debtor(s):

Boris Pinchevskiy

Represented By
Elena Steers

Defendant(s):

Boris Pinchevskiy

Pro Se

Plaintiff(s):

Gabriella Plattner

Represented By
Gabriella G Plattner
Holly Roark

Allen Letgolts

Represented By
Gabriella G Plattner
Holly Roark

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01019 Miller, Chapter 7 Trustee v. Ride on Autos. a California corporation

#10.00 Status conference re: Complaint for 1. breach of oral contract;
2. money had and received; 3. open book account; 4. accounting;
5. declaratory relief; 6. turnover of property of the estate; 7. avoidance
of postpetition transfers; 8. recovery of postpetition transfers; and
9. preservation of postpetition transfers

Order appr stip to continue entered

Docket 1

***** VACATED *** REASON: Order approving stip entered 3/18/20.
Hearing continued to 4/29/20 at 2:30 pm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Ride on Autos. a California

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Cathy Ta

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, April 15, 2020

Hearing Room 301

1:30 PM

1:18-10469 Porter Ranch Integrative Medical Clinic, P.C.

Chapter 7

Adv#: 1:20-01021 Zamora, Chapter 7 Trustee v. Keh et al

- #11.00** Status conference re: complaint by Nancy J. Zamora
(1) Avoidance of Actual Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A); Cal. Civ. Code § 3439.04];
(2) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(B); Cal. Civ. Code § 3439.05];
(3) Avoidance of Postpetition Transfers [11 U.S.C. § 549];
(4) Recovery of Avoided Transfers [11 U.S.C. § 550];
(5) Preservation of Avoided Transfers [11 U.S.C. § 551]; and
(6) Disallowance of Claims [11 U.S.C. §502]

Docket 1

***** VACATED *** REASON: Continued to 5/27/20 per order (19-13078 doc # 23)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Porter Ranch Integrative Medical

Represented By
Michael D Luppi

Defendant(s):

Dr. Gerie Keh

Pro Se

Dr. Bennett Annan

Pro Se

Plaintiff(s):

Nancy J. Zamora, Chapter 7 Trustee

Represented By
Noreen A Madoyan

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan
Monserrat Morales

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

1:30 PM

CONT... Porter Ranch Integrative Medical Clinic, P.C.

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

1:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#12.00 Pretrial conference re: first amended 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

fr. 6/12/19; 8/7/19

Docket 7

***** VACATED *** REASON: Order entered 12/10/19 continuing hearing to 6/17/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Susan Biddle

Pro Se

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

1:30 PM

1:19-10494 Gerald Martin Nussbaum

Chapter 7

Adv#: 1:19-01052 Morehead v. Nussbaum et al

- #13.00** Pretrial 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

fr. 1/22/20(stip)

Docket 1

***** VACATED *** REASON: Order dismissing case entered 2/11/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerald Martin Nussbaum

Represented By
Neil R Hedtke

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mor et al

- #14.00** Status conference re: amended complaint for:
1. Fraud and Intentional Deceit;
 2. Breach of the Covenant of Good Faith and Fair Dealing;
 3. Agency by Estoppel; and
 4. Financial Elder Abuse

fr. 10/2/19; 11/6/19(stip); 12/4/19; 03/18/20(stip)

Stip to continue filed 3/16/20

Docket 25

***** VACATED *** REASON: Order approving stip entered. Hearing continued to 5/27/20 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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

2:30 PM

1:19-11703 Jose Luis Gonzalez Romero

Chapter 7

Adv#: 1:19-01121 Rossi et al v. Gonzalez Romero et al

#15.00 Motion for default judgment under LBR 7055-1

Docket 12

Tentative Ruling:

In the motion [doc. 12], movants did not attach a declaration or other evidence attesting to the allegations in the complaint. As such, movants have not proven the merits of their claim. In addition, because the amount claimed is unliquidated, pursuant to Local Bankruptcy Rule 7055-1(b)(2), movants must submit evidence of the amount of damages by declaration and notice must be given to the defaulting parties of the amount requested.

Accordingly, the Court will continue this hearing to **May 20, 2020 at 2:30 p.m.** to allow movants to supplement the motion with additional evidence. **By April 29, 2020**, movants must file and serve an amended motion and notice of the continued hearing on the defaulting parties.

Appearances on April 15, 2020 are excused.

Party Information

Debtor(s):

Jose Luis Gonzalez Romero

Represented By
Francis Guilardi

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

2:30 PM

CONT... Jose Luis Gonzalez Romero

Chapter 7

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, April 15, 2020

Hearing Room 301

2:30 PM

1:19-11703 Jose Luis Gonzalez Romero

Chapter 7

Adv#: 1:19-01121 Rossi et al v. Gonzalez Romero et al

#16.00 Status conference re: complaint for determination of dischargeability and objecting to debtor's discharge pursuant to § 523 and 727 of the bankruptcy code

fr. 12/11/19; 3/4/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on May 20, 2020**, to be held with the hearing on the plaintiffs' motion for default judgment [doc. 12].

Appearances on April 15, 2020 are excused.

Party Information

Debtor(s):

Jose Luis Gonzalez Romero

Represented By
Francis Guilardi

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 15, 2020

Hearing Room 301

2:30 PM

CONT... Jose Luis Gonzalez Romero

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

1:00 PM

1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan

Chapter 11

#1.00 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; 10/3/19

Docket 1

Tentative Ruling:

Continue to **1:00 p.m. on October 22, 2020**. On or before **October 8, 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 April 16, 2020 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, April 16, 2020

Hearing Room 301

1:00 PM

1:17-12969 Roger Ronald Steinbeck and Stannis Veronica Steinbeck

Chapter 11

#2.00 Post confirmation status conference

fr. 9/12/19; 10/3/19

Docket 1

Tentative Ruling:

Continue to **1:00 p.m. on December 17, 2020**. On or before **December 3, 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 April 16, 2020 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 16, 2020

Hearing Room 301

1:00 PM

1:20-10057 2300 Pisani, A Nevada Domestic LLC

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 2/20/20

Docket 1

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(4)(A) and (F), the Court will dismiss this case.

On January 10, 2020, 2300 Pisani, a Nevada Domestic LLC ("Debtor"), filed a voluntary chapter 11 petition. In its latest amended schedules [doc. 11], Debtor identified five secured creditors with liens against Debtor's primary asset, a duplex located at 2300 Pisani Place, Venice, California 90291 (the "Property"). Debtor indicated that it has no unsecured creditors.

On February 4, 2020, less than one month after filing its chapter 11 petition, Debtor filed a motion to sell the Property [doc. 21]. Through the Motion, Debtor sought approval of a private credit bid sale to the secured creditor with a third priority lien against the Property. Debtor did not engage in postpetition marketing of the Property and did not provide for overbidding in connection with the sale.

Center Street Lending Corporation ("Center Street"), the secured creditor with a first priority lien against the Property, opposed the sale. Debtor and Center Street disagree about the amount of Center Street's claim.

On April 2, 2020, the Court held a hearing on Debtor's motion to approve the sale. At that time, the Court noted that Debtor had failed to identify which prong of 11 U.S.C. § 363(f) allowed for a sale free and clear of liens against the Property. The Court also stated that Debtor would have to provide additional briefing regarding the amount of Center Street's claim and that the Court may set an evidentiary hearing on Debtor's request for a good faith determination under 11 U.S.C. § 363(m). As such, the Court continued the hearing.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

1:00 PM

CONT... 2300 Pisani, A Nevada Domestic LLC

Chapter 11

At the prior chapter 11 case status conference, the Court noted that Debtor had failed to file its January 2020 monthly operating report ("MOR"). To date, Debtor has neither filed the January 2020 MOR nor *any other MORs*; at this time, the February 2020 and March 2020 MORs are past due.

In light of the above, dismissal is warranted. Debtor has failed to comply with the requirements of being a chapter 11 debtor in possession, and Debtor appears to have filed this case in bad faith. Debtor does not have any unsecured creditors. Apparently, Debtor filed this case for the sole purpose of selling the Property for the benefit of one of its secured creditors. Debtor has not articulated why such a result could not be accomplished outside of bankruptcy, e.g., through a foreclosure sale.

Debtor has not set forth a compelling or legitimate reason for the Court to allow this case to continue in chapter 11. Further, having reviewed Debtor's schedules and statement of financial affairs, conversion of this case to a chapter 7 case would not serve to benefit any creditors. Consequently, the Court will dismiss this case.

The Court will prepare the Order.

Party Information

Debtor(s):

2300 Pisani, A Nevada Domestic

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 16, 2020

Hearing Room 301

2:00 PM

1:18-11620 Antoine R Chamoun

Chapter 7

#4.00 Motion to withdraw as counsel for debtor

fr. 3/26/20

Docket 63

***** VACATED *** REASON: Motion withdrawn 04/14/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

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**

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

1:18-11620 Antoine R Chamoun

Chapter 7

#4.10 Trustee's Application for Authority to Employ Real Estate Broker

Docket 65

Tentative Ruling:

On March 6, 2020, the debtor filed an opposition to the chapter 7 trustee's application to employ a real estate broker on the sole basis that the debtor has moved to convert his case to a chapter 13 case [doc. 74]. Given that the Court is denying the debtor's request to convert this case, the Court will approve this application.

The chapter 7 trustee must submit an 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
Jorge A Gaitan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

1:18-11620 Antoine R Chamoun

Chapter 7

#5.00 Debtor's motion to convert case from chapter 7 to 13.

Docket 72

Tentative Ruling:

Deny.

I. BACKGROUND

On June 26, 2018, Antoine R. Chamoun ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee").

In his petition, Debtor stated he lives at 16935 Blackhawk Street, Unit 9, Granada Hills, CA 91344 (the "Blackhawk Property"). In his amended schedule A/B [doc. 23], Debtor identified real property located at 1706 Empty Saddle Road, Simi Valley, CA 93063 (the "Empty Saddle Property"). Debtor valued the Empty Saddle Property at \$500,000. In his schedule D, Debtor indicated that the following deeds of trust encumber the Empty Saddle Property: (A) a deed of trust in favor of Bank of America in the amount of \$287,311; (B) a deed of trust in favor of Special Loan Servicing in the amount of \$46,123; and (C) a deed of trust in favor of Walid Chamoun ("Walid"), Debtor's brother, in the amount of \$333,434. Debtor also scheduled \$1,432.14 in taxes and \$421,054.52 in unsecured debt.

In his Statement of Financial Affairs ("SOFA"), Debtor stated that he is not married and referenced a prepetition dissolution action against his ex-wife, Patricia Chamoun ("Patricia"). In his schedule G, Debtor referenced a lease agreement with Patricia, indicating that Patricia rents the Empty Saddle Property from Debtor.

In an attachment to his schedule J [doc. 1], Debtor states that Patricia pays the mortgage "on the home" directly to lenders. Although Debtor swore under penalty of perjury that he lives at the Blackhawk Property, i.e., not with Patricia at the Empty Saddle Property, Debtor listed \$0 in expenses. In addition, in his amended schedule C, Debtor claimed a \$100,000 homestead exemption in the Empty Saddle Property,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

CONT... Antoine R Chamoun

Chapter 7

referring to the Empty Saddle Property as a "family residence."

Moreover, in his schedule I [doc. 1], Debtor stated that he receives \$1,118.48 in monthly income. However, in his SOFA, Debtor stated that he received no income from 2016 until the petition date, in June 2018.

On September 16, 2019, the Trustee filed a complaint against Walid and Patricia for avoidance of fraudulent transfers (the "Fraudulent Transfer Action") [1:19-ap-01105-VK, doc. 1]. In the complaint, the Trustee alleges that the deed of trust in favor of Walid is a fraudulent transfer because Debtor did not receive any value in return for the deed of trust. In addition, as to Patricia, the Trustee alleges—

In 2016, Debtor received the Empty Saddle Property, and liability on debts associated with the Empty Saddle Property, via a marital settlement agreement ("MSA"). Pursuant to the MSA, Debtor also received a significantly imbalanced share of the community property debts.

On August 1, 2016, Debtor leased the Empty Saddle Property to Patricia for a period of 10 years. Debtor only charged, as rent, the mortgage payment owed to Bank of America. The lease to Patricia fails to account for the fair market rental value of the Empty Saddle Property over the 10 year term covered by the lease.

On October 14, 2019, Debtor received his chapter 7 discharge [doc. 60]. In the meanwhile, the parties attempted to settle the Fraudulent Transfer Action through mediation. However, on February 10, 2020, the mediator filed a certificate regarding conclusion of mediation, noting that the parties did not settle [Fraudulent Transfer Action, doc. 14]. The Fraudulent Transfer Action remains pending.

On February 19, 2020, the Trustee filed an application to employ a real estate broker (the "Broker Application") [doc. 65]. On March 6, 2020, Debtor filed a motion to convert his case to a chapter 13 case (the "Motion") [doc. 72]. Debtor also filed an opposition to the Broker Application [doc. 74], on the basis that Debtor will be converting his case to a chapter 13 case. The Trustee opposes Debtor's request to convert his case [doc. 76].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

CONT... Antoine R Chamoun

Chapter 7

II. ANALYSIS

A. General Right to Convert Standard

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 § 706(a) if the debtor engages in bad faith conduct that would warrant dismissal or reconversion of a chapter 13 case.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

CONT... Antoine R Chamoun

Chapter 7

The Court also determined that there is 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 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.*

B. Whether Debtor is Eligible to be a Chapter 13 Debtor

The parties do not discuss the impact of Debtor’s receipt of a discharge on Debtor’s ability to convert this case. "[T]here is no absolute prohibition on converting a case from Chapter 7 to Chapter 13 post-discharge, but pre-closing; rather there is a § 1307(c) ‘for cause’ review.” *In re Santos*, 561 B.R. 825, 830 (Bankr. C.D. Cal. 2017). In *Santos*, the debtors received a chapter 7 discharge. *Id.*, at 826. After their discharge, the chapter 7 trustee moved to employ a broker and compel the debtors to turn over their real property. *Id.* The debtors then moved to convert their case to a chapter 13 case. *Id.*

In considering the conversion motion, the bankruptcy court first outlined permissible methods of filing a chapter 7 followed by a chapter 13 case—

In considering whether there are grounds for conversion “for cause,” (such as manipulation of Bankruptcy Code or abuse of process), the Court notes that two similar, and allowed, tactics have a fundamentally different impact on administration of the bankruptcy estate. Those situations are when a debtor files sequential bankruptcies (i.e. the filing of a Chapter 13 upon the closing of the Chapter 7 case), and when the Debtor attempts to file simultaneous bankruptcies (the filing of a Chapter 13 case while a Chapter 7 case is pending). The former is permissible and is commonly referred to as a Chapter 20 case. *See, e.g., In re Metz*, 67 B.R. 462, 465 (9th Cir. BAP 1986). The latter appears to be permissible in the Ninth Circuit upon a finding that the later filing occurred in good faith. *See In re Blendheim*, 803 F.3d 477, 500 (9th Cir. 2015).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

CONT... Antoine R Chamoun

Chapter 7

Id., at 829–30. The court distinguished between these permissible methods and the debtors’ request to convert their case, holding—

In this case, as opposed to *Blendheim*, allowing Debtors' proposed conversion would relieve Debtors of burdens (allowing the bankruptcy estate to be fully administered) tied to benefits (the bankruptcy discharge) that they have already received. To extend the Chapter 20 practice and the *Blendheim* holding to allow for conversion in this situation would be to create a loophole that could lead to abuse of the bankruptcy system. *See, e.g., In re Lesniak*, 208 B.R. 902, 906 (Bankr. N.D. Ill. 1997) (“[T]he Court finds that it would be an abuse of process to permit the Debtors to convert to Chapter 13 at this stage of their Chapter 7 case.”). If “a debtor converts to Chapter 13 after the Chapter 7 discharge, but before the estate property is liquidated, he has received all of the benefits of Chapter 7 without any of the burdens, because he regains his nonexempt property, and his debts have all been discharged.” *In re Rigales*, 290 B.R. 401, 407 (Bankr. D.N.M. 2003). Bankruptcy relief involves a “quid pro quo.” *See In re Jeffrey*, 176 B.R. 4, 6 (Bankr. D. Mass. 1994).

...

The Court... finds that cause would exist to convert or dismiss a Chapter 13 case that was converted to Chapter 13 post-discharge, prior to closing, *when administration of the Chapter 7 estate was still occurring*. Specifically, Debtors’ proposed conversion... would result in an abuse of process. Because *Marrama* allows the Court to deny conversion “for cause” under § 1307(c), the Debtors are ineligible to be debtors under Chapter 13 at time time.

Id., at 830-31 (emphasis added).

As in *Santos*, Debtor seeks to convert his case post-discharge while administration of his chapter 7 estate is still occurring. As such, allowing Debtor to convert to a chapter 13 case would result in Debtor obtaining the benefits of a discharge without the attendant burdens, i.e., administration of Debtor’s estate. Because such a result would

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

CONT...

Antoine R Chamoun

Chapter 7

amount to an abuse of process and lead to reconversion to a chapter 7 case under 11 U.S.C. § 1307(c), Debtor is not eligible to be a chapter 13 debtor at this time. [FN1].

C. Debtor's Bad Faith Conduct

In addition to Debtor's discharge preventing conversion of this case, the Court also may deny the Motion based on bad faith conduct by Debtor. Here, Debtor provided inconsistent information in his schedules and statements. In his petition, Debtor stated that he resides at the Blackhawk Property. However, Debtor claimed a homestead exemption in the Empty Saddle Property and, in his schedule J, swore under penalty of perjury that Debtor has \$0 in expenses, noting that Patricia pays the mortgage "on the home." Debtor provided no explanation regarding who pays the rent and other expenses for Debtor to reside at the Blackhawk Property. Moreover, although Debtor stated that he receives \$1,118.48 in monthly income, Debtor indicates in his SOFA that he has received \$0 in income from 2016 through 2018.

Aside from Debtor's inconsistent statements, Debtor seemingly moved to convert his case to frustrate the Trustee's efforts to liquidate the Empty Saddle Property. Debtor did not file the Motion until after the Trustee's unsuccessful mediation with Walid and Patricia and the Trustee's request to hire a broker. Further, the Trustee is pursuing the Fraudulent Transfer Action on the belief that the deed of trust in favor of Walid is meant to encumber the Empty Saddle Property to prevent liquidation of the Empty Saddle Property. Consequently, the Court also will deny the Motion on the basis that Debtor requests conversion of his case in bad faith.

III. CONCLUSION

The Court will deny the Motion.

The Trustee must submit an order within seven (7) days.

FOOTNOTES

1. The Trustee also argues that Debtor cannot satisfy 11 U.S.C. § 109(e) because his unsecured debts exceed the debt limit of \$419,275. In his latest-amended schedule E/F [doc. 23], Debtor scheduled a total of \$422,486.66 in unsecured

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

CONT...

Antoine R Chamoun

Chapter 7

debt. However, Debtor indicated that \$186,616.92 is either contingent or unliquidated. This leaves a total of \$235,869.74 in noncontingent, liquidated unsecured debt. Although there are some claims in the Claims Register that appear not to overlap with Debtor's schedules, those claims amount to \$24,174.86. In any event, because the Court is denying conversion on other grounds, Debtor's eligibility based on the debt limit of § 109(e) is not determinative.

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

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

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#6.00 Motion re: objection to claim number 11 by Claimant Kolkel, Inc.,
Christopher Kolson and Debra Kolson

Docket 220

*** VACATED *** REASON: Continued by Stip to 6/18/20 at 2:00 p.m. -
jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#7.00 Debtor's objection to claim of Poladov, LLC
[Proof of claim no. 6]

fr. 3/5/20

Docket 233

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):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

1:20-10026 Joseph Wanamaker

Chapter 7

#8.00 Motion to extend deadline to file a complaint to commence an adversary proceeding to object to the discharge of the debtor and to object to the discharge of individual debt of creditors The Affiliati Network, Inc. and Sanjay Palta under 11 U.S.C. sec 523 and 727

Docket 41

Tentative Ruling:

Deny as moot.

On March 23, 2020, the Chief Judge of the United States Bankruptcy Court, Central District of California, issued General Order 20-03 (the "General Order"), located on the Court's website at cacb.uscourts.gov/sites/cacb/files/documents/general-orders/GO%2020-03.pdf. In relevant part, the General Order provides—

The deadline set under Federal Rule of Bankruptcy Procedure 4004(a) for objections to the debtor's discharge shall be extended, and the 60 day time period set therein shall begin on the reset date for the meeting of creditors, provided that if the meeting is subsequently reset by the United States Trustee and/or order of the Court, such period will begin on the last date to which such meeting is reset;

The deadline set under Federal Rule of Bankruptcy Procedure 4007(c) for filing a complaint as to the dischargeability of certain debts under § 523(c) shall be extended, and the 60 day time period set therein shall begin on the reset date for the meeting of creditors, provided that if the meeting is subsequently reset by the United States Trustee and/or order of the Court, such period will begin on the last date to which such meeting is reset....

General Order, p. 2. In light of the General Order, the deadlines to object to a debtor's discharge and/or to request nondischargeability of a debt have automatically been reset and extended. As such, this motion is moot. Should movants request an

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 16, 2020

Hearing Room 301

2:00 PM

CONT... Joseph Wanamaker

Chapter 7

additional extension beyond these extended deadlines, movants may file another request for extension at that time.

The Court will prepare the order.

Party Information

Debtor(s):

Joseph Wanamaker

Represented By
Stephen M Goodman

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, April 21, 2020

Hearing Room 301

8:30 AM

1:19-12784 David Bergantino

Chapter 7

#1.00 Reaffirmation agreement between debtor and
BMW Bank of North America

fr. 3/17/20

Docket 10

***** VACATED *** REASON: Rescheduled for 6/16/20 at 8:30 AM. (see
doc # 16)**

Party Information

Debtor(s):

David Bergantino

Represented By
Steven A Wolvek

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, April 21, 2020

Hearing Room 301

8:30 AM

1:19-12985 Alexander Rey Onodera Resurreccion

Chapter 7

#2.00 Reaffirmation agreement between debtor and Fifth Third Bank

Docket 10

***** VACATED *** REASON: Rescheduled for 6/16/2020 at 8:30 AM. (see doc # 16)**

Party Information

Debtor(s):

Alexander Rey Onodera

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**

Tuesday, April 21, 2020

Hearing Room 301

8:30 AM

1:20-10013 Sylvia Ayala and Onorio Bernal Ayala

Chapter 7

#3.00 Reaffirmation agreement between debtor
and Logix Federal Credit Union

Docket 14

***** VACATED *** REASON: Rescheduled for 6/16/20 at 8:30 AM. (see
doc # 19)**

Party Information

Debtor(s):

Sylvia Ayala

Represented By
Leon Nazaretian

Joint Debtor(s):

Onorio Bernal Ayala

Represented By
Leon Nazaretian

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, April 21, 2020

Hearing Room 301

8:30 AM

1:20-10126 Carlos Rene Herrera

Chapter 7

#4.00 Reaffirmation agreement between debtor and Federal Home Loan Mortgage Corp.

Docket 16

***** VACATED *** REASON: Rescheduled for 6/16/20 at 8:30 AM. (see doc # 19)**

Party Information

Debtor(s):

Carlos Rene Herrera

Represented By
Francis Guilardi

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, April 21, 2020

Hearing Room 301

8:30 AM

1:20-10183 Julio C. Quequezana and Raquel Quequezana

Chapter 7

#5.00 Reaffirmation agreement between debtor and Capital One Auto Finance, a division of Capital One, N.A.

Docket 13

***** VACATED *** REASON: Rescheduled for 6/16/20 at 8:30 AM. (see doc # 16)**

Party Information

Debtor(s):

Julio C. Quequezana

Represented By
R Grace Rodriguez

Joint Debtor(s):

Raquel Quequezana

Represented By
R Grace Rodriguez

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, April 21, 2020

Hearing Room 301

8:30 AM

1:20-10196 Cassady L Dill

Chapter 7

#6.00 Reaffirmation agreement between debtor
and Toyota Motor Credit Corporation

Docket 17

***** VACATED *** REASON: Rescheduled to 6/16/20 at 8:30 a.m. - jc**

Party Information

Debtor(s):

Cassady L Dill

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, April 21, 2020

Hearing Room 301

8:30 AM

1:20-10238 Romeo Emilio Marmol Cortez and Cecilia Elvira Suarez

Chapter 7

#7.00 Reaffirmation agreement between debtor
and American Honda Finance Corporation

Docket 11

***** VACATED *** REASON: Rescheduled to 6/16/20 at 8:30 a.m. - jc**

Party Information

Debtor(s):

Romeo Emilio Marmol Cortez

Represented By
Michael H Colmenares

Joint Debtor(s):

Cecilia Elvira Suarez

Represented By
Michael H Colmenares

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, April 21, 2020

Hearing Room 301

8:30 AM

1:20-10261 Rohan Senarathne

Chapter 7

#8.00 Reaffirmation agreement between debtor and Toyota Motor Credit Corp

Docket 10

***** VACATED *** REASON: Rescheduled to 6/16/20 at 8:30 a.m. - jc**

Party Information

Debtor(s):

Rohan Senarathne

Represented By
Joy M Johnson

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, April 21, 2020

Hearing Room 301

8:30 AM

1:20-10264 Leslie Susette Morales

Chapter 7

#9.00 Reaffirmation agreement between debtor
and Toyota Motor Credit Corporation

Docket 17

***** VACATED *** REASON: Rescheduled to 6/16/20 at 8:30 a.m. - jc**

Party Information

Debtor(s):

Leslie Susette Morales

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, April 21, 2020

Hearing Room 301

8:30 AM

1:20-10622 Josef Astor

Chapter 7

#10.00 Reaffirmation agreement between debtor
and Toyota Motor Credit Corporation

Docket 10

***** VACATED *** REASON: Rescheduled to 6/16/20 at 8:30 a.m. - jc**

Party Information

Debtor(s):

Josef Astor

Represented By
Jeffrey J Hagen

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 22, 2020

Hearing Room 301

9:30 AM

1:20-10093 Robert Alderman and Noni Alderman

Chapter 7

#1.00 Motion for relief from stay [PP]

SIERRA CREDIT CORPORATION
VS
DEBTOR

Docket 47

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 Alderman

Represented By
Stephen L Burton

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 22, 2020

Hearing Room 301

9:30 AM

CONT... Robert Alderman and Noni Alderman

Chapter 7

Movant(s):

Sierra Credit Corporation

Represented By
Adam N Barasch

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 22, 2020

Hearing Room 301

9:30 AM

1:19-11471 Melissa Roberta Ramirez

Chapter 13

#2.00 Motion for relief from stay [RP]

ROYAL PACIFIC FUNDING CORP
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):

Melissa Roberta Ramirez

Represented By
Hasmik Jasmine Papian

Movant(s):

Royal Pacific Funding Corp

Represented By
Raymond Jereza

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 22, 2020

Hearing Room 301

9:30 AM

CONT... Melissa Roberta Ramirez

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 29, 2020

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; 11/13/19; 12/4/19; 2/5/20 (stip);

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, April 29, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#2.00 Motion for relief from stay [RP]

BAYVIEW LOAN SERVICING, LLC
VS
DEBTOR

fr: 1/8/20; 2/5/20; 3/4/20

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Hernandez

Represented By
Donald E Iwuchuku

Movant(s):

Bayview Loan Servicing, LLC., as

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, April 29, 2020

Hearing Room 301

9:30 AM

1:19-10874 Caridad Salas Hileman

Chapter 13

#3.00 Motion for relief from stay [RP]

Property: 291 South 16th Ave., Show Low AZ 85901

NATIONSTAR MORTGAGE LLC dba CHAMPION MORTGAGE COMPANY
VS
DEBTOR

fr. 3/18/20; 4/1/20

Stip for adequate protection filed 4/9/20

Docket 53

*** VACATED *** REASON: Order approving stip entered 4/13/20.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Caridad Salas Hileman

Represented By
Ryan A. Stubbe

Movant(s):

NATIONSTAR MORTGAGE LLC

Represented By
Arnold L Graff

Trustee(s):

Elizabeth (SV) 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 29, 2020

Hearing Room 301

9:30 AM

1:20-10319 Jose Ramon Cano

Chapter 13

#4.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

fr. 3/4/20

Docket 11

Tentative Ruling:

The Court having reviewed the debtor's declaration, filed on April 22, 2020 [doc. 25], the debtor having properly served the notice of the continued hearing on all creditors [doc. 14], no objection having been filed and the debtor being current on his chapter 13 plan payments, the Court will grant the motion.

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):

Jose Ramon Cano

Represented By
Donald E Iwuchuku

Movant(s):

Jose Ramon Cano

Represented By
Donald E Iwuchuku
Donald E Iwuchuku

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

9:30 AM

CONT... Jose Ramon Cano

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 29, 2020

Hearing Room 301

9:30 AM

1:19-12536 Keith Gonzalez

Chapter 7

#5.00 Motion for relief from stay [UD]

924 CARONDELET LLC
VS
DEBTOR

Docket 20

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to 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.

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 October 7, 2019. In his schedule G [doc. 1], the debtor did not indicate a leasehold interest in the subject real property. In his schedule E/F [doc. 1], the debtor did not list the movant as a creditor. The debtor also did not

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

9:30 AM

CONT...

Keith Gonzalez

Chapter 7

list the movant on his master mailing list [doc. 1]. Accordingly, the movant was not served with notice of the debtor's bankruptcy case.

On September 24, 2019, without knowledge of the debtor's chapter 7 case, the movant filed an unlawful detainer action against Hwa-Jeong Shin and Sung-Ill Ahn for possession of the subject real property [Declaration of Agop Gary Arakelian ("Arakelian Decl."), ¶ 2, Exh. C]. On October 9, 2019, the debtor and Amy Volker each filed a prejudgment claim and answer to the unlawful detainer complaint [Arakelian Decl., ¶ 3, Exh. D].

The unlawful detainer trial was set for December 24, 2019 [Arakelian Decl., ¶ 3]. However, on December 23, 2019, the movant was notified for the first time that Ms. Volker had filed a chapter 7 petition, initiating bankruptcy case 1:19-bk-12393-MT [Arakelian Decl., ¶ 4, Exh. E]. The unlawful detainer trial was continued to January 23, 2020, and then again to March 5, 2020 [Arakelian Decl., ¶ 4].

At the March 5, 2020 continued trial date, the movant was notified for the first time of the debtor's bankruptcy case. *Id.* at ¶ 6. By this time, the debtor had already received a discharge and his case had been closed [docs. 11 and 12]. Consequently, retroactive relief from the automatic stay is appropriate in this case.

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):

Keith Gonzalez

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

9:30 AM

CONT... Keith Gonzalez

Chapter 7

Movant(s):

924 Carondelet, LLC

Represented By
Agop G Arakelian

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 29, 2020

Hearing Room 301

9:30 AM

1:20-10226 Alejandro Cardenas and Veronica Cardenas

Chapter 7

#6.00 Motion for relief from stay [PP]

HONDA LEASE TRUST
VS
DEBTORS

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):

Alejandro Cardenas

Represented By
L. Tegan Rodkey

Joint Debtor(s):

Veronica Cardenas

Represented By
L. Tegan Rodkey

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

9:30 AM

CONT... Alejandro Cardenas and Veronica Cardenas

Chapter 7

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, April 29, 2020

Hearing Room 301

9:30 AM

1:20-10247 Stephen Douglas Benton and Melody Kelso Benton

Chapter 7

#7.00 Motion for relief from stay [PP]

HONDA LEASE TRUST
VS
DEBTOR

Docket 11

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Stephen Douglas Benton

Represented By
Leon D Bayer

Joint Debtor(s):

Melody Kelso Benton

Represented By
Leon D Bayer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

9:30 AM

CONT... Stephen Douglas Benton and Melody Kelso Benton

Chapter 7

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, April 29, 2020

Hearing Room 301

9:30 AM

1:20-10195 Andre Whitmore

Chapter 7

#8.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE
VS
DEBTOR

Docket 12

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, April 29, 2020

Hearing Room 301

9:30 AM

CONT... Andre Whitmore

Chapter 7

Party Information

Debtor(s):

Andre Whitmore

Pro Se

Movant(s):

Nationstar Mortgage LLC d/b/a Mr.

Represented By
Jennifer C Wong

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

9:30 AM

1:19-10874 Caridad Salas Hileman

Chapter 13

#9.00 Motion for relief from stay [RP]

HSBC BANK USA NA
VS
DEBTOR

Property: 14658 Haynes St., Van Nuys CA 91411

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 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Caridad Salas Hileman

Represented By
Ryan A. Stubbe

Movant(s):

HSBC BANK USA, NATIONAL

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

9:30 AM

CONT... Caridad Salas Hileman

Sean C Ferry

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 29, 2020

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

#10.00 Motion for judgment on the pleadings

fr. 12/11/19; 1/22/20; 2/26/20; 3/18/20(stip)

Docket 31

***** VACATED *** REASON: Stip entered continuing hearing to 6/10/20 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

Represented By

Dane W Exnowski

Nationstar Mortgage LLC, A

Represented By

Dane W Exnowski

Bank of America, N.A, a National

Represented By

Laura G Brys

Payam Khodadadi

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, April 29, 2020

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, April 29, 2020

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

- #11.00** 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; 12/4/19; 2/19/20; 3/18/20(stip)

Docket 1

***** VACATED *** REASON: Stip entered continuing hearing to 6/10/20 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

1:30 PM

CONT... Christopher Sabin Nassif
Robin Nassif

Represented By
Matthew D. Resnik

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

1:30 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

Adv#: 1:18-01113 VitaVet Labs, Inc. v. Gashtili

- #12.00** Status conference re first amended adversary complaint for non-dischargeability and objection to discharge pursuant to:
1. 11 U.S.C. sec 523 (a)(2)
 2. 11 U.S.C. sec 523 (a)(6)
 3. 11 U.S.C. sec 727 (a)(2)(A)

fr, 12/19/18; 9/18/19; 10/23/19; 1/22/20(stip); 3/4/20(stip)

Docket 4

Tentative Ruling:

How does the plaintiff intend to proceed with its claims under 11 U.S.C. §§ 523(a)(6) and 727(a)(2)(A)?

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, April 29, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01155 Goldman v. Mandalay Bay, LLC, A Nevada Limited Liability Comp

#13.00 Status Conference re: First Amended Complaint for:
(1) Avoidance of Voidable and Fraudulent Transfers; and
(2) Recovery of Avoided Transfers for the Benefit of
the Bankruptcy Estate

fr. 3/25/20(stip)

Docket 5

***** VACATED *** REASON: Stip ent. continuing hrg to 6/3/20 at 1:30
p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

Mandalay Bay, LLC, A Nevada

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

1:30 PM

1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:19-01009 Goldman v. Pavehzadeh et al

- #14.00** Pretrial 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, 11/20/19, 1/22/19; 3/18/20

CROSS CLAIM

Shahnam Ebrahimi
vs
Houshang Pavehzadeh

FIRST AMENDED COUNTER-CLAIM

Shahnam Ebrahimi
vs
Amy Goldman

Docket 1

***** VACATED *** REASON: Order approving stipulation to continue
entered 4/28/20. Hearing rescheduled for 6/24/20 at 1:30 PM.**

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, April 29, 2020

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, April 29, 2020

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

#15.00 Pretrial conference re: complaint to determine dischargeability
of debt under 11 U.S.C. sec 523(a)(2), (4), (6)

fr. 4/3/19; 10/2/19; 2/19/20(stip)

Docket 1

***** VACATED *** REASON: Continued by stip to 8/5/20 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, April 29, 2020

Hearing Room 301

1:30 PM

CONT... Remon Ramzy Hanna

Chapter 7

Randy B Soref

Raied Francis

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, April 29, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01041 Sheik v. LBS Financial Credit Union et al

#16.00 Status Conference re: Complaint by Maryam Sheik
against LBS Financial Credit Union, MDA MOTORS
CORP., Greenwood Pontiac, Inc., Jamshid Lavi, an individual

Docket 1

Tentative Ruling:

The plaintiff did not timely serve the summons on the defendants.

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 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 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 that summons were timely served on the defendants. If the plaintiff can obtain an issued Another Summons from the Court by May 13, 2020, the status conference will be continued to **1:30 p.m. on July 8, 2020**.

No later than **June 24, 2020**, the parties must submit a joint status report in accordance with Local Bankruptcy Rule 7016-1(a).

Party Information

Debtor(s):

Maryam Sheik

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 29, 2020

Hearing Room 301

1:30 PM

CONT...

Maryam Sheik

Roksana D. Moradi-Brovia

Chapter 11

Defendant(s):

LBS Financial Credit Union Pro Se

MDA MOTORS CORP. Pro Se

Greenwood Pontiac, Inc. Pro Se

Jamshid Lavi, an individual Pro Se

Plaintiff(s):

Maryam Sheik

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 29, 2020

Hearing Room 301

1:30 PM

1:19-12082 Robert M. Gerstein

Chapter 7

Adv#: 1:19-01140 Himes v. Gerstein

#17.00 Status conference re: first amended complaint

fr. 2/5/20; 3/4/20

Docket 3

Tentative Ruling:

On March 9, 2020, the Court entered an order dismissing the plaintiff's first amended complaint (the "Dismissal Order") [doc. 12]. In the Dismissal Order, the Court stated that "if the plaintiff elects to proceed with the action, the plaintiff must file and serve a second amended complaint no later than March 31, 2020." Dismissal Order, p. 2.

The plaintiff did not file a second amended complaint by March 31, 2020. As such, the Court will dismiss this adversary proceeding.

The Court will prepare the Order.

Party Information

Debtor(s):

Robert M. Gerstein

Represented By
John D Faucher

Defendant(s):

Robert M. Gerstein

Pro Se

Plaintiff(s):

Greg Himes

Pro Se

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
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

1:30 PM

1:19-12557 Judy A Scott

Chapter 7

Adv#: 1:19-01144 West Medical Center, Inc. v. Scott

#18.00 Pre-trial conference re: first amended complaint
objecting to discharge under section 523 of
the Bankruptcy Code

fr. 2/5/20

Docket 14

Tentative Ruling:

The Court will continue this pretrial conference to **1:30 p.m. on June 17, 2020**. No later than **June 3, 2020**, the parties must file and serve their witness and exhibit lists for trial.

At this time, the courthouses in the Central District of California remain closed to the public. The Court is exploring the prospect of conducting a trial with counsel and witnesses participating via video. At the continued pretrial conference, the Court will update the parties as to any developments regarding available trial dates and methods.

Appearances on April 29, 2020 are excused.

Party Information

Debtor(s):

Judy A Scott

Represented By
James G. Beirne

Defendant(s):

Judy A Scott

Pro Se

Plaintiff(s):

West Medical Center, Inc.

Represented By
Adam Van Susteren

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

1:30 PM

CONT... Judy A Scott

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, April 29, 2020

Hearing Room 301

2:00 PM

1:12-16879 Elmer Barrientos and Marlene Barrientos

Chapter 7

#19.00 Debtor's Motion to Determine Secured Status of Claim

fr. 3/26/20

Docket 27

*** VACATED *** REASON: Continued to 4/30/20 at 2:00 p.m. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elmer Barrientos

Represented By
James T King

Joint Debtor(s):

Marlene Barrientos

Represented By
James T 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, April 29, 2020

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

#20.00 The Lincoln National Life Insurance Company's motion to dismiss
Helayne Muennichow's counterclaims pursuant to rule 12(b)(6)

Docket 106

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on May 13, 2020.**

Appearances on April 29, 2020 are excused.

Party Information

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Hermann Muennichow

Chapter 7

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

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

#21.00 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;
12/20/19; 1/30/20; 03/25/20

Cross-claim

David Seror, solely 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 will continue this status conference to **2:30 p.m. on May 13, 2020**, to be held with the hearing on Lincoln National's motion to dismiss [doc. 106].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Hermann Muennichow

Chapter 7

Appearances on April 29, 2020 are excused.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01019 Miller, Chapter 7 Trustee v. Ride on Autos. a California corporation

#22.00 Application for right to attach order and for issuance of writ of attachment

fr. 3/25/20(stip)

Docket 6

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Ride on Autos. a California

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Cathy Ta
Claire K Wu

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

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, April 29, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01019 Miller, Chapter 7 Trustee v. Ride on Autos. a California corporation

#23.00 Status conference re: Complaint for 1. breach of oral contract;
2. money had and received; 3. open book account; 4. accounting;
5. declaratory relief; 6. turnover of property of the estate; 7. avoidance
of postpetition transfers; 8. recovery of postpetition transfers; and
9. preservation of postpetition transfers

fr. 4/15/20(stip)

Stip to continue filed 4/20/20

Docket 1

***** VACATED *** REASON: continued to 6/17/20 at 1:30 p.m. per order
entered on 4/21/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Ride on Autos. a California

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Cathy Ta

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, April 29, 2020

Hearing Room 301

2:30 PM

1:19-11696 Peter M. Seltzer

Chapter 7

Adv#: 1:19-01151 Kessler v. Seltzer

#24.00 Defendant's motion to dismiss complaint for the denial of discharge pursuant to FRCP 12b(6) & FRCP 9(b)

Docket 5

Tentative Ruling:

For the reasons discussed below, the Court will grant in part and deny in part the motion.

I. BACKGROUND

On July 9, 2019, Peter M. Seltzer ("Defendant") filed a voluntary chapter 11 petition, initiating bankruptcy case 1:19-bk-11696-VK. On December 26, 2019, the Court entered an order converting Defendant's bankruptcy case to one under chapter 7 [Bankruptcy Case, doc. 98].

On December 16, 2019, Darren Kessler ("Plaintiff") filed a complaint against Defendant (the "Complaint"), seeking nondischargeability of the debt owed to him pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4) and (a)(6) and for denial of discharge pursuant to 11 U.S.C. §§ 727(a)(2), (a)(4)(A) and (a)(5). In relevant part, the Complaint makes the following factual allegations:

On May 20, 2014, Defendant executed and delivered to Plaintiff a promissory note/equity agreement (the "May Note") [Complaint, Exh. A]. Under the terms of the May Note, Defendant borrowed and agreed to pay Plaintiff the principal sum of \$800,000 (the "Principal"). The May Note provided that Plaintiff would immediately receive a 14% equity interest in ACC Enterprises, LLC ("ACC"). Defendant was to pay off the Principal upon receipt of payment from ACC. The payments were to be made on a cyclical basis based on disbursement made via K-1 by ACC to Defendant within thirty days of Defendant being paid.

On October 1, 2014, Defendant and Plaintiff agreed to modify the May Note, and entered into a new promissory note (the "October Note") [Complaint, Exh.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

B]. The October Note provided that in addition to the previously acquired 14% interest in ACC, Defendant also personally agreed to repay Plaintiff the sum of \$800,000 along with an equity interest in the "stock of the makers" [*sic*]. All principal and accrued interest in the October Note was due and payable by October 1, 2017, and the October Note states that repayment of the Principal is "in addition to" the transfer of equity.

On July 10, 2014, Plaintiff transferred \$300,000 to ACC Industries, Inc. On November 21, 2014, Plaintiff transferred an additional \$500,000 to Defendant's corporation, Jakdyl, Inc. [Complaint, Exh. C]. ACC Industries, Inc. and Jakdyl, Inc. are listed on Defendant's statement of financial affairs, item #27.

On August 18, 2015, Defendant emailed Plaintiff reaffirming that he "anticipate[d] paying [Plaintiff] back \$800,000 principle [*sic*] by end of Dec 2015... (Remainder will be paid from Vegas Building \$250k)." (the "2015 Email") [Complaint, Exh. D].

Defendant defaulted in his performance of the October Note by failing to pay the note in full when due. Prior to filing the Complaint, Plaintiff made a demand for the balance due on the October Note, but no part of said balance has been paid. Consequently, Plaintiff filed a complaint against Defendant in the superior court for the state of California for breach of contract, money had and received and unjust enrichment.

In statements made in the state court action, Defendant denied executing the May Note and the October Note. Defendant also stated that the company in which Plaintiff was to receive distributions and an equity interest did not exist at the time Plaintiff transferred funds to Defendant. Defendant further stated that the emails affirming his obligation to Plaintiff were "altered." Thus, when Defendant made the representations in the May Note and the October Note, he knew them to be false, and made these representations with the intent to induce Plaintiff to enter into the notes.

After the petition date, Defendant filed his original schedules and statement of financial affairs ("SOFA") [Bankruptcy Case, doc. 10]. Defendant signed his

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

schedules and SOFA under penalty of perjury as true and accurate.

Defendant's SOFA, listed, among other things: (i) no income from employment or operation of a business in 2019; (ii) no payments to insiders within one year prior to the petition date; (iii) no gifts within the two years prior to the petition date; (iv) no loss or insurance coverage from theft, fire or other disaster; (v) no transfers within the two years prior to the petition date; (vi) no accounts with financial institutions closed within the one year prior to the petition date; and (vii) interest in three business entities – Indiana Texas Management ("ITM"), 2305 LLC and Jakdyl LLC.

On August 15, 2019, Defendant appeared for his § 341(a) meeting of creditors, where he testified under oath about his assets and liabilities (the "Meeting"). At the Meeting, Defendant revealed that he had an interest in over 20 business entities as well as additional pending litigation, which he failed to disclose in his original schedules.

Following the Meeting, Plaintiff filed several motions for Fed. R. Bankr. P. ("FRBP") 2004 examinations, mainly against financial institutions where Defendant currently had (or had in the past) accounts and where Defendant's entities currently had (or had in the past) accounts.

On October 15, 2019, Defendant filed amended schedules and SOFA [Bankruptcy Case, doc. 56]. Defendant filed the amended schedules two months after the Meeting and after the Court granted several of Plaintiff's FRBP 2004 examinations.

The amended schedules and SOFA disclosed the following, which were not included in the original schedules: (i) transfer of \$50,000 to Brian Burr; (ii) four litigation claims against third parties; \$6,850 gross income in the last calendar year from operating a business; (iii) \$150,000 received in the last year from a legal settlement; (iv) \$300,000 property damage from the November 2018 Woolsey fire; (v) two transfers including a \$550,000 transfer to Neil Harris in February 2019 as a business investment to be repaid and a \$50,000 transfer to Brian Burr "temporarily" in May 2019; and (vi) an additional nine business entities which he had an interest within the four years prior to the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer
petition date.

Chapter 7

Defendant's July 2019 and August 2019 monthly operating reports ("MOR") reflect that beyond receipt of one insurance proceed check in the amount of \$121,000, Defendant had no income. Those MORs also reflect that Defendant retained accounts under the name of 2305 LLC and ITM, neither of which were designated debtor-in-possession accounts, to transact for general personal expenses. The August 2019 MOR also reflects that Defendant withdrew \$66,010 for a "price lift." Defendant has submitted no evidence that such funds were used for Woolsey fire damage repairs.

Defendant's September 2019 and October 2019 MORs reflect, among other things, that Defendant: (i) received another alleged insurance proceeds check in the amount of \$134,162.70; (ii) made a cash withdrawal from the 2305 LLC account in the amount of \$9,510 rendering the account closed; (iii) closed his Wells Fargo debtor-in-possession account and opened a new account at Union Bank; (iv) paid \$15,000 to "tactical mitigation" for purported home damage repairs; and (v) paid an additional \$15,000 for "price lift" for alleged home repairs.

Based on the discovery Plaintiff received from his FRBP 2004 examinations, many (if not all) of Defendant's entities are the alter ego of the other. Defendant often and freely moved funds in and out of his entities and into and out of Defendant's personal accounts to hide funds from creditors, and for his own personal use.

Defendant maintained a bank account, in his name, at Chase during the pendency of his bankruptcy case and immediately prior to the petition date. On May 21, 2019, Defendant received over \$178,759 in insurance proceeds. Only \$126,000 of these funds were deposited in the debtor-in-possession account, as Defendant withdrew \$40,000 on May 29, 2019, an additional \$9,866.64 on the day prior to the petition date, and a further \$2,832 after the petition date (collectively, the "Insurance Proceed Transfers").

Between March 2019 and the petition date, Defendant made the following withdrawals and/or transfers from the 2305 LLC account, none of which were

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

disclosed in Defendant's original or amended schedules: (i) March 18, 2019, wire to ETF Management in the amount of \$150,000; (ii) April 19, 2019, wire to Harris Ritoff in the amount of \$100,000; (iii) May 20, 2019, two withdrawals in the amounts of \$28,000 and \$7,000; and (iv) May 28, 2019, a withdrawal in the amount of \$4,000 (collectively, the "Pre-Petition Transfers").

As of January 1, 2019, Defendant had \$1,048,301.55 in the ITM and 2305 LLC bank accounts. About six months later, on the petition date, Defendant only had \$128,857.76, which funds consisted solely of insurance proceeds. Defendant has not provided a justification or explanation for the dissipation of \$900,000.

In his amended SOFA, Defendant asserts that he received \$250,000 in income in 2018 and that ACG Industries was shut down in 2017. However, a review of the ITM bank account reveals that from March 2018 to May 2018, Defendant received \$905,000 from ACG Industries. This demonstrates that Defendant received three times the amount of income disclosed in his amended SOFA and that ACG Industries was still operating in 2018.

Attached to the Complaint are the May Note [Exh. A], the October Note [Exh. B], bank statements [Exh. C] and the 2015 Email [Exh. D]. The May Note provides that Defendant "promises to get re payment to the order of [Plaintiff], or his successors in interest, the sum of EIGHT HUNDRED THOUSAND (\$800,000.) DOLLARS through revenues generated by [ACC]. Along with securing an equity stake of 14% in the makers INVESTMENT in [ACC]...." The May Note further provides, that "[a]ll principal and accrued interest shall be due and payable on a cyclical basis based on disbursement made via K-1 by ACC to 'maker' within 30 days of 'maker' being paid." On May 22, 2014, Plaintiff and Defendant apparently signed the May Note.

The October Note provides that Defendant and ACC "promises to pay to the order of [Plaintiff], or his successors in interest, the sum of Eight hundred thousand (\$800,000.) DOLLARS along with an equity interest of 14% in the makers...." The October Note provides that interest will accrue for three years, "payable annually on the anniversary date at the rate of five percent (1%) [*sic*]

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

per annum." The October Note further provides that: "[a]ll principal and accrued interest shall be due and payable by Oct 1, 2017." On October 1, 2014, Plaintiff and Defendant apparently signed the October Note.

Based on the bank statements, on July 10, 2014, Plaintiff made a \$300,000 transfer to ACC Industries, Inc., and on November 21, 2014, he made a \$500,000 transfer to Jakdyl, Inc.

On February 4, 2020, Defendant filed the Motion [doc. 5]. In the Motion, Defendant argues that Plaintiff has failed to state a claim under Fed. R. Civ. P. 12(b)(6) and that Plaintiff has failed to plead the fraud-based claims with particularity as required by Fed. R. Civ. P. 9(b). On April 15, 2020, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 9]. On April 22, 2020, Defendant filed a reply to the Opposition (the "Reply") [doc. 11].

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 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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

1955, 167 L.Ed. 2d 929 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009)). "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 555 (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). 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).

"A complaint that merely recites statutory language fails to state a claim under Rule 12(b)(6)." *In re Kubick*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994). This is because "mere statutory language does not plead facts sufficiently so that they may be answered or denied." *Id.* "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Id.*

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged...." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

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 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;
- (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)).

i. 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 also can be considered fraudulent when the promisor knew or should have known of his inability to perform. *In re Barrack*, 217 B.R. 598, 606 (B.A.P. 9th Cir. 1998). A promise to perform in the future is not a false representation or false pretense unless the debtor did not have intent to perform at the time he made the representation.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

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).

ii. Justifiable Reliance

To satisfy the reliance requirement of § 523(a)(2)(A), a plaintiff must show "justifiable" reliance, not "reasonable reliance." *Field v. Mans*, 516 U.S. 59, 74-75, 116 S. Ct. 437, 133 L. Ed. 2d 351 (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.

iii. 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). "Further, as the Supreme Court explained in *Field*, a court may turn to the Restatement (Second) of Torts (1976), 'the most widely accepted distillation of the common law of torts,' for guidance on this issue." *In re Russell*, 203 B.R. 303, 313 (Bankr. S.D. Cal. 1996) (citing to *Field*, 516 U.S. at 70).

"Turning to the Restatement, proximate cause entails (1) causation in fact, which requires a defendant's misrepresentations to be a 'substantial factor in determining the course of conduct that results in [the plaintiff's] loss,' § 546; and (2) legal causation, which requires the plaintiff's loss to have been 'reasonably expected to result from the reliance,' § 548A. In determining the presence of proximate cause, however, courts must refrain from relying on speculation to determine whether and to what extent a creditor would have suffered a loss absent fraud. *Id.* (citing to *In re Siriani*, 967 F.2d 302, 306 (9th Cir. 1992)).

Here, the Complaint seeks nondischargeability under § 523(a)(2)(A) based on the following: (1) Defendant's statements in the state court action; and (2) Defendant's misrepresentations in the May Note and the October Note.

As concerns Defendant's statements in the state court action, Plaintiff has not

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

adequately alleged that Defendant made a representation to Plaintiff that ACC existed *prior* to Defendant's provision of the May Note and/or the October Note. Further, if years after Plaintiff made the pertinent monetary transfers, Defendant denied executing the May Note and the October Note, and claimed the 2015 Email was altered, that does not establish that Defendant made false representations or omissions *prior* to signing either or both of the notes. *See In re Lee*, 536 B.R. 848, 855 (Bankr. N.D. Cal. 2015) ("The alleged misrepresentation must have occurred at the inception of the debt as an inducement for the debt."). Consequently, the statements made in the state court action (as allegedly made by Defendant) do not satisfy the elements of a claim under § 523(a)(2)(A).

The same is true for the statements made in the 2015 Email. That email was written in August 2015, i.e., *after* Plaintiff allegedly made the pertinent monetary transfers to Defendant's entities. Accordingly, that email (as an alleged representation by Defendant) does not satisfy the elements of a claim under § 523(a)(2)(A).

As concerns the representations in the May Note, the Complaint does not make sufficient allegations regarding whether the condition precedent was met, *i.e.*, that ACC generated revenue and that disbursements were made to Defendant within the pertinent time frame, *i.e.*, before the October Note went into effect. Further, the May Note contains no deadline for the payment in full of any accrued interest and principal.

As concerns the representations in and about the May Note and the October Note, the Complaint has not plead with particularity the circumstances constituting fraud as required by Rule 9(b). The Complaint does not sufficiently identify what statements or representations Defendant made to Plaintiff *before* Plaintiff transferred the pertinent funds in July 2014 and November 2014, and when Defendant did so. Similarly, the Complaint does not articulate on which statements or representations Plaintiff relied.

Consequently, as to the § 523(a)(2) cause of action, the Court will grant the Motion with leave to amend.

C. 11 U.S.C. § 523(a)(4)

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

i. Existence of Trust/Fiduciary Relationship

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); *see also In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) ("The definition of 'fiduciary capacity' under § 523(a)(4) is governed by federal law."). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796; *see also In re Stern*, 403 B.R. 58, 66 (Bankr. C.D. Cal. 2009) ("In order for the debt to be actionable for nondischargeability, the debtor must have been a trustee before the alleged wrong and without reference thereto; the debtor must have already been a trustee before the debt was created."); *Cantrell*, 269 B.R. at 420 ("Only relationships arising from express or technical trusts qualify as fiduciary relationships under § 523(a)(4)."). Under § 523(a)(4), a court must consider state law to ascertain whether there is the required express or technical trust. *In re Honkanen*, 446 B.R. 373, 379 (B.A.P. 9th Cir. 2011).

"A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. An express trust under California law requires the following five elements: (1) present intent to create a trust; (2) a trustee; (3) trust property; (4) a proper legal purpose; and (5) a beneficiary. *Honkanen*, at 379 n.6 (citing Cal. Prob. Code §§ 15201–15205). A technical trust under California law is one "arising from the relation of attorney, executor, or guardian, and not to debts due by a bankrupt in the character of an agent, factor, commission merchant, and the like." *Id.*, at n.7 (quoting *Royal Indemnity Co. v. Sherman*, 269 P.2d 123, 125 (Cal. Ct. App. 1954)). Additionally, "[t]rusts arising as remedial devices to breaches of implied or express contracts—such as resulting or constructive trusts—are excluded, while statutory trusts that bear the hallmarks of an express trust are not." *Id.* (citing *In re Pedrazzini*, 644 F.2d 756, 759 (9th Cir. 1981)).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

ii. Fraud

Under § 523(a)(4), fraud refers to actual fraud. *Honkanen*, 446 B.R. at 382 (citing *In re Roussos*, 251 B.R. 86, 91 (B.A.P. 9th Cir. 2000)). This involves the "conscious misrepresentation, or concealment, or non-disclosure of a material fact which induces the innocent party to enter into a contract." *Id.* at 383. The elements of actual fraud include the following:

(1) defendant made a misrepresentation, concealment, or non-disclosure of a material fact; (2) defendant had knowledge that what he was saying was false; (3) defendant intended to induce plaintiff's reliance; (4) plaintiff justifiably relied; and (5) plaintiff suffered damage as a result.

Id.

iii. Embezzlement or Larceny

"Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1) property rightfully in the possession of the non-owner debtor, (2) the non-owner's misappropriation of the property to a use other than that for which it was entrusted, and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). "The elements of larceny differ only in that a larcenous debtor has come into possession of funds wrongfully." *In re Mickens*, 312 B.R. 666, 680 (Bankr. N.D. Cal. 2004). A finding of larceny requires proof of the debtor's fraudulent intent in taking the creditor's property. *In re Sokol*, 170 B.R. 556, 560 (Bankr. S.D.N.Y. 1994).

"Fraudulent appropriation requires an intent to deprive, which can be inferred from the conduct of the person accused and from the circumstances of the situation." *Savonarola v. Beran*, 79 B.R. 493, 496 (Bankr. N.D. Fla. 1987).

For purposes of embezzlement and larceny, a fiduciary relationship is not required. *Littleton*, 942 F.2d at 555.

Here, the Complaint does not include sufficient allegations under § 523(a)(4). Plaintiff has not plausibly alleged that an express or technical trust, which was imposed before

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

and without reference to the wrongdoing that caused the debt, ever existed. Consequently, Plaintiff has not sufficiently set forth a fiduciary relationship, as defined under § 523(a)(4).

In the Complaint, Plaintiff alleges that Defendant agreed to act as Plaintiff's agent for purposes of ensuring that the Principal was repaid to Plaintiff in accordance with the May Note and the October Note. As stated above, any such agreement would not create the required technical trust within the purview of § 523(a)(4). Moreover, Plaintiff characterizes the debt as a loan. Accepting a loan, without more, does not create a fiduciary relationship. *See In re Mbunda*, 484 B.R. 344 (B.A.P. 9th Cir. 2012).

In addition, Plaintiff does not allege embezzlement or larceny. Plaintiff does not allege that Defendant misappropriated the Principal to a use other than that to which he and Defendant agreed. Similarly, Plaintiff does not allege that Defendant came into possession of the Principal wrongfully; rather Plaintiff admits he agreed to make the loan to Defendant. Consequently, Plaintiff's claim under § 523(a)(4) is insufficient.

As a result, as to the § 523(a)(4) cause of action, the Court will grant the Motion. Because it appears that the deficiencies could be cured by an amendment, the Court will provide leave to amend.

D. 11 U.S.C. § 523(a)(6)

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." As in any § 523(a) action, the plaintiff bears the burden of proof by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 286, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991).

i. Willfulness

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, 140 L.Ed. 2d 90 (1998). Thus, debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of §523(a)(6)." *Id.* at 64.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *In re Su*, 290 F.3d 1140, 1145-46 (9th Cir. 2002); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("the willful injury requirement of § 523(a)(6) is met when it is shown either that debtor had *subjective* motive to inflict injury *or* that the debtor believed that injury was substantially certain to occur as a result of his conduct") (emphasis in original).

ii. Maliciousness

Under § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.* at 1147. Maliciousness does not require "personal hatred, spite, or ill-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

Section 523(a)(6) generally applies to torts rather than to contracts. An intentional breach of contract generally will not give rise to a nondischargeable debt, unless it is accompanied by tortious conduct which results in willful and malicious injury. *Jercich*, at 1205; *Lockerby v. Sierra*, 555 F.3d 1038, 1040 (9th Cir. 2008) ("an intentional breach of contract cannot give rise to nondischargeability under § 523(a)(6) unless it is accompanied by conduct that constitutes a tort under state law").

Here, Plaintiff makes a claim under § 523(a)(6) based on conversion. "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)). "[A] mere contractual right of payment, without more, will not suffice" to support a claim for conversion. *Farmers Ins. Exchange v. Zerin*, 53 Cal. App. 4th 445, 452 (1997).

At the motion to dismiss stage, "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). The Complaint alleges that Defendant willfully and maliciously injured Plaintiff, that Defendant intended the consequences of his actions and that injury was substantially certain to result from Defendant's conduct. Thus, the Complaint sufficiently alleges the intent elements of §

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer
523(a)(6).

Chapter 7

However, the Complaint fails to allege the elements of conversion. Plaintiff alleges that he loaned the Principal to Defendant, and that Defendant was to repay the Principal to Plaintiff based on the terms in the notes. Plaintiff does not allege that Defendant used the Principal in any way other than to which the parties agreed. Further, Plaintiff cannot show that funds generated by, or received from ACC, were *Plaintiff's* property. Plaintiff may have had a contractual right to payment from revenues generated by ACC, but that does not turn ACC's revenues into Plaintiff's property. As stated above, a mere contractual right to payment, without more, will not support a claim for conversion.

As such, as to the § 523(a)(6) cause of action, the Court will grant the Motion. Because the deficiencies possibly could be cured by an amendment, the Court will provide leave to amend.

E. 11 U.S.C. § 727(a)(2)

11 U.S.C. § 727(a)(2) provides that a court shall grant a debtor a discharge unless "the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property ... has transferred, removed, destroyed, mutilated, or concealed ... (A) property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate, after the date of the filing of the petition."

"Two elements comprise an objection to discharge under § 727(a)(2)(A): 1) a disposition of property, such as transfer or concealment, and 2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor..." *In re Beauchamp*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999). The transfer must occur within one year prepetition. *In re Lawson*, 122 F.3d 1237, 1240 (9th Cir. 1997). Lack of injury to creditors is irrelevant under § 727(a)(2). *In re Bernard*, 96 F.3d 1279, 1281–82 (9th Cir. 1996).

"The standard for denial of discharge under § 727(a)(2)(B) is the same as § 727(a)(2)(A), but the disposition must be of estate property occurring after the petition date." *In re Miller*, 2015 WL 3750830, at *3 (Bankr. C.D. Cal. June 12, 2015).

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

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).

Here, the Complaint sufficiently states a claim under § 727(a)(2). Plaintiff alleges that Defendant, with the intent to hinder, delay or defraud Plaintiff, transferred and/or abandoned all or part of the Pre-Petition Transfers and the Insurance Proceed Transfers. These transfers occurred within one year prior to the petition date or after the petition date. Plaintiff also alleges that within the six months prior to the petition date, Defendant dissipated \$900,000 in the ITM and 2305 LLC bank accounts without explanation or justification. As stated above, at the motion to dismiss stage, intent may be generally alleged.

In the Motion, Defendant appears to argue that the Pre-Petition Transfers and the Insurance Proceed Transfers are not property of the estate. As concerns the Insurance Proceed Transfers, under 11 U.S.C. § 541(a)(1), the casualty insurance policy itself is property of the estate; so too, under 11 U.S.C. § 541(a)(6), are the proceeds from that policy. 11 U.S.C. § 541(a)(6) (property of the estate includes proceeds, product, offspring, rents and/or profits of or from property of the estate). *See also In re Hoffpauir*, 258 B.R. 447 (Bankr. D. Idaho 2001).

As concerns the Pre-Petition Transfers, these were all transfers or withdrawals from the 2305 LLC bank account which took place between March 2019 and May 2019. The Complaint references Defendant's MORs, to which Defendant attached the bank statements of 2305 LLC. Based on those bank statements, post-petition, Defendant used 2305 LLC's account to pay his general living expenses, *i.e.*, gas, utilities, restaurants and car payments. In essence, Plaintiff is alleging that Defendant significantly disregarded corporate formalities, such that the assets of 2305 LLC constitute Defendant's assets.

At this stage, Plaintiff has alleged sufficient facts to state a claim that is plausible on its face. Accordingly, as to the § 727(a)(2) cause of action, the Court will deny the Motion.

F. 11 U.S.C. § 727(a)(4)(A)

Pursuant to 11 U.S.C. § 727(a)(4)(A), the court shall not grant a debtor a discharge if "the debtor knowingly and fraudulently, in or in connection with the case—made a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

false oath or account." 11 U.S.C. § 727(a)(4)(A). "The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors have accurate information without having to conduct costly investigations." *In re Retz*, 606 F.3d 1189, 1196 (9th Cir. 2010) (internal quotations and citation omitted).

To prevail on a claim under § 727(a)(4)(A), the plaintiff must show, by a preponderance of the evidence, that: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *Id.*, at 1197.

i. *False Oath*

"The requisite false oath may involve either an affirmatively false statement or an omission from the debtor's schedules." *Searles*, 317 B.R. at 377 (citing *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir. 1999)).

ii. *Materiality*

"A false statement is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." *Wills*, 243 B.R. at 62; *see also In re Guadarrama*, 284 B.R. 463, 473 (C.D.Cal. 2002) ("A false statement or omission is material if it concerns information that would aid in understanding the debtor's financial affairs.") "[A]n omission or misstatement relating to an asset that is of little value or that would not be property of the estate is material if the omission or misstatement detrimentally affects administration of the estate." *Wills*, 243 B.R. at 63.

iii. *Knowingly and Fraudulently*

"A debtor acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198 (internal quotation marks omitted). To demonstrate fraudulent intent, a plaintiff has "the burden of showing that: (1) [defendant] made the representations [e.g., a false statement or omission in bankruptcy schedules]; (2) . . . at the time *he knew they were false*; [and] (3) . . . he made them with the *intention and purpose of deceiving the creditors*." *Id.*, at 1198-99 (emphasis in original; internal quotations omitted).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

"Intent is usually proven by circumstantial evidence or by inferences drawn from the debtor's conduct." *Id.*, at 1199. "[M]ultiple omissions of material assets or information may well support an inference of fraud if the nature of the assets or transactions suggests that the debtor was aware of them at the time of preparing the schedules and that there was something about the assets or transactions which, because of their size or nature, a debtor might want to conceal." *In re Coombs*, 193 B.R. 557, 565-66 (Bankr. S.D. Cal. 1996). "The fact of prompt correction of an inaccuracy or omission may be evidence probative of lack of fraudulent intent." *In re Searles*, 317 B.R. 368, 377 (B.A.P. 9th Cir. 2004) *aff'd*, 212 F. App'x 589 (9th Cir. 2006).

Here, the Complaint contains sufficient allegations under § 727(a)(4)(A). In the Complaint, Plaintiff alleges that Defendant made numerous false oaths in his original schedules and SOFA, including, among other things, omitting the entities in which Defendant had an interest, the loss from the Woolsey fire, the amount of income Defendant received from operating a business and the transfers Defendant made within two years prior to the petition date. Defendant's amended schedules and SOFA, which Defendant filed after Plaintiff's 2004 examinations were granted, indicated that Defendant did not accurately disclose his financial information in the original schedules and SOFA. These inaccuracies or omissions bear a relationship to Defendant's business transactions or estate, or concern the discovery of assets, business dealings, or the existence and disposition of Defendant's property.

In addition, the Complaint alleges that Defendant knowingly and fraudulently failed to list assets and financial information in his original schedules and SOFA. As previously noted, Defendant's intent and state of mind may be generally alleged.

These allegations are sufficient to state a claim under § 727(a)(4)(A). Consequently, as to the § 727(a)(4)(A) cause of action, the Court will deny the Motion.

G. 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:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

(1) debtor at one time, not too remote from the bankruptcy petition date, owned identifiable assets; (2) on the date the bankruptcy petition was filed or order of relief granted, the debtor no longer owned the assets; and (3) the bankruptcy pleadings or statement of affairs do not reflect an adequate explanation for the disposition of the assets.

Retz, 606 F.3d at 1205.

Here, the Complaint does not make sufficient allegations under § 727(a)(5). Plaintiff alleges that Defendant dispensed of \$105,520 *post-petition* without evidence that such funds were used for home repairs. However, Ninth Circuit precedent limits § 727(a)(5) to a debtor's inexplicable, *pre-petition* loss of assets. *In re Choy*, 569 B.R. 169, 184-185 (Bankr. N.D. Cal. 2017). Accordingly, as to the § 727(a)(5) cause of action, the Court will grant the Motion, with leave to amend.

III. CONCLUSION

The Court will grant the Motion as to the claims under §§ 523(a)(2), (a)(4) and (a)(6) and § 727(a)(5), with leave to amend, and will deny the Motion as to the balance of the claims.

Plaintiff will have 14 days from the date of the hearing to file and serve on Defendant and his counsel an amended complaint, or to file and serve notice on Defendant and his counsel that Plaintiff will not do so.

Plaintiff must submit the order within seven (7) days.

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson
Kathleen C Hipps

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

Defendant(s):

Peter M. Seltzer

Represented By
Kathleen C Hipps

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies
Noreen A Madoyan

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, April 29, 2020

Hearing Room 301

2:30 PM

1:19-11696 Peter M. Seltzer

Chapter 11

Adv#: 1:19-01151 Kessler v. Seltzer

#25.00 Status conference re: complaint for the denial of discharge pursuant to 11 U.S.C. sec 727(a) and non-dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2), (a) (4) and (a)(6)

fr. 2/19/20; 4/8/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

Defendant(s):

Peter M. Seltzer

Pro Se

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

10:30 AM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#1.00 Application for second interim compensation for David A Tilem,
debtor's attorney

Docket 236

***** VACATED *** REASON: Order entered 4/23/20 continuing hearing to
6/4/20 at 10:30 AM.**

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, April 30, 2020

Hearing Room 301

10:30 AM

1:19-11648 Maryam Sheik

Chapter 11

#2.00 First interim application by Resnik Hayes Moradi LLP, debtor's counsel, for allowance of fees and reimbursement of costs for the period July 3, 2019 through February 10, 2020

Docket 72

Tentative Ruling:

Contrary to Local Bankruptcy Rule 2016-1(a)(2), the applicant did not provide 45 day notice of the hearing on this application to other professionals of the estate. As such, the Court will continue this hearing to **10:30 a.m. on June 18, 2020**. No later than **May 4, 2020**, the applicant must file and serve notice of the continued hearing to professionals employed by the estate.

In addition, the debtor's latest monthly operating report [doc. 82] reflects an ending balance of \$6,954.12. Given that this amount is insufficient to satisfy the applicant's current request (as well as any request for payment of fees and costs by other professionals), the applicant must address how funds on hand and future payments will be allocated between itself and other professionals. No later than **May 28, 2020**, the applicant must file and serve a supplemental brief addressing these issues.

Appearances on April 30, 2020 are excused.

Party Information

Debtor(s):

Maryam Sheik

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, April 30, 2020

Hearing Room 301

10:30 AM

1:19-11902 John Christian Lukes

Chapter 11

#3.00 First interim application by Resnik Hayes Moradi LLP, debtor's counsel, for allowance of fees and reimbursement of costs for the period July 29, 2019 through February 10, 2020

Docket 113

Tentative Ruling:

Contrary to Local Bankruptcy Rule 2016-1(a)(2), the applicant did not provide 45 day notice of the hearing on this application to other professionals of the estate. As such, the Court will continue this hearing to **10:30 a.m. on June 18, 2020**. No later than **May 4, 2020**, the applicant must file and serve notice of the continued hearing to professionals employed by the estate.

In addition, the debtor's latest monthly operating report [doc. 117] reflects an ending balance of \$15,707.62. Given that this amount is insufficient to satisfy the applicant's current request (as well as any request for payment of fees and costs by other professionals), the applicant must address how funds on hand and future payments will be allocated between itself and other professionals. No later than **May 28, 2020**, the applicant must file and serve a supplemental brief addressing these issues.

Appearances on April 30, 2020 are excused.

Party Information

Debtor(s):

John Christian Lukes

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, April 30, 2020

Hearing Room 301

1:00 PM

1:18-11729 Richard Philip Dages

Chapter 11

#4.00 Order to show cause why debtor's counsel should not be ordered to disgorge fees

fr. 3/12/20

Docket 136

Tentative Ruling:

Having reviewed the declaration of Oninye Anyama filed on April 16, 2020 [doc. 161] and in light of the order granting Ms. Anyama's motion to withdraw as counsel [doc. 164], the Court will continue this hearing to **October 22, 2020 at 1:00 p.m.** to assess the propriety of disgorgement, considering the Court's ruling to convert this case to one under chapter 7 and the possible input of the chapter 7 trustee. *See* calendar no. 5.

Appearances on April 30, 2020 are excused.

3/12/20 Ruling

The Court intends to to continue this hearing to a later date to assess the motion in light of whether the debtor's case is dismissed or converted.

In the meantime, the Court will enter an order that the debtor's counsel is not to receive any further payments on her prior fees - which were allowed on an interim basis - pending further order of the Court.

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, April 30, 2020

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;7/18/19; 8/8/19;
9/12/19; 11/14/19; 11/21/19; 1/9/20; 3/10/20

Docket 1

Tentative Ruling:

Having reviewed the debtor's declaration filed on April 16, 2020 [doc. 158] and based on the chapter 11 examiner's initial report [doc. 149], pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1), the Court will convert this case to one under chapter 7.

In the *Initial Report of Chapter 11 Examiner John P. Pringle*, the chapter 11 examiner states that the debtor appears to have an interest in several previously undisclosed real properties. The debtor's refusal to provide pertinent documentation to the chapter 11 examiner prevented the chapter 11 examiner from fully assessing the nature and extent of the debtor's interests in the real properties at issue. As a result of the debtor's probable interests in those real properties, the estate likely has significant additional secured debt and unsecured debt, and also may have undisclosed assets which could be used to pay unsecured and undersecured creditors.

A chapter 7 trustee can investigate the estate's interests in these real properties, and the use of the proceeds from the debtor's prepetition sale of real property, and determine if any such interests can be liquidated for the benefit of creditors, and any sale proceeds can be recovered. Additionally, the chapter 7 trustee can investigate any claims the estate may have against the debtor's former counsel. The chapter 11 examiner will receive payment of his allowed fees and costs through the chapter 7 trustee's administration of the case.

The Court will prepare the order.

3/12/20 Ruling

In the debtor's declaration, filed on February 27, 2020 [doc. 150], the debtor requests that the Court dismiss this case. If the debtor agrees to pay the allowed fees and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

1:00 PM

CONT...

Richard Philip Dagues

Chapter 11

expenses of the chapter 11 examiner and all allowed unsecured claims in full, **and provides for such payment to be made, prior to the dismissal of the case**, the Court thereafter will dismiss this case with a 180-day bar.

If the debtor does not provide for payment of the allowed fees and expenses of the chapter 11 examiner and all allowed unsecured claims in full, prior to the dismissal of the case, based on the chapter 11 examiner's initial report ("Examiner Report") [doc. 149], pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1), the Court will convert this case to one under chapter 7.

In the Examiner Report, the chapter 11 examiner states that the debtor appears to have an interest in several previously undisclosed real properties. A chapter 7 trustee can investigate the estate's interests in these real properties, and the use of the proceeds from the debtor's prepetition sale of real property, and determine if any such interests can be liquidated for the benefit of creditors, and any sale proceeds can be recovered.

1/9/20 Ruling

Based on, among other things, the debtor's flawed and inaccurate disclosures, which are discussed below, pursuant to 11 U.S.C. §§ 105(a) and 1104(c)(1), the Court will order the appointment of a chapter 11 examiner to investigate, among other things, the debtor's assets, liabilities and prepetition transfers.

Exhibits to the Disclosure Statement Inconsistent with Filed Schedules

To the debtor's disclosure statement [doc. 117], the debtor attached a schedule A/B ("Exhibit B") [Exh. B] and a schedule E/F ("Exhibit C", and together with Exhibit B, the "Attachments") [Exh. C]. The Attachments are not consistent with the debtor's most recently filed schedule A/B ("Amended Schedule A/B") [doc. 28], filed on August 17, 2018, and schedule E/F ("Schedule E/F") [doc. 1], filed on July 10, 2018.

In his Amended Schedule A/B, the debtor lists an interest in real property located in North Hills, California (the "North Hills Property"), valued at \$810,000. In Exhibit B, the debtor values the North Hills Property at \$835,000. The debtor does not list an interest in any other real property.

In his Amended Schedule A/B, the debtor represents that, as of the petition date, he

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

1:00 PM

CONT... Richard Philip Dages

Chapter 11

had \$900 in his bank account. In Exhibit B, the debtor represents that he had \$1,000.

Below is a chart listing the nonpriority unsecured creditors the debtor enumerated in his Schedule E/F, compared to Exhibit C to the proposed disclosure statement.

Schedule E/F [doc. 1]	Exhibit C [doc. 117]
<ul style="list-style-type: none"> • Capital One • Credit One Bank NA • First Premier Bank • Syncb/low • TD Auto Finance • TD Bank USA/targetcred • Thd/cbna 	<ul style="list-style-type: none"> • DCFS Trust • Franchise Tax Board • LA County Treasurer & Tax Collector • LVNV Funding • Merrick Bank c/o Resurgent Capital • Midland Funding LLC • Mr. Cooper • Synchrony Bank

All of the creditors listed in Exhibit C have filed proofs of claim in the debtor's case. With the exception of DCFS Trust (which the debtor appears to have called TD Auto Finance in his Schedule E/F) and Mr. Cooper, none of the creditors listed in Exhibit C were listed in the debtor's master mailing list. As such, it does not appear that these creditors received notice of the debtor's chapter 11 case. The Court is concerned that there may be additional creditors that did not receive notice of this chapter 11 case.

To date, the debtor has not filed an amended master mailing list.

Undisclosed Sale of Real Property Two Months Prior to the Petition Date

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

1:00 PM

CONT... Richard Philip Dages

Chapter 11

On November 14, 2019, the debtor filed his 2018 federal tax return with the Court (the "2018 Tax Return") [doc. 119]. The 2018 Tax Return indicates that, in May 2018, two months prior to the debtor filing his chapter 11 petition, from the sale of real property located at 15170 Greenrock, Lancaster, California (the "Greenrock Property"), the debtor received proceeds in the amount of \$39,660.

Item 18 of the statement of financial affairs ("SOFA") states, "[w]ithin 2 years before you filed for bankruptcy, did you sell, trade or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs?" In his original SOFA [doc. 1], filed on July 10, 2018, and his amended SOFAs [docs. 15 and 26], filed on July 25, 2018 and August 14, 2018, the debtor responded "no" to item 18.

In his Amended Schedule A/B, the debtor represents that, as of the petition date, he had \$900 in his bank account. What did the debtor do with the significant proceeds from the sale of the Greenrock Property - which he received two months prior to the petition date?

Undisclosed Interests in Real Property

As discussed in calendar no. 1, the 2018 Tax Return indicates that, in addition to the North Hills Property, the debtor was collecting rents from real properties located at 40536 N 171st East, Lancaster, California (the "Lancaster Property") and 13640 Norris Ave., Sylmar, California (the "Sylmar Property"). However, the Lancaster Property is not listed in the debtor's original schedules and statements [doc. 1] or in the debtor's numerous subsequent amendments [docs. 15, 23, 26 and 28].

In his statement of financial affairs, the debtor identifies the Sylmar Property as the address for his business, Helping Hands Homes. However, the debtor did not include an interest in the Sylmar Property in his Amended Schedule A/B or set forth a lease for the Sylmar Property in his schedule G [doc. 1].

Are there secured creditors holding liens against the Lancaster Property and/or the Sylmar Property which did not receive notice of this chapter 11 case?

On March 18, 2019, a creditor, who was not listed in the debtor's schedules or master mailing list, filed a motion for relief from stay (the "RFS Motion") based on an unlawful detainer action regarding real property located at 13350 Dyer Street, Sylmar,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

1:00 PM

CONT... **Richard Philip Dages**

Chapter 11

California (the "Dyer Street Property") [doc. 66]. In his chapter 11 petition, the debtor identified the Dyer Street Property as his residence.

On March 27, 2019, the debtor filed an opposition to the RFS Motion (the "Opposition") [doc. 68]. In the Opposition, the debtor states that, prepetition, he entered into an agreement to lease the Dyer Street Property for seven years, commencing on June 30, 2018, *i.e.* ten days prior to filing this chapter 11 case. The debtor did not list this lease agreement in his schedule G [doc. 1] or in any of the numerous amended schedules and statements [docs. 15, 23, 26 and 28].

On June 13, 2019, the Court entered an order granting the RFS Motion [doc. 80]. Since the RFS Motion was granted, the debtor has not filed a notice of change of address. Does the debtor still reside at the Dyer Street Property, and if not, where is the debtor residing?

Incomplete Statement of Financial Affairs

Item 4 of the SOFA states, "[d]id you have any income from employment or from operating a business during this year or the two previous calendar years?" Item 4 explicitly requests that the debtor disclose his or her *gross income*.

In his original SOFA [doc. 1], filed on July 10, 2018, and his most recently filed SOFA [doc. 26], filed on August 14, 2018, the debtor responded "no" to item 4. As evidenced by his 2017 tax returns [doc. 48] and the 2018 Tax Return, as well as his disclosures in Schedule I, the debtor's response to item 4 is clearly inaccurate.

Engagement of an Accountant without Court Approval

In his October 2019 monthly operating report [doc.122], the debtor listed a \$450.00 "personal expense" to "Farzan." According to the fee summary attached to the Tax Return [doc. 119], the debtor engaged Farzan & Farzan AAC for the preparation of his 2018 tax return and paid \$450 for this service. The debtor has not obtained Court approval for the employment of any accountant.

Party Information

Debtor(s):

Richard Philip Dages

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

1:00 PM

CONT...

Richard Philip Dages

Onyinye N Anyama

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

1:00 PM

1:19-11902 John Christian Lukes

Chapter 11

#6.00 Status conference re: chapter 11 case

fr. 9/19/19; 2/6/20

Docket 1

Tentative Ruling:

The debtor did not timely file his March 2020 monthly operating report. Has the debtor filed his 2018 and 2019 federal tax returns with the Internal Revenue Service? If not, when does the debtor anticipate doing so?

Party Information

Debtor(s):

John Christian Lukes

Represented By
Matthew D Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

1:00 PM

1:20-10093 Robert Alderman and Noni Alderman

Chapter 7

#7.00 U.S. Trustee's motion to disgorge compensation pursuant to 11 U.S.C. § 329
fr. 3/26/20(stip)

Stip to continue filed 4/27/20

Docket 41

***** VACATED *** REASON: Order entered continuing hearing to
6/25/2020 at 1:00 PM [doc. 61].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Alderman

Represented By
Stephen L Burton

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

1:00 PM

1:20-10543 Amerigrade Corp.

Chapter 11

#8.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The debtor did not timely file its March 2020 monthly operating report.

On April 24, 2020, a Substitution of Attorney for the debtor was filed.

A motion for relief from the automatic stay, filed by TBB Valley Investments, LLC, regarding the debtor's scheduled real property located at 13217 Filmore Street, Pacoima, CA 91331, has been filed and is set for hearing at 9:30 a.m. on May 20, 2020.

Party Information

Debtor(s):

Amerigrade Corp.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

2:00 PM

1:12-16879 Elmer Barrientos and Marlene Barrientos

Chapter 7

#9.00 Debtor's Motion to Determine Secured Status of Claim

fr. 3/26/20; 4/29/20

Docket 27

Tentative Ruling:

At the prior hearing on this matter, the Court instructed the debtors to serve Prospect Mortgage, LLC ("Prospect Mortgage") at **15301 Ventura Bl., #D210, Sherman Oaks, CA 91403**. Nevertheless, the debtors attempted to serve Prospect Mortgage at an incorrect address.

The Court will continue this matter to **2:00 p.m. on June 4, 2020**. No later than **May 14, 2020**, the debtors must file and serve proof of service of the motion and notice of the continued hearing on Prospect Mortgage **at the correct address of 15301 Ventura Bl., #D210, Sherman Oaks, CA 91403**. If the debtors fail to properly serve Prospect Mortgage, the Court may deny the motion as to Prospect Mortgage.

Appearances on April 30, 2020 are excused.

Party Information

Debtor(s):

Elmer Barrientos

Represented By
James T King

Joint Debtor(s):

Marlene Barrientos

Represented By
James T 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**

Thursday, April 30, 2020

Hearing Room 301

2:00 PM

1:18-10417 Deborah Lois Adri

Chapter 7

#10.00 Creditor Moshe Adri's motion for allowance of administrative expense claim

fr. 7/18/19; 1/23/20(stip)

Stip to cont filed 4/17/20

Docket 335

***** VACATED *** REASON: Order approving stip entered 4/21/20.
Hearing continued to 8/6/20 at 2:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub

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**

Thursday, April 30, 2020

Hearing Room 301

2:00 PM

1:19-11843 14554 Friar, LLC

Chapter 11

#11.00 Order to show cause why debtor's counsel should not be held in civil contempt for failure to comply with court order

Docket 62

Tentative Ruling:

According to the debtor's statement of financial affairs [doc. 9], the debtor paid its counsel, Donna Bullock, \$2,500 for services related to this bankruptcy case. On January 24, 2020, the Court entered an order to show cause why Ms. Bullock should not disgorge the \$2,500 (the "First OSC") [doc. 52]. Ms. Bullock never responded to the First OSC.

On March 5, 2020, the Court held a hearing on the First OSC. Ms. Bullock did not appear. On March 9, 2020, the Court entered an order requiring Ms. Bullock to disgorge the \$2,500 received from the debtor within fourteen days after entry of the order (the "Order") [doc. 60]. Pursuant to the Order, Ms. Bullock was to file a declaration stating that she complied with the Order no later than April 1, 2020. Ms. Bullock did not timely file such a declaration.

On April 3, 2020, the Court entered an order to show cause why Ms. Bullock should not be held in civil contempt for failure to comply with the Order (the "Second OSC") [doc. 62]. Pursuant to the Second OSC, Ms. Bullock was to file and serve on the debtor a response by April 16, 2020.

On April 16, 2020, Ms. Bullock timely filed a declaration in response to the Second OSC (the "Bullock Response") [doc. 65]. On the same day, the debtor's principal filed a declaration in response to the Second OSC (the "Debtor Response") [doc. 66].

In the Bullock Response, Ms. Bullock testifies that she has determined that the debtor never paid her the \$2,500 as stated in the debtor's statement of financial affairs or any other amount for legal services in connection with the debtor's bankruptcy case. Ms. Bullock further testifies that she offered \$2,500 to the debtor's principal, but he refused to take it because he had not paid Ms. Bullock for any services in connection with this case. Ms. Bullock also testifies that she was unable to comply with the Order

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

2:00 PM

CONT... 14554 Friar, LLC

Chapter 11

because of the COVID-19 pandemic.

In the Debtor Response, the debtor's principal testifies that he never made the \$2,500 payment to Ms. Bullock as stated in the debtor's statement of financial affairs. The debtor's principal testifies that he never paid Ms. Bullock any amount in connection with this case.

Based on the representations in the Bullock Response and the Debtor Response that Ms. Bullock received no compensation in connection with this case, the Court will discharge the Second OSC.

Appearances on April 30, 2020 are excused.

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, April 30, 2020

Hearing Room 301

2:00 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#12.00 Debtor's Amended motion for authority to use cash collateral on an interim basis
fr. 03/19/20; 4/2/20

Docket 46

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 30, 2020

Hearing Room 301

2:00 PM

1:15-12100 Shirley Raasch

Chapter 7

#13.00 Motion to reopen chapter 7 case to add Social Security Administration as a creditor

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):

Shirley Raasch

Represented By
John Sullivan

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, May 5, 2020

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 5, 2020

Hearing Room 301

10:30 AM

1:15-11825 Donald M. Baarns and Lisa A. Baarns

Chapter 13

#27.00 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 refunds

fr. 2/11/20

Docket 53

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, May 5, 2020

Hearing Room 301

10:30 AM

1:15-11825 Donald M. Baarns and Lisa A. Baarns

Chapter 13

#28.00 Trustee's motion for order modifying the plan to increase the plan payment pursuant to 11 U.S.C. sec 1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. sec 1307(c)(6)

fr. 2/11/20

Docket 51

Tentative Ruling:

Grant. Pursuant to 11 U.S.C. §§ 1329(a) and 1325(b), the plan payment will increase to \$1,645.88 per month.

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
Ali R Nader

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, May 5, 2020

Hearing Room 301

10:30 AM

1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

#29.00 Trustee's motion for order modifying the plan to increase the plan payment pursuant to 11 U.S.C. §1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. §1307(c)(6)

fr. 2/11/20

Docket 103

Tentative Ruling:

Grant. Pursuant to 11 U.S.C. §§ 1329(a) and 1325(b), the plan payment will increase to \$6,412.89 per month.

Movant must submit the order within seven (7) days.

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, May 5, 2020

Hearing Room 301

10:30 AM

1:17-10710 Nick A Avedissian and Hripsime Avedissian

Chapter 13

#30.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 4/14/20

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nick A Avedissian

Represented By
Michael Jay Berger

Joint Debtor(s):

Hripsime Avedissian

Represented By
Michael Jay Berger

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, May 5, 2020

Hearing Room 301

10:30 AM

1:17-13190 Seferino Carlin

Chapter 13

#31.00 Trustee's motion to dismiss case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax refunds

fr. 2/11/20

Docket 38

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, May 5, 2020

Hearing Room 301

10:30 AM

1:17-13190 Seferino Carlin

Chapter 13

#32.00 Trustee's motion for order modifying the plan to increase the plan payment pursuant to 11 U.S.C. §1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. §1307(c)(6)

fr. 2/11/20

Docket 36

Tentative Ruling:

Grant. Pursuant to 11 U.S.C. §§ 1329(a) and 1325(b), the plan payment will increase to \$1,145.00 per month.

Movant must submit the order within seven (7) days.

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, May 5, 2020

Hearing Room 301

10:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#33.00 Trustee's Motion to dismiss case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax refunds

fr. 2/11/20

Docket 142

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
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, May 5, 2020

Hearing Room 301

10:30 AM

1:19-10039 Keith Tatsukawa

Chapter 13

#34.00 Motion to dismiss case for failure to make plan payments

fr. 4/14/20

Docket 58

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, May 5, 2020

Hearing Room 301

10:30 AM

1:19-11670 Alma Hilda Sosa

Chapter 13

#35.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 36

***** VACATED *** REASON: Voluntary dismissal of motion filed 3/26/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alma Hilda Sosa

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, May 5, 2020

Hearing Room 301

11:00 AM

1:14-11478 Romulo Gramata Bernardino and Ladinila Aspiras

Chapter 13

#36.00 Opposition to response to notice of final cure payment filed by creditor US Bank, NA et al., and request for complete accounting of loan and reconciliation of payments

fr. 3/10/20 (stip); 4/14/20

STIP FILED 4/24/20

Docket 162

***** VACATED *** REASON: resolved per order entered on 4/29/20 doc# 176**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Romulo Gramata Bernardino

Represented By
Kevin T Simon

Joint Debtor(s):

Ladinila Aspiras Bernardino

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, May 5, 2020

Hearing Room 301

11:00 AM

1:14-15266 Nabiollah Morovati

Chapter 13

#37.00 Hearing on objection to closing of chapter 13 case

fr. 4/14/20

Docket 67

Tentative Ruling:

Pursuant to the Court's ruling at the prior hearing on April 14, 2020 [doc. 72], the creditor was to file and serve the objection and notice of the continued hearing on the debtor, the debtor's counsel and the chapter 13 trustee. That notice was to indicate that any written response was to be filed and served by May 1, 2020.

On April 17, 2020, the creditor filed a proof of service that represents that she served the objection on the debtor, the debtor's counsel and the chapter 13 trustee [doc. 74]. However, the proof of service does not indicate the address at which she served each party as required by Local Bankruptcy Rule 9013-3(d)(2)(B). Additionally, the proof of service is signed by the creditor, who is a party, and therefore, under Fed. R. Civ. P. 4(c)(2), is not eligible to effectuate service of process. Moreover, the creditor did not serve notice of the continued hearing and the deadline to file a response.

Accordingly, the Court will continue this hearing to **June 9, 2020 at 11:00 a.m.** By **May 12, 2020**, the creditor must serve the objection **and notice of continued hearing** on the debtor, the debtor's attorney and the chapter 13 trustee. The notice must indicate that any written response must be filed and served by **June 2, 2020**.

The proof of service must indicate the address at which the creditor served each party with the objection and notice of the continued hearing, as required by Local Bankruptcy Rule 9013-3(d)(2)(B). Additionally, the proof of service must be signed by someone over 18 years of age, other than the creditor.

Appearances on May 5, 2020 are excused.

Ruling from April 14, 2020

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, May 5, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati

Chapter 13

On November 21, 2014, Nabiollah Morovati ("Debtor") filed a voluntary chapter 13 petition. On January 17, 2020, the chapter 13 trustee filed a *Notice of Intent to File Trustee's Final Report and Account, Obtain Discharge of Debtor, and Close Case* (the "Notice of Intent") [doc. 64]. On January 28, 2020, in response to the Notice of Intent, Sukari Hayes ("Creditor") filed an *Objection to the Closing of the Case* (the "Objection") [doc. 65].

On February 26, 2020, the Court entered an order setting a hearing on the Objection (the "Order") [doc. 67]. Pursuant to the Order, Creditor was to serve the Objection on Debtor, Debtor's counsel and the chapter 13 trustee no later than March 9, 2020. Creditor did not file proof with the Court that she complied with the Order.

Consequently, the Court will continue this hearing to **May 5, 2020 at 11:00 a.m. No later than April 17, 2020**, Creditor must file and serve the Objection and notice of the continued hearing on Debtor, Debtor's counsel and the chapter 13 trustee. That notice must indicate that any written response to the Objection must be filed and served by May 1, 2020.

If Creditor does not timely file proof of service in compliance with this ruling, the Court may overrule the Objection at the May 5, 2020 continued hearing.

Party Information

Debtor(s):

Nabiollah Morovati

Represented By
Keith F Rouse

Trustee(s):

Elizabeth (SV) 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 5, 2020

Hearing Room 301

11:00 AM

1:15-14149 Norma Castellon

Chapter 13

#38.00 Amended motion to commence loan modification management program
fr. 4/14/20

Docket 93

Tentative Ruling:

Having reviewed the debtor's declaration in response to the lender's opposition [doc. 97], the Court will grant the motion.

The debtor must submit an order within seven (7) days.

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, May 5, 2020

Hearing Room 301

11:00 AM

1:18-12252 Leon Gerald Williams

Chapter 13

#39.00 Application to allow late filed claim

fr. 3/10/20

Docket 46

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Leon Gerald Williams

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 5, 2020

Hearing Room 301

11:00 AM

1:19-11998 Joseph Lisi and Cynthia Lisi

Chapter 13

#40.00 Motion re: objection to claim number 4 by claimant Heriberto Perez
fr, 12/10/19; 2/11/20

Docket 25

Tentative Ruling:

On April 15, 2020, the debtors filed a motion to withdraw the reference and set it for hearing before this Court. Pursuant to Local Bankruptcy Rule ("LBR") 5011-1(b), the debtors must file motions to withdraw the reference before the *District Court*. As such, the debtors should file a notice of withdrawal of the motion before this Court and pursue relief from the District Court. The debtors may refer to LBR 5011-1(b) and Local Civil Rule 9 for additional guidance.

The Court will continue this matter to **11:00 a.m. on August 11, 2020**. No later than **July 28, 2020**, the debtors must file a status report updating the Court on the status of the motion to withdraw the reference.

Appearances on May 5, 2020 are excused.

Party Information

Debtor(s):

Joseph Lisi

Represented By
David S Hagen

Joint Debtor(s):

Cynthia Lisi

Represented By
David S Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, May 5, 2020

Hearing Room 301

11:00 AM

1:19-12851 Neil Iain Barrington Taffe

Chapter 13

#41.00 Motion for authority to sell real property under LBR 3015-1(p)
fr. 2/11/20 (stip); 3/10/20

Docket 18

Tentative Ruling:

Deny. Debtor has not cited any authority allowing the Court to approve the proposed sale of real property, located in Las Vegas, Nevada, for an amount which is less than the amount owed to the beneficiary under the deed of trust, without the secured creditor's consent.

Respondent must submit the order within seven (7) days.

Party Information

Debtor(s):

Neil Iain Barrington Taffe

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 5, 2020

Hearing Room 301

11:00 AM

1:20-10293 Lloyd Weintraub

Chapter 13

#42.00 U.S. Trustee's motion to disgorge compensation pursuant to
11 U.S.C. § 329

Stip to continue filed 5/1/20

Docket 43

***** VACATED *** REASON: Order approving stip entered 5/1/20.
Hearing continued to 6/11/20 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lloyd Weintraub

Represented By
Stephen L Burton

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, May 5, 2020

Hearing Room 301

11:30 AM

1:19-11648 Maryam Sheik

Chapter 11

#43.00 Motion for order determining the value of collateral [11 U.S.C. §506(a), FRBP 3012]

Docket 80

Tentative Ruling:

If the debtor acknowledges that she is prohibited under 11 U.S.C. § 1123(b)(5) from bifurcating the secured claim of JPMorgan Chase Bank, N.A., *i.e.*, the beneficiary of the first deed of trust against the debtor's principal residence, and that the valuation is irrelevant for that purpose, the Court will grant the motion.

The movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, May 5, 2020

Hearing Room 301

11:30 AM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#44.00 Motion for order determining value of collateral
[11 U.S.C. §506(a), FRBP 3012]

Docket 91

Tentative Ruling:

Pursuant to 11 U.S.C. § 1129, for purposes of treatment of the claim under a chapter 11 plan of reorganization, the subject real property is valued at \$540,000.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant 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

Movant(s):

Melida Jimenez

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Jose Luis Jimenez Escobar

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, May 5, 2020

Hearing Room 301

11:30 AM

CONT...

Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

Matthew D. Resnik

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

9:30 AM

1:20-10344 Arndt & Traina, Inc.

Chapter 7

#1.00 Motion for relief from stay [UD]

SYLMAR PROPERTIES
VS
DEBTOR

fr. 4/8/20

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 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.*

On February 13, 2020, the debtor filed a voluntary chapter 7 petition. On February 19, 2020, the movant filed and served an unlawful detainer complaint against the debtor for possession of real property located in Sylmar, California. On April 13, 2020, the movant filed and served the amended motion [doc. 22]. Attached to the amended motion is a declaration by Vince Real, attorney for movant.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

9:30 AM

CONT... Arndt & Traina, Inc.

Chapter 7

In Mr. Real's declaration, he testifies that he and the movant were unaware of the debtor's chapter 7 bankruptcy case at the time of filing the unlawful detainer complaint [Declaration of Vince Real, ¶ 2]. Mr. Real testifies that he became aware of the debtor's bankruptcy case when he received notice of the 11 U.S.C. § 341(a) meeting of creditors, which was after the unlawful detainer complaint was filed. *Id.* Accordingly, retroactive relief from the automatic stay is appropriate in this case.

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):

Arndt & Traina, Inc.

Represented By
Mark T Young
Luke P Daniels

Movant(s):

Arndt & Traina, Inc.

Represented By
Mark T Young
Mark T Young
Mark T Young
Luke P Daniels
Luke P Daniels
Luke P Daniels

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

9:30 AM

1:19-11643 Larry M Halpern

Chapter 7

#2.00 Motion for relief from stay [RP]

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING
VS
DEBTOR

fr. 10/23/19; 1/22/20(stip)

Docket 27

Tentative Ruling:

In light of the issues discussed in the chapter 7 trustee's motion for turnover regarding the subject real property [doc. 61] and the Court's ruling to deny that motion [doc. 66], and given that it is now May 2020 (the motion for relief from stay was filed in September 2019), the Court will 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.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

9:30 AM

CONT... Larry M Halpern

Caren J Castle

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, May 6, 2020

Hearing Room 301

9:30 AM

1:17-13313 Pedro Mejia Lopez

Chapter 13

#3.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 3/25/20

Stip for adequate protection filed 4/21/20

Docket 54

*** VACATED *** REASON: Order approving stip entered 4/22/20.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pedro Mejia Lopez

Represented By
Donald E Iwuchuku

Movant(s):

THE BANK OF NEW YORK

Represented By
Stephanie StMartin-Ancik
Julian T Cotton
James F Lewin

Trustee(s):

Elizabeth (SV) 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 6, 2020

Hearing Room 301

9:30 AM

1:19-11072 **Jaime C Bagamaspad and Fatima Bagamaspad**

Chapter 13

#4.00 Motion for relief from stay [RP]

US BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 3/4/20; 4/8/20

Docket 43

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 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):

Jaime C Bagamaspad

Represented By
Stephen L Burton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

9:30 AM

CONT... Jaime C Bagamaspad and Fatima Bagamaspad

Chapter 13

Joint Debtor(s):

Fatima Bagamaspad

Represented By
Stephen L Burton

Movant(s):

US Bank National Association not

Represented By
Kristin A Zilberstein
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, May 6, 2020

Hearing Room 301

9:30 AM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#5.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

fr. 4/15/20

Docket 82

Tentative Ruling:

- NONE LISTED -

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

Movant(s):

Wells Fargo Bank, N.A., as Trustee ,

Represented By
Kelly M Kaufmann

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

9:30 AM

1:19-13155 Shobert Vartan

Chapter 7

#6.00 Motion for relief from stay [AN]

BRIGHT ENABULELE
VS
DEBTOR

Docket 33

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 March 17, 2020, movant filed an adversary proceeding against the debtor, asserting claims for relief under 11 U.S.C. §§ 523(a)(2), (a)(4) and (a)(6). 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.

Notwithstanding the foregoing, movant may proceed against the other non-debtor defendants in the nonbankruptcy action.

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Movant(s):

Bright Enabulele

Represented By
Levi Reuben Uku

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

9:30 AM

1:20-10424 Lynn Baltasar Lim

Chapter 7

#7.00 Motion for relief from stay [RP]

REDWOOD BPL HOLDINGS, INC.
VS
DEBTOR

Docket 13

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

The Court does not make a finding that the debtor was involved in the scheme to hinder, delay or defraud creditors.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party 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, May 6, 2020

Hearing Room 301

9:30 AM

CONT... Lynn Baltasar Lim

Chapter 7

Party Information

Debtor(s):

Lynn Baltasar Lim

Pro Se

Movant(s):

Redwood BPL Holdings, Inc.

Represented By
Michael J Gomez

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 6, 2020

Hearing Room 301

9:30 AM

1:19-12073 Scott Alan Secor and Iman Secor

Chapter 13

#8.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE, LLC
VS
DEBTOR

Stip to continue filed 5/1/20

Docket 37

*** VACATED *** REASON: Order approving stip entered 5/5/20.
Hearing continued to 6/10/20 at 9:30 AM.

Tentative Ruling:

Party Information

Debtor(s):

Scott Alan Secor

Represented By
Stephen L Burton

Joint Debtor(s):

Iman Secor

Represented By
Stephen L Burton

Movant(s):

NATIONSTAR MORTGAGE, LLC

Represented By
Jacky 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, May 6, 2020

Hearing Room 301

9:30 AM

1:20-10057 2300 Pisani, A Nevada Domestic LLC

Chapter 11

#9.00 Motion for relief from stay [RP]

CENTER STREET LENDING CORP.
VS
DEBTOR

Case dismissed 4/17/2020

Docket 46

***** VACATED *** REASON: Case dismissed on 4/17/20 [doc. 50]. The motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

2300 Pisani, A Nevada Domestic

Represented By
Michael R Totaro

Movant(s):

Center Street Lending Corporation

Represented By
John W Kim
Marisol A Nagata

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

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

#10.00 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);
11/20/19 (stip); 1/22/20(stip); 3/25/20

Docket 1

Tentative Ruling:

On January 28, 2020, the Court entered an order dismissing the debtor's chapter 7 case for failure to file required documents (the "Dismissal Order") [Bankruptcy Docket, doc. 107]. The following day, the chapter 7 trustee submitted a no asset report. Subsequently, the debtor's case was closed [Bankruptcy Docket, doc. 108]. On March 20, 2020, by request of the debtor, the Court entered an order reopening the debtor's bankruptcy case [Bankruptcy Docket, doc. 112]. The debtor has moved to vacate the Dismissal Order [Bankruptcy Docket, doc. 117].

Given that the debtor's case has reopened and the chapter 7 trustee apparently has determined that there are no assets to distribute, the Court will not delay prosecution of this matter.

In the latest joint status report [doc. 40], the debtor did not indicate whether she consents to entry of a final judgment by this Court. 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

1:30 PM

CONT... **Elizabeth Y. Zaharian**
L.Ed.2d 475 (2011)).

Chapter 11

In addition, the plaintiff has indicated that it intends to seek a judgment of nondischargeability against the debtor's husband, who is not a debtor before this Court. If the plaintiff elects to proceed with its claim against the nondebtor husband, the plaintiff must file and serve a memorandum of points and authorities explaining why it is legally entitled to a judgment of nondischargeability against a nondebtor individual.

Parties should be prepared to discuss the following:

Deadline for the debtor to file a response to the complaint: 6/5/20

Deadline to complete discovery: 7/15/20.

Deadline to file pretrial motions: 7/31/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 8/19/20.

Pretrial: 9/9/20 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), 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):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

Defendant(s):

Armand Zaharian

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

1:30 PM

CONT... Elizabeth Y. Zaharian
Elizabeth Y. Zaharian

Pro Se

Chapter 11

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, May 6, 2020

Hearing Room 301

1:30 PM

1:19-12517 Hayde Rodriguez Barahona

Chapter 7

Adv#: 1:20-01016 Zamora, Chapter 7 Trustee v. Rodriguez Barahona et al

- #11.00** Status conference re: complaint to:
(1) Obtain declaratory relief as to estate's ownership interest in real property; and
(2) Authorize sale of property owned in part by non-debtor

fr. 4/8/20

Docket 1

Tentative Ruling:

In connection with the request to pay compensation to a realtor employed by the chapter 7 trustee, the Court intends to set the motion to approve the compromise between the parties for hearing. The Court will continue this status conference to **1:30 p.m. on July 29, 2020**. If the Court grants the motion to approve the compromise, and the parties stipulate to dismissal of this action prior to the continued status conference, the Court may take the continued status conference off calendar.

Appearances on May 6, 2020 are excused.

Party Information

Debtor(s):

Hayde Rodriguez Barahona

Represented By
Navid Kohan

Defendant(s):

Hayde Rodriguez Barahona

Pro Se

Juan Manuel Barahona Garcia

Pro Se

Plaintiff(s):

Nancy J Zamora, Chapter 7 Trustee

Represented By
Larry D Simons

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

1:30 PM

CONT... Hayde Rodriguez Barahona

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

1:30 PM

1:19-13064 Adam Matthew Stern

Chapter 7

Adv#: 1:20-01031 Gewant v. Stern et al

#12.00 Status conference re: complaint determining debt to be not dischargeable and for objection to discharge

Stip to continue filed 4/24/20

Docket 1

***** VACATED *** REASON: Order approving stip entered 4/28/20.
Hearing continued to 6/3/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adam Matthew Stern

Represented By
Marc C Rosenberg

Defendant(s):

Adam Stern

Pro Se

Laura Denean Sterns

Pro Se

Joint Debtor(s):

Laura Denean Sterns

Represented By
Marc C Rosenberg

Plaintiff(s):

Dennis Gewant

Represented By
Allan D Sarver

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 6, 2020

Hearing Room 301

2:00 PM

1:20-10007 Jason Scott Fontaine

Chapter 7

#13.00 Debtor's motion to avoid lien under 11 U.S.C. §522(f) with Jennifer Hoult
fr. 3/26/20

Docket 11

***** VACATED *** REASON: Continued to 5/7/20 at 2:00 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jason Scott Fontaine

Represented By
Leonard Pena

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 6, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01128 Miller, Chapter 7 Trustee v. Yaspan

#14.00 Motion to dismiss adversary proceeding pursuant to
Fed. R. Bankr. P. 7012 and FED.R.CIV.P.12(b)(6)

Docket 28

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On February 16, 2018, Deborah Lois Adri ("Debtor") filed a voluntary chapter 11 petition. On April 13, 2018, the Court entered an order approving Robert Yaspan as general bankruptcy counsel as of the petition date [Bankruptcy Docket, doc. 53].

A. Relevant Bankruptcy Events

On December 17, 2018, creditor Moshe Adri filed a motion to appoint a chapter 11 trustee (the "Trustee Appointment Motion") [Bankruptcy Docket, doc. 216]. On February 7, 2019, the Court held a hearing on the Trustee Appointment Motion. At that time, the Court issued a ruling granting the Trustee Appointment Motion (the "Trustee Ruling") [Bankruptcy Docket, doc. 277]. In the Trustee Ruling, the Court stated, in relevant part—

The Court ordered Debtor to file amended monthly operating reports ("MORs") to properly complete certain sections. Debtor did not timely file amended MORs. Throughout January 2019, Debtor filed certain amended and second amended MORs and bank statements. The bank statements were partially redacted. Although Debtor's original MORs included information for her general DIP bank account, a payroll account and a tax account, Debtor's second set of amended MORs added information for a money market account and bank statements related to Debtor's corporation, Gold Girls, Inc. ("Gold Girls").

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

In addition, Debtor included statements and an accounting for two prepetition personal accounts that Debtor has omitted from her original schedules (the "Omitted Personal Accounts"). These statements reflected that, in January and February 2018, Debtor transferred a significant amount of funds into the Omitted Personal Accounts. The amended MORs also showed that Debtor had been using Gold Girls' account and previously undisclosed accounts to pay her personal living expenses. In addition, Debtor had distributed an unauthorized postpetition loan to Ride on Autos, Inc. ("ROA") in the amount of \$22,000.

In her second amended February 2018 MOR, Debtor indicated that the aggregate ending balance in her disclosed accounts was \$506,178.73. As of December 31, 2018, Debtor's ending balance had dramatically declined to \$12,261.54. Similarly, Gold Girls' account diminished from \$125,000 in February 2018 to \$10,926.83 in December 2018. Overall, postpetition, Debtor spent \$534,279.28.

Debtor did not file amended schedules or an amended Statement of Financial Affairs until after Mr. Adri filed the Trustee Appointment Motion. The amended schedules and statements differed significantly from Debtor's original schedules and statements.

Trustee Ruling, pp. 3-5. On these facts, the Court entered an order directing the appointment of a chapter 11 trustee [Bankruptcy Docket, doc. 278]. Subsequently, Elissa Miller was appointed the chapter 11 trustee. On March 6, 2019, Ms. Miller filed a motion to convert Debtor's case to a chapter 7 case (the "Motion to Convert") [Bankruptcy Docket, doc. 296]. On April 8, 2019, the Court entered an order converting Debtor's case to a chapter 7 case [Bankruptcy Docket, doc. 305]. Ms. Miller was appointed the chapter 7 trustee (the "Trustee").

B. Relevant Adversary Matters

On October 24, 2019, the Trustee filed a complaint against Mr. Yaspan, initiating this adversary proceeding. By stipulation of the parties, in February 2020, the Trustee filed a first amended complaint (the "FAC") [doc. 25], asserting claims for breach of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

fiduciary duty and professional negligence against Mr. Yaspan. Aside from incorporating the relevant portions of the Trustee Ruling, above, the Trustee alleges—

In January 2018, Debtor consulted with Mr. Yaspan regarding filing for bankruptcy after Mr. Adri obtained a \$1,353,835.48 judgment against Debtor as well as significant debts owed to taxing authorities. Prepetition, Debtor gave Mr. Yaspan a \$626,000 check she had received from a family trust (the "Trust"). Mr. Yaspan deposited this check into his firm's client trust account and (A) kept \$25,000 as a retainer; (B) transferred \$100,000 to Gold Girls, allegedly as working capital despite the fact that Gold Girls had ceased doing business; and (C) wired \$501,000 to a DIP account. On the same day, Debtor withdrew \$403,345.70 from the DIP account.

Subsequently, Mr. Yaspan and others employed prepared Debtor's schedules and statements without conducting due diligence as to Debtor's assets and liabilities. Mr. Yaspan failed to discuss with Debtor the various implications of filing a chapter 11 case and failed to take into consideration the impact of the timing of the petition on Debtor's tax debt.

Moreover, prepetition, Debtor had a 50% interest in ROA and would buy used automobiles at auction and then consign them to ROA without taking title or having a written agreement with ROA regarding the terms of the consignment. ROA would then sell the vehicles, deduct costs and the commission incurred by ROA and pay the balance to Debtor. Debtor provided in her disclosure statement that she started the business with funds inherited from her parents, i.e., the funds deposited into Mr. Yaspan's trust account.

Postpetition, Debtor continued this business without obtaining approval by the Court and without providing any information regarding Debtor's business plan. Mr. Yaspan failed to take any steps to protect assets of the estate or provide guidance to Debtor regarding her business, such as by advising that Debtor formalize the business relationship through a written agreement. Further, within two years,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

Debtor received \$961,700 in distributions from the Trust. Debtor and Mr. Yaspan failed to disclose these transfers in Debtor's Statement of Financial Affairs, in addition to failing to disclose the Omitted Personal Accounts and Debtor's use of estate accounts for personal expenses.

On September 27, 2018, after Mr. Yaspan filed an application requesting compensation from the estate, the Court entered an order allowing \$97,398.85 in fees and expenses and approving payment of 85% of the fees. The Trustee believes Mr. Yaspan was paid an additional \$17,000.

As counsel to a chapter 11 debtor in possession, Mr. Yaspan owed fiduciary duties to the estate, which he breached by failing to, among other things, act honestly and with full disclosure regarding Debtor's assets, failing to properly counsel Debtor, failing to act with reasonable diligence, failing to act in the interest of the estate, closing his eyes or being passive to Debtor's conduct, signing Debtor's schedules and statements which were inaccurate, without conducting a reasonable inquiry, and failing to advise Debtor to take preventative or corrective action. As a result, the estate has been damaged in an amount in excess of \$900,000.

In addition, Mr. Yaspan breached his duty of care to the estate by filing the petition prior to the expiration of the time the IRS would be entitled to a priority administrative claim and by subjecting Debtor to complaints for nondischargeability. As a result, the estate sustained damages for potentially up to \$2 million.

On March 6, 2020, Mr. Yaspan filed a motion to dismiss the FAC (the "Motion") [doc. 28]. In the Motion, Mr. Yaspan contends: (A) the Trustee cannot demonstrate causation of damages; (B) the Trustee lacks standing to sue Mr. Yaspan; (C) public policy bars claims against Mr. Yaspan; and (D) the Trustee's claims are barred by the doctrine of unclean hands. On April 22, 2020, the Trustee opposed the Motion [doc. 32].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Aside from this adversary proceeding, Debtor also filed a complaint against Mr. Yaspan, asserting claims for, among other things, breach of fiduciary duty and professional negligence [1:20-ap-01014-VK]. Debtor's complaint is based on many of the same allegations as the FAC.

In addition, the Trustee has filed a complaint against Debtor, requesting denial of Debtor's discharge pursuant to 11 U.S.C. § 727(a)(2), (a)(3) and (a)(4) (the "Discharge Action"). The Discharge Action remains pending.

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 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).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

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). Under the "incorporation by reference" doctrine, a court may look beyond the four corners of the complaint to take into account documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012). The court "may treat the referenced 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.*, quoting *United States v. Richie*, 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.").

B. Standing

Mr. Yaspan contends that the Trustee does not have standing to bring her claims against Mr. Yaspan. Pursuant to 11 U.S.C. § 541(a), the commencement of a bankruptcy case creates an estate comprised of the following property—

- (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.
...
- (7) Any interest in property that the estate acquires after the commencement of the case.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Pursuant to 11 U.S.C. § 323—

- (a) The trustee in a case under this title is the representative of the estate.
- (b) The trustee in a case under this title has capacity to sue and be sued.

"The scope of section 541 is broad, and includes causes of action." *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 707 (9th Cir.1986) (citing *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983)). In chapter 11 cases where the debtor is an individual, the estate owns prepetition causes of action held by the debtor pursuant to 11 U.S.C. § 541(a)(1) as well as "all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7...." 11 U.S.C. § 1115(a)(1).

"[B]y reason of section 541(a)(7), the bankruptcy estate in Chapter 7 will continue to include the property interests that section 1115 incorporated into the estate during the pendency of Chapter 11." *In re Schichtel*, 556 B.R. 90, 92–93 (Bankr. W.D.N.Y. 2016); *see also In re Roussos*, 2016 WL 5349717, at *5 (Bankr. C.D. Cal. 2016) ("[I]n a case that has been converted from Chapter 11 to Chapter 7, claims against the debtor or the estate that arise post-petition but pre-conversion are treated as though they had arisen pre-petition."). Several courts have held that breach of fiduciary duty and malpractice claims held by the debtor during a chapter 11 case pass to the chapter 7 trustee upon conversion. *See, e.g. In re R & R Assocs. of Hampton*, 402 F.3d 257, 265 (1st Cir. 2005) ("These claims belonged to the bankrupt estate, and [the chapter 7 trustee], as the successor to the debtor in possession and representative of the estate, plainly is entitled to pursue whatever legal claims belonged to the estate."); *and In re Eddy*, 304 B.R. 591, 599 (D. Mass. 2004) ("If a Chapter 11 case is converted to [a] Chapter 7 case, the appointed Chapter 7 trustee is essentially a successor estate representative... [who] assumes the powers of the debtor in possession.").

"The bankruptcy code endows the bankruptcy trustee with the *exclusive* right to sue on behalf of the estate." *Estate of Spirtos v. One San Bernardino Cty. Superior Court*, 443 F.3d 1172, 1176 (9th Cir. 2006) (emphasis added). "The debtor can pursue such claims only if they are abandoned by the estate." *In re Meehan*, 2014 WL 4801328, at

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

*4 (B.A.P. 9th Cir. 2014) (citing 11 U.S.C. § 554).

In light of these authorities, the Trustee succeeded to Debtor's claims upon conversion of Debtor's case to a chapter 7 case. The breach of fiduciary duty and professional negligence claims arose pre-conversion and, as a result, were property of the estate at the time the Court converted Debtor's case. Because the Trustee has the *exclusive* right to sue on claims held by the estate, the Trustee has standing to pursue this action.

The cases referenced by Mr. Yaspan are inapposite. First, the California authorities cited by Mr. Yaspan merely hold that an attorney-client relationship "*or other basis for a duty of care*" must exist to assert a claim for professional negligence. *Jager v. County of Alameda*, 8 Cal.App.4th 294, 297 (Ct. App. 1992) (emphasis added). Here, the Trustee has alleged bases to assert both her claims, namely, that she succeeded to Debtor's rights upon conversion of this case and that Mr. Yaspan owed a fiduciary duty to the estate as well as Debtor (discussed below). Moreover, even if California law restricted non-client parties from bringing certain claims against attorneys, the Trustee's express right under the Bankruptcy Code to inherit a debtor's causes of action would preempt California law. See *Sherwood Partners, Inc. v. Lycos, Inc.*, 394 F.3d 1198, 1204 (9th Cir. 2005) (holding that the trustee's statutory powers preempts state law that interferes with those powers); and *In re Ellwanger*, 140 B.R. 891, 900 (Bankr. W.D. Wash. 1992) ("The more fundamental flaw in movants' position is that federal bankruptcy law, rather than assignability or public policy under state law, determines whether the malpractice claims are property of the estate."). As such, the Trustee has standing to prosecute her claims.

C. Whether Mr. Yaspan Owed a Fiduciary Duty to the Estate

Mr. Yaspan asserts that he did not owe any fiduciary duties to the estate. As a preliminary matter, the Trustee may bring a claim for breach of fiduciary duty whether Mr. Yaspan owed that duty to the estate or Debtor. As explained above, the Trustee is the only party with standing to bring any pre-conversion claims held *either* by Debtor or the estate. Nevertheless, in the FAC, it appears the Trustee is resting her claim for breach of fiduciary duty on duties owed to the estate. If the Trustee intended to base her claim on duties owed to *both* Debtor and the estate, the Trustee should amend the FAC to split the claim and specify which allegations pertain to a breach as to Debtor versus a breach as to the estate. However, to the extent the Trustee intends to proceed

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

with a breach of fiduciary duty claim as to the estate alone, case law supports the Trustee's position that Mr. Yaspan owed fiduciary duties to the chapter 11 estate.

"According to the majority of courts addressing this issue, an attorney for a debtor in possession is a fiduciary of the bankruptcy estate." *In re Count Liberty, LLC*, 370 B.R. 259, 280 (Bankr. C.D. Cal. 2007) (aggregating cases); *see also In re Perez*, 30 F.3d 1209, 1219 (9th Cir. 1994) ("Counsel for the estate must keep firmly in mind that his client is the estate and not the debtor individually. Counsel has an independent responsibility to determine whether a proposed course of action is likely to benefit the estate or will merely cause delay or produce some other procedural advantage to the debtor."). In *Count Liberty*, the court, citing numerous authorities from across the country, explored the nature of the duties owed by a chapter 11 debtor in possession's counsel to the estate—

Counsel for a debtor in possession is not simply a mouthpiece for his client. Counsel is charged with the duty to advise the debtor in possession of its responsibilities under the Code, and to assist the debtor in possession, and its principals, in discharging those responsibilities. A debtor in possession's attorney bears a heightened duty of care to ensure the integrity of the bankruptcy process where, by definition, a debtor in possession is not disinterested, and counsel for a debtor in possession must be disinterested, free of any adverse entanglements which could cloud its judgment respecting what is best for the estate.

A debtor in possession's attorney must be proactive, *i.e.*, prepared to render unsolicited legal advice regarding preventative or corrective action that may be necessary for the debtor in possession to properly discharge its fiduciary obligations. The attorney must render candid advice, so the client can make informed decisions regarding the representation. Counsel cannot remain a passive observer, silently sitting by in the face of a client's legally unacceptable decision. Nor can the attorney simply close his eyes to matters that may have an adverse legal consequence to the estate. Zealous representation requires the attorney to initiate advice (1) when the client is unaware of the potentially adverse legal consequences of a proposed course of action,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

and (2) where the offering of advice would be in the client's best interests. If the attorney and client disagree, counsel must refrain from filing bad faith or frivolous pleadings and ultimately withdraw if the high standard for withdrawal is met.

Count Liberty, LLC, 370 B.R. at 281–83 (internal quotations and citations omitted). [FN1].

In the FAC, the Trustee alleges that Mr. Yaspan breached precisely these types of duties. Mr. Yaspan attempts to distinguish *Count Liberty* on the basis that, there, the issue arose in connection with the court's review of counsel's entitlement to attorneys' fees. However, the context of the *Count Liberty* decision is a distinction without a difference; the court never held that parties may only raise breach of fiduciary duty issues in connection with fee applications. In fact, several courts have allowed affirmative claims for breach of fiduciary duty and professional negligence to proceed against counsel for chapter 11 debtors. *See, e.g. In re Food Management Group, LLC*, 380 B.R. 677, 713 (Bankr. S.D.N.Y. 2008) (rejecting the attorney-defendants' argument that the trustee was limited to pursuing disgorgement instead of initiating an adversary proceeding to bring a claim for, among other things, breach of fiduciary duty); *R & R Assocs.*, 402 F.3d 257 (allowing chapter 7 trustee to bring adversary proceeding against former chapter 11 debtor in possession's counsel for breach of fiduciary duty and negligent representation); and *In re Jennings*, 378 B.R. 678, 686 (Bankr. M.D. Fla. 2006) (same).

In his reply, Mr. Yaspan emphasizes that such a duty to the estate presents attorneys for debtors in possession with a difficult decision: either breach his duty of confidence to the debtor in possession by alerting the Court of misconduct or breach his duty to the estate by remaining silent. But such a duty has long been part of the bargain between counsel and estate. Congress prescribed certain duties to professionals employed by the estate and gave bankruptcy courts oversight over these professionals' employment and compensation. 11 U.S.C. §§ 327, 330. In return, such professionals receive first priority compensation from the estate. 11 U.S.C. § 507(a)(1).

In fact, courts have explicitly acknowledged the difference between state rules of professional conduct and duties of counsel for debtors in possession. For instance, the Second Circuit Bankruptcy Appellate Panel explained that, "[i]n the nonbankruptcy

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

context, absent ongoing fraud or criminal activity, an attorney's obligation is to advise the client and, if the client disagrees, resign." *In re JLM, Inc.*, 210 B.R. 19, 26 (B.A.P. 2d Cir. 1997). However, the panel's study of several bankruptcy cases painted a different picture—

[T]he attorney for the debtor in possession may not simply resign where the client refuses the attorney's advice concerning the client's fiduciary obligations to the estate and its creditors. Counsel must do more, informing the court in some manner of derogation by the debtor in possession. *See* ... 1 NORTON BANKR. L. & PRAC.2d § 27:22 & n. 33 (Supp.1997) (citing *In re Swansea Consol. Resources, Inc.*, 155 B.R. 28, 38 n.14 (Bankr.D.R.I.1993) (as an officer of the court, debtor in possession's counsel "had absolutely no choice but to disclose" unauthorized diversion of debtor in possession funds to foreign bank); *Agresti v. Rosenkranz (In re United Utensils Corp.)*, 141 B.R. 306, 309 (Bankr.W.D.Pa.1992) ("If the debtor is not fulfilling its fiduciary duty to the estate, it is the responsibility and duty of debtor's counsel to bring such matters to the attention of the court")); *Vining v. Ward (In re Ward)*, 894 F.2d 771, 776 (5th Cir.1990) (had attorney for the debtor known of existence of an unscheduled judgment against the estate, "as an officer of the court, [the attorney] would certainly have had a duty to inform the court"); *In re Rivers*, 167 B.R. 288, 300 (Bankr.N.D.Ga.1994); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. at 847 (recognizing that counsel for the debtor in possession faced with management's persistence in breaching fiduciary obligation must alert the court through motion to be relieved as counsel or otherwise).

Id.

Even if Mr. Yaspan believed he could not disclose information to the Court, Mr. Yaspan always had the option of withdrawing as counsel. "Under no circumstances... may the lawyer for a bankruptcy estate pursue a course of action, unless he has determined in good faith and as an exercise of his professional judgment that the course complies with the Bankruptcy Code and serves the best interests of the estate." *Perez*, 30 F.3d at 1219. In such a case, "[t]he wholly unacceptable response is to do nothing and continue in the engagement." *In re Wilde Horse Enterprises, Inc.*,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

136 B.R. 830, 847 (Bankr. C.D. Cal. 1991). As outlined by the *Wilde Horse* court in response to an attorney's comment that there was nothing she could have done to control her client—

The prepetition answer comes from our own Ninth Circuit Bankruptcy Appellate Panel in *In re Villa Madrid*, 110 B.R. 919 (9th BAP 1990) where the Court said:

"The importunities of a desperate client do not relieve an attorney of the affirmative duty of reasonable inquiry imposed by Rule 9011. The evident warning flags and the inadequate time available to make such inquiry should have impelled [the attorney] to consider the ever-present option of declining a questionable engagement." *Id.* at p. 924.

The post-petition answer is that on the very first hint or suspicion that the debtor or debtor's principal is not being honest, or is neglecting his/hers/its fiduciary duty to the estate, it is the attorney's duty to first ask *probing* questions and *demand full and reasonably corroborated responses*, and then if counsel is still unsatisfied or ethically uncomfortable, immediately bring the unresolved concerns to the Court's attention by way of a motion to be relieved as counsel of record or in some other way. The wholly unacceptable response is to do nothing and continue in the engagement "looking the other way". Counsel does so at his or her personal and professional peril.

Id. (emphases in *Wilde Horse*).

In light of this ample authority, Mr. Yaspan had a fiduciary duty to the estate. In the FAC, the Trustee explicitly alleges which duties she believes Mr. Yaspan breached. As a result, the FAC includes adequate allegations regarding breach of duties owed to the estate.

D. Damages for Breach of Fiduciary Duty

To establish a claim for breach of fiduciary duty, a plaintiff must show "the existence

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

of a fiduciary relationship, breach of that duty and damages." *Shopoff & Cavallo LLP v. Hyon*, 167 Cal.App.4th 1489, 1509 (Ct. App. 2008).

Mr. Yaspan contends that the Trustee's alleged damages are speculative and that the Trustee has failed to allege how Mr. Yaspan's alleged conduct proximately caused the damages. In support, Mr. Yaspan cites *Campbell v. Magana*, 184 Cal.App.2d 751 (Ct. App. 1960) and *Namikas v. Miller*, 225 Cal.App.4th 1574 (Ct. App. 2014). In *Campbell*, the appellate court affirmed the trial court's judgment that, although the attorneys had negligently handled the client's case, the client did not suffer any damages because her case had no merit. *Campbell*, 184 Cal.App.2d at 763. The client attempted to argue that, even if she could not have won at trial, she should be able to recover the settlement value of her claim. *Id.*, at 757-58. The appellate court rejected this notion, holding that any possibility of settlement "fell in the category of speculation, conjecture and contingency." *Id.*, at 758.

In *Namikas*, the plaintiff sued his attorney for negligently recommending entry into a marital settlement agreement; the agreement based spousal support payments on a calculation by a software program called DissoMaster. *Namikas*, 225 Cal.App. at 1579-80. Years later, the court modified the amount of spousal support after the plaintiff's new attorney argued that spousal support should be calculated using a forensic marital standard of living analysis. *Id.*, at 1579.

In this context, the appellate court affirmed the trial court's judgment in favor of the attorneys, holding that the plaintiff had failed to demonstrate whether he would have received a more favorable outcome absent his attorney's alleged negligence. *Id.*, at 1580. The appellate court highlighted that the plaintiff had not submitted evidence that his ex-wife would have accepted lower spousal support payments or that, in return for a lower spousal support payment, the ex-wife would not have demanded a larger property settlement or payment of her attorneys' fees. *Id.*, at 1583-87. The appellate court also noted that damages are particularly difficult to show in cases involving settlement because such damages are "inherently speculative" and often based on "an educated guess." *Id.*, at 1582-83.

These cases are a far cry from the allegations in the FAC. In *Campbell* and *Namikas*, the courts were asked to engage in conjecture regarding the amount of a possible settlement the plaintiffs may have received. The Court need not engage in any such

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

speculation here. The Trustee's allegations draw a clear line from Mr. Yaspan's alleged conduct to a specific amount of damages, i.e., the amount depleted from the estate. Moreover, in contrast to the intense evidentiary burden in *Namikas*, the alleged damages here are based on easily verifiable sources, such as Debtor's bank statements. Finally, the facts in *Campbell* and *Namikas* are completely distinguishable from the allegations in the FAC. Mr. Yaspan has not explained how cases about the speculative valuation of settlements relate to a bankruptcy case where damages are based on transfer of estate property. Simply put, there are no useful parallels between these cases and this adversary proceeding.

Mr. Yaspan also asserts that there are *no* damages because the Trustee has sued to deny Debtor her discharge and, as a result, creditors will not be damaged. Notwithstanding the fact that the Court has not adjudicated Debtor's entitlement to a discharge, the relevant issue is whether the estate (or Debtor, if the claim is a prepetition claim inherited from Debtor) has been damaged. There is likely no clearer damage to the estate than depletion of assets. Whether creditors have incurred damages as a result is not relevant to the claims before the Court. [FN2].

Finally, Mr. Yaspan contends that the Trustee must establish that Debtor would not have transferred estate assets but for Mr. Yaspan's conduct. However, the Trustee's allegations are not exclusively based on Mr. Yaspan's failure to advise Debtor. The Trustee also alleges that Mr. Yaspan failed to investigate Debtor's financial affairs, failed to complete Debtor's schedules and statements accurately and failed to bring light to Debtor's improper transfers of estate assets. These allegations do not depend on Debtor's cooperation with Mr. Yaspan. Taking the allegations as a whole, the Trustee has provided a link between Mr. Yaspan's overall conduct and the damage incurred by the estate. The Court will not dismiss the Trustee's claim for breach of fiduciary duty.

E. Damages for Professional Negligence

With respect to professional negligence, the plaintiff must demonstrate "(1) the duty of the attorney to use such skill, prudence, and diligence as members of his or her profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the breach and the resulting injury; and (4) actual loss or damage resulting from the attorney's negligence." *Namikas*, 225 Cal.App.4th at 1581.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Mr. Yaspan again asserts that the Trustee's damages are too speculative, citing *Orrick Herrington & Sutcliffe v. Superior Court*, 107 Cal.App.4th 1052 (Ct. App. 2003) and *Shopoff*, 165 Cal.App.4th 1489. In *Orrick*, the client sued his former attorneys for failing to advise him of potential consequences of the marital settlement agreement the client signed, such as possibly exposing the client to tax and securities liability as well as litigation from his ex-wife and current wife. *Orrick*, 107 Cal.App.4th at 1055. Prior to suing his attorneys, the client had expended significant resources attempting to undo the marital settlement agreement and overturn the judgment of dissolution adopting the marital settlement agreement. *Id.* The appellate court held that the client had not established damages because—

The undisputed facts, however, show neither his ex-wife nor his current wife, nor the taxing authorities nor the securities regulators have made any claims against [the client]. Nothing compelled [the client] to spend hundreds of thousands of dollars in his futile attempt to overturn the settlement.

Id., at 1060.

Here, unlike *Orrick*, the tax consequences alleged by the Trustee are not speculative. The IRS has filed a proof of claim in the amount of \$634,733.87 against the estate, and indicated that \$510,740.42 of the claim is entitled to priority treatment. The impact of such priority treatment is that Debtor cannot receive a discharge of the IRS's priority claim and nonpriority unsecured creditors will receive less because of the priority claim. The active assertion of a claim against the estate is distinguishable from a case where the court based its opinion, in part, on the fact that the relevant taxing authorities had not made any claims against the client. In addition, Mr. Yaspan contends that Debtor did not suffer damages because her bankruptcy filing prevented entry of a larger judgment based on an arbitration award. Mr. Yaspan will have an opportunity to provide such a defense when the Court weighs facts and takes evidence. At this pleading stage, the Trustee has provided adequate allegations regarding damages based on the timing of the petition.

Next, Mr. Yaspan, referencing *Shopoff*, asserts that the Trustee cannot rely on the Discharge Action as a basis for her professional negligence claim. The Court agrees.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

In *Shopoff*, a client hired an attorney to represent him in a legal action regarding the client's business. *Shopoff*, 167 Cal.App.4th at 1498-1500. After obtaining a judgment for the client that was difficult to enforce, the attorney negotiated a global settlement of the action. *Id.*, at 1499. The settlement resulted in an interpleader action to liquidate the business's assets. *Id.*, at 1501. While the interpleader action was pending, the client sued his attorney for legal malpractice and breach of fiduciary duty, asserting that the attorney induced the client into agreeing to the settlement that led to less recovery than enforcing the judgment. *Id.*, at 1509-10. The *Shopoff* court held that the damages were too speculative because the interpleader action was still pending and it was not yet clear whether the client would receive less through the liquidation. *Id.*, at 1510-11.

Similarly, here, the Discharge Action is still pending. Because the Court has not adjudicated Debtor's entitlement to a discharge, it is not clear that Debtor will lose her discharge as a consequence of Mr. Yaspan's alleged conduct. Unlike the Trustee's allegations regarding the IRS's priority claim against the estate, which ripened before the Trustee initiated this adversary proceeding, the damages related to Debtor's potential loss of discharge are speculative.

The Trustee's reference to *Helbling v. Josselson*, 378 B.R. 550 (Bankr. N.D. Ohio 2007), is not persuasive. There, the chapter 7 trustee did not initiate an adversary proceeding against the debtor's attorney until *after* the debtor's discharge was revoked. *Helbling*, 378 B.R. at 552. Moreover, in *Helbling*, the issue of whether damages were speculative was not before the court; the court considered the issue of postpetition damages in the context of determining whether the professional negligence claim was property of the estate (holding that it was). *Id.*, at 555-56. As such, *Helbling* does not contradict the holding of *Shopoff*.

Consequently, the Court will dismiss the professional negligence claim based on Debtor's potential loss of her discharge without prejudice, and will not dismiss the professional negligence claim based on the tax consequences incurred as a result of the timing of Debtor's bankruptcy filing.

F. Public Policy

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Pursuant to Federal Rule of Evidence 501, "[i]n a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision." As such, the Court must apply California law on privilege. Under California Evidence Code § 954—

[T]he client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

- (a) The holder of the privilege;
- (b) A person who is authorized to claim the privilege by the holder of the privilege; or
- (c) The person who was the lawyer at the time of the communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

California's Evidence Code provides exceptions to the attorney-client privilege. Cal. Evid. Code §§ 956-962. For instance, pursuant to California Evidence Code § 958, "[t]here is no privilege under this article as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship." In addition, under California Evidence Code § 912(a)—

Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege)... is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

"The party claiming the [attorney-client] privilege has the burden of establishing the preliminary facts necessary to support its exercise, i.e., a communication made in the course of an attorney-client relationship." *Costco Wholesale Corp. v. Superior Court*, 47 Cal.4th 725, 733 (2009). [FN3].

Mr. Yaspan argues that public policy should bar this lawsuit because the Trustee's claims require an investigation of communications between Mr. Yaspan and Debtor, and Mr. Yaspan is unable to waive the attorney-client privilege. This argument is premature. At this stage, the Court is evaluating the adequacy of the Trustee's allegations. The Court is not ruling on the admissibility of evidence. [FN4].

The Court will assess the applicability of the attorney-client privilege if there is an actual controversy over disclosure of privileged information. Should the issue arise, the parties should be prepared to discuss why Debtor has not waived the privilege by suing Mr. Yaspan on the same bases as the Trustee. Debtor also may explicitly consent to disclosure. In any event, the Court is confined to adjudicating live cases or controversies, U.S. CONST. art. III, § 2, cl. 1, and cannot generate predictive rulings based on speculative evidentiary issues that may not materialize.

G. Unclean Hands/In Pari Delicto

Finally, Mr. Yaspan argues that the unclean hands doctrine bars the Trustee's lawsuit against Mr. Yaspan. According to Mr. Yaspan, the allegations in the FAC implicate Debtor and, as a party standing in Debtor's shoes, the Trustee also is subject to a defense of unclean hands.

The doctrine of unclean hands "demands that a plaintiff act fairly in the matter for which he seeks a remedy." *Kendall-Jackson Winery, Ltd. v. Superior Court*, 76 Cal.App.4th 970, 978 (Ct. App. 1999). "Whether the doctrine of unclean hands applies is a question of fact." *Id.*

Not every wrongful act constitutes unclean hands. But, the misconduct need not be a crime or an actionable tort. Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

The misconduct that brings the unclean hands doctrine into play must relate directly to the cause at issue. Past improper conduct or prior misconduct that only indirectly affects the problem before the court does not suffice. The determination of the unclean hands defense cannot be distorted into a proceeding to try the general morals of the parties.

Id., at 979. "[T]here must be a direct relationship between the misconduct and the claimed injuries." *Mattco Forge, Inc. v. Arthur Young & Co.*, 52 Cal.App.4th 820, 846 (Ct. App. 1997).

First, Mr. Yaspan appears to contend that the unclean hands doctrine bars the Trustee's professional negligence claim. Although the doctrine may apply to some of the allegations that form the bases of the professional negligence claim, the doctrine does not apply to Mr. Yaspan's legal advice regarding the timing of Debtor's petition and the related tax consequences. In other words, there is no connection between Debtor's alleged unclean hands and receipt of tax advice from Mr. Yaspan.

As to the remaining allegations, the issue is whether the Trustee inherits Debtor's alleged bad acts such that Mr. Yaspan may use unclean hands as a shield. The Ninth Circuit Court of Appeals has not directly addressed this issue. *See In re Mortg. Fund '08 LLC*, 527 B.R. 351, 366 (N.D. Cal. 2015) (noting lack of authority from the Court of Appeals). Yet, "every circuit to have considered the question has held that a defendant 'sued by a trustee in bankruptcy may assert the defense of *in pari delicto*, if the jurisdiction whose law creates the claim permits such a defense outside of bankruptcy.'" *Id.* (quoting *Peterson v. McGladrey & Pullen, LLP*, 676 F.3d 594, 598-99 (7th Cir. 2012)).

Generally, "when a trustee asserts a claim on behalf of a debtor, the trustee proceeds under 11 U.S.C. § 541(a)(1), which defines the property of the estate as 'all legal or equitable interests of the debtor in property as of the commencement of the case.'" *In re Crown Vantage, Inc.*, 2003 WL 25257821, at *6 (Bankr. N.D. Cal. 2003). As such, courts that assessed the issue have determined that § 541(a) "establishes the estate's rights as no stronger than they were when actually held by the debtor," and thus *in pari delicto*, or any other defense available against the debtor, can be asserted against the trustee." *Id.* (quoting *In re Hedged-Investments Associates, Inc.*, 84 F.3d 1281,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri
1284-86 (10th Cir. 1996)).

Chapter 7

However, these authorities pertain to prepetition causes of action. Courts have reached the opposite result where the alleged conduct occurred postpetition. As noted by one local court, "[n]umerous courts have held that the *in pari delicto* defense is available only with respect to conduct that occurred pre-petition." *Roussos*, 2016 WL 5349717 at *11 (collecting cases).

Although these cases draw a line between prepetition and postpetition conduct, the heart of the issue is not so much about timing than a debtor in possession's roles pre- and post-petition.

[U]pon the filing of her chapter 11 petition, the Debtor wore two hats, that of the debtor and that of the debtor-in-possession. On the petition date, the Properties became property of the estate, and the Debtor personally lost all legal and equitable interest in them. The Debtor became the fiduciary of the estate and was obligated to act in the interests of the creditors. The Debtor, however, also existed—to use that term—in her personal capacity and separate from her status as debtor-in-possession.

In re Hoang, 449 B.R. 850, 856–57 (Bankr. D. Md. 2011) (internal citation omitted). Thus, although a "trustee acquires prepetition claims as property of the estate... subject to whatever infirmities (such as an *in pari delicto* defense) that may have existed," the "post-petition conduct of the Debtors' principals, attorneys and other third-parties" that give rise to claims for harm to the estate are not imputed to the trustee. *Food Mgmt. Grp.*, 380 B.R. at 693-94.

Hoang is particularly analogous to the case here. There, the trustee alleged that a debtor used an escrow company and an attorney to carry out a "massive asset-concealment scheme." *Hoang*, 449 B.R. at 852. Among other conduct, the debtor was accused of using the attorney's trust account as a "private bank account" exclusively for her benefit. *Id.* Subsequently, the debtor filed a chapter 11 petition. *Id.* The trustee alleged that the debtor continued her asset-concealment scheme by: (A) failing to disclose assets in her schedules and statements; (B) selling undisclosed assets during the pendency of her case without approval by the bankruptcy court; (C) failing

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

to account for the sale proceeds in her debtor in possession account; (D) with the aid of the escrow company and her attorney, creating postpetition sham entities to hide the sale proceeds; and (E) parking proceeds in her attorney's trust account under different identities. *Id.*, at 852-54.

The trustee sued the attorney and the escrow company. *Id.*, at 852. The defendants attempted to use *in pari delicto* as a defense, on the basis that the allegations heavily implicated Debtor in the concealment scheme. *Id.*, at 854. The bankruptcy court acknowledged that "the application of *in pari delicto* doctrine to claims by a bankruptcy trustee grounded in a debtor's pre-petition activities seems fairly well settled." *Id.*, at 855. However, the court reasoned that the allegations did not compel imputation of the debtor's actions to the chapter 7 trustee—

As noted above, upon the filing of her chapter 11 petition, the Debtor wore two hats, that of the debtor and that of the debtor-in-possession. The complaint does not allege that the Debtor committed the asset-concealment scheme in the course of her service as debtor-in-possession. To the contrary, the Complaint alleges that Debtor acted wholly outside the scope of that role and strictly in her personal capacity by concealing her ownership and sale of the properties and secreting the sales proceeds through undisclosed bank accounts.

The Debtor also is alleged to have done so for her personal benefit and not for the benefit of the estate. The Debtor did not disclose her ownership interest in the Properties on her bankruptcy Schedules, did not obtain court approval for their sale and did not transfer the sale proceeds into any debtor-in-possession bank accounts or otherwise disclose the sales in the bankruptcy case.

Id., at 858.

Similarly, here, upon the filing of her chapter 11 petition, Debtor wore two hats: one as a fiduciary to the estate and another in her personal capacity. As in *Hoang*, Debtor's alleged postpetition actions that were adverse to the estate were presumed to have been done in her personal capacity. As such, the Trustee does not shoulder the burden of defenses arising from Debtor's postpetition conduct. Consequently, the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

doctrine of unclean hands does not apply to the Trustee's postpetition allegations.

As to the prepetition allegations, the doctrine of unclean hands will apply as a defense. However, the determination is premature. The Court has yet to weigh any evidence with respect to this adversary proceeding or the Discharge Action. If Debtor is proven culpable, the unclean hands doctrine may apply to bar claims against Mr. Yaspan that are based on prepetition conduct.

III. CONCLUSION

The Court will grant the Motion, without prejudice, as to the professional negligence claim based on the Discharge Action. The Court otherwise will deny the Motion.

The Trustee must submit an order within seven (7) days.

FOOTNOTES

1. Mr. Yaspan's citation to *In re SIDCO, Inc.*, 173 B.R. 194 (E.D. Cal. 1994), is unpersuasive. There, the court merely held that attorneys for debtors in possession do not owe fiduciary duties to creditors or shareholders. *SIDCO*, 173 B.R. at 196-97. The Trustee is not arguing that Mr. Yaspan owes any duties to creditors.
2. To the extent Mr. Yaspan argues that the Trustee is limited to requesting disgorgement as damages, he has provided no authority setting forth such a holding; in fact, as noted by one court in the face of a similar argument: "The... Defendants have offered no authority – and the Court is aware of none – for the proposition they espouse limiting the Trustee to fee disgorgement if the Trustee can establish liability for breach of fiduciary duty and damages in a larger amount." *Food Mgmt.*, 380 B.R. at 713.
3. Courts disagree as to whether a chapter 7 trustee inherits an individual debtor's right to waive the attorney-client privilege. Compare *In re Ginzburg*, 517 B.R. 175, 182 (Bankr. C.D. Cal. 2014); with *In re Eddy*, 304 B.R. 591, 599–600 (Bankr. D. Mass. 2004). Because this issue is not properly before the Court, and may not need to be if Debtor herself waives the privilege, the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

Court will not rule on this issue at this time.

4. Mr. Yaspan's reference to *Solin v. O'Melveny & Myers, LLP*, 89 Cal.App.4th 451 (Ct. App. 2001), does not compel a different result. There, the court dismissed an action when the non-party clients intervened to request dismissal based on the attorney-client privilege. *Solin*, 89 Cal.App.4th at 456. In addition, the clients' request came after the parties were engaged in discovery, and it became evident that privileged information would be necessary. Here, Debtor has not intervened to assert her privilege, and this matter is at the pleading stage.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Represented By
Robert M Yaspan
David D Samani

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Larry W Gabriel

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, May 6, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01128 Miller, Chapter 7 Trustee v. Yaspan

#15.00 Status conference re: complaint for breach of fiduciary duty

fr. 1/8/20; 3/4/20; 3/25/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Larry W Gabriel

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, May 6, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#16.00 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, 12/18/19; 2/5/20; 2/26/20; 3/4/20;
3/18/20; 4/1/20; 4/8/20

Docket 64

Tentative Ruling:

Pursuant to the amended order scheduling settlement conference [doc. 53], the parties are to participate in a settlement conference related to the unresolved controversies in the bankruptcy case and adversary proceeding between the plaintiff and the defendant on May 15, 2020 at 9:00 a.m. The Court will continue this matter, as well as matters 17 through 23, to **June 3, 2020 at 1:30 p.m.** At the continued hearing, the parties should be prepared to inform the Court of the status of the mediation.

Appearances on May 6, 2020 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, May 6, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#17.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper.

fr. 5/14/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20;
3/4/20; 3/18/20; 4/1/20; 4/8/20

Docket 55

Tentative Ruling:

See calendar no. 16.

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, May 6, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#18.00 Debtor's motion for summary judgment and/or summary adjudication of facts

fr. 2/5/20; 2/26/20; 3/4/20; 3/18/20; 4/1/20; 4/8/20

Docket 174

Tentative Ruling:

See calendar no. 16.

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, May 6, 2020

Hearing Room 301

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; 11/13/19; 12/10/19;
2/5/20; 2/26/20; 3/4/20; 3/18/20; 4/1/20; 4/8/20

Docket 70

Tentative Ruling:

See calendar no. 16.

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, May 6, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#20.00 Debtor's motion to quash subpoena for documents and
deposition subpoena for Johanna Scott

fr. 3/4/20; 3/18/20; 4/1/20; 4/8/20

Docket 29

Tentative Ruling:

See calendar no. 16.

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, May 6, 2020

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 Debtor's motion to quash subpoena for documents and deposition
subpoena for Fenton & Ross

fr. 3/4/20; 3/18/20; 4/1/20; 4/8/20

Docket 28

Tentative Ruling:

See calendar no. 16.

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, May 6, 2020

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 Defendants' motion to dismiss

fr. 10/2/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20; 3/4/20;
3/18/20; 4/1/20; 4/8/20

Docket 12

Tentative Ruling:

See calendar no. 16.

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, May 6, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #23.00** Status conference re amended complaint for:
1. Declaratory relief re nondischargeability of Civil Penalties [11 U.S.C. sec.523(a)(7)]
 2. 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; 11/13/19; 2/5/20; 2/26/20;
3/4/20; 3/18/20; 4/1/20; 4/8/20

Docket 8

Tentative Ruling:

See calendar no. 16.

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, May 6, 2020

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, May 6, 2020

Hearing Room 301

2:30 PM

1:19-12198 Boris Pinchevskiy

Chapter 7

Adv#: 1:19-01138 Plattner et al v. Pinchevskiy

#24.00 Motion for default judgment under LBR 7055-1

Docket 12

Tentative Ruling:

Grant motion for default judgment in the amount of \$3,462,730 (\$3,470,730 minus \$8,000 already paid) under 11 U.S.C. § 523(a)(7). The plaintiffs also have established that 11 U.S.C. § 523(a)(2)(A) and (a)(4) serve as alternative bases for nondischargeability as to \$2,781,174.77 of their requested total, representing the \$2,784,924.77 in damages described in paragraphs 16, 27-29 and 31 of the Declaration of Gabriella Plattner minus \$3,650 paid from other sources as described in paragraph 39 of the Declaration of Gabriella Plattner.

Movants must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT within seven (7) days.

Appearances on May 6, 2020 are excused.

Party Information

Debtor(s):

Boris Pinchevskiy

Represented By
Elena Steers

Defendant(s):

Boris Pinchevskiy

Pro Se

Plaintiff(s):

Gabriella Plattner

Represented By
Gabriella G Plattner
Holly Roark

Allen Letgolts

Represented By
Gabriella G Plattner

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... Boris Pinchevskiy

Holly Roark

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, May 6, 2020

Hearing Room 301

2:30 PM

1:19-12198 Boris Pinchevskiy

Chapter 7

Adv#: 1:19-01138 Plattner et al v. Pinchevskiy

#25.00 Status conference re: complaint to determine dischargeability
of debt

fr. 2/5/20; 4/15/20

Docket 1

Tentative Ruling:

See calendar no. 24.

Plaintiffs' appearance on May 6, 2020 is excused.

Party Information

Debtor(s):

Boris Pinchevskiy

Represented By
Elena Steers

Defendant(s):

Boris Pinchevskiy

Pro Se

Plaintiff(s):

Gabriella Plattner

Represented By
Gabriella G Plattner
Holly Roark

Allen Letgolts

Represented By
Gabriella G Plattner
Holly Roark

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 6, 2020

Hearing Room 301

2:30 PM

1:19-12677 John Stephen Travers

Chapter 7

Adv#: 1:20-01010 Ace Industrial Supply, Inc. v. Travers

#26.00 Amended motion to dismiss adversary complaint under FRCP 12(B)(6)

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 October 23, 2019, John Stephen Travers ("Debtor") filed a voluntary chapter 7 petition, initiating bankruptcy case 1:19-bk-12677-VK. On his petition, Debtor listed the following *dbas*: Toolmaster Industrial Support, Inc., Toolmasters Industrial Supply, Inc. and Travco Tools, Inc.

On January 30, 2020, Ace Industrial Supply, Inc. ("Plaintiff") filed a complaint against Debtor and Tool Masters (the "Complaint"), seeking nondischargeability of the debt owed to it pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4) and (a)(6). The Complaint also seeks a permanent injunction against Debtor and Tool Masters. In relevant part, the Complaint makes the following allegations:

Plaintiff had approximately 150 sales representatives employed by it for telemarketing sales of industrial tools and equipment. Jasper Pantaleon is a former sales representative of Plaintiff.

Debtor is the chief executive officer, secretary and chief financial officer of Toolmasters Industrial Supply, Inc. ("Toolmasters"). Tool Masters is an unincorporated business entity of Debtor. Debtor and Tool Masters are competitors of Plaintiff.

Mr. Pantaleon sold paper copies and electronic versions of Plaintiff's customer account information to Debtor, who purchased the information using cash, MoneyGrams and checks. The account information for each customer includes the name of Plaintiff's

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

customer, the customer's contact information, the person to contact and specific sales of industrial tools and equipment previously sold by Plaintiff, including the date, quantity and price.

From September 2018 to present, Debtor provided Plaintiff's customer account information to his own salespersons to call Plaintiff's clients and solicit their business [Exh. E, Declaration of Justin Lehman, employee of Toolmasters]. Based on the account information, Debtor knew who to call and when Plaintiff's customers may need to reorder industrial tools and equipment. Debtor made these calls in a manner so that Plaintiff's customers would not realize they were being contacted by a company other than Plaintiff [Exh. C, Declaration of Priscilla Schlauch, one of Plaintiff's customers].

Additionally, Mr. Pantaleon funneled Plaintiff's orders to Debtor to fulfill for Plaintiff's customers and get paid by Plaintiff's customers. In doing these activities, Mr. Pantaleon breached his written employment agreement with Plaintiff to keep confidential Plaintiff's trade secret information [Exh. D, Declaration of Larry G. Lawrence, the general manager of Plaintiff].

The information about Plaintiff's account information is not public information and is only known to Plaintiff. The account information is confidential, proprietary and trade secret information of Plaintiff. Debtor was fully aware of the confidential, proprietary and trade secret nature of Plaintiff's customer account information.

Debtor has wrongfully solicited and made sales using stolen confidential and proprietary Plaintiff customer account information obtained improperly and unlawfully from Plaintiff. The misappropriation and use of Plaintiff's trade secret information was done intentionally by Debtor in contravention of the law. Debtor was aware, prior to him being provided with Plaintiff's account information, that Plaintiff had agreements with its sales representatives confirming, in writing, that the customer account information was confidential and proprietary trade secret information of Plaintiff.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

Plaintiff has suffered actual losses consisting of sales made by Debtor to Plaintiff's customers. Debtor used Plaintiff's trade secret information of its customer accounts to solicit Plaintiff's customers, make sales to them and switch the customers to buy from Debtor rather than Plaintiff. But for the use of the stolen account information, the sales made by Debtor would not have occurred.

In October 2018, Plaintiff became aware of Debtor's wrongful taking, purchase and theft of Plaintiff's customer account information. Plaintiff sent detailed, written cease and desist letters to Debtor. Even after those letters, Debtor continued to sell, purchase and use Plaintiff's trade secret information about its customers.

On December 14, 2018, Plaintiff filed a complaint in the Superior Court of California, County of Los Angeles, against Debtor, Toolmasters, Tool Masters and Mr. Pantaleon alleging misappropriation of trade secrets in violation of Cal. Civ. Code § 3426, et seq., breach of duty of loyalty/violation of California Labor Code § 2863 and breach of contract (the "State Court Complaint") [Exh. A].

The State Court Complaint is based on Plaintiff's allegations that Debtor and Mr. Pantaleon willfully misappropriated and used Plaintiff's customer account information. On January 9, 2019, the state court issued a preliminary injunction against Debtor, Toolmasters and Tool Masters [Exh. B].

Attached to the Complaint is the verified State Court Complaint [Exh. A], the preliminary injunction issued by the state court [Exh. B], a declaration by Priscialla Schlauch [Exh. C], a declaration by Larry G. Lawrence [Exh. D] and a declaration by Justin Lehmann [Exh. E].

The allegations in the State Court Complaint mirror the allegations in the Complaint. Attached to the State Court Complaint is Mr. Pantaleon's signed confidentiality agreement with Plaintiff.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... **John Stephen Travers**

Chapter 7

The preliminary injunction enjoins Debtor, Toolmasters and Tool Masters, during the pendency of the state court action, from using, disclosing, copying, transmitting or transferring to any third party any confidential and proprietary customer account information of Plaintiff and from representing to customers or potential customers that they are Plaintiff when attempting to make sales. Additionally, the preliminary injunction orders Debtor, Toolmasters and Tool Masters to return to Plaintiff any of the confidential information in their custody, possession or control.

Ms. Schlauch is one of Plaintiff's customers. In her declaration, Ms. Schlauch testifies in relevant part:

On November 26, 2018, Mark, their regular sales representative at Plaintiff, called Ms. Schlauch and her partner and asked from them to call him back to see if they wanted to order anything from Plaintiff. ¶ 3. On December 3, 2018, Ms. Schlauch and her partner received a call from a person they assumed was Mark, asking if they wanted to order any new tools and supplies. ¶ 4. The person did not identify himself by name. *Id.* During the call, Ms. Schlauch's partner asked a question about a prior employee of Plaintiff, to which the person on the phone said that he was no longer working at Plaintiff. *Id.* Ms. Schlauch placed an order with the person on the phone for \$400 and gave him a credit card number. *Id.* The person on the phone stated that he was familiar with her account and that this is not the largest order that they had made in the past. *Id.* At no time did the person on the phone tell Ms. Schlauch and her partner that he was not calling from Plaintiff. *Id.*

The next day, Ms. Schlauch and her partner received a call from Mark. ¶ 5. Ms. Schlauch and her partner told Mark that they had already placed an order with him. *Id.* Mark informed them that he was unaware of any such order and that he had not called them the day before. *Id.* Ms. Schlauch went online to check her credit card statement to see if there was a charge for the sale. *Id.* There was a charge on her credit card from "Toolmaster" in California. *Id.*

Mr. Lawrence is the general manager of Plaintiff. In his declaration, Mr.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... **John Stephen Travers**

Chapter 7

Lawrence details how Plaintiff guards its customer account information to keep it confidential, including that Plaintiff requires its employees to sign an agreement to protect the confidential information, as well as in Plaintiff's employment handbook. Mr. Lawrence testifies that Plaintiff's customer information is not in any public domain and is not available to any of its competitors. ¶ 6. Mr. Lawrence also testifies that Mr. Pantaleon worked for Plaintiff, that Mr. Pantaleon signed the confidentiality agreement and received a copy of the employee handbook. ¶¶ 11-19. Mr. Lawrence testifies that he was told by a former employee that Mr. Pantaleon was selling Plaintiff's customer account information to Debtor. ¶ 20.

Mr. Lehmann currently is employed by Toolmasters and was formerly employed by Plaintiff. In his declaration, Mr. Lehmann testifies in relevant part:

On September 11, 2018, Mr. Lehmann became aware that Debtor and Toolmasters were using printouts of Plaintiff's customer account information. ¶ 8. The printouts were being used by the sales representatives to call Plaintiff's customers. *Id.* These printouts were the only leads being given by Toolmasters to its telemarketers to make sales calls. *Id.* The printouts were on the telemarketers' desks each day. *Id.* Mr. Lehmann was given the printouts by Debtor. ¶ 13.

The printouts of Plaintiff's customer account information were referred to by Debtor and others at Toolmasters as "Ace House Paper." *Id.* On several occasions, Debtor told Mr. Lehmann that he was buying a lot of Ace House Paper and that he had a lot of Ace House Paper for use at Toolmasters. *Id.* On September 11, 2018, Mr. Lehmann's first day at Toolmasters, Debtor told him that "[y]ou are not going to worry about accounts for a long time. You will not have to split any accounts. I have a lot of Ace House Paper." ¶ 10. On September 18 or 19, 2018, Debtor told Mr. Lehmann that he has "bought a large amount of Ace House Paper" and had "paid a bunch of money for them." ¶ 17.

When Mr. Lehmann began working at Toolmasters in September 2018, Toolmasters employed six pro salespersons and two "green peas,"

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

which are new hires who have not yet demonstrated that they have adequate sales skills to be employed as a "pro" salesperson. ¶ 12. By December 16, 2018, because of the increased sales, Toolmasters employed eight pro salespersons and four green peas. ¶ 19.

Mr. Lehmann thought that the use of Plaintiff's customer account information was fundamentally wrong, so he decided to contact the owner of Plaintiff and let him know that the information had been stolen and was being used by Toolmasters to sell to Plaintiff's customers. ¶ 9.

On March 2, 2020, Debtor filed an amended motion to dismiss the Complaint (the "Motion") [doc. 7]. In the Motion, Debtor argues that the Complaint fails to state a claim under Fed. R. Civ. P. 12(b)(6). On April 22, 2020, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 17]. To the Opposition, Plaintiff attached a declaration by Mr. Pantaleon. On April 29, 2020, Debtor filed a reply to the Opposition and a request to strike Mr. Pantaleon's declaration [doc. 18].

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 defendant has acted unlawfully.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

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); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009)). "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 555 (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). 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).

"A complaint that merely recites statutory language fails to state a claim under Rule 12(b)(6)." *In re Kubick*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994). This is because "mere statutory language does not plead facts sufficiently so that they may be answered or denied." *Id.* "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Id.*

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally."

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged...." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

B. Mr. Pantaleon's Declaration

To the Opposition, Plaintiff attached a declaration by Mr. Pantaleon. Generally, when ruling on a Rule 12(b)(6) motion, the court cannot consider "new" facts alleged in plaintiff's opposition papers. *See Schneider v. California Dept. of Corrections*, 151 F.3d 1194, 1197 (9th Cir. 1998). On the other hand, the court should consider the "new" facts in plaintiff's opposition papers when deciding whether to grant leave to amend or to dismiss with or without prejudice. *See Orion Tire Corp. v. Goodyear Tire & Rubber Co., Inc.*, 268 F.3d 1133, 1137-38 (9th Cir. 2001). Accordingly, the Court will not consider Mr. Pantaleon's declaration, except in the context of whether to grant leave to amend or to dismiss with prejudice.

C. Allegations Under 11 U.S.C. § 523

In the opposition, Plaintiff seems to argue that because it has sufficiently alleged that Debtor violated the California Uniform Trade Secrets Act ("CUTSA"), those allegations are sufficient for alleging nondischargeability under § 523. Plaintiff cites to several cases in which the bankruptcy court, applying the doctrine of collateral estoppel, determined that a prepetition state court judgment based on violation of the state's trade secret act was nondischargeable. *See, e.g., In re Shahverdi*, No. ADV 09-0119-MT, 2013 WL 2466862 (B.A.P. 9th Cir. June 7, 2013), *In re Frye*, No. ADV.LA 07-01150-BB, 2008 WL 8444822 (B.A.P. 9th Cir. Aug. 19, 2008), *In re Lopez*, 367 B.R. 99 (B.A.P. 9th Cir. 2007), *In re Jonatzke*, 478 B.R. 846 (Bankr. E.D. Mich. 2012) and *In re Brown*, 237 B.R. 740 (Bankr. C.D. Cal. 1999).

However, what those cases demonstrate, and in particular *Shahverdi*, is that although

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

a judgment based on a debtor's misappropriation of a trade secret may be nondischargeable, the Court still must determine whether the related findings are sufficient to meet the standards for nondischargeability set forth under § 523. In *Shahverdi*, the Bankruptcy Appellate Panel for the Ninth Circuit ("BAP") vacated and remanded the bankruptcy court's decision to grant summary judgment under §§ 523(a)(2)(A) and (a)(4) based on a prepetition arbitration judgment. *Shahverdi*, 2013 WL 2466862, at *16. The bankruptcy court in *Shahverdi* based its decision to grant summary judgment on CUTSA. *Id.* at *7. In vacating and remanding the bankruptcy court's ruling, the BAP determined that the bankruptcy court failed to make sufficient findings for nondischargeability. *Id.* at *16. See also *Matter of Miller*, 156 F.3d 598 (5th Cir. 1998) (reversing and remanding because a judgment for misappropriation of trade secrets did not necessarily establish nondischargeability). [FN1].

Accordingly, the Court must evaluate the allegations in the Complaint based on the standards set forth in § 523.

D. 11 U.S.C. § 523(a)(2)(A)

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the 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;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... John Stephen Travers

Chapter 7

In re Weinberg, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

Here, the Complaint does not contain sufficient allegations under § 523(a)(2)(A) to state a claim that is plausible on its face. The Complaint does not allege that Debtor made any representations to Plaintiff in order to obtain Plaintiff's customer account information. Similarly, the Complaint does not articulate on which statements or representations Plaintiff justifiably relied.

Moreover, it does not appear that leave to amend is appropriate in this case; the deficiencies in the Complaint cannot be cured by amendment. The Complaint alleges that Debtor purchased the customer account information from Mr. Pantaleon; not Plaintiff. Other than the cease and desist letters, nowhere in the Complaint does Plaintiff allege any communication between Debtor and Plaintiff regarding the customer account information. Additionally, in the Opposition, Plaintiff acknowledges that it has not alleged a claim for fraud. Consequently, as to the § 523(a)(2) cause of action, the Court will grant the Motion with prejudice.

E. 11 U.S.C. § 523(a)(4)

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

Plaintiff makes no claim that Debtor was acting in a fiduciary capacity, nor claims that Debtor embezzled. Therefore, the focus of the inquiry is on the term "larceny."

"For purposes of section, 523(a)(4), a bankruptcy court is not bound by the state law definition of larceny but, rather, may follow federal common law, which defines larceny as a felonious taking of another's personal property with intent to convert it or deprive the owner of the same." *In re Ormsby*, 591 F.3d 1199, 1205 (9th Cir. 2010) (quoting 4 *Collier on Bankruptcy* ¶ 523.10[2] (15th ed. rev. 2008)). Felonious is defined as "'proceeding from an evil heart or purpose; malicious; villainous ... Wrongful; (of an act) done without excuse of color of right.'" *In re Kiesewetter*, 391 B.R. 740, 748 (Bankr.W.D.Pa.2008) (quoting BLACK'S LAW DICTIONARY (8th

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... **John Stephen Travers**
ed. 2004)).

Chapter 7

"Fraudulent appropriation requires an intent to deprive, which can be inferred from the conduct of the person accused and from the circumstances of the situation."
Savonarola v. Beran, 79 B.R. 493, 496 (Bankr. N.D. Fla. 1987).

For purposes of larceny, a fiduciary relationship is not required. *Littleton*, 942 F.2d 551, 555 (9th Cir. 1991).

Here, the Complaint contains sufficient allegations to state a claim under § 523(a)(4). The allegations in the Complaint are analogous to the facts in *In re Ormsby*, 386 B.R. 243 (E.D. Cal. 2008), *aff'd*, 591 F.3d 1199 (9th Cir. 2010). In *Ormsby*, Lawrence E. Ormsby ("Ormsby") owned a small real estate title company, Inter-County. *Ormsby*, 386 B.R. at 246. First American Title Company of Nevada ("First American"), a larger title company, had developed extensive databases and organization of title records that greatly simplified title searches such as those Ormsby conducted. *Id.* at 247. Ormsby contracted to access the databases ("plants") developed for the period after 2000, but did not subscribe to access the plants for earlier years. *Id.*

In spring of 2000, Ormsby began soliciting employees of First American to work at Inter-County. *Id.* Joseph McCaffrey ("McCaffrey") was one of the employees Ormsby solicited. *Id.* Ormsby and McCaffrey discussed the importance of the plants to a new title company, and the plants' potential to make a new company competitive. *Id.* McCaffrey understood that the plants were not public records, but rather were private and proprietary to First American. *Id.* Ormsby hired McCaffrey and paid him a \$7,000 signing bonus. *Id.*

In anticipation of his employment at Inter-County and while he still had access to his office at First American, McCaffrey appropriated the 1900s plants from First American, with the encouragement, cooperation and assistance of Ormsby. *Id.* McCaffrey gave the microfiche files to Ormsby, who sent them out to a non-local copy service for duplication. *Id.* Inter-County then used the appropriated plants in searching titles and issuing policies until their return was compelled by court order. *Id.*

Prepetition, First American filed an action in a Nevada state court against Ormsby and McCaffrey. *Id.* The Nevada state court entered judgment against Ormsby and found

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

that he encouraged, assisted and cooperated with McCaffrey in misappropriating the plants. *Id.* at 247–48. Subsequently, Ormsby filed a chapter 7 petition, and First American brought a complaint seeking nondischargeability of the judgment under §§ 523(a)(4) and (a)(6). *Id.* at 248. The bankruptcy court granted summary judgment in favor of First American, and Ormsby appealed. *Id.*

Ormsby first appealed the bankruptcy court’s judgment to the United States District Court for the Eastern District of California. The district court affirmed the bankruptcy court’s ruling, stating in relevant part:

Per the state court judgment, [Ormsby] encouraged, cooperated, and assisted in the misappropriation of the title plants from [First American]. [Ormsby] had knowledge of and acquiesced in the theft and conversion of the title plants. [Ormsby] sent the microfiche title plants to a non-local copy service. [Ormsby’s] title company converted to its own use [First American’s] proprietary base files, subdivision files, and preliminary title reports to assist it in the opening of their business. This Court concludes that these facts, in conjunction with the remainder of the state court findings, amounts to the "felonious taking of [First American’s] personal property with intent to convert it" by [Ormsby].

Therefore, section 523(a)(4) works to bar the bankruptcy discharge of [Ormsby’s] obligation to [First American].

Id. at 250. Ormsby then appealed the district court’s ruling to the Ninth Circuit Court of Appeals, which affirmed the district court’s ruling. On appeal to the Ninth Circuit, Ormsby argued that judgment against him did not constitute larceny within the federal definition of the term because the state court judgment did not make findings of fraudulent intent. *Ormsby*, 591 F.3d at 1205. In relevant part, the Ninth Circuit stated:

We make no determination concerning whether federal law requires a finding of fraudulent intent for larceny as Ormsby contends. Were we to find that larceny required fraudulent intent, the state court judgment would provide enough information to determine that the court found that his actions amounted to fraud, because "[i]ntent may properly be inferred from the totality of the circumstances and the conduct of the person accused." *Kaye v. Rose (In*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

re Rose), 934 F.2d 901, 904 (7th Cir.1991). The totality of the circumstances as described in the state court's findings of fact make clear that Ormsby acted with fraudulent intent. When he started Inter-County, he purchased the rights to use the title plant for 2000 until the present, demonstrating that he was aware of the lawful means of obtaining access to them. Rather than purchasing the rights to the title plants for the 1900s, he hired McCaffrey away from a competing title company and discussed with him the importance of the title plants to a new title company. While McCaffrey still had access to the plants that [First American] possessed, Ormsby encouraged, cooperated, and assisted McCaffrey's removal of the plants and their reproduction. Of particular note, Ormsby sent the microfiche containing the plants to a non-local copying service, likely to avoid detection. Based on these facts found by the state court, Ormsby's conduct constituted larceny within the federal meaning of the term; accordingly under section 523(a)(4), his debt cannot be discharged.

Id. at 1206.

The allegations in the Complaint are similar to those in *Ormsby*. The Complaint alleges that Debtor coopted one of Plaintiff's employees to get Plaintiff's customer account information, and then used that information, which he knew was confidential, proprietary and trade secret information to Plaintiff, to solicit or obtain business from Plaintiff's clients. As in *Ormsby*, Plaintiff has sufficiently alleged that Debtor encouraged, cooperated and assisted Mr. Pantaleon in the misappropriation of its customer account information, and that Debtor had knowledge of and acquiesced in the theft and conversion of that information. These allegations sufficiently state a claim that Debtor committed larceny with the meaning of § 523(a)(4), *i.e.*, a felonious taking of Plaintiff's personal property with intent to convert it by Debtor. Accordingly, as to the § 523(a)(4) cause of action, the Court will deny the Motion.

F. 11 USC § 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." As in any § 523(a) action, the plaintiff bears the burden of proof by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 286, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

i. *Willfulness*

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, 140 L.Ed. 2d 90 (1998). In the Ninth Circuit, " § 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Ormsby*, 591 F.3d at 1206 (quoting *In re Su*, 290 F.3d 1140, 1142 (9th Cir.2002)). "The Debtor is charged with the knowledge of the natural consequences of his actions." *Id.* (citing *In re Cohen*, 121 B.R. 267, 271 (Bankr.E.D.N.Y.1990)). *See also Su*, 290 F.3d at 1146 ("In addition to what a debtor may admit to knowing, the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action.").

ii. *Maliciousness*

Under § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.* at 1147. Maliciousness does not require "personal hatred, spite, or ill-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

Here, Plaintiff makes a claim under § 523(a)(6) based on Debtor's alleged violation of CUTSA. At the motion to dismiss stage, "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Rule 9(b). The Complaint alleges that Debtor willfully and maliciously injured Plaintiff and that Debtor intended the consequences of his actions. Thus, the Complaint sufficiently alleges the intent elements of § 523(a)(6).

Additionally, contrary to Debtor's argument, the Complaint alleges that Plaintiff was damaged by suffering actual losses consisting of sales by Debtor and Tool Masters to Plaintiff's customers. Under Rule 8, the Complaint need not state a specific amount of damages to put Debtor on notice of the claims against him.

Regarding willfulness, in *In re Hernandez*, No. ADV 09-02271, 2011 WL 3300927, at *5 (B.A.P. 9th Cir. Jan. 5, 2011), the BAP examined the elements of a claim under

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

CUTSA and the element of willfulness under § 523(a)(6). In *Hernandez*, prepetition, a California state court entered a judgment against the debtors for misappropriation of trade secrets, intentional interference with contractual relations and intentional interference with prospective economic advantage. *Hernandez*, 2011 WL 3300927, at *1. Subsequently, the debtors filed a chapter 7 petition, and the creditor filed a complaint seeking nondischargeability of the judgment under § 523(a)(6). *Id.* at *2. The creditor moved for summary judgment, and the bankruptcy court, applying the doctrine of collateral estoppel, determined that the judgment was nondischargeable. *Id.* The debtors appealed. *Id.* at *3.

When discussing whether collateral estoppel applied to the business torts, *i.e.* misappropriation of trade secrets, the BAP stated, in relevant part:

The jury made no specific finding concerning the willful nature of [the debtors'] conduct, but found [the debtors] liable for misappropriation of trade secrets, intentional interference with contractual relations and intentional interference with prospective economic advantage. We thus examine whether these causes of action under California law encompass the same elements as the willful requirement under § 523(a)(6) and whether the jury's findings satisfy those elements.

Under California law, a trade secret is misappropriated if a person (1) acquires a trade secret knowing or having reason to know that the trade secret has been acquired by "improper means," (2) discloses or uses a trade secret the person has acquired by "improper means" or in violation of a nondisclosure obligation, (3) discloses or uses a trade secret the person knew or should have known was derived from another who had acquired it by improper means or who had a nondisclosure obligation, or (4) discloses or uses a trade secret after learning that it is a trade secret but before a material change of position. Cal. Civ.Code § 3426.1, subd. (b). "Improper means," includes "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy...." Cal. Civ.Code § 3426.1.

Regarding the mental state for an actionable acquisition of a trade secret, one court observed that the term "acquired" as used in the statute "implies more than passive reception; it implies pointed conduct intended to secure dominion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

over the thing, i.e., '[t]o gain, obtain, or get as one's own, to gain the ownership of (by one's own exertions or qualities).'" *Silvaco Data Sys.*, 184 Cal.App. 4th at 234. In other words, "one does not ordinarily 'acquire' a thing inadvertently; the term implies conduct directed to that objective." *Id.*

Hernandez, 2011 WL 3300927, at *5. The BAP went on to examine the elements, under California law, of intentional interference with contractual relations and intentional interference with prospective economic advantage. The BAP then noted:

Our examination of the elements for misappropriation of trade secrets, intentional interference with contractual relations and intentional interference with prospective economic advantage reveals that the identical factual allegations were at issue in the state court action as those for a willful injury under § 523(a)(6); i.e., all causes of action required an inquiry into whether [the debtors] acted either with an objective substantial certainty of injury or whether [the debtors] acted with a subjective motive to cause [the creditor's] injury.

...

In sum, the issues essential to the willful injury requirement under § 523(a)(6) were identical to those raised in [the creditor's] state court complaint. Moreover, those issues were actually litigated and necessarily decided when they were submitted to the jury and determined. Accordingly, there is no genuine issue of material fact as to whether the state court jury decided that [the debtors] caused a willful injury within the meaning of § 523(a)(6).

Hernandez, 2011 WL 3300927, at *5. Similarly, the bankruptcy court in *In re Kohler*, No. 04-54120-MM, 2008 WL 5753359, at *4 (Bankr. N.D. Cal. Nov. 6, 2008), found that the requisite knowledge for misappropriation of trade secrets under California law is identical to and satisfies the requirement of intent to inflict injury for a finding of willfulness under § 523(a)(6).

Accordingly, if the Complaint sufficiently alleges a violation of CUTSA, those allegations are sufficient to meet the elements of willfulness under § 523(a)(6). Under California law, a prima facie claim for misappropriation of trade secrets requires that the plaintiff demonstrate that: (1) he owned a trade secret; (2) the defendant acquired,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

disclosed, or used the plaintiff's trade secret through improper means; and (3) the defendant's actions damaged the plaintiff. *Cytodyn, Inc. v. Amerimmune Pharmaceuticals, Inc.*, 160 Cal.App.4th 288, 297 (Cal Ct. App. 2008). "Improper means' includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means." *Id.* at 296.

A defendant who receives trade secret information from someone other than the plaintiff is liable for trade secret misappropriation if the plaintiff can show that the defendant knew or had reason to know that the information was a trade secret and that the use or disclosure was unlawful. *Steinberg Moorad & Dunn, Inc. v. Dunn*, No. CV 01-07009 RSWL(RZX), 2002 WL 31968234, at *24 (C.D. Cal. Dec. 26, 2002).

The Complaint sufficiently states a claim under CUTSA. Plaintiff alleges that its customer account information is a trade secret. In *Morlife, Inc. v. Perry*, 56 Cal.App.4th 1514 (Cal Ct. App. 1997), the California Court of Appeal extensively summarized California law with respect to when a customer list can be protected as a trade secret:

With respect to the general availability of customer information, courts are reluctant to protect customer lists to the extent they embody information which is readily ascertainable through public sources, such as business directories ... On the other hand, where the employer has expended time and effort identifying customers with particular needs or characteristics, courts will prohibit former employees from using this information to capture a share of the market. Such lists are to be distinguished from mere identities and locations of customers where anyone could easily identify the entities as potential customers ... As a general principle, the more difficult information is to obtain, and the more time and resources expended by an employer in gathering it, the more likely a court will find such information constitutes a trade secret ... The requirement that a customer list must have economic value to qualify as a trade secret has been interpreted to mean that the secrecy of this information provides a business with a substantial business advantage ... In this respect, a customer list can be found to have economic value because its disclosure would allow a competitor to direct its sales efforts to those customers who have already shown a willingness to use a unique type of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT...

John Stephen Travers

Chapter 7

service or product as opposed to a list of people who only might be interested ... Its use enables the former employee to solicit both more selectively and more effectively.

Id. at 1521–22.

In the Complaint, Plaintiff alleges that the customer account information is confidential and not known to the public. The information contains more than just the identity and location of Plaintiff's customers; it also contains the customers' particular needs and characteristics. Additionally, Plaintiff alleges that the customer account information has economic value because its use increased Debtor's sales. The Complaint also alleges Plaintiff's efforts to keep this information confidential by having their sales representatives sign nondisclosure agreements. Accordingly, the Complaint contains sufficient allegations that Plaintiff's customer account information is a trade secret.

The Complaint alleges that Debtor acquired the customer account information through improper means, *i.e.*, paid Plaintiff's employee for the information. The Complaint also alleges that Debtor then improperly used the information, *e.g.*, solicited Plaintiff's customers in a manner such that the customers thought they were placing an order with Plaintiff. The Complaint also alleges that Plaintiff was damaged in the amount of the sales that were placed with Debtor. Finally, the Complaint alleges that Debtor knew of the nondisclosure agreement prior to purchasing the customer account information from Mr. Pantaleon. Consequently, as to the § 523(a)(6) cause of action, the Court will deny the Motion.

III. CONCLUSION

The Court will grant the Motion with respect to the § 523(a)(2)(A) with prejudice. The Court will deny the Motion as to the §§ 523(a)(4) and (a)(6) claims.

Debtor must file and serve an answer to the Complaint within fourteen days.

Plaintiff must submit the order within seven (7) days.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

CONT... John Stephen Travers

Chapter 7

FOOTNOTES

1. Moreover, in this case, there is no state court judgment.

Party Information

Debtor(s):

John Stephen Travers

Represented By
Robert M Aronson

Defendant(s):

John Stephen Travers

Represented By
Robert M Aronson

Plaintiff(s):

Ace Industrial Supply, Inc.

Represented By
Jeffery J Daar
Robert P Sheils

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 6, 2020

Hearing Room 301

2:30 PM

1:19-12677 John Stephen Travers

Chapter 7

Adv#: 1:20-01010 Ace Industrial Supply, Inc. v. Travers

#27.00 Status conference re: complaint to determine dischargeability

fr. 3/25/20;

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Stephen Travers

Represented By
Robert M Aronson

Defendant(s):

John Stephen Travers

Pro Se

Plaintiff(s):

Ace Industrial Supply, Inc.

Represented By
Jeffery J Daar

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 7, 2020

Hearing Room 301

1:00 PM

1:19-13136 Stephanie Izquierdo

Chapter 7

#1.00 U.S. Trustee's Motion under 11 U.S.C. §110 for disgorgement of fees and fines against bankruptcy petition preparer Gloria Ortiz and Taxxprep

Docket 11

Tentative Ruling:

Grant. Pursuant to 11 U.S.C. § 110(h)(5), respondents must remit the fines set forth below to the Office of the U.S. Trustee:

1. Respondents failed to sign and print their 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): **\$100.00** (\$50.00 per violation)
2. Respondents 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): **\$100.00** (\$50.00 per violation)
3. Respondents failed to notify the debtor of the maximum amount the debtor could be charged before preparing any document for filing for the debtor or accepting any fee from or on behalf of the debtor as required by 11 U.S.C. § 110(h)(1): **\$50.00**

Because respondents did not disclose their identity, the Court will triple these fines pursuant to 11 U.S.C. § 110(l)(2)(D), for a total of **\$750.00**. Pursuant to 11 U.S.C. § 110(h)(3)(A)(i), the Court will also require disgorgement of **\$500.00** in unreasonable fees paid by the debtor.

In addition, by intentionally charging the debtor \$300 more than the amount permitted for typical chapter 7 documents, and then not disclosing their involvement, and falsely preparing the debtor's documents to appear as if no one helped her, respondents acted fraudulently in violation of 11 U.S.C. § 110(i)(1). Respondents must pay statutory damages in the amount of **\$2,000.00** to the debtor.

Thus, respondents must remit the following amounts to the Office of the U.S. Trustee:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 7, 2020

Hearing Room 301

1:00 PM

CONT...

Stephanie Izquierdo

Chapter 7

\$2,500.00 to the debtor pursuant to 11 U.S.C. § 110(h)(3) and 11 U.S.C. § 110(i) and \$750.00 payable to the U.S. Trustee. Respondents 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):

Stephanie Izquierdo

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, May 7, 2020

Hearing Room 301

2:00 PM

1:20-10007 Jason Scott Fontaine

Chapter 7

#2.00 Debtor's motion to avoid lien under 11 U.S.C. §522(f)

fr. 3/26/20; 5/6/20

Docket 11

Tentative Ruling:

Given that the parties agree that the Notice of Levy was not recorded, there is no lien to avoid under 11 U.S.C. § 522(f). As such, this motion is moot.

Nevertheless, the debtor's accounts and any funds held by the Sheriff are property of the estate. 11 U.S.C. § 541(a). As such, the Court will order the Sheriff to release any funds in its possession to the chapter 7 trustee immediately.

The parties' arguments regarding the debtor's entitlement to an exemption or dismissal of the debtor's case will be addressed if an objection to the debtor's claims of exemption is filed or a motion for the dismissal of this case is filed and set for hearing, on proper notice.

The Court will prepare the order.

Party Information

Debtor(s):

Jason Scott Fontaine

Represented By
Leonard Pena

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 7, 2020

Hearing Room 301

2:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#3.00 Motion of Goodman Law Offices, APC and Andrew Goodman to withdraw as counsel for debtor Nasrollah Gashtili in chapter 11 bankruptcy case and adversary action commenced by Vitvate Labs, Inc.

Docket 211

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):

Nasrollah Gashtili

Represented By
Andrew Goodman

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 7, 2020

Hearing Room 301

2:00 PM

1:20-10057 2300 Pisani, A Nevada Domestic LLC

Chapter 11

- #4.00** Debtor's amended motion for order authorizing:
(1) Sale of property at 2300 Pisani Pl, Venice, CA 90291-4827
outside the ordinary course of business pursuant to section 363(b);
(2) Without overbids;
(3) For a determination of good faith purchaser pursuant to §363(m)
(4) Authorizing disbursement of proceeds; and
(5) Waiving the 14-day stay imposed by FRBP 6004

fr. 2/20/20; 3/19/20; 4/2/20

Docket 21

***** VACATED *** REASON: Case dismissed on 4/17/20 [doc. 50].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

2300 Pisani, A Nevada Domestic

Represented By
Michael R Totaro

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

1:30 PM

1:19-13078 Gerie G Annan

Chapter 7

Adv#: 1:20-01032 Tenggren v. Annan

#1.00 Status conference re: complaint objecting to debtors discharge to section 727 of the bankruptcy code

Docket 1

***** VACATED *** REASON: Order entered 4/21/20 rescheduling hearing to 5/20/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerie G Annan

Represented By
Michael D Luppi

Defendant(s):

Gerie G Annan

Pro Se

Joint Debtor(s):

Bennett Annan

Represented By
Michael D Luppi

Plaintiff(s):

Nancy S Tenggren

Represented By
Andrew J Spielberg

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 13, 2020

Hearing Room 301

1:30 PM

1:19-13145 Daniel Michael Uzan

Chapter 7

Adv#: 1:20-01035 Mitchell et al v. Uzan

#2.00 Status conference re: complaint determination of nondischargeability pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4) and 523(a)(6)

Docket 1

***** VACATED *** REASON: Continued to 5/20/20 at 1:30 p.m. on the Court's own motion - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Michael Uzan

Represented By
Mark T Jessee

Defendant(s):

Daniel Michael Uzan

Pro Se

Plaintiff(s):

Jason Mitchell

Represented By
Stella A Havkin

JHM Ventures, a California

Represented By
Stella A Havkin

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

#3.00 Status conference re: complaint

Docket 1

***** VACATED *** REASON: Another Summons Issued 3/25/20. Hearing
Set for 6/3/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Bright Enabulele

Represented By
Levi Reuben Uku

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

1:30 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#4.00 Status Conference Re: Complaint

Docket 1

*** VACATED *** REASON: Continued to 5/20/20 at 1:30 p.m. on the
Court's own motion - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Pro Se

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 11

Adv#: 1:19-01010 Strategic Funding Source, Inc. v. Armand Zaharian et al

#0.00 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);
11/20/19 (stip); 1/22/20(stip); 3/25/20; 5/6/20

Docket 1

Tentative Ruling:

5/6/20 Tentative Ruling

On January 28, 2020, the Court entered an order dismissing the debtor's chapter 7 case for failure to file required documents (the "Dismissal Order") [Bankruptcy Docket, doc. 107]. The following day, the chapter 7 trustee submitted a no asset report. Subsequently, the debtor's case was closed [Bankruptcy Docket, doc. 108]. On March 20, 2020, by request of the debtor, the Court entered an order reopening the debtor's bankruptcy case [Bankruptcy Docket, doc. 112]. The debtor has moved to vacate the Dismissal Order [Bankruptcy Docket, doc. 117].

Given that the debtor's case has reopened and the chapter 7 trustee apparently has determined that there are no assets to distribute, the Court will not delay prosecution of this matter.

Party Information

Debtor(s):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

Defendant(s):

Armand Zaharian

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT... Elizabeth Y. Zaharian
Elizabeth Y. Zaharian

Pro Se

Chapter 11

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, May 13, 2020

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

#5.00 The Lincoln National Life Insurance Company's motion to dismiss Helayne Muennichow's counterclaims pursuant to rule 12(b)(6)

fr. 4/29/20

Docket 106

Tentative Ruling:

Grant.

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"). Lincoln National named Helayne Muennichow, the Trustee and the Duane Van Dyke Irrevocable Trust (the "Trust") as defendants. 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 Ms. 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 (the "Change Form"). 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT...

Hermann Muennichow

Chapter 7

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 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.

Lincoln National incorporated the Policy into the Complaint. The attached Policy includes the following provision: "The Owner is shown on page 3 or in a rider attached to this policy. While the Insured is alive, the Owner may exercise every right and option and receive every benefit provided by this policy. These rights, however, are subject to the written consent of any Irrevocable Beneficiary." Policy, p. 5. The Policy did not designate an Irrevocable Beneficiary. The Policy further provided that: "While the Insured is alive, the Owner or beneficiary may be changed." Policy, p. 5.

In addition, both the Policy and the application to obtain the Policy, also incorporated into the Complaint, are signed only by Debtor as the "Owner." Lincoln also attached the Change Form to the Complaint. The Change Form stated, in relevant part: "The Signature of all owners will be required to exercise any contractual right under policy/certificate."

On March 15, 2019, Ms. Muennichow filed an answer to the Complaint and her counterclaims against Lincoln National (the "Counterclaims") [doc. 33]. In relevant part, Ms. Muennichow alleges—

In 1983, Debtor and Ms. Muennichow married. In 2006, Debtor obtained the Policy. The application for the Policy listed Ms. Muennichow as the sole beneficiary. For most of the duration of the Policy, the premiums were paid with community property funds

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT...

Hermann Muennichow
generated from community property.

Chapter 7

The Change Form explicitly stated, "The Signature of all owners will be required to exercise any contractual right under policy/certificate." Prior to March 2013, the entirety of the premiums were paid with community property funds; as such, Ms. Muennichow was a partial owner of the Policy.

Lincoln National failed to investigate if the transfer of ownership was made with Ms. Muennichow's consent or if Debtor signed the form without duress. Lincoln National also failed to investigate after the Trust removed Ms. Muennichow as beneficiary. Lincoln National, Debtor and the Trust all failed to consult with Ms. Muennichow before signing the transfer of ownership or changing the beneficiary to the Policy.

Because Ms. Muennichow did not sign or consent to the transfer of ownership, the transfer was ineffective. Ms. Muennichow first learned about these changes in April or May 2018, during a deposition of John Van Dyke.

Pursuant to these allegations, Ms. Muennichow asserts claims for Breach of the Implied Covenant of Good Faith and Fair Dealing and Breach of Fiduciary Duty. On February 20, 2020, Lincoln National filed a motion to dismiss the Counterclaims (the "Motion") [doc. 106]. Ms. Muennichow opposes the Motion [doc. 112].

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT...

Hermann Muennichow

Chapter 7

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*, *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009); and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

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). Under the "incorporation by reference" doctrine, a court may look beyond the four corners of the complaint to take into account documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012). The court "may treat the referenced 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.*, quoting *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,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT... **Hermann Muennichow**

Chapter 7

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. Breach of Fiduciary Duty

In 2001, the Supreme Court of California held that "[t]he-insurer-insured relationship... is not a true 'fiduciary relationship'..." *Vu v. Prudential Prop. & Cas. Ins. Co.*, 26 Cal.4th 1142, 1150-51 (2001). Nevertheless, the *Vu* court stated that California courts had imposed "special and heightened" duties that were "fiduciary-like" but arose "because of the unique nature of the insurance contract, *not* because the insurer *is* a fiduciary." *Id.*, at 1151 (emphasis in *Vu*).

The holding that insurers owe "fiduciary-like" duties but are *not* actual fiduciaries has led to divergent interpretations regarding whether insurers may be sued for breach of fiduciary duty. Most "Ninth Circuit courts, construing California law, hold that while the insurer-insured relationship is fiduciary in nature, it does not provide for an independent action for common law breach of fiduciary duty." *Negrete v. Fid. 7 Guar. Life Ins. Co.*, 444 F.Supp.2d 998, 1003-04 (C.D. Cal. 2006) (citing *Solomon v. North American Life and Cas. Ins. Co.*, 151 F.3d 1132, 1138 (9th Cir. 1998)). Some courts have held that "[a]n insurer's breach of its 'fiduciary-like duties' is adequately addressed by a claim for breach of the covenant of good faith and fair dealing implied in the insurance contract." *Tran v. Farmers Grp., Inc.*, 104 Cal.App.4th 1202, 1212 (Ct. App. 2002); *see also David v. Allstate Ins. Co.*, 2013 WL 5178558, at *4 (C.D. Cal. 2013). Other courts have allowed breach of fiduciary duty claims to proceed if a plaintiff states a breach of the limited special duties owed by insurers. *See, e.g. Negrete*, 444 F.Supp.2d at 1004; *and In re Nat'l W. Life Ins. Deferred Annuities Litig.*, 467 F.Supp.2d 1071, 1087 (S.D. Cal. 2006).

The Court notes that in *Negrete* and *National Western Life*, the courts allowed a claim for breach of fiduciary duty because the insurers had held themselves out as

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT...

Hermann Muennichow

Chapter 7

something more than an insurance company. In *Negrete*, the plaintiff had alleged that the insurance company had held itself out as financial advisors and estate planning specialists. *Negrete*, 444 F.Supp.2d at 1004. In *National Western Life*, the plaintiffs alleged that the insurers "held themselves out as objective financial planners who act in [the plaintiffs'] best interests." *National Western Life*, 467 F.Supp.2d at 1087.

Here, Ms. Muennichow has not alleged that Lincoln National held itself out as anything more than an insurance company. As such, under the authorities above, there can be no independent claim for breach of fiduciary duty against Lincoln National.

Even if Ms. Muennichow could state a claim for breach of fiduciary duty, the authorities above contemplate claims brought by *the insured*. With the exception of *Tangorra v. ING USA Annuity & Life Ins. Co.*, 2013 WL 12084961 (S.D. Cal. Aug. 14, 2013), Ms. Muennichow has not provided any authorities that allow a party other than the insured to assert a breach of fiduciary cause of action against the insurer. However, *Tangorra* is inapposite.

In *Tangorra*, the plaintiff alleged that *both* she and her husband had entered into an annuity agreement with the insurance company and that *both* she and her husband had signed a change of beneficiary form adding herself and her husband's three children as the primary beneficiaries. *Tangorra*, 2013 WL 12084961 at *1. The plaintiff further alleged that the husband signed a *second* change of beneficiary form without the plaintiff's knowledge, removing the plaintiff as a beneficiary, and that the form included the following language: **"If the owner resides in a Community Property or Marital property state, the owner's spouse must also sign the change in form."** *Id.* (emphasis added). Under these allegations, the *Tangorra* court held that:

Interpreting *Vu* and other California case law, some district courts in California have allowed breach of fiduciary duty claims where plaintiffs allege something more than a simple insurer-insured relationship. See e.g. *In re National Western Life Ins. Deferred Annuities Litigation*, 467 F.Supp.2d 1071, 1088 (S.D. Cal. 2006); *Negrete ex rel. Ow v. Fidelity and Guaranty Life Ins. Co.*, 444 F.Supp.2d 998, 1003–04 (C.D. Cal. 2006); *Estate of Migliaccio*, 436 F.Supp.2d 1095, 1108 (C.D. Cal. 2006).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT...

Hermann Muennichow

Chapter 7

Here, Plaintiff alleges that Defendant owed her a fiduciary duty directly and by way of her marital community property rights to act with the utmost good faith and in the best interest of Plaintiff in administering the annuity. Plaintiff alleges that Defendant breached that duty by failing, contrary to its own form and to the community property laws of California, to get her consent to a change and/or to pay her claim for benefits. As a result of that breach, Plaintiff was damaged. This Court cannot say that "it appears beyond doubt" that the Plaintiff can prove no set of facts which would entitle her to relief on a fiduciary duty-based theory.

Id., at *3-4.

Here, Ms. Muennichow has not alleged that she was a signatory to the Policy. In fact, the Policy, incorporated into the Complaint and referenced by Ms. Muennichow in the Counterclaims, does not include Ms. Muennichow's signature anywhere in the Policy or the application to obtain the Policy. [FN1]. Although the *Tangorra* court relied *in part* on unspecified community property rights, the court relied on such rights only in combination with the direct rights owed to the plaintiff as a signatory to the policy *and* the original change of ownership form. Those allegations are not comparable to the allegations here. Ms. Muennichow has not presented, and the Court has not found, any cases allowing a breach of fiduciary duty action to proceed where the plaintiff is a non-insured, non-signatory former beneficiary.

To the extent California law allows breach of fiduciary duty claims to be asserted against an insurer at all, Ms. Muennichow has not alleged a claim for relief. In addition, as neither the insured nor a signatory to the Policy, Ms. Muennichow has cited no authority that allows her to proceed with her breach of fiduciary duty claim. Consequently, the Court will dismiss the breach of fiduciary duty claim with prejudice.

C. Breach of the Covenant of Good Faith and Fair Dealing

i. Standing

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT...

Hermann Muennichow

Chapter 7

As a preliminary matter, Lincoln National asserts that Ms. Muennichow does not have standing to sue Lincoln National for breach of the covenant of good faith and fair dealing because Ms. Muennichow was not a party to the Policy. However, the primary case cited by Lincoln National allowed for "parties to the insurance contract *or named beneficiaries*" to sue insurers for breach of the covenant of good faith and fair dealing. *Grant v. State Farm Life Ins. Co.*, 2007 WL 3119738, at *4 (E.D. Cal. 2007). In *Grant*, the spouse asserting an interest in the policy was never a named beneficiary. *Id.*, at *1. The *Grant* court held that the surviving spouse was, at most, an incidental beneficiary based on her claim to the deceased spouse's estate as the surviving spouse. *Id.*, at *4-5; *see also Erwin-Rios v. UNUM Life Ins. Co. of Am.*, 2013 WL 12097544, at *4 (S.D. Cal. 2013) ("Plaintiff has failed to allege facts showing that she had a contractual relationship with UNUM. Under the Policy, she was not named as the insured *or as an express beneficiary.*") (emphasis added).

"As a general rule, absent an assignment of rights or a final judgment, a third party claimant may not bring a direct action against an insurance company on the contract because the insurer's duties flow to the insured." *Harper v. Wausau Ins. Co.*, 56 Cal.App.4th 1079, 1086 (Ct. App. 1997). "There are several exceptions to the general rule which prohibits a third party claimant from suing an insurer." *Id.* As relevant to this action, an express beneficiary has standing to sue an insurer, as does a third party "where the contracting parties must have intended to benefit that individual and such intent appears on the terms of the agreement." *Id.*, at 1087. "It is well settled, however, that [this exception] excludes enforcement of a contract by persons who are only incidentally or remotely benefited by the agreement." *Id.*

Whereas in *Grant* and *Erwin-Rios* the suing spouses were never express beneficiaries to an insurance contract, here, the Policy expressly listed Ms. Muennichow as the beneficiary. As such, Ms. Muennichow was not merely an incidental or remote beneficiary based on a community property claim. Instead, Ms. Muennichow alleges that she was deprived of her rights as an express beneficiary based on the conduct alleged in her Counterclaims. Because Ms. Muennichow seeks relief based on loss of her status as a former intended beneficiary, Ms. Muennichow has standing to assert her claim for breach of the covenant of good faith and fair dealing.

ii. General Breach of Implied Covenant Standard

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT... **Hermann Muennichow**

Chapter 7

The implied covenant is breached where an insurer acts "unreasonably" or "without proper cause." *Chateau Chamberay Homeowners Ass'n v. Associated Int'l Ins. Co.*, 90 Cal.App.4th 335, 347 (Ct. App. 2001). "[A]llegations which assert such a claim must show that the conduct of the defendant, whether or not it also constitutes a breach of a consensual contract term, demonstrates a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement. Just what conduct will meet these criteria must be determined on a case by case basis and will depend on the contractual purposes and reasonably justified expectations of the parties." *Id.* (internal quotation omitted).

"A breach of the implied covenant of good faith and fair dealing does not require a breach of a specific provision of a contract." *Abbit v. ING USA Annuity & Life Ins. Co.*, 252 F.Supp.3d 999, 1010 (S.D. Cal. 2017), *aff'd*, 774 F.App'x 351 (9th Cir. 2019) (citing *Carma Developers (Cal.), Inc. v. Marathon Dev. California, Inc.*, 2 Cal.4th 342, 373 (1992). "Rather, '[t]he covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the *benefits of the agreement actually made.*'" *Id.* (quoting (*Guz v. Bechtel Nat. Inc.*, 24 Cal.4th 317, 349–50 (2000)) (emphasis in *Guz*). However, it is "equally clear that a party cannot be held liable on a bad faith claim for doing what is expressly permitted in the agreement." *Solomon*, 151 F.3d at 1137.

Ms. Muennichow bases her claim for breach of the implied covenant of good faith and fair dealing on one or a combination of the following: (A) that the Change Form explicitly stated that "the Signature of all owners will be required to exercise any contractual right under policy/certificate;" and (B) that Ms. Muennichow's unspecified community property rights made Ms. Muennichow an owner of the Policy. Both theories are discussed below.

iii. Reference to Contractual Language

"As a general rule, California requires a change to a beneficiary designation to be made in accordance with the terms of the policy." *Life Ins. Co. of N. Am. v. Ortiz*, 535

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT... **Hermann Muennichow**

Chapter 7

F.3d 990, 994 (9th Cir. 2008). Insurance contracts are "subject to the same general principles of interpretation as any other contract." *Casey v. Metro. Life Ins. Co.*, 688 F.Supp.2d 1086, 1094 (E.D. Cal. 2010) (citing *AIU Ins. Co. v. Sup. Ct.*, 51 Cal.3d 807, 821–822 (1990)). "The mutual intention of the contracting parties at the time the contract was formed governs interpretation." *Id.* (citing Cal. Civ. Code § 1636). "The parties' mutual intent is to be determined, if semantically possible, *solely* from the written provisions of the contract." *AIU Insurance*, 51 Cal.3d at 822.

The Court's interpretation of the Policy and the Change Form is governed "solely" by the written provisions in those documents. The Policy defined the owner as the entity listed "on page 3 or in a rider attached to this policy." Policy, p. 5. Neither page 3 nor any rider refer to Ms. Muennichow as an owner. In fact, Ms. Muennichow is not listed as an owner or a co-insured party anywhere in the Policy or the application to obtain the Policy. [FN2]. In addition, the Policy required the written consent of beneficiaries *only if* the beneficiary was an "Irrevocable Beneficiary." Policy, p. 5. Ms. Muennichow also was not designated an Irrevocable Beneficiary in the Policy.

As such, the written provisions required only that Debtor, as the sole owner defined by the Policy, sign the Change Form. Because the Court is interpreting the mutual intentions of Debtor and Lincoln National, the fact that the parties to the Policy did not define Ms. Muennichow as an owner and left blank the multiple spaces where a co-owner would have signed the Policy indicates that the term "owner" refers solely to Debtor. Thus, Ms. Muennichow's allegations do not establish that Lincoln National breached the terms of its own Policy or the requirements of the Change Form.

Moreover, although a breach of the Policy is not a prerequisite to Ms. Muennichow's claim, it is "equally clear that a party cannot be held liable on a bad faith claim for doing what is expressly permitted in the agreement." *Solomon*, 151 F.3d at 1137. The Policy explicitly allowed for a change of owner or beneficiary while the insured party was alive. Policy, p. 5. Whether Lincoln National owed a duty to Ms. Muennichow based on her community property rights is a separate issue, discussed below; however, that Lincoln National did not seek Ms. Muennichow's consent prior to transferring ownership of the Policy did not violate the language in the Policy or the signature requirement on the Change Form.

iv. Community Property Rights

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT... Hermann Muennichow

Chapter 7

Ms. Muennichow's core allegations regarding Lincoln National's alleged breach of the covenant of good faith and fair dealing rest on her assertion that Lincoln National should have investigated Ms. Muennichow's community property interest in the Policy and obtained her consent prior to transferring ownership of the Policy. However, Ms. Muennichow has set forth no law that imposes such a duty on insurers.

Once again, Ms. Muennichow asserts that *Tangorra* is on point. However, *Tangorra* is unhelpful to Ms. Muennichow with respect to her claim for breach of the implied covenant of good faith and fair dealing. Although the *Tangorra* court mentioned community property rights in its analysis of that plaintiff's breach of fiduciary claim, as to the plaintiff's claim for *breach of the implied covenant of good faith and fair dealing*, the court stated as follows:

Here, Plaintiff has sufficiently alleged breach of the implied covenant. She alleges that Plaintiff and Defendant entered into an Agreement and that the Agreement specifically stated that the beneficiary could not be changed without her consent. Plaintiff further alleges that she has fully performed (or been excused from performing) under the Agreement. Plaintiff further alleges that Defendant had an implied duty under the Agreement to act in good faith and fair dealing with Plaintiff with respect to (1) obtaining her authorization to change beneficiaries under the Agreement; and (2) properly approve Plaintiff's claim for benefits or proceeds under the Agreement. Finally, Plaintiff alleges that Defendant breached the Agreement by failing to get her consent and failing to pay her claim, all of which has damaged Plaintiff. Therefore, Plaintiff has stated a claim for breach of the implied covenant.

Tangorra, 2013 WL 12084961 at *3. As is evident from this analysis, the *Tangorra* court relied exclusively on the plaintiff's *agreement* with the insurance company; as discussed above, the plaintiff in *Tangorra* was a signatory to the annuity agreement at issue in *Tangorra*. *Id.* Here, Ms. Muennichow is not a signatory to the Policy. The *Tangorra* analysis has no bearing on whether Ms. Muennichow's community property rights entitle her to bring a claim for breach of the implied covenant of good faith and fair dealing against Lincoln National. As such, Ms. Muennichow has not stated a claim for relief against Lincoln National. [FN3].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT... Hermann Muennichow

Chapter 7

III. CONCLUSION

The Court will dismiss the Counterclaims without leave to amend.

Lincoln National must submit an order within seven (7) days.

FOOTNOTES

1. As noted above, the Court may look beyond the four corners of the Counterclaims to take into account documents whose contents are alleged in the Counterclaims, but not physically attached. *Davis*, 691 F.3d at 1160.
2. Given that the Complaint was filed after the transfer of ownership of the Policy to the Trust, the version of the Policy attached to the Complaint designates the Trust as the owner of the Policy "on page 3." However, Lincoln National also attached the application to obtain the Policy completed by Debtor, which reflects that Debtor applied to be the sole owner of and insured party to the Policy.
3. Ms. Muennichow may have a claim against Debtor's estate and/or the Trust, depending on which underlying community property right she intends to assert. *See, e.g., Grant*, 2007 WL 3119738, at *5 ("[W]hile [the plaintiff] could have certain rights to the Policy proceeds if [the decedent] used community property assets to pay the premiums for the Policy, those rights would not include a claim against the [insurance company].")(emphasis in original).

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Defendant(s):

Duane Van Dyke Irrevocable Trust

Represented By
Kelly Warren

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT... Hermann Muennichow

Chapter 7

Helayne Muennichow

Benjamin Blakeman

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

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

#6.00 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;
12/20/19; 1/30/20; 03/25/20; 4/29/20

Cross-claim

David Seror, solely 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:

- NONE LISTED -

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 13, 2020

Hearing Room 301

2:30 PM

CONT... Hermann Muennichow

Chapter 7

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Defendant(s):

Duane Van Dyke Irrevocable Trust

Pro Se

Helayne Muennichow

Pro Se

David Seror

Represented By
Richard Burstein

Plaintiff(s):

The Lincoln National Life Insurance

Represented By
Erin Illman

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 14, 2020

Hearing Room 301

2:00 PM

1:11-11603 Kevan Harry Gilman

Chapter 7

#1.00 Judgment creditors motion assignment order and restraining order

Docket 735

***** VACATED *** REASON: Amended order entered 4/3/20. Hearing
Rescheduled for 5/21/20 at 2:00 pm.**

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

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; 11/6/19; 12/4/19; 1/8/20; 2/26/20; 4/15/20

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, May 20, 2020

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, May 20, 2020

Hearing Room 301

9:30 AM

1:19-11072 **Jaime C Bagamaspad and Fatima Bagamaspad**

Chapter 13

#1.10 Motion for relief from stay [RP]

US BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 3/4/20; 4/8/20; 5/6/20

Stip for adequate protection filed 5/11/20

Docket 43

*** VACATED *** REASON: Order approving stip entered 5/11/20.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime C Bagamaspad

Represented By
Stephen L Burton

Joint Debtor(s):

Fatima Bagamaspad

Represented By
Stephen L Burton

Movant(s):

US Bank National Association not

Represented By
Kristin A Zilberstein
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, May 20, 2020

Hearing Room 301

9:30 AM

1:20-10609 Sherrod Broderick Sloan and Jessica Debra Sloan

Chapter 7

#2.00 Motion for relief from stay [PP]

AMERICREDIT FINANCIAL SERVICES, INC.
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):

Sherrod Broderick Sloan

Represented By
Steven A Alpert

Joint Debtor(s):

Jessica Debra Sloan

Represented By
Steven A Alpert

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

9:30 AM

CONT... Sherrod Broderick Sloan and Jessica Debra Sloan

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

9:30 AM

1:19-12539 Enrique Oscar Rollandi Martinasso

Chapter 7

#3.00 Motion for relief from stay [RP]

TSASU, LLC AND TRISARA, LLC
VS
DEBTOR

Docket 76

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):

Enrique Oscar Rollandi Martinasso

Represented By
Onyinye N Anyama

Movant(s):

Tsas, LLC and Trisara, LLC

Represented By
Martin W. Phillips

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

9:30 AM

CONT... Enrique Oscar Rollandi Martinasso

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, May 20, 2020

Hearing Room 301

9:30 AM

1:20-10093 Robert Alderman and Noni Alderman

Chapter 7

#4.00 Motion for relief from stay [RP]

LBS FINANCIAL CREDIT UNION
VS
DEBTOR

Docket 52

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Robert Alderman

Represented By
Stephen L Burton

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

9:30 AM

CONT... Robert Alderman and Noni Alderman

Chapter 7

Movant(s):

LBS Financial Credit Union

Represented By
Karel G Rocha

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

9:30 AM

1:20-10093 Robert Alderman and Noni Alderman

Chapter 7

#5.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY, FSB
VS
DEBTOR

Docket 55

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) 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):

Robert Alderman

Represented By
Stephen L Burton

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

9:30 AM

CONT... Robert Alderman and Noni Alderman

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

9:30 AM

1:20-10543 Amerigrade Corp.

Chapter 11

#6.00 Motion for relief from stay [UD]

TBB VALLEY INVESTMENTS, LLC
VS
DEBTOR

Docket 20

Tentative Ruling:

Unless an appearance is made at the hearing on May 20, 2020, the hearing is continued to June 17, 2020 at 9:30 a.m., and movant must cure the deficiencies noted below on or before May 27, 2020.

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.

The declaration attached to the motion is not signed by a *person* who has personal knowledge of the matters set forth in the declaration as required by 28 U.S.C. § 1746 and Fed. R. Evid. 902(11).

In the motion, movant appears to request annulment of the automatic stay [doc. 20, p. 10]. However, movant did not attach a supplemental declaration to the motion explaining what actions were taken before movant knew the bankruptcy petition was filed, and why movant would be entitled to such relief.

On May 6, 2020, the debtor filed a response to the motion for relief from the automatic stay [doc. 30]. **By no later than June 10, 2020**, 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 its standing to seek the requested relief.

Appearances on May 20, 2020 are excused.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

9:30 AM

CONT... Amerigrade Corp.

Chapter 11

Party Information

Debtor(s):

Amerigrade Corp.

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 20, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01041 Sheik v. LBS Financial Credit Union, a California corporati

- #7.00** Status conference re: complaint for:
1) Quiet title;
2) Slander of title;
3) Declaratory relief

Docket 1

Tentative Ruling:

The plaintiff did not timely serve the summons on the defendants.

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 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 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 that summons were timely served on the defendants. If the plaintiff can obtain an issued Another Summons from the Court by June 1, 2020, the status conference will be continued to **1:30 p.m. on August 5, 2020**.

No later than **July 22, 2020**, the parties must submit a joint status report in accordance with Local Bankruptcy Rule 7016-1(a).

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

1:30 PM

CONT... Maryam Sheik

Chapter 11

Debtor(s):

Maryam Sheik

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Defendant(s):

LBS Financial Credit Union, a	Pro Se
MDA Motors Corp., a California	Pro Se
Greenwood Pontiac, Inc. a dissolved	Pro Se
Jamshid Lavi, an individual	Pro Se
All Persons Or Entities Unknown	Pro Se
Does 1-10, Inclusive	Pro Se

Plaintiff(s):

Maryam Sheik

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 20, 2020

Hearing Room 301

1:30 PM

1:19-12324 Jorge Amilcar Vargas

Chapter 13

Adv#: 1:20-01038 Galvez v. Vargas

#8.00 Status conference re: complaint to determine nondischargeability of debt under 11 U.S.C. sec 1328(a)(4)

Docket 1

***** VACATED *** REASON: Order dismissing adversary entered 5/13/20 [doc. 8].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Amilcar Vargas

Represented By
Marc A Goldbach

Defendant(s):

Jorge Amilcar Vargas

Pro Se

Plaintiff(s):

Nancy Damian Galvez

Represented By
Magdalena R Bordeaux
Mallory Sepler-King
Jill Thompson

Trustee(s):

Elizabeth (SV) 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 20, 2020

Hearing Room 301

1:30 PM

1:19-12995 William Douglas Breidenbach

Chapter 13

Adv#: 1:20-01036 Rich v. Breidenbach

#9.00 Status conference re: complaint to determine nondischargeability of debt to plaintiff pursuant to 11 U.S.C. sec 523(A)(2)(A),(4)and (6) for debtor Breidenbach's false pretenses, false representations, actual fraud, frauds while a fiduciary, embezzlement, and willful and malicious injury to plaintiff's property, and for recovery of plaintiff's consequential damages resulting therefrom

Docket 1

***** VACATED *** REASON: Order dismissing adversary entered 5/13/20 [doc. 6].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Douglas Breidenbach

Represented By
Marc A Goldbach

Defendant(s):

William Douglas Breidenbach

Pro Se

Plaintiff(s):

Mary-Ann Rich

Represented By
Michael B Carroll

Trustee(s):

Elizabeth (SV) 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 20, 2020

Hearing Room 301

1:30 PM

1:19-13078 Gerie G Annan

Chapter 7

Adv#: 1:20-01032 Tenggren v. Annan

#10.00 Status conference re: complaint objecting to debtors discharge
to section 727 of the bankruptcy code

fr. 5/13/20

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: 9/1/20.

Deadline to complete one day of mediation: 9/18/20.

Deadline to file pretrial motions: 10/2/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 10/21/20.

Pretrial: 11/4/20 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), 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, May 20, 2020

Hearing Room 301

1:30 PM

CONT... Gerie G Annan

Chapter 7

Debtor(s):

Gerie G Annan

Represented By
Michael D Luppi

Defendant(s):

Gerie G Annan

Pro Se

Joint Debtor(s):

Bennett Annan

Represented By
Michael D Luppi

Plaintiff(s):

Nancy S Tenggren

Represented By
Andrew J Spielberger

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 20, 2020

Hearing Room 301

1:30 PM

1:19-13145 Daniel Michael Uzan

Chapter 7

Adv#: 1:20-01035 Mitchell et al v. Uzan

#11.00 Status conference re: complaint determination of nondischargeability pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4) and 523(a)(6)

fr. 5/13/20

Docket 1

***** VACATED *** REASON: Another summons issued 4/23/20. Status conference moved to 6/17/20 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Michael Uzan

Represented By
Mark T Jessee

Defendant(s):

Daniel Michael Uzan

Pro Se

Plaintiff(s):

Jason Mitchell

Represented By
Stella A Havkin

JHM Ventures, a California

Represented By
Stella A Havkin

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

#12.00 Status conference re: complaint for non-dischargeability
under 11 U.S.C. sec 523(a)(4)(6)

Docket 1

***** VACATED *** REASON: Amended Complaint filed-Summons issued
4/2/20. Hearing scheduled for 6/3/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Bright Enabulele

Represented By
Levi Reuben Uku

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01039 Lewis v. Vartan

#13.00 Status conference re: first amended complaint to determine dischargeability of debt 11 U.S.C. § 523(a)(2)(A); fraud; fraud or defecation while acting in a fudiciary capacity 11 U.S.C. § 523 (a)(4) and wilful and malicious injury 11 U.S.C. §523(a)(6)

Stip to continue fied 4/21/20

Docket 4

***** VACATED *** REASON: Order approving stip entered 4/22/20.
Hearing reschedul for 6/10/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Lester L Lewis

Represented By
Elissa Miller

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#14.00 Status conference re: first amended complaint to determine dischargeability of debt 11 U.S.C. sec 523(a)(2); fraud; fraud or defecation while acting in a fiduciary capacity 11 U.S.C. sec 523(a)(4); and willful and malicious injury 11 U.S.C. sec 523(a)(6)

Docket 4

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on July 8, 2020**, to be held with the hearing on the defendant's motion to dismiss [doc. 7].

Appearances on May 20, 2020 are excused.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Philip Alvarez as Successor Trustee

Represented By
Fritz J Firman

Philip Alvarez

Represented By
Fritz J Firman

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

1:30 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#15.00 Status Conference Re: Complaint to determine dischargeability
and objection to discharge

fr. 5/13/20

Docket 1

Tentative Ruling:

The Court will set the defendant's motion to dismiss [doc. 6] for hearing at **2:30 p.m. on June 24, 2020**. The defendant must file and serve notice of the hearing on the plaintiff.

The Court also will continue this status conference to **2:30 p.m. on June 24, 2020**, to be held with the hearing on the motion to dismiss. The parties do not need to file another joint status report.

Appearances on May 20, 2020 are excused.

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Pro Se

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

#16.00 Motion to dismiss adversary proceeding pursuant to
Fed. R. Bankr. P. 7012 by defendant Robert Yaspan

Docket 4

Tentative Ruling:

The defendants did not properly serve the plaintiff with notice of the hearing on their motions to dismiss. On April 15, 2020, defendant Elissa D. Miller (the "Trustee"), filed a notice of hearings, but did not serve the notice on the plaintiff at her address. Instead, the Trustee sent the notice to an email address. In addition, the notice filed by the Trustee did not include the information required by Local Bankruptcy Rule ("LBR") 9013-1(c)(2), such as the deadline to file an opposition to the motions.

The Court will continue the hearings on the motions to dismiss to **2:30 p.m. on June 24, 2020**. No later than **June 3, 2020**, the defendants must file and serve notice of the continued hearing on the plaintiff at her address. The notice must include all information required by LBR 9013-1(c)(2).

Appearances on May 20, 2020 are excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Represented By
David D Samani

Elissa Miller

Represented By
Larry W Gabriel

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Plaintiff(s):

Deborah Lois Adri

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, May 20, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

#17.00 Motion to dismiss adversary proceeding by defendant Elissa D. Miller's

Docket 6

Tentative Ruling:

See calendar no. 16.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Represented By
David D Samani

Elissa Miller

Represented By
Larry W Gabriel

Plaintiff(s):

Deborah Lois Adri

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, May 20, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

#18.00 Status conferene re: complaint for:
1- Unjust Enrichment, 2- Breach of Fiduciary Duty,
3- Professional Negligence, 4- Fraudulent Concelament,
5- Fraudulent Misrepresentation, 6- Constructive Fraud,
7- Attorney's fees for the Tort of Another, 8- Disgorgement of fees,
9- Declaratory Judgment

fr. 4/8/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on June 24, 2020**, to be held with the continued hearings on the defendants' motions to dismiss.

Appearances on May 20, 2020 are excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Pro Se

Elissa Miller

Pro Se

Plaintiff(s):

Deborah Lois Adri

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Cathy Ta
Larry W Gabriel

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01128 Miller, Chapter 7 Trustee v. Yaspan

#18.10 Status conference re: complaint for breach of fiduciary duty

fr. 1/8/20; 3/4/20; 3/25/20; 5/6/20

Docket 1

Tentative Ruling:

Assuming the defendant timely files an answer, parties should be prepared to discuss the following:

Deadline to complete discovery: 10/1/20.

Deadline to file pretrial motions: 10/30/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 11/25/20.

Pretrial: 12/9/20 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), 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):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Defendant(s):

Robert Yaspan

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Larry W Gabriel

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, May 20, 2020

Hearing Room 301

2:30 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

Adv#: 1:18-01113 VitaVet Labs, Inc. v. Gashtili

#19.00 Motion to withdraw as attorney for debtor Nasrollah Gashtili

Docket 59

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):

Nasrollah Gashtili

Represented By
Andrew Goodman

Defendant(s):

Nasrollah Gashtili

Represented By
Andrew Goodman

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, May 20, 2020

Hearing Room 301

2:30 PM

1:19-11034 John Bicz

Chapter 7

Adv#: 1:19-01125 Peterson v. Bicz

#20.00 Status conference re: complaint to determine dischargeability
of debt under 11 USC sec 523

fr. 12/18/19; 2/5/20; 3/18/20; 4/1/20;

Docket 1

***** VACATED *** REASON: Adversary closed 5/4/20.**

Tentative Ruling:

- NONE LISTED -

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

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 20, 2020

Hearing Room 301

2:30 PM

1:19-11703 Jose Luis Gonzalez Romero

Chapter 7

Adv#: 1:19-01121 Rossi et al v. Gonzalez Romero et al

#21.00 Amended motion for default judgment under LBR 7055-1

fr. 4/15/20

Docket 15

Tentative Ruling:

Grant motion for default judgment pursuant to 11 U.S.C. § 523(a)(6). Movant will be awarded a judgment for the principal amount of \$9,451.64.

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT, within seven (7) days.

Movants' appearance on May 20, 2020 is excused.

Party Information

Debtor(s):

Jose Luis Gonzalez Romero

Represented By
Francis Guilardi

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

2:30 PM

CONT... Jose Luis Gonzalez Romero

Chapter 7

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, May 20, 2020

Hearing Room 301

2:30 PM

1:19-11703 Jose Luis Gonzalez Romero

Chapter 7

Adv#: 1:19-01121 Rossi et al v. Gonzalez Romero et al

#22.00 Status conference re: complaint for determination of dischargeability and objecting to debtor's discharge pursuant to § 523 and 727 of the bankruptcy code

fr. 12/11/19; 3/4/20; 4/15/20

Docket 1

Tentative Ruling:

See calendar no. 21.

Party Information

Debtor(s):

Jose Luis Gonzalez Romero

Represented By
Francis Guilardi

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 20, 2020

Hearing Room 301

2:30 PM

CONT... Jose Luis Gonzalez Romero

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 21, 2020

Hearing Room 301

1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#1.00 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; 12/5/19; 3/19/20; 4/2/20

Docket 190

Tentative Ruling:

The Court will continue this hearing to **June 11, 2020 at 2:00 p.m.** to be held in connection with the *Order to Show Cause Why this Case Should Not Be Converted to One Under Chapter 7* [doc. 217].

Appearances on May 21, 2020 are excused.

Ruling from December 5, 2019

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,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 21, 2020

Hearing Room 301

1:00 PM

CONT... Nasrollah Gashtili

Chapter 11

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.

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, May 21, 2020

Hearing Room 301

1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#2.00 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; 12/5/19; 3/19/20; 4/2/20

Docket 1

Tentative Ruling:

The Court will continue this case status conference to **June 11, 2020 at 2:00 p.m.** to be held in connection with the *Order to Show Cause Why this Case Should Not Be Converted to One Under Chapter 7* [doc. 217].

Appearances on May 21, 2020 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, May 21, 2020

Hearing Room 301

1:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#3.00 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; 12/5/19; 3/26/20

Docket 1

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (4)(A), (F) and (K), the Court intends to issue an order to show cause why this case should not be dismissed or converted to one under chapter 7.

On May 7, 2020, the debtor filed a case status report (the "Status Report") [doc. 248]. Contrary to the *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* [doc. 23], the Status Report is not supported by evidence.

As of May 13, 2020, the debtor has not filed monthly operating reports for March 2020. The debtor's monthly operating report for April 2020 will be due on May 15, 2020. Further, in the Status Report, the debtor states that it has not paid the United States Trustee quarterly fees for the first quarter of 2020.

In the Status Report, the debtor represents that its revenues are down approximately 70%. The debtor states that unless there is a significant upturn in business, the debtor "likely has little or no ability to generate the type of net income needed to fund [a chapter 11 plan]."

The Court will prepare the order to show cause, setting the hearing at 2:00 p.m. on June 11, 2020.

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, May 21, 2020

Hearing Room 301

1:00 PM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 21, 2020

Hearing Room 301

2:00 PM

1:11-11603 Kevan Harry Gilman

Chapter 7

#4.00 Judgment Creditors Motion Assignment Order and Restraining Order

fr. 5/14/20

Docket 735

Tentative Ruling:

I. BACKGROUND

On March 25, 2020, creditors Tammy R. Phillips and Tammy R. Phillips, a Prof Law Corp. ("Creditors"), filed a motion for an order assigning any stimulus check received by Kevan Harry Gilman ("Debtor") pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("Stimulus Check") to Creditors (the "Motion for Assignment") [doc. 735]. The Court set the Motion for Assignment for hearing and directed Debtor to disclose whether he qualifies for a Stimulus Check and, if so, if Debtor intends to claim an exemption in the Stimulus Check.

On April 16, 2020, Debtor filed a declaration in response to the Motion for Assignment (the "Declaration") [doc. 744]. In the Declaration, in relevant part, Debtor states that he does not expect to receive a Stimulus Check. The remainder of the Declaration is about Debtor's medical issues. On May 11, 2020, Creditors filed an untimely reply to the Declaration (the "Reply") [doc. 745]. In the Reply, Creditors neither address Debtor's contention that he is unlikely to receive a Stimulus Check nor provide relevant legal analysis.

II. ANALYSIS

Pursuant to the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), "eligible individual[s]" may receive "as a credit against the tax imposed by subtitle A for the first taxable year beginning in 2020 an amount equal to the sum of"—

- (1) \$1,200 (\$2,400 in the case of eligible individuals filing a joint return), plus

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 21, 2020

Hearing Room 301

2:00 PM

CONT...

Kevan Harry Gilman

Chapter 7

- (2) an amount equal to the product of \$500 multiplied by the number of qualifying children (within the meaning of section 24(c)) of the taxpayer.

26 U.S.C.A. § 6428(a). Congress placed limitations on the Stimulus Check based on an individual's adjusted gross income. 26 U.S.C.A. § 6428(c). The adjusted gross income is calculated by reference to the individual's 2019 tax return or, if the individual did not file a tax return in 2019, by reference to the 2018 tax return. 26 U.S.C.A. § 6428(f)(1), (f)(5)(A). If a 2018 tax return also is unavailable, the adjusted gross income is determined by reference to the individual's 2019 Social Security Benefit Statement or 2019 Social Security Equivalent Benefit Statement. 26 U.S.C.A. § 6428(f)(5)(B).

The CARES Act does not explicitly prohibit judgment creditors from levying the Stimulus Check, and does not explicitly provide for an automatic exemption of the Stimulus Check to protect the Stimulus Check from collection. *See* CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT, PL 116-136, March 27, 2020, 134 Stat 281. Moreover, there is not yet any case law analyzing whether judgment creditors may levy on the Stimulus Check or whether judgment debtors are entitled to claim an exemption in the Stimulus Check.

There is, however, some authority discussing these issues in the context of the Economic Stimulus Act of 2008 (the "ESA"). Much of the CARES Act mirrors the ESA. Like the CARES Act, the ESA provided for stimulus checks via 26 U.S.C. § 6428. *See, e.g. In re Schwinn*, 400 B.R. 295, 298-99 (Bankr. D. Kan. 2009). The relevant portions of 26 U.S.C. § 6428 are mostly identical under both the ESA and the CARES Act, with the exception that the stimulus checks under the ESA were capped at lower amounts. *Id.*

There appear to be no California cases analyzing whether stimulus checks (under any prior act) are covered by a particular exemption under California law. In addition, the existing federal cases that discuss exemptions of such checks apply the exemption law of other states. Nevertheless, the cases are instructive.

Bankruptcy cases within this circuit that address exemptions of stimulus checks primarily focus on two issues: (A) first, whether such checks are property of the estate; and (B) second, whether debtors may otherwise exempt the checks from the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 21, 2020

Hearing Room 301

2:00 PM

CONT... Kevan Harry Gilman

Chapter 7

estate. *See, e.g. In re Wooldridge*, 393 B.R. 721 (Bankr. D. Idaho 2008); *In re Schwenke*, 2008 WL 4381822 (Bankr. D. Mont. Sep. 25, 2008); and *In re Campillo*, 2008 WL 2338316 (Bankr. D. Ariz. June 6, 2008). Although whether the Stimulus Check is property of the estate is not relevant to this matter [FN1], the fact that these courts held that debtors must turn over stimulus checks to the estate for distribution to creditors means, at least under the similarly worded ESA, that there was no federal law or policy that automatically excepted the stimulus checks from collection by creditors. *Id.*

Nevertheless, the cases did allow for debtors to attempt to claim an exemption under state law. *Id.* In those cases, after a thorough analysis under Idaho, Montana and Arizona law, the courts held the debtors were not entitled to claim the specific exemptions they asserted. *Id.* As noted above, there are currently no cases that assess whether any of California's statutory exemptions apply to stimulus checks. However, as with any other asset, Debtor may seek to exempt the Stimulus Check from collection in accordance with California law. If Debtor elects to claim an exemption, Debtor will have the burden of proving his entitlement to an exemption under Cal. Code of Civ. Proc. § 703.580(b).

As it stands, Debtor allegedly does not expect to receive a Stimulus Check. However, should Debtor receive a Stimulus Check in the future, the Court will set the following procedure: (A) the Court will order that the Stimulus Check be sent directly to Creditors; (B) Creditors must serve the Court's order on the United States Government; (C) if Creditors receive the Stimulus Check, Creditors must deposit the check into a client trust account held by Creditors' counsel, Charles Q. Jakob (the "Trust Account"); (D) within 14 days of receiving the Stimulus Check, Debtor may claim an exemption in the Stimulus Check by filing a notice before this Court, specifying which California statute allows for an exemption in the Stimulus Check and providing sufficient evidence and legal analysis to meet his burden of proof; (E) within 14 days after filing such a notice, Creditors may file and serve an objection to Debtor's claim of exemption; and (F) within seven days after any such objection, Debtor may file and serve a reply.

If Debtor does *not* timely claim an exemption in the Stimulus Check, or if the Court holds that Debtor is not entitled to an exemption, the Court will allow the funds in the Trust Account to be released to Creditors. If the Court holds that Debtor is entitled to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 21, 2020

Hearing Room 301

2:00 PM

CONT... Kevan Harry Gilman

Chapter 7

an exemption, Creditors must turn over the funds to Debtor.

III. CONCLUSION

The Court will prepare the order setting the procedures above.

FOOTNOTES

1. Here, the Court is assessing whether a judgment creditor may enforce an order of this Court, pursuant to Federal Rule of Civil Procedure 69(a), by collecting the Stimulus Check, not whether Debtor must turn over the Stimulus Check to the estate.

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 21, 2020

Hearing Room 301

2:00 PM

1:20-10478 Enrique P. Soriano

Chapter 7

#5.00 Motion to vacate dismissal and reinstate chapter 7 based on mistake, inadvertence or neglect

Docket 14

Tentative Ruling:

Contrary to Local Bankruptcy Rule 1017-2(c), the debtor has not "include[d] as exhibits to the motion all of the documents that were not timely filed...." The Court will not grant this motion until the debtor files a declaration and attaches the pay stubs that the debtor failed to file prior to dismissal.

The Court will continue this matter to **2:00 p.m. on June 4, 2020**. If the debtor files a declaration with the required documents attached by **May 28, 2020**, the Court will vacate the dismissal of the debtor's case.

Appearances on May 21, 2020 are excused.

Party Information

Debtor(s):

Enrique P. Soriano

Represented By
Ali R Nader

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 27, 2020

Hearing Room 301

9:30 AM

1:20-10094 Jonathan Hidalgo

Chapter 13

#1.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 2/5/20; 3/25/20; 4/8/20

Docket 11

Tentative Ruling:

Pursuant to the third order granting the motion on an interim basis [doc. 41], no later than May 20, 2020, the debtor had to file a declaration demonstrating that he timely made his required postpetition deed of trust payments on his residential and commercial real properties, his postpetition homeowner's association payments and his postpetition chapter 13 plan payments. The debtor did not timely file such a declaration.

Accordingly, for the reasons set forth in the Court's tentative ruling at the prior hearing held on March 25, 2020, unless the debtor provides for the prompt conversion of this case to one under chapter 7, **or files an amended chapter 13 plan which provides that he will surrender his residential real property**, the Court will deny the motion.

The Court will prepare the order.

April 8, 2020 Tentative Ruling

Pursuant to the second order granting the motion on an interim basis (the "Second Interim Order") [doc. 34], no later than April 1, 2020, the debtor had to file a declaration demonstrating that he timely made his required postpetition deed of trust payments on his residential and commercial real properties, his postpetition homeowner's association payments and his postpetition chapter 13 plan payments.

On April 1, 2020, the debtor filed a declaration (the "Second Declaration") [doc. 36]. The Second Declaration does not demonstrate that the debtor has made his February 2020 and March 2020 postpetition deed of trust payments as to his residential real property and his February 2020 and March 2020 postpetition homeowner's

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 27, 2020

Hearing Room 301

9:30 AM

CONT...

Jonathan Hidalgo

Chapter 13

association payments. The Second Declaration demonstrates that the debtor made only one of his postpetition homeowner's association payments.

Similarly, the debtor's prior declaration, filed on March 23, 2020 (the "First Declaration") [doc. 31], does not demonstrate that he made these payments. In the First Declaration, the debtor states that he made his February 2020 deed of trust payment as to his residential real property. However, the debtor did not indicate the date he mailed the payment to the secured lienholder.

Accordingly, for the reasons set forth in the Court's tentative ruling at the prior hearing held on March 25, 2020, unless the debtor provides for the prompt conversion of this case to one under chapter 7, **or files an amended chapter 13 plan which provides that he will surrender his residential real property**, the Court will deny the motion.

March 25, 2020 Tentative Ruling

Unless the debtor provides for the prompt conversion of this case to one under chapter 7, the Court will deny the motion.

Pursuant to the order granting the motion on an interim basis (the "Interim Order") [doc. 22], no later than March 23, 2020, the debtor had to file a declaration demonstrating that he timely made his required postpetition deed of trust payments on his residential and commercial real properties, his postpetition homeowner's association payments and his postpetition chapter 13 plan payments. On March 23, 2020, the debtor filed a declaration [doc. 31]. That declaration does not demonstrate that the debtor fully complied with the Interim Order.

Pursuant to 11 U.S.C. § 362(c)(3)(C)(i)(III), the debtor has not provided clear and convincing evidence that his financial or personal affairs have improved since the prior case, such that the pending chapter 13 case will result in a confirmed plan that will be fully performed. Accordingly, if the case remains as one under chapter 13, the Court cannot grant the motion.

However, 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 27, 2020

Hearing Room 301

9:30 AM

CONT...

Jonathan Hidalgo

Chapter 13

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 or personal 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. If the debtor is willing to convert this case to one under chapter 7, the Court will grant the motion.

February 5, 2020 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 **March 25, 2020 at 9:30 a.m. No later than February 12, 2020**, 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).

On January 31, 2020, Pensco Trust Company Custodian fbo Alan L Brooks, IRA ("Pensco"), a secured creditor, filed a timely opposition to the motion [doc. 20]. Pensco argues that the debtor has not overcome the presumption of bad faith as required by 11 U.S.C. § 362(c)(3)(C).

In his immediately preceding case, the debtor was not represented by counsel. In the pending case, the debtor has retained counsel, which is a change in the debtor's personal and financial affairs. The Court will continue this hearing in order to assess the debtor's ability to perform under his proposed chapter 13 plan.

The debtor must timely pay his: (A) February 2020 and March 2020 plan payments in the amount of \$4,798.00 (as stated in the debtors' proposed chapter 13 plan) to the chapter 13 trustee [doc. 15]; (B) February 2020 and March 2020 deed of trust payments in the amount of \$3,000.00 (as stated in his current schedule J) as to his residential real property [doc. 14]; (C) February 2020 and March 2020 deed of trust payments in the amount of \$1,523.72 (as stated in Pensco's opposition) as to his commercial real property [doc. 20]; and (D) February 2020 and March 2020 homeowner's association ("HOA") payments on his residential real property in the amount of \$380 (as stated in his current schedule J). **No later than March 23, 2020**, the debtor must file a declaration to demonstrate that he timely made his required

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 27, 2020

Hearing Room 301

9:30 AM

CONT...

Jonathan Hidalgo

Chapter 13

post-petition deed of trust, HOA and chapter 13 plan payments.

In addition, the debtor's schedule I [doc. 14] indicates rental income in the amount of \$3,000 per month. However, the debtor's schedule G [doc. 14] indicates that the debtor has no unexpired leases. **By February 12, 2020**, the debtor must amend his schedule G to include any unexpired leases.

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

Jonathan Hidalgo

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, May 27, 2020

Hearing Room 301

9:30 AM

1:20-10829 Cinthia Garzon

Chapter 7

#2.00 Motion for relief from stay [PP]

HONDA LEASE TRUST
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):

Cinthia Garzon

Represented By
David Samuel Shevitz

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 27, 2020

Hearing Room 301

9:30 AM

1:19-10576 Shelly Ray Holeman

Chapter 13

#3.00 Motion for relief from stay [PP]

KINECTA FEDERAL CREDIT UNION
VS
DEBTOR

Docket 39

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):

Shelly Ray Holeman

Represented By
Matthew D. Resnik

Movant(s):

Kinecta Federal Credit Union

Represented By
Arnold L Graff

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 27, 2020

Hearing Room 301

9:30 AM

CONT... Shelly Ray Holeman

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 27, 2020

Hearing Room 301

9:30 AM

1:18-11934 Phillip David Eastburn

Chapter 13

#4.00 Motion for relief from stay [RP]

GS MORTGAGE-BACKED SECURITIES TRUST 2019-SL1, U.S. BANK TRUST
NATIONAL ASSOCIATION
VS
DEBTOR

Stip of adequate protection filed 5/22/20

Docket 31

***** VACATED *** REASON: Order approving stip entered 5/26/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Phillip David Eastburn

Represented By
David H Chung

Movant(s):

GS Mortgage-Backed Securities

Represented By
Austin P Nagel

Trustee(s):

Elizabeth (SV) 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 27, 2020

Hearing Room 301

9:30 AM

1:20-10678 John Michael Smith, Jr and Rebecca Phelps Smith

Chapter 13

#5.00 Motion for relief from stay

UNITED STATES OF AMERICA
VS
DEBTOR

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):

John Michael Smith Jr

Represented By
Louis J Esbin

Joint Debtor(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

Movant(s):

UNITED STATES OF AMERICA

Represented By
Jolene Tanner

Trustee(s):

Elizabeth (SV) 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 27, 2020

Hearing Room 301

1:30 PM

1:18-10469 Porter Ranch Integrative Medical Clinic, P.C.

Chapter 7

Adv#: 1:20-01021 Zamora, Chapter 7 Trustee v. Keh et al

- #6.00** Status conference re: complaint for:
- (1) Avoidance of actual fraudulent transfers [11 U.S.C. §§ 544, 548(a)(1)(A); Cal. Civ. Code § 3439.04];
 - (2) Avoidance of constructive fraudulent transfers [11 U.S.C. §§ 544, 548(a)(1)(B); Cal. Civ. Code § 3439.05];
 - (3) Avoidance of postpetition transfers [11 U.S.C. § 549];
 - (4) Recovery of avoided transfers [11 U.S.C. § 550];
 - (5) Preservation of avoided transfers [11 U.S.C. § 551]; and
 - (6) Disallowance of claims [11 U.S.C. §502]

fr. 4/15/20

Docket 1

*** VACATED *** REASON: Case dismissed 4/9/20. [Doc.#7]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Porter Ranch Integrative Medical	Represented By Michael D Luppi
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Defendant(s):

Dr. Gerie Keh	Pro Se
Dr. Bennett Annan	Pro Se

Plaintiff(s):

Nancy J. Zamora, Chapter 7 Trustee	Represented By Noreen A Madoyan
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Trustee(s):

Nancy J Zamora (TR)	Represented By Noreen A Madoyan
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 27, 2020

Hearing Room 301

1:30 PM

CONT...

Porter Ranch Integrative Medical Clinic, P.C.

Monserrat Morales

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 27, 2020

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mor et al

- #7.00** Status conference re: amended complaint for:
1. Fraud and Intentional Deceit;
 2. Breach of the Covenant of Good Faith and Fair Dealing;
 3. Agency by Estoppel; and
 4. Financial Elder Abuse

fr. 10/2/19; 11/6/19(stip); 12/4/19; 03/18/20 (stip); 4/15/20(stip)

Stip to continue filed 5/4/20

Docket 25

***** VACATED *** REASON: Order approving stip entered 5/7/20.
Hearing continued to 6/24/20 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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 27, 2020

Hearing Room 301

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 27, 2020

Hearing Room 301

1:30 PM

1:19-12995 William Douglas Breidenbach

Chapter 13

Adv#: 1:20-01036 Rich v. Breidenbach

#8.00 Status conference re: complaint to determine nondischargeability of debt to plaintiff pursuant to 11 U.S.C. sec 523(A)(2)(A),(4)and (6) for debtor Breidenbach's false pretenses, false representations, actual fraud, frauds while a fiduciary, embezzlement, and willful and malicious injury to plaintiff's property, and for recovery of plaintiff's consequential damages resulting therefrom

Docket 1

*** VACATED *** REASON: Rescheduled for 5/20/20 at 1:30 p.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Douglas Breidenbach

Represented By
Marc A Goldbach

Defendant(s):

William Douglas Breidenbach

Pro Se

Plaintiff(s):

Mary-Ann Rich

Represented By
Michael B Carroll

Trustee(s):

Elizabeth (SV) 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 27, 2020

Hearing Room 301

1:30 PM

1:19-12995 William Douglas Breidenbach

Chapter 13

Adv#: 1:20-01037 Rich v. Breidenbach

#9.00 Status conference re: complaint to determine nondischargeability of debt to plaintiff pursuant to 11 U.S.C. sec 523(A)(2)(A),(4)and (6) for debtor Breidenbach's false pretenses, false representations, actual fraud, frauds while a fiduciary, embezzlement, and willful and malicious injury to plaintiff's property, and for recovery of plaintiff's consequential damages resulting therefrom

Docket 1

***** VACATED *** REASON: Duplicate case of 20-01036**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Douglas Breidenbach

Represented By
Marc A Goldbach

Defendant(s):

William Douglas Breidenbach

Pro Se

Plaintiff(s):

Mary-Ann Rich

Represented By
Michael B Carroll

Trustee(s):

Elizabeth (SV) 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 27, 2020

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#10.00 Status conference re: complaint to determine dischargeability of debt 11 U.S.C. sec 523(a)(2); fraud; fraud or defecation while acting in a fiduciary capacity 11 U.S.C. sec 523(a)(4); and willful and malicious injury 11 U.S.C. sec 523(a)(6)

Docket 1

*** VACATED *** REASON: Rescheduled for 5/20/20 at 1:30 p.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Philip Alvarez as Successor Trustee

Represented By
Fritz J Firman

Philip Alvarez

Represented By
Fritz J Firman

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 27, 2020

Hearing Room 301

2:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#11.00 Plaintiff's motion for summary judgment as to defendants Susan Biddle and Susan Biddle, Trustee of the Biddle 2018 Family Trust, dated November 16, 2018 or, in the alternative, summary of adjudication of issues

Docket 34

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on July 1, 2020.**

Appearances on May 27, 2020 are excused.

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Susan Biddle, Trustee of the Biddle

Represented By
Michael S Robinson
Lisa A. Coe

Susan Biddle

Represented By
Michael S Robinson
Lisa A. Coe

Plaintiff(s):

David K. Gottlieb

Represented By
Peter A Davidson
Howard Camhi

Trustee(s):

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, May 27, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Anderson

Peter A Davidson
Howard Camhi

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, May 28, 2020

Hearing Room 301

10:30 AM

1:19-12310 Juan Carlos Martinez and Fatima Cristina Martinez

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David K. Gottlieb, Chapter 7 Trustee

Docket 41

Tentative Ruling:

David Keith Gottlieb, chapter 7 trustee – approve fees of \$1,171.47 and reimbursement of expenses of \$37.00, 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):

Juan Carlos Martinez

Represented By
Jan Peter Quaglia

Joint Debtor(s):

Fatima Cristina Martinez

Represented By
Jan Peter Quaglia

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

9:30 AM

1:19-11471 Melissa Roberta Ramirez

Chapter 13

#1.00 Motion for relief from stay [RP]

ROYAL PACIFIC FUNDING CORP
VS
DEBTOR

fr. 4/22/20

Docket 30

***** VACATED *** REASON: Motion withdrawn 5/18/20 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melissa Roberta Ramirez

Represented By
Hasmik Jasmine Papian

Movant(s):

Royal Pacific Funding Corp

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, June 3, 2020

Hearing Room 301

9:30 AM

1:19-13056 Cruz A Cortez

Chapter 7

#2.00 Motion for relief from stay [RP]

FEDERAL HOME LOAN MORTGAGE CORPORATION
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 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):

Cruz A Cortez

Pro Se

Movant(s):

Federal Home Loan Mortgage

Represented By
Robert P Zahradka

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

9:30 AM

CONT... Cruz A Cortez

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, June 3, 2020

Hearing Room 301

9:30 AM

1:20-10659 Nasrin Nino

Chapter 7

#3.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

RE: 20897 Kelvin Pl. Los Angeles CA 91367 [2nd deed of trust]

Stip to continue filed 5/19/20

Docket 22

*** VACATED *** REASON: Order approving stip entered 5/21/20.
Hearing continued to 9/23/20 at 9:30 am

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Jennifer C Wong

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

9:30 AM

1:20-10659 Nasrin Nino

Chapter 7

#4.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

RE: 20897 Kelvin Pl. Los Angeles CA 91367 [3rd deed of trust)

Stip to continue filed 5/19/20

Docket 19

***** VACATED *** REASON: Order approving stip entered 5/21/20.
Hearing continued to 9/23/20 at 9:30 am**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Jennifer C Wong

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

9:30 AM

1:20-10526 Chinweike Okonkwo

Chapter 13

#5.00 Motion for relief from stay [PP]

DAIMLER TRUST
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):

Chinweike Okonkwo

Represented By
Laleh Ensafi

Movant(s):

Daimler Trust

Represented By
Jennifer H Wang

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

9:30 AM

CONT... Chinweike Okonkwo

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 3, 2020

Hearing Room 301

9:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#6.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mercedes Benitez

Represented By
Matthew D. Resnik

Movant(s):

The Bank of New York Mellon 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 3, 2020

Hearing Room 301

1:30 PM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:18-01077 The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

#7.00 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;
12/20/19; 1/30/20; 03/25/20; 4/29/20; 5/13/20

Cross-claim

David Seror, solely 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

Docket 1

Tentative Ruling:

The Court will approve the parties' stipulation regarding the discovery cutoff date and the deadline to file pretrial motions [doc. 119]. Based on the parties' stipulated dates and deadlines, the Court also will set the following dates and deadlines:

Deadline to complete and submit pretrial stipulation in accordance with Local
Bankruptcy Rule 7016-1: 4/21/21.

Pretrial: 5/5/21 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after
this status conference, the chapter 7 trustee must submit a Scheduling Order.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Hermann Muennichow

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):

Hermann Muennichow

Represented By
Stuart R Simone

Defendant(s):

Duane Van Dyke Irrevocable Trust

Pro Se

Helayne Muennichow

Pro Se

David Seror

Represented By
Richard Burstein

Plaintiff(s):

The Lincoln National Life Insurance

Represented By
Erin Illman

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01155 Goldman v. Mandalay Bay, LLC, A Nevada Limited Liability Comp

#8.00 Status Conference re: First Amended Complaint for:
(1) Avoidance of Voidable and Fraudulent Transfers; and
(2) Recovery of Avoided Transfers for the Benefit of
the Bankruptcy Estate

fr. 3/25/20(stip); 4/29/20(stip)

STIP TO CONT FILED 5/12/20 - jc

Docket 5

***** VACATED *** REASON: Continued by Stip to 7/8/20 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

Mandalay Bay, LLC, A Nevada

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01042 Sheik v. Protax, LLC, a California Limited Liability Compan

- #9.00** Status conference re: complaint for:
1) Quit title
2) Slander of title
3) Declaratory relief

Docket 1

***** VACATED *** REASON: Another summons issued 5/27/20. Status
conference rescheduled for 7/29/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Protax, LLC, a California Limited

Pro Se

All Persons or Entities Unknown

Pro Se

Does 1 to 10, Inclusive

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By

Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01043 Sheik v. Lilly Group, a trust et al

- #10.00** Status conference re: complaint for:
- 1) Fraud;
 - 2) Fraud based on forgery
 - 3) Civil conspiracy
 - 4) Quiet title
 - 5) Cancellation of instruments
 - 6) Slander of title
 - 7) Declaratory relief
 - 8) Injunctive relief

Docket 1

Tentative Ruling:

In the executed summons [doc. 4], the plaintiff indicates that she served two of the defendants, Lilly Group and Lavender Enterprises, "c/o Maryam Sheik." What is the plaintiff's relationship to these entities?

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Lilly Group, a trust

Pro Se

Lavender Enterprises, a trust

Pro Se

RA Sterling Investments & Holdings

Pro Se

Andrew Alcaraz, an individual

Pro Se

All Persons or Entities Unknown

Pro Se

Does 1 to 10, Inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Maryam Sheik

Chapter 11

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

1:19-12539 Enrique Oscar Rollandi Martinasso

Chapter 7

Adv#: 1:20-01013 Beacon Sales Acquisition, Inc. d/b/a AMS and Allie v. Martinasso

#11.00 Status conference re: complaint to deny discharge of debtor under 11 U.S.C. §§727(a)(2)(A) and 727(a)(4)(A)

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 7/31/20.

Deadline to file pretrial motions: 8/31/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 9/23/20.

Pretrial: 10/7/20 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), 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):

Enrique Oscar Rollandi Martinasso

Represented By
Onyinye N Anyama

Defendant(s):

Enrique Martinasso

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Enrique Oscar Rollandi Martinasso

Chapter 7

Plaintiff(s):

Beacon Sales Acquisition, Inc. d/b/a

Represented By
Ronald Clifford

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

1:19-13064 Adam Matthew Stern

Chapter 7

Adv#: 1:20-01031 Gewant v. Stern et al

#12.00 Status conference re: complaint determining debt to be not dischargeable and for objection to discharge

fr. 5/6/20(stip)

Docket 1

***** VACATED *** REASON: Order Dismissing Adversary Proceeding entered on May 28, 2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adam Matthew Stern

Represented By
Marc C Rosenberg

Defendant(s):

Adam Stern

Pro Se

Laura Denean Sterns

Pro Se

Joint Debtor(s):

Laura Denean Sterns

Represented By
Marc C Rosenberg

Plaintiff(s):

Dennis Gewant

Represented By
Allan D Sarver

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

#13.00 Status conference re: first amended complaint for non-dischargeability under 11 U.S.C. sec 523(A)(2) (4) and (6)

fr. 5/20/20

Docket 6

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on July 15, 2020**, to be held with the hearing on the defendant's motion to dismiss [doc. 11].

Appearances on June 3, 2020 are excused.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Bright Enabulele

Represented By
Levi Reuben Uku

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#14.00 Debtor's motion to quash subpoena for documents and deposition subpoena for Johanna Scott

fr. 3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20

Docket 29

Tentative Ruling:

The parties should be prepared to discuss a deadline to file a written stipulation as required by Local Bankruptcy Rule 7026-1(c)(3), and continued hearing dates on the motions to quash.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#15.00 Debtor's motion to quash subpoena for documents and deposition
subpoena for Fenton & Ross

fr. 3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20

Docket 28

Tentative Ruling:

See calendar no 14.

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, June 3, 2020

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#16.00 Defendants' motion to dismiss

fr. 10/2/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20; 3/4/20;
3/18/20; 4/1/20; 4/8/20; 5/6/20

Docket 12

Tentative Ruling:

For reasons discussed in the Court's ruling from the prior hearing on April 1, 2020, the Court granted the motion to dismiss in part and denied the motion in part.

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.

April 1, 2020 Ruling

After reviewing the supplemental briefing [docs. 26 and 27], the Court will grant in part and deny in part the motion for the reasons discussed below.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott
Action").

Chapter 13

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.

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

...

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

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 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. Defendants defrauded Plaintiff by failing to withhold his payroll taxes in lawful and appropriate amounts, failing to pay those withheld taxes to government authorities as required by

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

law on Plaintiff's behalf and by issuing fraudulent tax records on which Plaintiff relied to report and pay his annual income taxes.

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. 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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. 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")

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

[doc. 19] and a request for judicial notice [doc. 20]. On September 26, 2019, Defendants filed a reply to the Opposition (the "Reply") [doc. 22].

On November 13, 2019, the Court held a hearing on defendants' *Motion to Dismiss Pursuant to Rules 8, 9, and 12* (the "Motion") [doc. 12]. Prior to the hearing, the Court issued a tentative ruling, see below (the "Tentative Ruling"). After listening to oral argument at the hearing, the Court ordered the parties to submit briefing and continued the hearing to February 5, 2020.

On December 16, 2019, Plaintiff filed a supplemental brief (the "Plaintiff's Supplemental Brief") [doc. 26]. In Plaintiff's Supplemental Brief, Plaintiff requests that the Court reconsider the Tentative Ruling on the following causes of action in the FAC: (A) waiting time penalties under Cal. Lab. Code § 203; (B) statute of limitations under Cal. Lab. Code §§ 226(f) and 1198.5(k); (C) declaratory relief concerning ownership of the funds (third cause of action); (D) annulment of transfers in fraud of creditors (fourth cause of action); (E) breach of contract (twelfth cause of action); (F) conversion (thirteenth cause of action); (G) injunctive relief under the UCL. In addition, Plaintiff argues that the Court must dismiss an entire cause of action rather than strike a portion of the allegations in the FAC. On January 6, 2020, Debtor filed a reply to Plaintiff's Supplemental Brief (the "Debtor's Supplemental Brief") [doc. 27].

II. DISCUSSION

Based on the Motion, the Opposition, the Reply, the Plaintiff's Supplemental Brief and the Debtor's Supplemental Brief, the Court will issue the following ruling. 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

hear matters involving debtors, the causes of action must involve some rights under title 11.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

"[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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

The Court does not have "arising under" or "arising in" jurisdiction over causes of 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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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, 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

jurisdictional support;

(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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

"core" proceedings and that claims four through seventeen were "non-core" proceedings within the meaning of the Bankruptcy Code. Except as discussed below, each of the claims in the 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).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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); *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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

"A UCL action is an equitable action by means of which a plaintiff may recover 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"). Under CLC § 202, an employer must pay an employee who resigns his or her wages within 72 hours. If the employer fails to timely pay those wages, the employer is liable for waiting time penalties under CLC § 203(a). The wages shall continue as a penalty from the due date at the same rate until paid, but not

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

more than 30 days. Here, Plaintiff resigned on June 17, 2017. This is within the three-year period. 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 §§ 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's claims for penalties under CLC §§ 1102.5(f), 98.6(b)(3) and 226(e) are barred by the applicable statute of limitations. 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. The Court will dismiss these claims without leave to amend.

Plaintiff's claims for penalties under CLC §§ 1198.5(k) and 226(f) are not barred by applicable statute of limitations. Plaintiff alleges that on August 6, 2018, Plaintiff demanded a copy of his personnel file and a copy of his complete payroll and time records. Plaintiff's causes of action under CLC §§ 1198.5(b)(1) and 226(b) would not have accrued until at the earliest Plaintiff's demand for his records or at the latest when Defendants failed to comply by the deadlines set forth in the statutes. Using either date, the period is within the applicable one-year statute of limitations. The Court will not 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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

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)).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

"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.

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... **Kenneth C. Scott**

Chapter 13

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 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 governmental 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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). Because Debtor filed his petition under chapter 13, 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.

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).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

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 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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. Specifically, Plaintiff states that "[j]udicial intervention is required to determine the rights and obligations of each of the parties, including but not limited to [Debtor] and MPPI, as to whether MPPI owned at least \$17,247.00 in cash maintained in a "business bank account" as of the [p]etition [d]ate herein and on relevant dates thereafter according to proof, or whether those funds were part of [Debtor's] bankruptcy estate in this proceeding." FAC, ¶ 65.

The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides in pertinent part:

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."

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 the funds were property of the bankruptcy estate because, as of the petition date, Debtor was the 100% shareholder of a subchapter S corporation, MPPI, and as such, all MPPI's profits flow directly through to Debtor as the sole shareholder. All 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, *i.e.* the Funds. The Court also determined that Debtor was entitled to an exemption of the Funds. Additionally, the parties did not dispute that, on the petition date, the Funds were held in a business account.

This request for declaratory relief is essentially asking the Court to reconsider its ruling in the Exemption Order. However, 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.

In the Plaintiff's Supplemental Brief, Plaintiff argues that by dismissing this cause of action, Plaintiff will be prejudiced. As the Court stated in its ruling on the Objection to Exemption [1:18-bk-13024-VK, doc. 150], allowing Debtor his claim of exemption does not prevent Plaintiff from obtaining a court determination that the *distribution* of the Funds from MPPI to Debtor was improper or from otherwise holding Debtor and/or MPPI liable to Plaintiff. Nothing in this ruling contradicts those statements.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

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.

Plaintiff alleges this cause of action against Defendants. If Plaintiff is moving under CUVTA, as he indicated in the Opposition, he may be able to state a claim for relief under FRCP 12(b)(6) as to MPPI and Debtor, but not as to Scott.Psy.D.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

FRCP 8(a)(2) requires that a pleading stating a claim for relief contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The function of this pleading requirement is to "give the defendant fair notice of what the...claim is and the grounds upon which it rests." *Bell Atl. Corp.*, 550 U.S. at 555. The FAC does not state the legal basis for the cause of action against Defendants. As such, Defendants have not been provided with fair notice regarding Plaintiff's claim against them and the grounds upon which it rests, as required by FRCP 8(a)(2).

In the Plaintiff's Supplemental Brief, Plaintiff argues that he should not be required to amend the FAC because he has alleged sufficient facts. In practice, "a complaint...must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Twombly*, 550 U.S. at 562, 127 S.Ct. 1955. Without knowing the legal basis of the claim, the Court cannot assess whether Plaintiff has alleged sufficient factual allegations respecting all material elements necessary to sustain recovery. Additionally, under CUVTA, Plaintiff has not alleged sufficient factual allegations against Scott Psy.D. The Court will dismiss this claim with leave to amend.

In the Debtor's Supplemental Brief, Debtor argues that, for purposes of a fraudulent transfer, the payment of a dividend cannot be the basis of a transfer for no consideration. Debtor is incorrect. There is case law supporting the assertion that a dividend payment, in certain circumstances, can be avoided as a fraudulent conveyance. *See In re TC Liquidations LLC*, 463 B.R. 257, 278 (Bankr. E.D.N.Y. 2011) (distribution of dividends to shareholders of S corporation for payment of the shareholders tax obligations were avoided as fraudulent conveyances under 11 U.S.C. § 548(a)(1)(A)).

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

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 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

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)

In the thirteenth cause of action, Plaintiff makes two separate statements for his claim 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. Plaintiff claims that he has suffered economic damages in the amount of back pay he should have received had he been paid all wages earned in a timely manner, plus interest thereon. The second 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

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). Regarding his first statement, in support of his position, Plaintiff cites *Voris v. Lampert*, 7 Cal. 5th 1141, 446 P.3d 284 (2019), *reh'g denied* (Oct. 23, 2019). In *Voris*, the plaintiff worked with the defendant to launch three startup companies, partly in return for a promise of later payment of wages. After a falling out, the plaintiff was fired, and he was never paid the promised compensation. The plaintiff sued the three companies, invoking breach of contract and statutory remedies for the nonpayment of wages, and won. The plaintiff was unable to collect on his judgments and sought to hold the defendant personally liable for the unpaid wages based on conversion. The *Voris* court held that conversion was not an appropriate remedy.

In *Voris*, the California Supreme Court stated in relevant part:

Vor is argues, the nonpayment of wages should be treated as a conversion of property, not as a failure to satisfy a " 'mere contractual right of payment.' " (*Sanowicz, supra*, 234 Cal.App.4th at p. 1041, 184 Cal.Rptr.3d 517.) But to accept this argument would require us to indulge a similar fiction: namely, that once Vor is provided the promised services, certain identifiable monies in his employers' accounts became Vor is's personal property, and by failing to turn them over at the agreed-upon time, his employers converted Vor is's property to their own use.

Vor is contends that there is precedent for this view. . . Vor is directs our attention to the Court of Appeal's decision in *Department of Industrial Relations v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 64 Cal.Rptr.2d 457 (*UI Video Stores*). There, in a brief two-paragraph discussion, the court approved a conversion action brought

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

by the Division of Labor Standards Enforcement (DLSE) of the Department of Industrial Relations. DLSE had sued Blockbuster on behalf of Blockbuster employees to recover money that was unlawfully deducted from their paychecks to pay for uniforms, in violation of the applicable wage order. The parties settled, and as part of the settlement agreement Blockbuster mailed individual checks to the employees in the amount of the wrongful deductions. But a number of checks were returned as undelivered, and DLSE ordered Blockbuster to deposit those checks in California's unpaid wage fund. When Blockbuster refused, DLSE filed a second complaint, alleging that Blockbuster's refusal amounted to an unlawful conversion of the checks to its own use. The Court of Appeal reversed a grant of summary judgment in the defendant's favor, apparently accepting DLSE's argument that it had the right to immediate possession of the checks, in its capacity as an agent of the state and trustee for the employees. (*Id.* at pp. 1094–1096, 64 Cal.Rptr.2d 457.)

Although *UI Video Stores* involved a conversion action *related to* wrongfully withheld wages, it did not concern a conversion claim *for* the nonpayment of wages. The act of conversion that the court recognized in *UI Video Stores* was the defendant's misappropriation of certain checks that it had cut and mailed to employees as part of the settlement agreement—checks that at least arguably became the property of the employees at that time. The defendant's failure to pay wages in the first instance was not remedied through a conversion claim, but rather through DLSE's enforcement action under the Labor Code. Whether the employees could have sustained a conversion action for the unpaid uniform reimbursements themselves is a matter that was not at issue in *UI Video Stores*, and which the court did not address.

For reasons already explained, the nature of the underlying wage claim in *UI Video Stores*, like the nature of the wage claim in this case, is not one that fits easily with traditional understandings of the conversion tort. Unlike the cases involving failure to turn over

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

commissions, for example, which were earmarked for a specific person before being misappropriated and absorbed into another's coffers, a claim for unpaid wages simply seeks the satisfaction of a monetary claim against the employer, without regard to the provenance of the monies at issue. In this way, a claim for unpaid wages resembles other actions for a particular amount of money owed in exchange for contractual performance—a type of claim that has long been understood to sound in contract, rather than as the tort of conversion.

Voris, 7 Cal. 5th at 1153–56. The *Voris* court went on to state in a footnote:

We do not suggest that any and all claims related to wages necessarily fall outside the bounds of the law of conversion, merely because they relate to wages. The label of monies as "wages" or "commissions" or "fees"—or any other form of compensation for that matter—is not determinative, provided that the claim otherwise satisfies the elements of the conversion tort. (Cf. dis. opn., *post*, 7 Cal.5th at p. 1163, 250 Cal.Rptr.3d at pp. 797-798, 446 P.3d at pp. 299-300.) Take, for instance, an employer that pays wages but then removes the money from an employee's account, or that diverts withheld amounts from their intended purposes; that employer may well have committed conversion. (Cf. *U.S. v. Whiting* (7th Cir. 2006) 471 F.3d 792 [employer committed criminal conversion under federal statute by holding money deducted from employees' paychecks in the company's general operating account instead of delivering it to the employees' 401(k) plans or paying the employees' health insurance premiums; once employees had been paid, the deductions belonged to the employees and no longer belonged to the employer].) But absent a similar scenario, the ordinary failure to pay wages does not give rise to conversion.

Voris, 7 Cal. 5th at 1156, n.11.

Here, some of Plaintiff's allegations, *i.e.*, deductions for general overhead expenses, are analogous to the claims in *UI Video Stores*. However, some of Plaintiff's allegations, *i.e.*, deductions for payroll taxes, are analogous to the claims in *U.S. v.*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

Whiting, 471 F.3d 792 (7th Cir. 2006), where the employer committed conversion by diverting withheld amount from their intended purpose, rather than the underlying wage claim in *UI Video Stores*, where the employer deducted monies from the employees' paychecks for uniforms.

Plaintiff alleges that Defendants committed conversion by diverting withheld amounts from their intended purpose. Specifically, Plaintiff alleges that MPPI and/or Debtor deducted monies from his paycheck for payroll taxes, which should have been paid to the taxing authorities, but MPPI or Debtor failed to do so, *i.e.*, MPPI and/or Debtor converted the monies to their own use rather than paying the monies to the taxing authorities. The court in *Voris* specifically stated that in circumstances like the one Plaintiff is alleging here, there may be a claim for conversion. If the allegations in the FAC are true, as the Court must accept at this stage, Plaintiff has alleged sufficient allegations to state a claim for relief that is plausible on its face.

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. However, pursuant to FRCP 8(d)(2), if a party makes alternative statements, the pleading is sufficient if any one of them is sufficient. Because Plaintiff's first statement of the claim is sufficient, the Court will not dismiss this claim.

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)

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,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

August 6, 2018, Plaintiff alleges that he requested his personnel file 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' 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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.

(emphasis added). "The UCL statutory standing requirements differ from standing requirements in federal court." *Freeman v. ABC Legal Servs., Inc.*, 877 F. Supp. 2d 919, 923–24 (N.D. Cal. 2012). Under California law, "[t]o 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, in federal court, a plaintiff must also meet the requirements for standing under Article III to pursue injunctive relief under the UCL. *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.*

"Even if [the UCL] permits a plaintiff to pursue injunctive relief in California state courts . . . even though he or she currently suffers no individualized injury as a result of a defendant's conduct, 'a plaintiff whose cause of action [under the UCL] is perfectly viable in state court under state law may nonetheless be foreclosed from litigating the same cause of action in federal court, if he cannot demonstrate the requisite injury' to establish Article III standing." *Id.* (quoting *Lee v. Am. Nat'l Ins. Co.*, 260 F.3d 997, 1001–02 (9th Cir. 2001)).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

In *Hangarter*, a plaintiff insured brought suit against her insurer and its parent company for discontinuing total disability benefits. One of the plaintiff's claims was for injunctive relief under the UCL. The appellate court concluded that the plaintiff lacked Article III standing to seek injunctive relief against the defendants for violation of the UCL, because the plaintiff currently had no contractual relationship with the defendants, and therefore, was not threatened personally by their future conduct.

Several courts have applied these standards in the context of wage and hour disputes, and have concluded that a former employee lacks standing to seek prospective injunctive relief because a former employee cannot show a real or immediate threat of irreparable injury by the former employer's employment practices. *See, e.g., Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 864–65 (9th Cir. 2017); *Davis v. Farmers Ins. Exch.*, 245 Cal. App. 4th 1302, 1326–27, 200 Cal. Rptr. 3d 315, 335 (2016), *as modified on denial of reh'g* (Apr. 21, 2016); *Oyarzo v. Tuolumne Fire Dist.*, No. 1:11-CV-01271-SAB, 2014 WL 37247, at *3 (E.D. Cal. Jan. 6, 2014), *aff'd in part, vacated in part, remanded sub nom. on other grounds Oyarzo v. Turner*, 641 F. App'x 700 (9th Cir. 2015); *Milligan v. Am. Airlines, Inc.*, 327 F. App'x 694 (9th Cir. 2009) ("Milligan is not an American employee. She therefore cannot show that she faces a 'real or immediate threat of irreparable injury' by American's employment practices. The fact that Milligan brought a class-action claim does not alter this analysis."); *Richards v. Ernst & Young LLP*, C08–4988 JF (HRL), 2010 WL 682314 (N.D. Cal. Feb. 24, 2010) (finding the plaintiff "lacks 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.").

However, there is some case law that suggests that "[a] former employee currently seeking to be reinstated or rehired may have standing to seek injunctive relief against a former employer." *Bayer*, 861 F.3d at 865; *see also Pitre v. Wal-Mart Stores, Inc.*, No. SACV171281DOCDFMX, 2017 WL 11093619, at *5 (C.D. Cal. Nov. 8, 2017). Here, Plaintiff is a former employee of MPPI, but Plaintiff has requested an order reinstating his employment with Defendants. As such, Plaintiff may have Article III standing to pursue injunctive relief under the UCL.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

Nevertheless, "injunctive relief [under the UCL] is available to prevent threatened injury and is not a remedy designed to right completed wrongs." *Madrid v. Perot Sys. Corp.*, 130 Cal. App. 4th 440, 464–65, 30 Cal. Rptr. 3d 210, 228 (2005). "It should neither serve as punishment for past acts, nor be exercised in the absence of any evidence establishing the reasonable probability the acts will be repeated in the future." *Id.*

Here, Plaintiff's requests for injunctive relief appear to be remedies designed to right Defendants' alleged wrongs. All Plaintiff's requests address Defendants' conduct in the past in order to collect his purported unpaid wages, not Defendants' conduct in the future to prevent unfair employment practices as required by the UCL. Plaintiff has not alleged that any conduct he requests the Court enjoin is likely to be repeated in the future. Accordingly, 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) and 226(e) 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).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

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, June 3, 2020

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #17.00** Status conference re amended complaint for:
1. Declaratory relief re nondischargeability of Civil Penalties [11 U.S.C. sec.523(a)(7)]
 2. 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; 11/13/19; 2/5/20; 2/26/20;
3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20

Docket 8

Tentative Ruling:

The parties should be prepared to discuss an appropriate continued date for this status conference.

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, June 3, 2020

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, June 3, 2020

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#18.00 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, 12/18/19; 2/5/20; 2/26/20; 3/4/20;
3/18/20; 4/1/20; 4/8/20; 5/6/20

Docket 64

Tentative Ruling:

The parties should be prepared to discuss the status of the appeal.

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, June 3, 2020

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#19.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper.

fr. 5/14/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20;
3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20

Docket 55

Tentative Ruling:

On December 16, 2019, Mr. Hopper filed an amended proof of claim [claim 3-3]. Does the debtor intend to object to the amended proof of claim? If so, when does the debtor intend to file such an objection?

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, June 3, 2020

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#20.00 Debtor's motion for summary judgment and/or summary adjudication of facts

fr. 2/5/20; 2/26/20; 3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20

Docket 174

Tentative Ruling:

The Court intends to continue this hearing until after the Court has ruled on the motions to quash [docs. 28 and 29] and the motion to compel [doc. 46]. The parties should be prepared to discuss dates for such a continued hearing.

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, June 3, 2020

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#21.00 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; 12/10/19;
2/5/20; 2/26/20; 3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20

Docket 70

Tentative Ruling:

Ruling from December 10, 2019

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

\$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 My Private Practice.

On March 6, 2019, the Debtor filed an amended SOFA [doc. 34]. In the amended

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott
title 28;

Chapter 13

- (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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

‘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.

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

1:30 PM

1:19-13078 Gerie G Annan

Chapter 7

Adv#: 1:20-01032 Tenggren v. Annan

#21.10 Status conference re: complaint objecting to debtors discharge to section 727 of the bankruptcy code

fr. 5/13/20; 5/20/20

Docket 1

***** VACATED *** REASON: Court has approved entry of orders assigning the matter to the mediation program and setting a pretrial conference on 11/4/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerie G Annan

Represented By
Michael D Luppi

Defendant(s):

Gerie G Annan

Pro Se

Joint Debtor(s):

Bennett Annan

Represented By
Michael D Luppi

Plaintiff(s):

Nancy S Tenggren

Represented By
Andrew J Spielberg

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 3, 2020

Hearing Room 301

2:30 PM

1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01116 Bars v. Sheikh

#22.00 Amended motion for approval of stipulation for judgment between plaintiff and defendants

fr. 11/6/19; 1/22/20 (stip) ; 3/25/20

Docket 27

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

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, June 3, 2020

Hearing Room 301

2:30 PM

CONT... Atif Sheikh

Chapter 7

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**

Wednesday, June 3, 2020

Hearing Room 301

2:30 PM

1:18-11471 Atif Sheikh

Chapter 7

Adv#: 1:18-01116 Bars v. Sheikh

#23.00 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; 11/13/19; 1/22/20; 3/25/20

Docket 1

Tentative Ruling:

See calendar no. 22.

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**

Thursday, June 4, 2020

Hearing Room 301

10:30 AM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#1.00 Application for second interim compensation for David A Tilem,
debtor's attorney

fr. 4/30/20

Docket 236

Tentative Ruling:

The Court will continue this hearing to **June 11, 2020 at 10:30 a.m.**

Appearances on June 4, 2020 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 4, 2020

Hearing Room 301

1:00 PM

1:17-13142 Amir Elosseini

Chapter 11

#2.00 Debtor's first amended disclosure statement hearing

fr. 4/9/20

Docket 188

Tentative Ruling:

Taking into account the objections to the proposed disclosure statement, the disclosure statement does not currently contain adequate information.

Any amended chapter 11 plan of reorganization and related disclosure statement should address the objections raised by the United States Trustee and HSBC Bank USA, except those related to confirmation issues, such as feasibility and compliance with 11 U.S.C. § 1123(b)(5). Those issues will be evaluated in connection with a hearing regarding confirmation. The amended disclosure statement and plan should address, among other things, the following:

Service. 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 Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

1:00 PM

CONT... Amir Elosseini

Chapter 11

United States Department of Justice
Ben Franklin Station
P. O. Box 683
Washington, DC 20044

Chase/Bank One Card Serv. Claim. In the debtor's amended schedule E/F [doc. 67], 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.

Lease of Real Property. In the debtor's proposed chapter 11 plan of reorganization, the aggregate monthly payment to the creditors in classes 2(c), (d) and (e) is \$9,266.79. 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 [Exh. E]. How does the debtor intend to fund the deficiency between the plan payments and the rental income?

Employment Income. In the declaration of current/postpetition income and expenses, the debtor represents that he receives \$9,500 per month in income from his employment. The debtor's monthly operating reports do not reflect this income. See calendar no. 3. If the debtor includes this income as part of his gross wages, evidence of such income needs to be attached to the disclosure statement, as the monthly operating reports do not indicate any such employment income.

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, June 4, 2020

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;
5/16/19; 8/8/19; 11/14/19; 2/6/20; 4/9/20

Docket 1

Tentative Ruling:

The Court is considering the issuance of an Order to Show Cause, why this case should not be converted to one under chapter 7, or dismissed, pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (4)(E), (F) and (H).

Pursuant to the ruling at the prior status conference held on April 9, 2020, the debtor was to file an updated status report, supported by evidence, by May 21, 2020. The debtor did not timely file any such status report.

Additionally, the debtor was to file amended monthly operating reports that reflect the debtor's income received from his employment. As of May 28, 2020, the debtor has not filed any such amended monthly operating reports.

Moreover, because that income is property of the estate, the Court ordered the debtor to deposit his employment income into a debtor in possession account. The debtor's March 2020 and April 2020 monthly operating reports do not indicate any of his income from his post-petition employment.

Ruling from April 9, 2020

Pursuant to the ruling at the prior chapter 11 case status conference held on February 6, 2020, the debtor was to file an updated status report by March 26, 2020. The debtor has not timely done so.

In the debtor's amended disclosure statement [doc. 188], the debtor indicates that he is receiving income in the amount of \$5,000 per month plus commission of 25% of gross revenues from new patient treatment from Beverly Hills Cancer Center. The debtor indicates that he has deposited this income into the debtor's "corporate account." That

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

1:00 PM

CONT... Amir Elosseini

Chapter 11

account is not reflected in the debtor's monthly operating reports.

As property of the estate, that income must be deposited into a debtor in possession account. To reflect this income, the debtor must file amended monthly operating reports.

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, June 4, 2020

Hearing Room 301

1:00 PM

1:18-12494 **Elas, LLC dba Calnopoly, LLC**

Chapter 11

#4.00 Post confirmation status conference re: chapter 11 case
fr. 12/6/18; 6/20/19; 8/22/19; 11/14/19; 12/12/19; 2/6/20

Docket 1

***** VACATED *** REASON: Final Decree order entered 4/28/20. [Dkt.
174]**

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, June 4, 2020

Hearing Room 301

1:00 PM

1:19-13136 Stephanie Izquierdo

Chapter 7

#5.00 U.S. Trustee's Motion under 11 U.S.C. §110 for disgorgement of fees and fines against bankruptcy petition preparer Gloria Ortiz and Taxxprep

fr. 5/7/20

Order appr stip resolving motion ent 6/1/20

Docket 11

***** VACATED *** REASON: Order granting stipulation entered 6/1/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephanie Izquierdo

Pro Se

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

1:00 PM

1:20-10093 Robert Alderman and Noni Alderman

Chapter 7

#6.00 Motion in individual chapter 11 case for order authorizing debtor in possession to employ general counsel

Docket 63

Tentative Ruling:

Deny *nunc pro tunc* employment.

I. BACKGROUND

On January 14, 2020, Robert Alderman and Noni Alderman (the "Debtors") filed a voluntary chapter 11 petition. Stephen L. Burton ("Applicant") represents the Debtors.

On January 22, 2020, the United States Trustee (the "UST") filed a motion to dismiss or convert the Debtors' chapter 11 case to one under chapter 7 (the "Motion to Convert") [doc. 15]. The Motion to Convert was based on the Debtors' noncompliance with the UST requirements. The Debtors did not file a response to the Motion to Convert.

On February 20, 2020, the Court held a hearing on the Motion to Convert. At the hearing, the Debtors still were not in compliance with the UST requirements. Accordingly, the Court granted the Motion to Convert, and converted the Debtors' case to one under chapter 7 [doc. 36]. Prior to the Court converting the Debtors' case, Applicant did not file an employment application.

On March 4, 2020, the UST filed a motion for sanctions/disgorgement of the fees paid to Applicant by the Debtors (the "Motion for Sanctions") [doc. 41]. The Motion for Sanctions is based on Applicant's failure to perform the services that he agreed to perform, and Applicant's failure to file an employment application.

On April 27, 2020, Applicant and the UST filed a stipulation to continue the hearing on the Motion for Sanctions (the "Stipulation") [doc. 59]. Pursuant to the Stipulation, Applicant was to file a motion to be employed by the estate by May 4, 2020, and a hearing on that motion would be set for June 4, 2020. On April 27, 2020, the Court

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

1:00 PM

CONT... **Robert Alderman and Noni Alderman**

Chapter 7

entered an order approving the Stipulation [doc. 61].

On May 10, 2020, Applicant filed a *Motion in Individual Chapter 11 Case for Order Authorizing Debtor in Possession to Employ General Counsel* (the "Motion") [doc. 63]. In the Motion, Applicant requests approval of *nunc pro tunc* employment as of the petition date. On May 21, 2020, the UST filed an opposition to the Motion [doc. 68].

II. DISCUSSION

"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, Applicant has failed to provide a satisfactory explanation for his failure to file an employment application during the pendency of the chapter 11 case, or shortly thereafter. Applicant states that he was busy assisting the Debtors with their chapter 11 compliance issues, but Applicant has not demonstrated any extraordinary

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

1:00 PM

CONT... **Robert Alderman and Noni Alderman** **Chapter 7**

circumstances that would have precluded him from filing an employment application while he worked on those issues. Compliance issues are not an extraordinary circumstance; many chapter 11 debtors have compliance issues. This appears to be a case of inexcusable or unexplained negligence.

Applicant additionally states that in mid-January, when the Debtors filed their petition, the "insurance companies and banks were not fully staffed." Applicant offered no explanation why that situation (if it actually existed) would delay the timely filing of his employment application.

Moreover, Applicant has not demonstrated that he benefitted the estate in some significant manner. Applicant did not file a response to the Motion to Convert, and the Debtors were not in compliance with the UST requirement prior to the hearing on the Motion to Convert. Based on the record before the Court, the Court cannot say that Applicant's efforts provided a significant benefit to the estate.

III. CONCLUSION

For the reasons discussed above, the Court will deny the Motion.

The UST must submit the order within seven (7) days.

Party Information

Debtor(s):

Robert Alderman

Represented By
Stephen L Burton

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

2:00 PM

1:19-11696 Peter M. Seltzer

Chapter 7

#7.00 Motion by Diane C. Weil, chapter 7 trustee, for issuance of an order to show cause why debtor should not be held in contempt for violation of this court's conversion order

fr. 3/26/20; 4/9/20

Docket 119

***** VACATED *** REASON: Notice of withdrawal filed 5/20/20 [doc. 161].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson
Kathleen C Hipps

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

2:00 PM

1:19-11947 California Warewashing and Laundry Service Inc.

Chapter 7

#8.00 Application of chapter 7 trustee to employ Menchaca & Company LLP
as accountant

Docket 13

***** VACATED *** REASON: Order entered on 5/18/20 [doc. 20].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

California Warewashing and

Represented By
Sevan Gorginian

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Amy L Goldman
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

2:00 PM

1:20-10007 Jason Scott Fontaine

Chapter 7

#9.00 Creditor Jennifer A. Hoult's motion to dismiss chapter 7 bankruptcy claim

Docket 51

Tentative Ruling:

Deny.

I. BACKGROUND

On January 2, 2020, Jason Scott Fontaine ("Debtor") filed a voluntary chapter 7 petition. In his schedule E/F [doc. 9], Debtor identified nine unsecured creditors, including Jennifer Hoult.

On February 7, 2020, the chapter 7 trustee filed a Notice of Assets and set a deadline of May 12, 2020 for creditors to file proofs of claim [doc. 14]. Multiple creditors timely filed proofs of claim against the estate.

On May 5, 2020, Ms. Hoult filed a motion to dismiss Debtor's case (the "Motion") [doc. 51]. In the Motion, Ms. Hoult requests dismissal under 11 U.S.C. § 707(b) on the basis that Debtor's debts are primarily consumer debts. In addition, Ms. Hoult requests dismissal on the basis that Debtor filed for bankruptcy protection without attempting to pay or settle the debt owed to Ms. Hoult. Finally, Ms. Hoult states that Debtor failed to schedule certain assets.

On May 21, 2020, Debtor filed an opposition to the Motion [doc. 63]. Debtor asserts that Ms. Hoult's request under § 707(b) is untimely and that there is no cause to dismiss this case. Ms. Hoult did not timely file a reply.

II. ANALYSIS

Pursuant to 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—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

2:00 PM

CONT...

Jason Scott Fontaine

Chapter 7

- (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(a), but only on a motion by the United States trustee.
- (b)
- (3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider—
 - (A) whether the debtor filed the petition in bad faith; or
 - (B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

Under 11 U.S.C. § 349(a), "[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title."

Pursuant to 11 U.S.C. § 109(g), "[n]otwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if"—

- (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or
- (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

In addition, 11 U.S.C. § 105(a) states—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

2:00 PM

CONT...

Jason Scott Fontaine

Chapter 7

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

A. The Request for Dismissal under 11 U.S.C. § 707(b) is Untimely

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 1017(e)(1), "a motion to dismiss a case for abuse under § 707(b) or (c) may be filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss."

Here, the first date set for the meeting of creditors under § 341(a) was February 7, 2020. As such, the deadline for creditors to file a motion to dismiss under § 707(b) ran on April 7, 2020. Although Ms. Hoult previously moved to extend the deadline to object to Debtor's discharge and/or seek to except the debt owed to her from discharge, Ms. Hoult never moved to extend the deadline to file a motion to dismiss under § 707(b). Moreover, General Order 20-03, which automatically extended certain deadlines, extended the deadline under FRBP 1017(e) *only as to the United States Trustee*. General Order 20-03, p. 2. As such, the Court will deny Ms. Hoult's request for dismissal under § 707(b) as untimely.

B. Ms. Hoult Has Not Set Forth an Alternative Basis for Dismissal

Pursuant to 11 U.S.C. § 707—

(c) 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;

Pursuant to 11 U.S.C. § 305—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

2:00 PM

CONT...

Jason Scott Fontaine

Chapter 7

(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;

FRBP 1017(e) does not set a deadline for parties in interest to request dismissal under other statutes, such as § 707(a) or § 305(a). As such, Ms. Hoult's request for dismissal under those provisions are timely. Nevertheless, aside from Ms. Hoult's time barred arguments under § 707(b), Ms. Hoult has not provided a legitimate basis for dismissal.

Ms. Hoult's primary basis for requesting dismissal is that Debtor filed for bankruptcy protection without attempting to repay the debt owed to Ms. Hoult. However, if filing a bankruptcy petition to avoid paying a debt was a legitimate basis for dismissal, every bankruptcy case would have to be dismissed. Ms. Hoult has not set forth any other reason why Debtor's filing was made in bad faith or is prejudicial to creditors. [FN1].

In fact, dismissal of this case will prejudice Debtor's creditors. Debtor scheduled several other creditors, many of whom timely filed proofs of claim to receive a distribution from the estate. The chapter 7 trustee has filed a Notice of Assets, signaling to creditors that a distribution will be forthcoming. If the Court dismisses this case, creditors will have to revert to a race to the courthouse to obtain any payment from Debtor. Moreover, if Debtor did fail to schedule assets, as Ms. Hoult contends, it is especially important to allow the chapter 7 trustee to continue investigating Debtor's assets and to collect them for the benefit of the estate. As such, Ms. Hoult has not provided cause for dismissal or shown that dismissal better serves the interests of Debtor and creditors.

III. CONCLUSION

The Court will deny the Motion.

Debtor must submit an order within seven (7) days.

FOOTNOTES

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

2:00 PM

CONT... Jason Scott Fontaine

Chapter 7

1. The parties' discussion about 11 U.S.C. § 727 is irrelevant to dismissal of this case. Section 727 governs Debtor's entitlement to a discharge, not whether Debtor's case should be dismissed.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declaration of Douglas W. Gastelum set forth below:

The debtor objects to paragraph 11 of Mr. Gastelum's declaration on the basis that the paragraph "contains a recitation of statements [Mr. Gastelum] heard." That paragraph contains no such statements. To the extent the debtor objects to Mr. Gastelum's reference to out of court statements made *by the debtor*, as set forth in paragraph 27 of the declaration, such statements are not hearsay pursuant to Federal Rule of Evidence 801(d)(2), which governs statements made by an opposing party.

Party Information

Debtor(s):

Jason Scott Fontaine

Represented By
Leonard Pena

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 4, 2020

Hearing Room 301

2:00 PM

1:20-10174 Cardessa Lucette Kerr

Chapter 7

#10.00 Order to show cause hearing re: dismissal for failure to
comply with rule 1006(b)

Docket 22

***** VACATED *** REASON: Payments made in full on 4/30/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cardessa Lucette Kerr

Pro Se

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

2:00 PM

1:20-10276 Hormoz Ramy

Chapter 7

#11.00 Creditor WVJP 2017-2, LP's Motion for extension of time to file a complaint objecting to discharge pursuant to 11 U.S.C. section 727

Docket 15

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Hormoz Ramy

Represented By
Siamak E Nehoray

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, June 4, 2020

Hearing Room 301

2:00 PM

1:20-10543 Amerigrade Corp.

Chapter 11

#12.00 Application of Resnik Hayes Moradi LLP to be employed as general bankruptcy counsel to the Debtor and Debtor-in-Possession from March 5, 2020 to April 24, 2020

Docket 27

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):

Amerigrade Corp.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 4, 2020

Hearing Room 301

2:00 PM

1:20-10478 Enrique P. Soriano

Chapter 7

#13.00 Motion to vacate dismissal and reinstate chapter 7 based on mistake, inadvertence or neglect

fr. 5/21/20

Docket 14

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Enrique P. Soriano

Represented By
Ali R Nader

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

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 302 Calendar**

Tuesday, June 9, 2020

Hearing Room 302

9:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#31.10 Hearing re: H. Samuel Hopper's objection to confirmation of debtor's third amended chapter 13 plan

fr. 1/14/20; 3/10/20; 4/14/20

Docket 166

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Movant(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 9, 2020

Hearing Room 301

10:30 AM

1:15-12329 Rene Dashiell

Chapter 13

#43.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 3/10/20

Docket 43

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rene Dashiell

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 9, 2020

Hearing Room 301

10:30 AM

1:17-12163 Cynthia Ann Donahue

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 refunds

fr. 2/11/20; 4/14/20

Docket 49

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, June 9, 2020

Hearing Room 301

10:30 AM

1:17-13190 Seferino Carlin

Chapter 13

#45.00 Trustee's motion to dismiss case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax refunds

fr. 2/11/20; 5/5/20;

Docket 38

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, June 9, 2020

Hearing Room 301

10:30 AM

1:17-13190 Seferino Carlin

Chapter 13

#46.00 Trustee's motion for order modifying the plan to increase the plan payment pursuant to 11 U.S.C. §1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. §1307(c)(6)

fr. 2/11/20; 5/5/20;

Docket 36

Tentative Ruling:

Grant. Pursuant to 11 U.S.C. §§ 1329(a) and 1325(b), the plan payment will increase to \$1,145.00 per month.

Movant must submit the order within seven (7) days.

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, June 9, 2020

Hearing Room 301

10:30 AM

1:18-10288 Adaure Chinyere Egu

Chapter 13

#47.00 Trustee's Motion to Dismiss Case Due to Material Default of the Plan Pursuant to §1307(c)(6) Failure to Submit All Tax Refunds

Docket 79

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
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

10:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

#48.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 12/10/19; 2/11/20; 3/10/20; 4/14/20

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

10:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#49.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 1/14/20; 3/10/20

Docket 56

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, June 9, 2020

Hearing Room 301

10:30 AM

1:19-10589 Paul Anthony Matulewicz

Chapter 13

#50.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 3/10/20

Docket 59

Tentative Ruling:

- NONE LISTED -

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, June 9, 2020

Hearing Room 301

11:00 AM

1:14-15266 Nabiollah Morovati

Chapter 13

#51.00 Hearing on objection to closing of chapter 13 case
fr. 4/14/20; 5/5/20

Docket 65

Tentative Ruling:

The Court will continue this hearing to **July 14, 2020 at 11:00 a.m.**

I. BACKGROUND

On November 21, 2014, Nabiollah Morovati (the "Debtor") filed a voluntary chapter 13 petition. In his schedule F, the Debtor listed a nonpriority unsecured claim in favor of Sukari Hayes ("Creditor") in the amount of \$17,932.97 [doc. 1]. The Debtor indicated that he incurred this debt on October 17, 2014 and that it was based on an employment wage claim. The Debtor listed the Creditor's address as:

Sukari Hayes
c/o Khashayar Eshragi, Esq.
520 S. Grand Avenue
Los Angeles, CA 90071

The Debtor also listed Creditor at this address in his master mailing list [doc. 1]. In his statement of financial affairs [doc. 1], the Debtor indicated that, within the year preceding the filing of her petition, he was a party to a prepetition nonbankruptcy action between the Debtor and Creditor. The Debtor did not indicate the status or disposition of the nonbankruptcy action.

On November 25, 2014, January 29, 2015 and April 27, 2015, the Debtor served notices of the 11 U.S.C. § 341(a) meeting of creditors and hearing on confirmation of chapter 13 plan, with a copy of the Debtor's chapter 13 plan, on Creditor at the address listed above [docs. 8, 15 and 24]. Creditor did not file an objection to the Debtor's chapter 13 plan. On December 1, 2015, the Court entered an order confirming the Debtor's chapter 13 plan [doc. 50].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati

Chapter 13

Throughout the pendency of the Debtor's bankruptcy case, notices were being sent to Creditor at the address listed above. On November 28, 2018, Creditor filed a notice of change of address stating that her old address was "Khashayar Eshraghi" and her new address is "Sukari M Hayes, 1310 12th Ave., #201, Los Angeles, California 90019" [doc. 59].

On January 17, 2020, the chapter 13 trustee ("Trustee") filed a *Notice of Intent to File Trustee's Final Report and Account, Obtain Discharge of Debtor and Close Case* ("Notice") [doc. 64]. The Notice provided that if no objection was filed within 30 days after the date of the Notice, the Court would discharge the Debtor. The Notice further provided that any objection must be accompanied by a notice of the hearing on the objection.

On January 28, 2020, Creditor timely filed the Objection [doc. 65]. On February 26, 2020, the Court entered an order setting the Objection for hearing, and requiring Creditor to provide notice of the hearing and deadline to file a response on the Debtor, the Debtor's attorney and the Trustee [doc. 67]. As a result of improper service, and because Creditor is self-represented, the Court continued the hearing several times [docs. 72 and 76]. On April 10, 2010, the Debtor filed a response to the Objection (the "Response") [doc. 71].

In the Objection, Creditor objects to the closing of the Debtor's case because she was "not informed to appear in bankruptcy court in 2015." This assertion is not supported by a declaration.

In the Response, the Debtor states that notice of the Debtor's chapter 13 filing was mailed to Creditor in care of the attorney who represented Creditor and assisted her in obtaining a judgment against the Debtor (the "Judgment"). Accordingly, the Debtor contends that serving Creditor at her attorney's address was proper under the circumstances. In his declaration, the Debtor's attorney states that Creditor's attorney's address was the only valid address for Creditor known to either he or the Debtor.

II. DISCUSSION

"A debtor who completes his payments under a Chapter 13 plan is entitled to a broad discharge of 'all debts provided for by the plan or disallowed under section 502 of [the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:00 AM

CONT...

Nabiollah Morovati

Chapter 13

Bankruptcy Code]....'" *Ellett v. Stanislaus*, 506 F.3d 774, 777 (9th Cir. 2007) (quoting 11 U.S.C. § 1328(a)). "[T]he phrase 'provided for' in section 1328(a) simply requires that for a claim to become dischargeable the plan must 'make a provision for' it, *i.e.*, deal with it or refer to it." *Id.* (quoting *Matter of Gregory*, 705 F.2d 1118, 1122 (9th Cir. 1983)).

"[A] claim cannot be considered to have been provided for by the plan **if a creditor does not receive proper notice of the proceedings.**" *Id.* (quoting *In re Hairopoulos*, 118 F.3d 1240, 1244 (8th Cir. 1997))(emphasis added). "The statutory command for notice embodies a basic principle of justice—that a reasonable opportunity to be heard must precede judicial denial of a party's claimed rights." *Id.* (quoting *City of New York v. New York, N.H. & H.R. Co.*, 344 U.S. 293, 297, 73 S.Ct. 299, 97 L.Ed. 333 (1953)).

"Courts have found that generally 'mailing a notice to a party's last-known address is "reasonably calculated" to provide actual notice.'" *In re Hernandez*, No. 2:12-BK-47099-RK, 2017 WL 6033409, at *5 (Bankr. C.D. Cal. Dec. 5, 2017) (quoting *In re Freedom Communications Holdings, Inc.*, 472 B.R. 257, 262 (Bankr. D. Del. 2012)). However, "[i]t is not enough merely to rely on one's own knowledge of a creditor's address." *In re Fauchier*, 71 B.R. 212, 215 (B.A.P. 9th Cir. 1987).

In order for a debt to be duly listed, the debtor must state the name and address of the creditor. . . . The burden is on the debtors to use reasonable diligence in completing their schedules and lists. . . . If a creditor proves that an address is incorrect, the debtor must justify the inaccuracy in preparing his schedules. . . . An incorrect or careless omission is not enough.

Id. (citations omitted). *See also In re Haga*, 131 B.R. 320, 327 (Bankr. W.D. Tex. 1991) (noting that "the debtor has the burden to show that the creditor ... had notice or actual knowledge of the case in time to file a proof of claim and request for a determination of dischargeability").

Here, the issue is whether the Debtor provided proper notice of his bankruptcy case to Creditor by serving Creditor care of her state court counsel. In the Reply, the Debtor contends that Creditor's state court counsel had a duty to provide notice to his client

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati

Chapter 13

of all matters affecting her case, including the judgment she obtained against the Debtor. However, case law states otherwise.

"An attorney who has represented a creditor in state court proceedings does not, by virtue of that relationship alone, represent the creditor with respect to that same debt in a federal bankruptcy proceeding. *Fauchier*, 71 B.R at 215 (collecting cases). "[O]rdinarily, an attorney-client relationship is terminated once representation is completed." *In re Perle*, 725 F.3d 1023, 1027 (9th Cir. 2013) (quoting *Damron v. Herzog*, 67 F.3d 211, 213 (9th Cir.1995)). "And, generally speaking, a lawyer's authority to represent a client ends 'because the lawyer has completed the contemplated services.'" *Id.* (quoting Restatement (Third) of the Law Governing Lawyers § 31 (2000)). Further, "[a]n attorney owes limited duties to a former client, and keeping the former client apprised of the status of ongoing litigation does not appear to be one of them."

In re: CYNTHIA CREWS, Debtor. CYNTHIA M. QUINTANILLA, Plaintiff, v. CARL M. CREWS, Defendant., No. 11-45982 CN, 2020 WL 1518534, at *7 (Bankr. N.D. Cal. Mar. 30, 2020).

Nevertheless, there are instances when an attorney's knowledge may be imputed to the attorney's client. If the creditor's attorney was **actively** representing the creditor to enforce claims against the debtor, at the time that notice of the bankruptcy was given to that attorney, the creditor's attorney's knowledge of a debtor's bankruptcy proceeding may be imputed to the creditor. *See, e.g., Perle*, 725 F.3d at 1027; *Lompa v. Price*, 871 F.2d 97 (9th Cir. 1989); *Maldonado v. Ramirez*, 757 F.2d 48, 51 (3d Cir. 1985); *Hernandez*, 2017 WL 6033409, at *4; *Musacco v. Walden*, No. CIV 13-1053 MV/KBM, 2016 WL 9777182, at *4 (D.N.M. June 17, 2016). Although *Price*, *Perle*, and *Hernandez* are in the context of chapter 7 cases, they are instructive. *See Ellett*, 506 F.3d at 778.

In *Price*, prepetition, the debtor and creditor were engaged in a contract dispute in state court. *Price*, 871 F.2d at 97. Prior to the state court suit being resolved, the debtor filed a chapter 7 petition. *Id.* The debtor did not list the creditor in his schedules or statements. *Id.* However, approximately two months prior to the deadline to file a nondischargeability complaint, the debtor's counsel sent the creditor's counsel a notice that the state court lawsuit would be stayed because of the debtor's bankruptcy case. *Id.* at 97-98. The notice did not contain any deadline dates. *Id.* at 98. After the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati

Chapter 13

deadline to file a nondischargeability complaint passed, the creditor filed a motion to file a late complaint. *Id.* The bankruptcy court granted the motion, and the debtor appealed to the Bankruptcy Appellate Panel for the Ninth Circuit ("BAP"). *Id.* The BAP reversed the bankruptcy court's ruling, and held that notice to the creditor's counsel constituted notice to the creditor. *Id.* The creditor appealed to the Ninth Circuit Court of Appeals.

The Court of Appeals affirmed the BAP's ruling. *Id.* at 99. In doing so, the Court of Appeals stated:

Counsel for the [the creditor] 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 creditor] now seeks to have declared nondischargeable. We hold that under these circumstances notice to counsel constituted notice to [the creditor]. *See Maldonado v. Ramirez*, 37 B.R. 219, 221 (D.V.I.1984) (notice to a creditor's attorney of a bankruptcy filing is usually sufficient if the attorney received knowledge of it while representing his client in enforcing a claim against the bankrupt) (citing 3 *Collier on Bankruptcy* ¶ 523.15(5)(c) (15th ed. 1983)), *rev'd on other grounds*, 757 F.2d 48, 51 (3d Cir.1985) (agreeing with premise, but finding the evidence insufficient to indicate that counsel was enforcing the claim for the client when notice was received); *In re Fulton*, 3 B.R. 600, 603-04 (Bankr.E.D.Mich.1980) (attorney who represents client in action affected by bankruptcy proceeding is impliedly authorized to receive notice on client's behalf regarding the action).

Id.

In *Perle*, among the debtor's outstanding debts was an arbitration award to the creditor. *Perle*, 725 F.3d at 1025. The award was made three years prior to the debtor filing his petition. *Id.* During the arbitration proceedings, the creditor was represented by counsel, Russo. *Id.* At the time of the debtor filing his petition, Russo did not represent the creditor with regard to enforcement or collection of the arbitration award, but did represent the creditor on other matters. *Id.* at 1025-26. During the debtor's bankruptcy case, Russo, on behalf of a different client, filed a nondischargeability complaint against the debtor. *Id.* at 1026. Russo never informed

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati

Chapter 13

the creditor of the debtor's bankruptcy filing. *Id.* Four years after he received a discharge, the creditor filed a motion to reopen the debtor's case to challenge dischargeability of the arbitration award. *Id.* The bankruptcy court granted the motion, and the arbitration award was found to be nondischargeable. *Id.* The debtor appealed, arguing, among other things, that even though the arbitration award is of the type that is nondischargeable under 11 U.S.C. §§ 523(a)(3) and (a)(6), that the creditor had notice or actual knowledge of the debtor's bankruptcy case by virtue of Russo's knowledge. *Id.*

The Ninth Circuit Court of Appeals declined to impute Russo's knowledge of the debtor's bankruptcy filing to the creditor. In doing so, the Court of Appeals stated:

Here, the "contemplated services" that Russo performed for [the creditor] consisted of handling the arbitration. Once the arbitration ended, Russo no longer represented [the creditor] with respect to it. He did continue to handle other unrelated matters for [the creditor] but this is of little significance considering that a lawyer's representation of a client is subject-matter specific.

Additionally, Russo learned of [the debtor's] bankruptcy on behalf of a different client, Corsair, who was contesting the dischargeability of its own debt. This distinguishes [the debtor's] case from two cases on which he relies, *Lompa v. Price (In re: Price)*, 871 F.2d 97 (9th Cir.1989) and *In re Linzer*, 264 B.R. 243 (Bankr.E.D.N.Y.2001). In both of those cases, *the lawyer who received notice of the debtor's bankruptcy was still representing the creditor in relation to the debt that was owed.* Here, in contrast, Russo received notice of [the debtor's] bankruptcy as Corsair's counsel, not as [the creditor's].

Perle, 725 F.3d at 1027–28 (emphasis added).

In *Hernandez*, the debtor listed two addresses, both of which were incorrect, for the creditors in his schedules. *Hernandez*, 2017 WL 6033409, at *3. One of the addresses was the creditors' attorney. *Id.* The debtor contended that service to the creditors at their attorney's address was proper. *Id.* at *4. The bankruptcy court disagreed, stating:

Unlike the situation in *Lompa v. Price* and *In re Price*, notice to Creditors'

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:00 AM

CONT...

Nabiollah Morovati

Chapter 13

attorney did not constitute proper notice here where (1) there is no evidence that shows the attorney was actively representing the creditors to enforce claims against the debtor at the time that notice of the bankruptcy was given to the attorney, and (2) the notice to Creditors at the Attorney Address did not actually list the attorney's name and relationship to Creditors.

Debtor has not shown by clear and convincing evidence that Creditors' former attorney was enforcing a claim against the Debtor *at the time* notice was sent to attorney. Although Creditors state in their declaration that "[the Attorney Address] belongs to David Greenberg, who was Creditors' counsel at the time," *Declaration of Jaime Farias*, ECF 42 at 7, ¶ 3, this statement as well as the other evidence in this case do not demonstrate that Mr. Greenberg was representing Creditors in an action against Debtor at that time Mr. Greenberg allegedly received notice of the bankruptcy case. Indeed, the evidence in the record suggests the opposite: that the Creditors did not have any pending litigation claims against Debtor at the time notice of the bankruptcy case was sent out to the attorney. *Declaration of Jaime Farias*, ECF 42 at 7–8, ¶¶ 3–4. Mr. Farias's testimony that "[h]ad we been given proper notice of Debtor's bankruptcy, we would have commenced an adversary proceeding against the Debtor for non-dischargeability based on fraud and willful malicious injury by the Debtor" makes sense and is credible, a further indication that they did not have prior actual notice of Debtor's bankruptcy case.

Id. (emphasis in original).

Here, at this point, neither party has presented enough evidence for the Court to determine whether Creditor received sufficient notice for the Debtor's chapter 13 plan to have provided for the Creditor's claim. Creditor has not provided evidence of when she received notice of the Debtor's bankruptcy case, and how she became aware of the Debtor's bankruptcy case. In 2018, Creditor filed a notice of change of address - so she certainly was aware of the Debtor's bankruptcy case by then. Creditor also has not provided evidence of whether the attorney who assisted her, in obtaining the Judgment, had stopped representing her, for the collection of the Judgment, by the date that the Debtor mailed notices regarding the bankruptcy case to that attorney.

Similar to *Hernandez*, the Debtor has not provided evidence that Creditor's attorney

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati

Chapter 13

was actively representing Creditor, with respect to collection of the Judgment, when notice of the bankruptcy case was sent to the attorney. Nor has the Debtor provided evidence that serving Creditor at her attorney's address was proper under the circumstances. *See In re Schicke*, 290 B.R. 792, 805 (B.A.P. 10th Cir. 2003), *aff'd*, 97 F. App'x 249 (10th Cir. 2004) (concluding that service to former attorney's address was proper when corporation changed its name, and the corporation's address did not appear in any documents in the state court action between the parties). Although the Debtor's attorney contends this was the only *valid* address known to him or the Debtor, because the Judgment is for a wage claim, presumably, the Debtor would have been in possession of personnel records which would contain Creditor's personal address. Consequently, the Debtor has not yet provided a sufficient explanation of why he did not serve Creditor at her last known address.

Before the Court can determine whether the Creditor received sufficient notice, such that the chapter 13 plan provides for the claim, the parties must submit supplemental briefs and evidence, including declarations signed under penalty of perjury.

III. CONCLUSION

The Court will continue this hearing to **July 14, 2020 at 11:00 a.m. By June 30, 2020**, the parties must submit supplemental briefs and evidence regarding the issues discussed above.

Party Information

Debtor(s):

Nabiollah Morovati

Represented By
Keith F Rouse

Trustee(s):

Elizabeth (SV) 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 9, 2020

Hearing Room 301

11:00 AM

1:19-10681 Jan Bidasha

Chapter 13

#52.00 Motion re: objection to claim number 4 by claimant Novastar

fr. 4/14/20

Docket 76

Tentative Ruling:

See calendar no. 58.

Party Information

Debtor(s):

Jan Bidasha

Represented By
Neil C Evans

Trustee(s):

Elizabeth (SV) 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 9, 2020

Hearing Room 301

11:00 AM

1:19-11998 Joseph Lisi and Cynthia Lisi

Chapter 13

#53.00 Debtor's motion for withdrawal of reference with respect to determination of claim of Heriberto Perez

Docket 45

Tentative Ruling:

Previously, the Court instructed the debtors that, pursuant to Local Bankruptcy Rule 5011-1(b), the debtors must file the motion to withdraw the reference before the District Court. The Court also instructed the debtors to withdraw the motion that is filed before this Court.

Have the debtors filed a motion to withdraw the reference before the District Court?

Party Information

Debtor(s):

Joseph Lisi

Represented By
David S Hagen

Joint Debtor(s):

Cynthia Lisi

Represented By
David S Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:00 AM

1:20-10024 Antonio Jesus Almeida

Chapter 13

#54.00 Motion under 11 U.S.C. sec 110 for fines and disgorgement of fees against bankruptcy petition preparer Jenny Casco

Docket 33

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): **\$100.00** (\$50.00 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): **\$100.00** (\$50.00 per violation)
3. Respondent failed to prove the debtor a copy of the documents filed on his behalf as commanded by 11 U.S.C. § 110(d): **\$50.00**
4. Respondent executed ten documents on behalf of the debtor in violation of 11 U.S.C. § 110(e)(1): **\$500.00** (\$50.00 per violation)
5. Respondent gave legal advice in violation of 11 U.S.C. § 110(e)(2): **\$50.00**
6. 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): **\$50.00**
7. Respondent failed to file an accurate declaration under penalty of perjury disclosing the fee she received on behalf of the debtor(s) as dictated by 11 U.S.C. § 110(h)(2): **\$50.00**

Because respondent did not disclose her identity, the Court will triple these fines

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:00 AM

CONT... Antonio Jesus Almeida Chapter 13

pursuant to 11 U.S.C. § 110(l)(2)(D), for a total of **\$2,700.00**. Pursuant to 11 U.S.C. § 110(h)(3)(A)(i), the Court will also require disgorgement of **\$1,100.00** in unreasonable fees paid by the debtor.

In addition, by forging the debtor's signature on ten documents filed in this case, 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.

Thus, respondent must remit the following amounts to the Office of the U.S. Trustee: **\$3,100.00 to the debtor pursuant to 11 U.S.C. § 110(h)(3) and 11 U.S.C. § 110(i) and \$2,700.00 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):

Antonio Jesus Almeida	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 9, 2020

Hearing Room 301

11:00 AM

1:20-10156 Shalva Tikva

Chapter 13

#55.00 Creditor Jacqueline Stein's Objection to claim of homestead exemption

Docket 35

***** VACATED *** REASON: Notice rescheduling hearing for 7/2/20 at
2:00 PM entered 6/3/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shalva Tikva

Represented By
Michael R Totaro

Trustee(s):

Elizabeth (SV) 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 9, 2020

Hearing Room 301

11:00 AM

1:20-10460 Veronica E Pledger

Chapter 13

#56.00 Motion for order determining value of collateral

Docket 19

***** VACATED *** REASON: Set in error. Hearing set for 11:30 AM
calendar.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Veronica E Pledger

Represented By
Ali R Nader

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:00 AM

1:20-10678 John Michael Smith, Jr and Rebecca Phelps Smith

Chapter 13

#57.00 Debtors' Amended motion for conversion of chapter 13 case to a chapter 11 case; and request to set meeting of creditors, claims bar date and case management conference

Docket 21

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):

John Michael Smith Jr

Represented By
Louis J Esbin

Joint Debtor(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

Trustee(s):

Elizabeth (SV) 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 9, 2020

Hearing Room 301

11:00 AM

1:20-10974 Maksym Tokarev

Chapter 13

#57.10 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 and impose the automatic stay under 11 U.S.C. § 362(a) as to the secured creditor with respect to the property until further order of the Court.

The debtor must submit the order within seven (7) days.

Additionally, the Court will dismiss the debtor's pending chapter 13 case, 1:18-bk-11685-VK. The chapter 13 trustee should take all necessary actions to complete administration of that case. To the extent that the chapter 13 trustee's actions in completing administration of that case may violate the automatic stay, the automatic stay will not apply.

The Court will prepare the order dismissing case 1:18-bk-11685-VK.

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**

Tuesday, June 9, 2020

Hearing Room 301

11:30 AM

1:19-10681 Jan Bidasha

Chapter 13

#58.00 Hearing re Novastar, LLC's objection to confirmation of debtor's second amended 13 Plan

fr. 3/10/20

Docket 63

Tentative Ruling:

Prior to the confirmation hearing on March 10, 2020, the Court posted a tentative ruling indicating its intention to dismiss this case because it was not filed in good faith. The debtor's attorney appeared at the hearing and requested a continuance to file a response. The Court continued the hearing to June 9, 2020, and ordered the debtor to file a response regarding her good faith by May 26, 2020. The debtor did not timely file such a response.

The debtor also was ordered to file an amended plan and an amended schedule G, which disclosed the lease on her real property located in Redondo Beach, California. As of June 3, 2020, the debtor has not filed either of those documents.

Accordingly, for the reasons set forth in the Court's tentative ruling from March 10, 2020, pursuant to 11 U.S.C. §§ 105(a), 349 and 1307(c), the Court will dismiss this case with a two-year bar to refiling.

The Court will prepare the order.

Tentative Ruling from March 10, 2020

Pursuant to 11 U.S.C. §§ 105(a), 349 and 1307(c), the Court may dismiss this case with a two-year bar to refiling.

I. BACKGROUND

A. Chapter 13 Petition and Schedules

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:30 AM

CONT... Jan Bidasha

Chapter 13

On March 24, 2019, Jan Bidasha (the "Debtor") filed a voluntary chapter 13 petition. In her petition [doc. 1], the Debtor represents that she lives at 17438 Kinzie, Northridge, California (the "Northridge Property"). In her statement of financial affairs ("SOFA") [doc. 35], the Debtor represents that she has lived at the Northridge Property during the three years prior to filing her chapter 13 petition.

In her schedule A/B [doc. 27], the Debtor indicates that she owns real property located at 2750 Artesia Blvd., #460, Redondo Beach, California (the "Redondo Beach Property"). In her schedule D [doc. 29], the Debtor listed two claims secured by the Redondo Beach Property, one in favor of Bank of America and the other in favor of Novastar, LLC ("Novastar"). In the Debtor's second amended chapter 13 plan [doc. 58], the Debtor represents that Novastar holds a third deed of trust against the Redondo Beach Property. However, in the Debtor's schedules, the second lienholder against the Redondo Beach Property is not disclosed.

In her schedule I [doc. 33], the Debtor represents that she receives \$5,515.34 in income per month, which includes \$1,600.00 from rental income. However, in her schedule G [doc. 31], the Debtor did not identify any unexpired leases.

In her schedule J [doc. 34], the Debtor represents that her monthly expenses total \$5,289.93. This includes a \$3,200 monthly expense for a "live in caretaker." Because of the Debtor's claimed expenses, the Debtor represents that her net monthly income is \$225.41.

B. State Court Litigation

In 2014, the Debtor filed a state court lawsuit against Novastar and other defendants [doc. 63, Exh. 1]. After Novastar prevailed in that lawsuit, the state court awarded Novastar attorneys' fees and costs. *Id.*

Subsequently, Novastar filed a state court action against the Debtor, among others [doc. 46, Exh. 1]. In that state court complaint (the "Complaint"), Novastar represents that in 2014, the Debtor executed a promissory note in the principal amount of \$90,000, with 12.90% interest, with all principal and unpaid interest due on the maturity date of May 1, 2015. This note is secured by a deed of trust on the Redondo

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:30 AM

CONT... Jan Bidasha

Chapter 13

Beach Property.

Novastar alleges that the Debtor represented in the loan documents that she did not live in the Redondo Beach Property and that Novastar would hold a second deed of trust. Novastar further represents that is discovered, after the loan was made, that the Debtor was living in the Redondo Beach Property and that Novastar's lien is subordinate to a second lien against the Redondo Beach Property, in favor of the City of Redondo Beach.

Additionally, Novastar claims that the Debtor used the proceeds of its loan to purchase real property located at 11227 Collett Avenue, Granada Hills, California (the "Granada Hills Property"). Novastar also alleges that the debtor transferred the Granada Hills Property to her son-in-law for insufficient consideration. In the Complaint, Novastar seeks an equitable lien against the Granada Hills Property.

On June 24, 2019, Novastar filed a motion for relief from stay to proceed with that state court action (the "RFS Motion") [doc. 46]. In July 2019, the Court granted relief from stay for that litigation to proceed [doc. 51].

C. Proofs of Claim

On May 29, 2019, Novastar filed proof of claim 4-1 (the "Claim"), asserting a claim secured by the Redondo Beach Property in the amount of \$516,711.90. According to the Claim, Novastar's note matured in 2015, which was prepetition. The Claim consists of the principal balance of the note, interest and attorneys' fees.

On March 2, 2020, the debtor filed an objection to the Claim (the "Objection") [doc. 74]. Even though the Court previously granted relief from stay for the state court litigation to proceed, the Objection concerns the same litigation. The hearing on the Objection is set for April 14, 2020.

Three other creditors have filed proofs of claim in the Debtor's case. The Franchise Tax Board and Verizon filed unsecured claims in the amounts of \$1,020.71 and \$764.08, respectively [Claims 1-1 and 2-1]. Bank of America, N.A. filed a secured claim against the Redondo Beach Property, based on a first deed of trust, in the amount of \$133,043.95 [Claim 3-1].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:30 AM

CONT... Jan Bidasha

Chapter 13

D. Chapter 13 Plan and the Debtor's Dilatory Conduct

To date, the Court has held four plan confirmation hearings, *i.e.*, on June 11, 2019, September 10, 2019, November 12, 2019 and February 11, 2020. Because the debtor failed to provide proper notice and to provide required documentation to the chapter 13 trustee, the Court continued each of these hearings.

In the Debtor's second amended chapter 13 plan (the "Plan") [doc. 58], the Debtor proposes to pay \$225.00 per month for 36 months. Plan payments are allocated to the Debtor's attorneys' fees, the Franchise Tax Board's claim, arrears to Bank of America, N.A., as the first deed of trust holder, and fees of the chapter 13 trustee. The Plan does not provide for any payments to be made to Novastar, or to the other small unsecured creditor. The chapter 13 trustee and Novastar have filed objections to confirmation of the Plan.

II. DISCUSSION

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 9, 2020

Hearing Room 301

11:30 AM

CONT... Jan Bidasha

Chapter 13

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).

Here, there is cause to dismiss the Debtor's case; it appears that that the Debtor did not file this case in good faith, and that this is a two-party dispute, between the Debtor and Novastar. Rather than going forward with the pending litigation in state court, which has the expertise to hear that litigation, and before which trial was set, the Debtor filed her chapter 13 petition. Subsequently, the Debtor has dragged this case out, on the basis of a chapter 13 plan that pays nothing to Novastar. In light of the foregoing, it appears that dismissal of this chapter 13 case is in the best interest of creditors and the estate.

III. CONCLUSION

For the foregoing reasons, pursuant to 11 U.S.C. §§ 105(a), 349 and 1307(c), the Court may dismiss this case with a two-year bar to refile.

Party Information

Debtor(s):

Jan Bidasha

Represented By
Neil C Evans

Trustee(s):

Elizabeth (SV) 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 9, 2020

Hearing Room 301

11:30 AM

1:20-10460 Veronica E Pledger

Chapter 13

#59.00 Debtor's motion for order determining value of collateral

Stip to resolve matter fld 06/03/20

Docket 19

***** VACATED *** REASON: Order approving stipulation resolving
motion entered 6/3/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Veronica E Pledger

Represented By
Ali R Nader

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

9:30 AM

1:20-10490 Bismarck Guillermo Ortega Estrada and Trinidad M.

Chapter 7

#1.00 Motion for relief from stay [RP]

CARRINGTON MORTGAGE SERVICES, LLP
VS
DEBTOR

Docket 18

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):

Bismarck Guillermo Ortega Estrada Pro Se

Joint Debtor(s):

Trinidad M. Izaguirre De Ortega Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

9:30 AM

CONT... Bismarck Guillermo Ortega Estrada and Trinidad M.

Chapter 7

Movant(s):

Carrington Mortgage Services, LLC

Represented By
Robert P Zahradka

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 10, 2020

Hearing Room 301

9:30 AM

1:19-12073 Scott Alan Secor and Iman Secor

Chapter 13

#2.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE, LLC
VS
DEBTOR

fr. 5/6/20(stip)

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

9:30 AM

CONT... Scott Alan Secor and Iman Secor

Chapter 13

Party Information

Debtor(s):

Scott Alan Secor

Represented By
Stephen L Burton

Joint Debtor(s):

Iman Secor

Represented By
Stephen L Burton

Movant(s):

NATIONSTAR MORTGAGE, LLC

Represented By
Jacky 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, June 10, 2020

Hearing Room 301

9:30 AM

1:20-10094 Jonathan Hidalgo

Chapter 13

#2.10 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

fr. 2/5/20; 3/25/20; 4/8/20; 5/27/20;

Docket 11

Tentative Ruling:

Does secured creditor Pensco Trust Company Custodian FBO Alan L Brooks, IRA still oppose the continuance of the automatic stay in this case?

Party Information

Debtor(s):

Jonathan Hidalgo

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, June 10, 2020

Hearing Room 301

9:30 AM

1:19-10499 Michael Gary Vickery and Elise Rose Vickery

Chapter 13

#3.00 Motion for relief from stay [RP]

HSBC BANK USA, N.A.
VS
DEBTOR

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Gary Vickery

Represented By
David S Hagen

Joint Debtor(s):

Elise Rose Vickery

Represented By
David S Hagen

Movant(s):

HSBC Bank USA, N.A.

Represented By
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, June 10, 2020

Hearing Room 301

9:30 AM

1:15-10278 Laura Lee Stone

Chapter 13

#4.00 Debtor's opposition to declaration of Specialized Loan Servicing, LLC
Re: default under adequate protection order; request for entry of
order granting relief from stay

Docket 62

Tentative Ruling:

On January 29, 2015, the debtor filed a chapter 13 petition. On September 27, 2019, The Bank of America National Association ("Creditor") filed a motion for relief from the automatic stay as to the real property located at 9749 Quakertown Avenue, Chatsworth, California 91311 (the "Property") [doc. 48]. On December 3, 2019, Creditor and the debtor filed a stipulation for adequate protection as to the Property (the "Stipulation") [doc. 54]. On the same day, the Court entered an order approving the Stipulation [doc. 56].

Under the terms of the Stipulation, the debtor must make regular monthly deed of trust payments in the amount of \$2,798.22 commencing on December 1, 2019 ("Deed of Trust Payments"). The debtor also must cure the postpetition arrears of \$14,432.32 in equal monthly installments of \$2,405.39 each commencing on December 15, 2019 and continuing through April 15, 2020, and by paying a lump sum in the amount of \$2,405.37 by May 15, 2020 ("Arrears Payments").

On April 27, 2020, Creditor filed a *Declaration re: Default Under Adequate Protection Order* (the "Default Declaration") [doc. 62]. In the Default Declaration, Creditor alleges that the debtor failed to make Deed of Trust Payments for February 2020, March 2020 and April 2020 and Arrears Payments for February 2020 and March 2020, totaling \$13,205.44. In the Default Declaration, Creditor attached a notice of default letter addressed to the debtor's counsel and the debtor and the post Stipulation payment history.

On May 6, 2020, the debtor filed an opposition to the Default Declaration (the "Opposition") [doc. 64]. In the Opposition, the debtor claims that she had cured the delinquency before the Default Declaration was filed with the Court and that she is current with Creditor. The debtor also disputes Creditor's accounting of her payments.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

9:30 AM

CONT...

Laura Lee Stone

Chapter 13

The debtor attached two types of proof of payment in support of her position. The first type is in the form of images of checks showing that the debtor made the following payments: (a) \$8,001.83 in January 2020 [Exh. B]; (b) \$10,407.22 in March 2020 [Exh. C]; and (c) \$2,405.39 in April 2020 [Exh. D]. The second type is in the form of images showing proof of delivery by the mail carriers of the checks [Exhs. B, C and D].

Pursuant to the Stipulation, from December 1, 2019 to April 1, 2020, the debtor should have made payments to Creditor in the aggregate amount of \$23,612.66. Based on the debtor's evidence in the Opposition, the debtor has made payments to Creditor in the aggregate amount of \$20,814.44. Accordingly, the debtor is deficient on payments under the Stipulation in the amount of \$2,798.22, or one Deed of Trust Payment.

On May 27, 2020, Creditor filed a reply to the Opposition (the "Reply") [doc. 69]. In the Reply, Creditor states that the payments reflected in the images of the checks for January 2020 and April 2020 were received and credited, but Creditor's records do not show the March 2020 payment being applied to the account. Even if Creditor receives the check written in March 2020, the debtor apparently still would be missing one Deed of Trust Payment.

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

Wednesday, June 10, 2020

Hearing Room 301

9:30 AM

1:19-11648 Maryam Sheik

Chapter 11

#5.00 Motion for relief from stay [PP]

DAIMLER TRUST
VS
DEBTOR

Stip for adequate protection filed 5/22/20

Docket 90

*** VACATED *** REASON: Order entered on 5/26/20 [doc. 95].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Movant(s):

Daimler Trust

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 10, 2020

Hearing Room 301

1:30 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

Adv#: 1:17-01017 Weil v. Cazares et al

- #6.00** 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)'; 08/21/19 (stip);
11/6/19; 1/8/20; 03/04/20 (stip)

Stip to continue filed 5/27/20

Docket 78

***** VACATED *** REASON: Order entered vacating pre-trial conference;
continued as status conference to 8/12/20 at 1:30 p.m. - jc**

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

1:30 PM

CONT... Dean Albert Maury Cazares

Chapter 7

Oxidizer, Inc.

Pro Se

Stanley Vincent

Pro Se

Plaintiff(s):

Diane C. Weil

Represented By
C John M Melissinos

Trustee(s):

Diane Weil (TR)

Represented By
C John M Melissinos

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

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

#7.00 Motion for judgment on the pleadings

fr. 12/11/19; 1/22/20; 2/26/20; 3/18/20(stip); 4/29/20(stip)

Docket 31

***** VACATED *** REASON: Order appr stip ent 6/2/20 - hrg cont to
8/12/20 at 2:30 p.m.**

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

Represented By

Dane W Exnowski

Nationstar Mortgage LLC, A

Represented By

Dane W Exnowski

Bank of America, N.A, a National

Represented By

Laura G Brys

Payam Khodadadi

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, June 10, 2020

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, June 10, 2020

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

- #8.00** 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; 12/4/19; 2/19/20; 3/18/20(stip);
4/29/20(stip)

Stip to cont fld 06/01/20

Docket 1

***** VACATED *** REASON: Order appr stip ent 6/2/20 - hrg cont to
8/12/20 at 2:30 p.m.**

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

1:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

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, June 10, 2020

Hearing Room 301

1:30 PM

1:19-12677 John Stephen Travers

Chapter 7

Adv#: 1:20-01010 Ace Industrial Supply, Inc. v. Travers

#9.00 Status conference re: complaint to determine dischargeability

fr. 3/25/20; 5/6/20

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: 9/30/20.

Deadline to complete one day of mediation: 10/15/20.

Deadline to file pretrial motions: 10/30/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 11/25/20.

Pretrial: 12/9/20 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

1:30 PM

CONT... John Stephen Travers

Chapter 7

Party Information

Debtor(s):

John Stephen Travers

Represented By
Robert M Aronson

Defendant(s):

John Stephen Travers

Pro Se

Plaintiff(s):

Ace Industrial Supply, Inc.

Represented By
Jeffery J Daar

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

1:30 PM

1:19-12817 Zara Gemilyan

Chapter 7

Adv#: 1:20-01045 United States Trustee (SV) v. Gemilyan

#10.00 Status conference re: complaint objecting to discharge pursuant to 11 U.S.C. sec 727(a)(3), 727(a)(4)(A), 727(a)(4)(D) and 727(a)(5)

Stipulation for waiver of defendant's discharge and entry of judgment filed 5/21/20

Docket 1

*** VACATED *** REASON: Order approving stipulation entered 5/26/20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Zara Gemilyan

Represented By
Daniel King

Defendant(s):

Zara Gemilyan

Pro Se

Plaintiff(s):

United States Trustee (SV)

Represented By
Katherine Bunker

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01039 Lewis v. Vartan

#11.00 Status conference re: first amended complaint to determine dischargeability of debt 11 U.S.C. § 523(a)(2)(A); fraud; fraud or defecation while acting in a fudiciary capacity 11 U.S.C. § 523 (a)(4) and wilful and malicious injury 11 U.S.C. §523(a)(6)

fr. 5/20/20(stip)

Docket 4

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on July 15, 2020**, to be held with the hearing on the defendant's motion to dismiss [doc. 10].

Appearances on June 10, 2020 are excused.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Lester L Lewis

Represented By
Elissa Miller

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

2:30 PM

1:18-11150 Robert Edward Zuckerman
Adv#: 1:18-01086 Abel v. Zuckerman et al

Chapter 7

#12.00 Plaintiff's Motion for summary judgment pursuant to FRBP Rule 7056

fr. 3/25/20

Docket 152

***** VACATED *** REASON: Continued by Stip to 6/17/20 at 2:30 p.m. -
jc**

Tentative Ruling:

- NONE LISTED -

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

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman Chapter 7

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
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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, June 10, 2020

Hearing Room 301

2:30 PM

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; 9/11/19; 11/13/19; 1/22/20; 3/25/20

Docket 75

***** VACATED *** REASON: Continued by Stip to 6/17/20 at 2:30 p.m. -
jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Edward Zuckerman	Represented By
	Sandford L. Frey
	Stuart I Koenig

Defendant(s):

Robert Edward Zuckerman	Pro Se
Continental Communities, LLC, a	Pro Se
Valley Circle Estates Realty Co., a	Pro Se
Zuckerman Building Company, a	Pro Se
Contiental San Jacinto, LLC, a	Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 10, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman Chapter 11

San Jacinto Z, LLC, a California	Pro Se
Rezinate San Jacinto, LLC, a	Pro Se
Maravilla Center, LLC, a California	Pro Se
Sunderland/McCutchan, Inc., a	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**

Wednesday, June 10, 2020

Hearing Room 301

2:30 PM

1:18-12785 Elizabeth Y. Zaharian

Chapter 7

Adv#: 1:19-01010 Strategic Funding Source, Inc. v. Armand Zaharian et al

#14.00 Motion of Law Offices of Raymond H. Aver, A Professional Corporation,
to withdraw as attorneys for defendant Elizabeth Y. Zaharian

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):

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

Defendant(s):

Armand Zaharian

Pro Se

Elizabeth Y. Zaharian

Represented By
Raymond H. Aver

Plaintiff(s):

Strategic Funding Source, Inc.

Represented By
Brian T Harvey

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 11, 2020

Hearing Room 301

10:30 AM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#0.10 Application for second interim compensation for David A Tilem,
debtor's attorney

fr. 4/30/20; 6/4/20;

Docket 236

Tentative Ruling:

Applicant, counsel to the debtor and debtor in possession – approve fees in the amount of \$173,175.00 and reimbursement of expenses in the amount of \$2,337.72, pursuant to 11 U.S.C. § 331, for the period between December 1, 2018 through March 21, 2020, on an interim basis. For the reasons stated below, the Court will not approve \$3,395 in fees.

Given that this case may be converted to one under chapter 7, and that most of the debtor's liquid assets constitute cash collateral, which is unlikely to be regenerated, Applicant may not collect any of the approved fees or approved expenses, pending further order of the Court.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

10:30 AM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

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 Applicant for the services identified below. These services appear to have been provided for the benefit of the debtor's principal and were not necessary to the administration of the debtor's case.

Category	Date	Timekeeper	Description	Time	Rate	Fee
Chapter 11 General	8/16/19	DAT	Telephone call from client representative regarding requirements for possible chapter 13. (1552)	0.10	\$550	\$55.00
Chapter 11 General	3/31/20	DAT	Conference call with attorney Goodman and client representative regarding court's tentative decision in dischargeability action. (1411)	1.10	\$550	\$605.00
Creditors and Claims	9/23/19	DAT	Review and respond to e-mail from attorney Goodman regarding revenue officer assigned to individual case. (1618)	0.10	\$550	\$55.00
Use, Sale or Lease of Estate Property	12/13/18	DAT	Review and respond to e-mail from attorney Goodman about 363(f)(3) Clear Channel issue.	0.10	\$550	\$55.00

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

10:30 AM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

Motions to Dismiss, Convert	1/3/19	DAT	Review and respond to email from attorney Goodman regarding mediation on dischargeability action.	0.10	\$550	\$55.00
Plan and Disclosure Statement	12/10/18	DAT	Review and respond to e-mail from attorney Goodman regarding VitaVet opposition to proposed sale of residence.	0.10	\$550	\$55.00
Plan and Disclosure Statement	12/10/18	DAT	Conference call with client representative and attorney Goodman regarding VitaVet objection to proposed sale of residence.	0.30	\$550	\$165.00
Plan and Disclosure Statement	12/20/18	DAT	Telephone call from client representative regarding court's tentative decision regarding sale of residence.	0.20	\$550	\$110.00
Plan and Disclosure Statement	1/7/19	DAT	Telephone call from Nasrollah Gashtili regarding schedules hearing on Jan 10 regarding sale of residence.	0.20	\$550	\$110.00
Plan and Disclosure Statement	1/9/19	DAT	Review and respond to e-mail from client representative regarding claim thought to be unsecured to be paid through escrow from sale of residence.	0.10	\$550	\$55.00
Plan and Disclosure Statement	1/15/19	DAT	Review offers for condo units.	0.10	\$550	\$55.00

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

10:30 AM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

Plan and Disclosure Statement	4/23/19	DAT	Review and revise disclosure statement to provide for stay of VitaVet dischargeability action while plan payments are current. (1438)	0.20	\$550	\$110.00
Plan and Disclosure Statement	9/4/19	DAT	Review draft 2019 personal return and respond to e-mail from accountant regarding same. (1359)	0.20	\$550	\$110.00
Plan and Disclosure Statement	2/13/20	DAT	Review and respond to e-mail from attorney Goodman regarding dischargeability action. (1512)	0.40	\$550	\$220.00
Plan and Disclosure Statement	2/14/20	DAT	Review and respond to e-mail from attorney Goodman after reviewing motion for summary judgment opposition in dischargeability action. (1409)	0.30	\$550	\$165.00

On December 18, 2018, Applicant billed 3.40 hours at his "overtime" rate of \$687.50 per hour to prepare the second cash collateral motion. Given that Applicant apparently had sufficient time to prepare the motion, including during the following day, and that the bulk of the analysis for the motion did not turn on the specific projections, the Court finds the overtime rate excessive. The Court will allow fees for these services at Applicant's regular hourly rate of \$550.

Category	Date	Timekeeper	Description	Time	Rate	Fee	Reduced Rate	Reduced Fee
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

10:30 AM

CONT... **Integrated Dynamic Solutions, Inc.**

Chapter 11

Cash Collateral Issues	12/18/18	DAT	Preparation of motion for use of cash collateral. Overtime hourly rates specified in retainer agreement were used as client did not timely provide cash flow projection forcing preparation of motion after hours.	3.40	\$687.50	\$2,337.50	\$550	\$1,870.00
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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 will not approve the fees billed by Applicant for the services identified below:

Category	Date	Timekeeper	Description	Time	Rate	Fee
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

10:30 AM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

Chapter 11 General	1/2/19	DAT	Telephone call from court clerk regarding hearing time for fee application, stipulation to continue hearing on motion for examiner and court schedule after January 10, 2019	0.20	\$550	\$110.00
Cash Collateral Issues	12/5/18	DAT	Confer with paralegal Murguia regarding notice of lodging.	0.10	\$550	\$55.00
Cash Collateral Issues	12/19/18	JJF	Prepare and mail second motion for use of cash collateral. (overtime).	0.50	\$225	\$112.50
Leases and Executory Contracts	12/10/18	DAT	Confer with paralegal Murguia to calendar hearing on motion to assume/reject executory contract	0.10	\$550	\$55.00
Plan and Disclosure Statement	10/9/19	JJF	Prepare and assemble reply by debtor to VitaVet objection to disclosure statement.	0.20	\$150	\$30.00
Plan and Disclosure Statement	12/5/19	DAT	Calendar future dates and deadlines. (1453)	0.20	\$550	\$110.00
Plan and Disclosure Statement	12/10/19	DAT	Telephone call to court chambers to inquire about status of order approving disclosure statement which needs to be included in plan package. (1026)	0.10	\$550	\$55.00
Plan and Disclosure Statement	1/17/20	DLC	Prepare table of contents and authorities for confirmation brief.	2.80	\$150	\$420.00

Applicant must submit the order within seven (7) days.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

10:30 AM

CONT... Integrated Dynamic Solutions, Inc.

Chapter 11

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 11, 2020

Hearing Room 301

1:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#1.00 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; 12/19/20

Docket 1

Tentative Ruling:

Based on the *Debtor's Second Post-Confirmation Status Report* [doc. 390], the Court will continue the post-confirmation status conference to **December 10, 2020 at 1:00 p.m.** On or before **November 25, 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.**

If an order granting the reorganized debtor a final decree and closing the case is entered prior to the continued hearing date, the Court will vacate the continued post-confirmation status conference.

Appearances on June 11, 2020 are excused.

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, June 11, 2020

Hearing Room 301

1:00 PM

1:20-10293 Lloyd Weintraub

Chapter 13

#2.00 U.S. Trustee's motion to disgorge compensation pursuant to
11 U.S.C. § 329

fr. 5/5/20(stip)

Stip resolving motion filed 5/28/20

Docket 43

***** VACATED *** REASON: Order approving stipualtion entered 6/2/20.**

Tentative Ruling:

Party Information

Debtor(s):

Lloyd Weintraub

Represented By
Stephen L Burton

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

1:00 PM

1:20-10293 Lloyd Weintraub

Chapter 13

#3.00 Application for compensation for Stephen L Burton, debtor's attorney

Docket 58

Tentative Ruling:

Deny in part and grant in part.

I. BACKGROUND

On February 6, 2020, Lloyd Weintraub ("Debtor") filed a voluntary chapter 11 petition. On February 21, 2020, Debtor filed a *Disclosure of Compensation of Attorney for Debtor(s)* (the "Disclosure") [doc. 18]. According to the Disclosure, Debtor paid his attorney, Stephen L. Burton, \$14,000.00 for services rendered or to be rendered on behalf of Debtor in contemplation of or in connection with the bankruptcy case.

On February 26, 2020, the United States Trustee ("UST") filed a motion to dismiss or convert Debtor's case (the "Motion to Convert") [doc. 23]. The Motion to Convert was based on Debtor's noncompliance with the UST requirements.

On March 11, 2020, Debtor and the UST filed a stipulation to convert Debtor's case to one under chapter 13, which resolved the Motion to Convert [doc. 30]. On March 19, 2020, the Court entered an order approving that stipulation and converting Debtor's case to one under chapter 13 [doc. 32].

On April 13, 2020, the UST filed a *Motion to Disgorge Compensation Pursuant to 11 U.S.C. § 329* (the "Motion for Sanctions") [doc. 43]. The Motion for Sanctions is based on Mr. Burton's failure to perform the services that he agreed to perform, and Mr. Burton's failure to file an employment application.

On May 18, 2020, Mr. Burton filed a *Motion in Individual Chapter 11 Case for Order Authorizing Debtor in Possession to Employ General Counsel* (the "Employment Motion") [doc. 57]. In the Employment Motion, Mr. Burton requests approval of *nunc pro tunc* employment as of the petition date.

On May 18, 2020, Mr. Burton also filed an *Application for Payment of Final Fees*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

1:00 PM

CONT...

Lloyd Weintraub

Chapter 13

and/or Expenses (the "Application") [doc. 58]. In the Application, Mr. Burton requests that the Court approve \$7,945 in fees and reimbursement of \$1,728 in expenses for the period between January 28, 2019 through March 19, 2020, which is the date of conversion of the case to chapter 13. \$1,365 of the amount billed is for postpetition services; the remainder is for prepetition services, which began in January 2019.

On May 28, 2020, Mr. Burton and the UST filed a stipulation resolving the Motion for Sanctions (the "Stipulation") [doc. 64]. On June 2, 2020, the Court entered an order approving the Stipulation [doc. 72]. Pursuant to the Stipulation, Mr. Burton will withdraw the Employment Motion, reduce his request for compensation by \$682.00, file a rights and responsibilities agreement for his representation of Debtor in his chapter 13 case, represent Debtor in his chapter 13 case for \$3,500 and refund Debtor \$3,227 and file a declaration attesting to the refund within thirty days of the entry of the order approving the Stipulation.

On June 4, 2020, Mr. Burton filed a *Rights and Responsibilities Agreement Between Debtor and Attorney for Debtor in a Chapter 13 Case* ("RARA") [doc. 73]. Pursuant to the RARA, Mr. Burton agreed to provide the identified responsibilities in the RARA, in the chapter 13 case, for \$3,500.

II. DISCUSSION

Pursuant to 11 U.S.C. § 329(a)—

- (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

- (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

1:00 PM

CONT...

Lloyd Weintraub

Chapter 13

of any such payment, to the extent excessive, to—

- (1) the estate, if the property transferred—
 - (A) would have been property of the estate; or
 - (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
- (2) the entity that made such payment.

Pursuant to 11 U.S.C. § 330(a)(3)—

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or 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;
- (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;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Under Local Bankruptcy Rule ("LBR") 2014-1(b)(1)(E)—

A timely application for employment is a prerequisite to compensation from the estate. Therefore, 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

1:00 PM

CONT...

Lloyd Weintraub
has been engaged.

Chapter 13

(emphasis added).

"[A] bankruptcy court has broad and inherent authority to deny any and all compensation when an attorney fails to meet the requirements of [§§ 327, 329, 330, 331]." *In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997).

Here, Mr. Burton did not timely file an employment application during the pendency of Debtor's chapter 11 case, and pursuant to the Stipulation, Mr. Burton has withdrawn his request for *nunc pro tunc* employment. Pursuant to LBR 2014-1(b)(1) (E), a timely application for employment is a prerequisite to the applicant receiving compensation from the estate. Because Mr. Burton was never employed as debtor in possession counsel, the Court will not approve any request for compensation for services provided during the course of Debtor's chapter 11 case.

Based on statements made in the Employment Motion and in the Declaration of Stephen L. Burton, it appears that Debtor may have been an appropriate candidate for a chapter 11 case; before the case was converted to one under chapter 13, Mr. Burton did take some steps to assist Debtor with fulfilling his duties as a chapter 11 debtor in possession. Consequently, the Court will authorize the reimbursement of expenses that were incurred in connection with the chapter 11 case, including payment of the chapter 11 petition filing fee, in the amount of \$1,717.00.

III. CONCLUSION

For the foregoing reasons, the Court will deny the Motion in part and grant the Motion in part, *i.e.*, with respect to the reimbursement of chapter 11 case expenses.

The Court will prepare the order.

Party Information

Debtor(s):

Lloyd Weintraub

Represented By
Stephen L Burton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

1:00 PM

CONT... Lloyd Weintraub

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

1:00 PM

1:20-10293 Lloyd Weintraub

Chapter 13

#3.10 Motion in individual chapter 11 case for order authorizing debtor in possession to employ general bankruptcy counsel

Docket 57

Tentative Ruling:

Pursuant to the stipulation between Stephen L. Burton and the United States Trustee [doc. 64], the Court will deem this motion to have been withdrawn.

Party Information

Debtor(s):

Lloyd Weintraub

Represented By
Stephen L Burton

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

2:00 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

#3.20 Motion to Continue Hearing re: Trustee's motion under Fed. R. Bankr. P. 9019 for order approving 1. Settlement agreement between chapter 7 Trustee and defendants resolving the adversary proceeding; and 2. Settlement agreement between chapter 7 trustee and Bell Trustee regarding trademark

Docket 169

Tentative Ruling:

- NONE LISTED -

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, June 11, 2020

Hearing Room 301

2:00 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

- #4.00 Trustee's motion under Fed. R. Bankr. P. 9019 for order approving
1. Settlement agreement between chapter 7 Trustee and defendants resolving the adversary proceeding; and
 2. Settlement agreement between chapter 7 trustee and Bell Trustee regarding trademark

Docket 157

Tentative Ruling:

On May 18, 2020, the chapter 7 trustee in this case (the "Trustee") filed a motion for approval of two settlement agreements (the "Agreements") [doc. 157]. The objecting creditors assert that they need further clarification regarding the impact of the Agreements on their rights, especially vis-à-vis a discharge injunction. However, the Trustee is selling the estate's interest in the subject trademark "as-is, where-is with no warranty." As such, the sale of the estate's interest in the subject trademark will not whatever rights the objecting creditors may have, regarding the future use of the trademark.

In addition, an analysis of the impact of the discharge injunction on the objecting creditors' rights regarding any future use of the estate's interest in the trademark is not before this Court, and the Trustee does not have an obligation to provide such a legal analysis to the objecting creditors.

Nevertheless, the Court will allow the objecting creditors to bid on the *estate's interest* in the trademark (such bid will not have any impact on the interest in the trademark held by the bankruptcy estate of Burton C. Bell, which the objecting creditors may pursue in the United States Bankruptcy Court, Middle District of Pennsylvania). The Court notes that the Agreements not only involve a payment into the estate by the debtor, but a waiver of the debtor's exemptions in certain assets of the estate. As such, if the objecting creditors choose to outbid the debtor, they must bear in mind the total benefit to the estate via the Agreements, including the waiver of the debtor's exemptions.

If the objecting creditors would like to place a bid on this estate's interest in the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

2:00 PM

CONT... Dean Albert Maury Cazares

Chapter 7

trademark, "as-is, where-is with no warranty," the Court will continue this hearing to **2:00 p.m. on July 2, 2020**. No later than **June 25, 2020**, the objecting creditors must file and serve a notice that they have placed a bid, including the amount of the bid, and provide a sufficient deposit of the bid to the Trustee.

If the objecting creditors **timely** bid on this estate's interest in the trademark, "as-is, where-is with no warranty," **and** provide the related deposit, the Court will reassess whether to grant the Motion. If the objecting creditors do not timely do so, the Court likely will grant the Motion. The Court notes that effectuation of the Agreements is contingent on approval of the agreement between the Trustee and the estate of Mr. Bell by the United States Bankruptcy Court, Middle District of Pennsylvania.

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, June 11, 2020

Hearing Room 301

2:00 PM

1:17-10378 Kandy Kiss of California, Inc. and Mary Teresa Barnes

Chapter 7

#5.00 Chapter 7 trustee's motion for order authorizing and approving stipulation between Howard M. Ehrenberg, Chapter 7 Trustee, and Petitioning Creditors for allowance of administrative expense claim pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure

Docket 236

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

2:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#6.00 Order to show cause why this case should not be converted to one under chapter 7

Docket 217

Tentative Ruling:

It appears that there may be additional cause to convert or dismiss this case, pursuant to 11 U.S.C. § 1112(b)(4)(I) and (b)(4)(P).

Because the debtor did not provide for timely payment of postpetition payroll taxes, the debtor and the Internal Revenue Service ("IRS") entered into a stipulation requiring the debtor to pay, among other things, the IRS's administrative claim (the "Stipulation") [doc. 173].

In July 2019, pursuant to the Stipulation and the related Order, to satisfy this administrative tax expense, the debtor was to pay \$6,491.92 to the IRS. The debtor's monthly operating report for July 2019 does not reflect that the debtor did so. Has the debtor made this payment?

In his response to the Court's order to show cause [doc. 227], the debtor states that he also owes a domestic support obligation (to his ex-wife) in the amount of \$47,000. The debtor previously has not discussed or reflected this domestic support obligation in his status reports or in his monthly operating reports. It appears to have arisen postpetition.

The debtor's nonpayment of postpetition taxes and postpetition domestic support obligations would constitute further cause for the dismissal or conversion of his chapter 11 case.

Party Information

Debtor(s):

Nasrollah Gashtili

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 11, 2020

Hearing Room 301

2:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#7.00 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; 12/5/19; 3/19/20; 4/2/20; 5/21/20

Docket 190

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, June 11, 2020

Hearing Room 301

2:00 PM

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; 10/17/19; 12/5/19; 3/19/20; 4/2/20; 5/21/20

Docket 1

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, June 11, 2020

Hearing Room 301

2:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#9.00 Order to show cause why this case should not be dismissed
of converted to one under chapter 7

Docket 252

Tentative Ruling:

In light of the representations made in the debtor's response [doc. 255] to the *Order to Show Cause Why this Case Should not be Dismissed or Converted to One under Chapter 7* [doc. 252], and in the debtor's chapter 11 case status report filed on May 7, 2020, pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (b)(4)(A), the Court will convert this case to one under chapter 7.

Although the debtor represents that its interest in Integrated Dynamic Solutions India Pvt. Ltd. and its causes of action against Automated Systems America, Inc. have little to no value, a chapter 7 trustee should make that determination. Further, there may be avoidance actions that the chapter 7 trustee appropriately could pursue. Accordingly, it appears to be in the best interests of creditors and the estate to convert this case to one under chapter 7.

The Court will prepare the order.

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 11, 2020

Hearing Room 301

2:00 PM

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; 12/5/19; 3/26/20; 5/21/20

Docket 1

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 11, 2020

Hearing Room 301

2:00 PM

1:19-12517 Hayde Rodriguez Barahona

Chapter 7

#11.00 Motion for order approving compromise of controversy between Nancy J. Zamora, chapter 7 trustee and debtor Hayde Rodriguez Barahona

Docket 45

Tentative Ruling:

Grant, as modified to the extent set forth in the *Trustee's Supplemental Brief Regarding Requested Compensation to Broker* and the supporting Declaration of Nancy J. Zamora [doc. 55], including, *inter alia*, that the chapter 7 trustee may not pay any compensation to the broker until the chapter 7 trustee receives payment of the full settlement amount.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Hayde Rodriguez Barahona

Represented By
Kevin T Simon

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, June 11, 2020

Hearing Room 301

2:00 PM

1:20-10276 Hormoz Ramy

Chapter 7

#12.00 Motion by chapter 7 trustee to extend deadline within which to file a complaint pursuant to 11 U.S.C. § 727

Docket 19

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):

Hormoz Ramy

Represented By
Siamak E Nehoray

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:19-12784 David Bergantino

Chapter 7

#1.00 Reaffirmation agreement between debtor and
BMW Bank of North America

fr. 3/17/20; 4/21/20

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Docket 10

Party Information

Debtor(s):

David Bergantino

Represented By
Steven A Wolvek

Trustee(s):

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... David Bergantino
David Keith Gottlieb (TR)

Pro Se

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:19-12985 Alexander Rey Onodera Resurreccion

Chapter 7

#2.00 Reaffirmation agreement between debtor and Fifth Third Bank

fr. 4/21/20

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Meeting ID: **161 851 8158**
Password: **751332**

Docket 10

Party Information

Debtor(s):

Alexander Rey Onodera

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**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... Alexander Rey Onodera Resurreccion

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:19-13056 Cruz A Cortez

Chapter 7

#3.00 Reaffirmation agreement between debtor and Santander Consumer USA Inc.

fr. 3/17/20

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Password: **751332**

Docket 16

Party Information

Debtor(s):

Cruz A Cortez

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... Cruz A Cortez

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10013 Sylvia Ayala and Onorio Bernal Ayala

Chapter 7

#4.00 Reaffirmation agreement between debtor and
Logix Federal Credit Union

fr. 4/21/20

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Password: **751332**

Docket 14

Party Information

Debtor(s):

Sylvia Ayala

Represented By
Leon Nazaretian

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... Sylvia Ayala and Onorio Bernal Ayala

Chapter 7

Joint Debtor(s):

Onorio Bernal Ayala

Represented By
Leon Nazaretian

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10126 Carlos Rene Herrera

Chapter 7

#5.00 Reaffirmation agreement between debtor and
Federal Home Loan Mortgage Corp.

fr. 4/21/20;

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Password: **751332**

Docket 16

Party Information

Debtor(s):

Carlos Rene Herrera

Represented By
Francis Guilardi

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... Carlos Rene Herrera

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**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10148 Kenneth F Weber

Chapter 7

#6.00 Reaffirmation agreement between debtor and Santander Consumer USA Inc.

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Password: **751332**

Docket 12

Party Information

Debtor(s):

Kenneth F Weber

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, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10183 Julio C. Quequezana and Raquel Quequezana

Chapter 7

#7.00 Reaffirmation agreement between debtor and
Capital One Auto Finance

fr. 4/21/20

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Password: **751332**

Docket 13

Party Information

Debtor(s):

Julio C. Quequezana

Represented By
R Grace Rodriguez

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... Julio C. Quequezana and Raquel Quequezana

Chapter 7

Joint Debtor(s):

Raquel Quequezana

Represented By
R Grace Rodriguez

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10196 Cassady L Dill

Chapter 7

#8.00 Reaffirmation agreement between debtor and
Toyota Motor Credit Corporation

fr. 4/21/20

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Docket 17

Party Information

Debtor(s):

Cassady L Dill

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT...

Cassady L Dill

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10238 Romeo Emilio Marmol Cortez and Cecilia Elvira Suarez

Chapter 7

#9.00 Reaffirmation agreement between debtor and
American Honda Finance Corporation

fr. 4/21/20

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Docket 11

Party Information

Debtor(s):

Romeo Emilio Marmol Cortez

Represented By
Michael H Colmenares

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... Romeo Emilio Marmol Cortez and Cecilia Elvira Suarez

Chapter 7

Joint Debtor(s):

Cecilia Elvira Suarez

Represented By
Michael H Colmenares

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, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10261 Rohan Senarathne

Chapter 7

#10.00 Reaffirmation agreement between debtor and
Toyota Motor Credit Corporation

fr. 4/21/20

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Password: **751332**

Docket 10

Party Information

Debtor(s):

Rohan Senarathne

Represented By
Joy M Johnson

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... Rohan Senarathne

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**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10264 Leslie Susette Morales

Chapter 7

#11.00 Reaffirmation agreement between debtor and
Toyota Motor Credit Corporation

fr. 4/21/20

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Docket 17

Party Information

Debtor(s):

Leslie Susette Morales Pro Se

Trustee(s):

Nancy J Zamora (TR) Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... Leslie Susette Morales

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10424 Lynn Baltasar Lim

Chapter 7

#12.00 Reaffirmation agreement between debtor and
American Honda Finance Corporation

Re: 2017 Honda Accord

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Password: **751332**

Docket 26

Party Information

Debtor(s):

Lynn Baltasar Lim

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... Lynn Baltasar Lim

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10424 Lynn Baltasar Lim

Chapter 7

#13.00 Reaffirmation agreement between debtor and American Honda Finance Corporation

Re: 2019 Honda Passport

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Password: **751332**

Docket 20

Party Information

Debtor(s):

Lynn Baltasar Lim

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... Lynn Baltasar Lim

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10622 Josef Astor

Chapter 7

#14.00 Reaffirmation agreement between debtor and Allegro Credit

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Meeting ID: 161 851 8158
Password: 751332

Docket 18

Party Information

Debtor(s):

Josef Astor

Represented By
Jeffrey J Hagen

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10622 Josef Astor

Chapter 7

#15.00 Reaffirmation agreement between debtor and
Toyota Motor Credit Corporation

fr. 4/21/20

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Meeting ID: **161 851 8158**
Password: **751332**

Docket 10

Party Information

Debtor(s):

Josef Astor

Represented By
Jeffrey J Hagen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

CONT... Josef Astor

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**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10689 Karla M. Fuentes

Chapter 7

#16.00 Reaffirmation agreement between debtor and
Capital One Auto Finance

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Meeting ID: **161 851 8158**
Password: **751332**

Docket 13

Party Information

Debtor(s):

Karla M. Fuentes

Represented By
R Grace Rodriguez

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, June 16, 2020

Hearing Room 301

8:30 AM

1:20-10801 Enrique Gonzalez

Chapter 7

#17.00 Reaffirmation agreement between debtor and Ally Bank

All appearances for the June 16, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Meeting ID: **161 851 8158**
Password: **751332**

Docket 9

Party Information

Debtor(s):

Enrique Gonzalez

Represented By
R Grace Rodriguez

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

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; 11/13/19; 12/4/19; 2/5/20 (stip); 4/29/20

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, June 17, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#2.00 Motion for relief from stay [RP]

BAYVIEW LOAN SERVICING, LLC
VS
DEBTOR

fr: 1/8/20; 2/5/20; 3/4/20; 4/29/20

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Hernandez

Represented By
Donald E Iwuchuku

Movant(s):

Bayview Loan Servicing, LLC., as

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, June 17, 2020

Hearing Room 301

9:30 AM

1:20-10543 Amerigrade Corp.

Chapter 11

#3.00 Amended Motion for relief from stay [UD]

TBB VALLEY INVESTMENTS, LLC
VS
DEBTOR

fr. 5/20/20

Docket 37

Tentative Ruling:

Grant pursuant to 11 U.S.C. § 362(d)(2).

On March 5, 2020, the Amerigrade Corp. (“Debtor”) filed a voluntary chapter 11 petition. In its schedule A/B, Debtor indicated it holds an interest in real property located at 13217 Filmore Street, Pacoima, California (the “Property”) [doc. 7]. Debtor represented that the Property was the subject of a foreclosure sale on February 19, 2020, and that “Debtor is working to unwind the sale.”

In its schedule D [doc. 7], Debtor indicates that, among others, Evette Awadalla and Robert Stewart hold junior liens against the Property. In its schedule G [doc. 7], Debtor represents that Olivia Awadalla, Debtor’s president and sole owner, Evette Awadalla and Robert Stewart have unexpired leases as to the Property. As to each of these three leases, Debtor did not indicate the remaining term or the monthly lease obligation.

In its statement of financial affairs [doc. 17], Debtor represents that it received \$1,500 in rental income from January 1, 2020 to the petition date, and \$11,500 in rental income in 2019. Further, in both of its chapter 11 case status reports filed on April 16, 2020 [doc. 19] and June 4, 2020 [doc. 48], Debtor represents that the rental income it receives is from a different real property than the property at issue.

On April 24, 2020, TBB Valley Investments (“Movant”) filed a motion for relief from stay to proceed with an unlawful detainer action as to the Property (the “Motion”) [doc. 20]. On May 6, 2020, Debtor filed an opposition to that motion (the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

9:30 AM

CONT... Amerigrade Corp.

Chapter 11

“Opposition”) [doc. 30]. In the Opposition, among other things, Debtor challenges Movant’s standing to bring the Motion.

On May 20, 2020, the Court held a hearing on the Motion. At the hearing, the Court continued the hearing to June 17, 2020, in order for Movant to cure the deficiencies noted in the Court’s ruling.

On May 22, 2020, Movant filed an amended motion for relief from stay to proceed with an unlawful detainer action as to the Property (the “Amended Motion”) [doc. 37]. Movant served the Amended Motion, notice of the hearing and deadline to file a response on Debtor, Debtor’s counsel, the United States trustee and all creditors.

Attached to the Amended Motion, is a declaration signed by Jeff Brandolino. In his declaration, Mr. Brandolino testifies that Movant is the owner of the Property, and that Movant acquired the Property at a foreclosure sale before Debtor filed its chapter 11 petition.

Also attached to the Amended Motion is the trustee deed upon sale, which indicates that Amber Investments Group, Movant and Recon Investment Fund B LLC purchased the Property at the foreclosure sale held on February 19, 2020 (the “Trustee Deed”) [Exh. A]. The Trustee Deed indicates that Movant has a 40% interest in the Property.

"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). As the Court of Appeals for the Ninth Circuit stated in *In re Griffin*, 719 F.3d 1126, 1128 (9th Cir. 2013):

A proceeding to determine eligibility for relief from a stay only determines whether a creditor should be released from the stay in order to argue the merits in a separate proceeding. *Johnson v. Righetti*, 756 F.2d 738, 740–41 (9th Cir.1985). Given the limited nature of the relief obtained through this proceeding and because final adjudication of the parties' rights and liabilities is yet to occur, a party seeking stay relief need only establish that it has a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

9:30 AM

CONT...

Amerigrade Corp.

Chapter 11

colorable claim to the property at issue. *In re Veal*, 450 B.R. 897, 914–15 (9th Cir. BAP 2011).

Here, Movant has established that it has a colorable claim to the Property. The Trustee Deed indicates that Movant holds a 40% interest in the Property, which it acquired from a foreclosure sale held on February 19, 2020. In its schedule A/B, Debtor also acknowledges this foreclosure sale.

In the Opposition, Debtor argues, among other things, that the lender on the Property failed to follow several of California’s nonjudicial foreclosure laws, and therefore, the foreclosure sale should be unwound. On a motion for relief from stay, the Court only determines whether the creditor should be released from the stay in order to argue the merits in a separate proceeding. Whether nonjudicial foreclosure laws have been violated is an issue that can be determined by the state court, and Debtor is free to litigate those issues in that forum.

In the Amended Motion, Movant requests relief from the automatic stay under 11 U.S.C. § 362(d)(2). Pursuant to 11 U.S.C. § 362(d)(2):

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

...

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

Pursuant to 11 U.S.C. § 362(g):

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

9:30 AM

CONT...

Amerigrade Corp.

Chapter 11

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

Because the foreclosure sale occurred prepetition, it appears that Debtor has no equity in the Property. In the Opposition, Debtor argues in a conclusory fashion that the Property is necessary for an effective reorganization. Debtor states that it will renovate and lease the Property.

Debtor's principal and two lienholders are living in the Property, apparently without making monthly lease payments. At this point, it appears that the Property is not income producing. Moreover, Debtor has not explained nor demonstrated how and when it will fund renovation of the Property, or the positive financial impact of any such renovation. Consequently, Debtor has not met its burden under 11 U.S.C. § 362(g) of showing that the Property is necessary to an effective reorganization.

In light of the foregoing, the Court will 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 obtain possession of the property.

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):

Amerigrade Corp.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

9:30 AM

1:19-11696 Peter M. Seltzer

Chapter 7

#4.00 Motion for relief from stay [AN]

HOWARD MISLE, BELMEKO LLC AND MEGHAN KONECNE
VS
DEBTOR

Docket 162

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 retains the right to file a proof of claim under 11 U.S.C. § 501 and/or and 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):

Peter M. Seltzer

Pro Se

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

9:30 AM

CONT...

Peter M. Seltzer

Jorge A Gaitan
Jessica L Bagdanov

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

9:30 AM

1:19-12928 Alfredo Gonzalez

Chapter 7

#5.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

Docket 56

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

Upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party 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, June 17, 2020

Hearing Room 301

9:30 AM

CONT... Alfredo Gonzalez

Chapter 7

Party Information

Debtor(s):

Alfredo Gonzalez

Represented By
Eric Bensamochan

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Laila Masud
D Edward Hays

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, June 17, 2020

Hearing Room 301

9:30 AM

1:20-10659 Nasrin Nino

Chapter 7

#6.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Stip to continue filed 5/19/20

Docket 28

*** VACATED *** REASON: Order approving stip entered 5/21/20.
Hearing continued to 9/23/20 at 9:30 am

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

9:30 AM

1:20-10156 Shalva Tikva

Chapter 13

#7.00 Motion for relief from stay [PP]

DAIMLER TRUST
VS
DEBTOR

Docket 39

***** VACATED *** REASON: Motion withdrawn 5/28/20 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shalva Tikva

Represented By
Michael R Totaro

Trustee(s):

Elizabeth (SV) 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 17, 2020

Hearing Room 301

9:30 AM

1:18-12939 Arianne Beth Pachter

Chapter 13

#8.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC DBA MR. COOPER
VS
DEBTOR

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arianne Beth Pachter

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, June 17, 2020

Hearing Room 301

9:30 AM

1:20-10269 John Goulter

Chapter 13

#9.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY
VS
DEBTOR

Docket 22

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Goulter

Represented By
Stella A Havkin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01019 Miller, Chapter 7 Trustee v. Ride on Autos. a California corporation

#10.00 Status conference re: complaint for 1. breach of oral contract;
2. money had and received; 3. open book account; 4. accounting;
5. declaratory relief; 6. turnover of property of the estate; 7. avoidance
of postpetition transfers; 8. recovery of postpetition transfers; and
9. preservation of postpetition transfers

fr. 4/15/20(stip), 4/29/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on August 12, 2020**, to allow the plaintiff to obtain approval of the parties' resolution from the Court. If the Court approves the parties' compromise, and the parties file a stipulation to dismiss this adversary proceeding prior to the continued status conference, the Court will take the status conference off calendar.

Appearances on June 17, 2020 are excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Ride on Autos. a California

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Cathy Ta

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

1:30 PM

CONT... Deborah Lois Adri

Chapter 7

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, June 17, 2020

Hearing Room 301

1:30 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

Adv#: 1:18-01113 VitaVet Labs, Inc. v. Gashtili

- #11.00** Status conference re first amended adversary complaint for non-dischargeability and objection to discharge pursuant to:
1. 11 U.S.C. sec 523 (a)(2)
 2. 11 U.S.C. sec 523 (a)(6)
 3. 11 U.S.C. sec 727 (a)(2)(A)

fr, 12/19/18; 9/18/19; 10/23/19; 1/22/20(stip); 3/4/20(stip);
4/29/20

Docket 4

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on July 15, 2020**. Prior to that date, if the plaintiff files a declaration that a party has not timely opposed the plaintiff's motion to dismiss pursuant to Local Bankruptcy Rule 9013-1(3)(A) and lodges an order to dismiss this adversary proceeding, the Court will take the continued status conference off calendar.

Appearances on June 17, 2020 are excused.

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, June 17, 2020

Hearing Room 301

1:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#12.00 Pretrial conference re: first amended 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

fr. 6/12/19; 8/7/19; 4/15/20

STIP TO VACATE P/T CONF FILED 5/28/20 - jc

Docket 7

***** VACATED *** REASON: Order approving stip entered 6/10/20.
Hearing continued to 7/1/20 at 2:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Susan Biddle

Pro Se

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

1:30 PM

CONT...

Christopher Anderson

Howard Camhi

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

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

#13.00 Status conference re: complaint to avoid fraudulent transfers

fr. 11/20/19

Docket 1

*** VACATED *** REASON: Continued by Stip to 8/19/20 at 1:30 p.m. -
jc

Tentative Ruling:

- NONE LISTED -

Party Information

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, June 17, 2020

Hearing Room 301

1:30 PM

1:19-12557 Judy A Scott

Chapter 7

Adv#: 1:19-01144 West Medical Center, Inc. v. Scott

#14.00 Pre-trial conference re: first amended complaint
objecting to discharge under section 523 of
the Bankruptcy Code

fr. 2/5/20; 4/29/20

Docket 14

Tentative Ruling:

Have the parties exchanged their exhibits?

The Court intends to set this matter for trial at **9:30 a.m. on September 29, 2020**. Are each of the parties and their counsel amenable to a physically distanced trial at the courthouse? If so, the Court will allow trial to proceed in person subject to certain requirements, including ordering the parties and their counsel to wear masks when they are not speaking and mandating that all individuals in attendance maintain a distance of six feet from each other.

WITNESS TESTIMONY:

Witness testimony **must be presented live** in accordance with the Federal Rules of Evidence.

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:

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

1:30 PM

CONT... Judy A Scott

Chapter 7

The Court will issue an order incorporating its trial procedures, the related deadlines and the trial date.

Party Information

Debtor(s):

Judy A Scott

Represented By
James G. Beirne

Defendant(s):

Judy A Scott

Pro Se

Plaintiff(s):

West Medical Center, Inc.

Represented By
Adam Van Susteren

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

1:30 PM

1:19-13145 Daniel Michael Uzan

Chapter 7

Adv#: 1:20-01035 Mitchell et al v. Uzan

#15.00 Status conference re: complaint for determination of nondischargeability pursuant to 11 U.S.C. sec 523(a)(2)(A), 523(a)(4) and 523(a)(6)

fr. 5/20/20

Docket 1

Tentative Ruling:

The Court will set the defendant's motion to dismiss [doc. 8] for hearing at **2:30 p.m. on July 29, 2020**. The defendant must file and serve timely notice of the hearing on the plaintiffs.

The Court also will continue this status conference to **2:30 p.m. on July 29, 2020**, to be held with the hearing on the motion to dismiss.

Appearances on June 17, 2020 are excused.

Party Information

Debtor(s):

Daniel Michael Uzan

Represented By
Mark T Jessee

Defendant(s):

Daniel Michael Uzan

Pro Se

Plaintiff(s):

Jason Mitchell

Represented By
Stella A Havkin

JHM Ventures, a California

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

1:30 PM

CONT... Daniel Michael Uzan

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

1:30 PM

1:20-10069 Shawn Sharon Melamed

Chapter 7

Adv#: 1:20-01046 Mazakoda, Inc. v. Melamed et al

#16.00 Status conference re: complaint objecting to discharge pursuant to 11 U.S.C. sec 727(3)(3), 727(a)(4)(A); 727(a)(4)(D). and 727(a)(5)

Docket 1

***** VACATED *** REASON: Another summons issued; new status conference hearing 7/8/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shawn Sharon Melamed

Represented By
Giovanni Orantes

Defendant(s):

Jenous Tootian

Pro Se

Shawn Sharon Melamed

Pro Se

Joint Debtor(s):

Jenous Tootian

Represented By
Giovanni Orantes

Plaintiff(s):

Mazakoda, Inc.

Represented By
Scott E Gizer

Trustee(s):

Amy L Goldman (TR)

Represented By
Scott E Gizer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

1:30 PM

1:20-10129 R&S RESEARCH LLC

Chapter 7

Adv#: 1:20-01047 Moncayo et al v. R&S RESEARCH LLC

#17.00 Status conference re: complaint objecting to entry of discharge pursuant to 11 U.S.C. sec 727(a) and (c)

Docket 1

Tentative Ruling:

Pursuant to 11 U.S.C. § 727, the debts of a corporation are not dischargeable in a chapter 7 case. *See* 11 U.S.C. § 727(a)(1) ("The court shall grant the debtor a discharge, unless... the debtor is not an individual."). Because the debtor will not be receiving a discharge by operation of § 727(a)(1), the plaintiffs' complaint is moot. Consequently, the Court will dismiss this adversary proceeding.

The Court will prepare the order.

Party Information

Debtor(s):

R&S RESEARCH LLC

Represented By
Allan D Sarver

Defendant(s):

R&S RESEARCH LLC

Pro Se

Plaintiff(s):

Claudia Moncayo

Represented By
Samuel Moorhead
Catherine Calderaro Wagner

Jessica Ojeda

Represented By
Samuel Moorhead

Kaveh Elihu

Represented By
Samuel Moorhead

Samuel Moorhead

Represented By
Samuel Moorhead

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

1:30 PM

CONT... R&S RESEARCH LLC

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

1:15-12563 Reza Fateh Manesh

Chapter 7

Adv#: 1:15-01237 Seror, not individually but solely in his capacity v. Fatehmanesh, an

#18.00 Motion to determine amount to be paid to Hossein Fatehmanesh after offset

Docket 90

Tentative Ruling:

Grant.

I. BACKGROUND

On July 30, 2015, Reza Fateh Manesh ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee").

On November 5, 2015, the Trustee filed a complaint against Hossein Fatehmanesh for turnover of the real property located at 14520 Delano Street, Van Nuys, California 91411 (the "Property") and an award of attorneys' fees, initiating this adversary proceeding. On January 26, 2017, after trial, the Court entered judgment in favor of the Trustee (the "Trial Judgment") [doc. 38]. Through the Trial Judgment, the Court awarded the Trustee \$15,000.

On February 8, 2017, the Trustee moved for an award of attorneys' fees and costs [doc. 47]. On March 31, 2017, the Court entered an order awarding the Trustee attorneys' fees in the amount of \$92,811.50 and costs in the amount of \$3,015.25 (together with the Trial Judgment, the "Trustee Award"). On April 17, 2017, the Trustee recorded an abstract of judgment reflecting the total amount owed the Trustee of \$110,826.75. Declaration of David Seror (the "Seror Declaration") [doc. 90], ¶ 3, Exhibit 1.

On January 14, 2020, the Trustee filed a motion to sell the Property (the "Sale Motion") [Bankruptcy Docket, doc. 144]. A title report generated in connection with the Sale Motion reflected a \$175,000 judgment, entered June 1, 2007, in favor of Mr. Fatehmanesh (the "Fatehmanesh Judgment"). Seror Declaration, ¶ 5, Exhibit 2. In addition, the Trustee located an abstract of judgment related to the Fatehmanesh Judgment recorded against the Property. Sale Motion, Exhibit 4. On February 10, 2020, the Court entered an order approving the Sale Motion [Bankruptcy Docket, doc.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT... Reza Fateh Manesh
156].

Chapter 7

On April 14, 2020, the Trustee filed a motion to determine the amount to be paid to Mr. Fatehmanesh (the "Motion") [doc. 90]. The Trustee estimates that Mr. Fatehmanesh is owed a total of \$403,458.88 (the \$175,000 Fatehmanesh Judgment plus interest at 10% per annum totaling \$228,458.88). The Trustee also asserts that the Court should subtract from this total the amount Mr. Fatehmanesh owes the Trustee pursuant to the Trustee Award. Mr. Fatehmanesh opposed the Motion [doc. 93], contending that he is entitled to compound interest from the 10-year anniversary of the Fatehmanesh Judgment forward.

II. ANALYSIS

The parties do not dispute the amount of the Trustee Award or the principal amount of the Fatehmanesh Judgment. Although Mr. Fatehmanesh notes that he believes the Trustee Award was excessive, Mr. Fatehmanesh appealed the Trustee Award and the award is now final. Mr. Fatehmanesh does not otherwise dispute the Trustee's calculation of principal and interest related to the Trustee Award.

The parties disagree about the amount of interest owed on the Fatehmanesh Judgment. Mr. Fatehmanesh asserts that, after 10 years, the principal amount of the Fatehmanesh Judgment became \$350,000 and, thereafter, interest began to accrue on that amount. In California, judgments expire 10 years after the date of entry of a money judgment. California Code of Civil Procedure ("CCP") § 683.020.

To renew a judgment, judgment creditors must file an application and pay a filing fee. CCP § 683.150; Cal. Gov't Code § 70626. "[T]he entry of renewal shall show the amount of the judgment as renewed. ...[T]his amount is the amount required to satisfy the judgment on the date of the filing of the application for renewal and includes the fee for the filing of the application for renewal." CCP § 683.150(c). The "amount required to satisfy a money judgment is the total amount of the judgment as entered or renewed with the following additions and subtractions:"

- (a) The addition of costs added to the judgment pursuant to Section 685.090.
- (b) The addition of interest added to the judgment as it accrues pursuant to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT...

Reza Fateh Manesh

Sections 685.010 to 685.030, inclusive.

Chapter 7

- (c) The subtraction of the amount of any partial satisfactions of the judgment.

- (d) The subtraction of the amount of any portion of the judgment that is no longer enforceable.

CCP § 695.210.

"When a judgment is renewed under the Enforcement of Judgments Law, the renewed judgment is the amount required to satisfy the judgment on the date of renewal, an amount that includes accumulated postjudgment interest." *Bisno v. Kahn*, 225 Cal.App.4th 1087, 1106 (Ct. App. 2014) (emphasis added). "Thus, the renewal of the judgment—which can be done every five years—effectively allows interest to accrue on interest that has been incorporated into the renewed judgment." *Id.* (citing CCP § 683.110(b)).

The California Constitution generally prohibits the postjudgment compounding of interest. *Westbrook v. Fairchild*, 7 Cal.App.4th 889, 893 (Ct. App. 1992).

The only exception to the rule that interest on interest (i.e. compound interest) may not be recovered is in situations in which interest is included in a judgment which then bears interest at the legal rate. One common situation occurs when a judgment is renewed. At that time, accrued interest is included in the new judgment, and the new judgment bears interest at the legal rate.

Id., at 894-95.

If the judgment debtor files for bankruptcy petition and a judgment has not expired by the petition date, 11 U.S.C. § 108(c) tolls the expiration date. *In re Spirtos*, 221 F.3d 1079, 1080-81 (9th Cir. 2000). In that case, the judgment "does not expire until 30 days after the end of the automatic stay." *Id.*, at 1081.

Here, Mr. Fatehmanesh seeks to benefit from the compound interest provision of CCP § 683.150(c) without having taken any of the steps required by that statute to renew

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT... Reza Fateh Manesh

Chapter 7

the Fatehmanesh Judgment. As explained in *Westbrook*, the California Constitution prohibits compound interest except in limited circumstances, such as obtaining a renewal of judgment. *Westbrook*, 7 Cal.App.4th at 893-95. Mr. Fatehmanesh has set forth no authority that would allow Mr. Fatehmanesh to claim compound interest without renewing his judgment.

To the extent Mr. Fatehmanesh believes the compound interest provision of CCP § 683.150(c) should have automatically been triggered because the automatic stay prevented Mr. Fatehmanesh from renewing the Fatehmanesh Judgment, that proposition is not supported by law. Mr. Fatehmanesh could have obtained relief from the automatic stay to renew the Fatehmanesh Judgment. That relief from the automatic stay is required to obtain such a renewal is further support for the fact that renewals of judgments are not automatic and require affirmative action by the judgment creditor. *See Spirtos*, 221 F.3d at 1081.

Having offered no authority to the contrary, and given the general prohibition of compound interest under California law, the Court will not allow for Mr. Fatehmanesh to claim compound interest on the Fatehmanesh Judgment. The Court will allow Mr. Fatehmanesh a total claim of \$403,458.88 offset by the amount Mr. Fatehmanesh owes the Trustee, for a total payment to Mr. Fatehmanesh of \$289,085.67. Mr. Fatehmanesh must furnish a fully executed W-9 form to the Trustee prior to receipt of any payment from the estate.

III. CONCLUSION

The Court will grant the Motion. Mr. Fatehmanesh must provide a fully executed W-9 form to the Trustee prior to receiving a payment from the estate.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Reza Fateh Manesh

Represented By
Lee W Harwell

Defendant(s):

Hossein Fatehmanesh, an individual

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT... Reza Fateh Manesh

Chapter 7

David Brian Lally

Plaintiff(s):

David Seror, not individually but

Represented By
Reed Bernet
Richard Burstein
Jessica L Bagdanov

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, June 17, 2020

Hearing Room 301

2:30 PM

1:18-11150 Robert Edward Zuckerman
Adv#: 1:18-01086 Abel v. Zuckerman et al

Chapter 7

#19.00 Plaintiff's Motion for summary judgment pursuant to FRBP Rule 7056

fr. 3/25/20; 6/10/20(stip)

Docket 152

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On May 4, 2018, Robert Edward Zuckerman ("Debtor") filed a voluntary chapter 11 petition. On March 18, 2019, the Court converted Debtor's case to a chapter 7 case [Bankruptcy Docket, doc. 129].

A. *The Prepetition State Court Judgment and Albini Adversary Proceeding*

Prepetition, dozens of individuals and entities, including Richard Abel ("Plaintiff"), filed a complaint against Debtor, initiating state court case no. SCV-245738 (the "State Court Action"). Request for Judicial Notice ("RJN") [doc. 156], Exhibit A. On March 20, 2017, the state court entered an amended judgment against Debtor (the "Amended Judgment"). *Id.*

On July 20, 2018, the other plaintiffs from the State Court Action filed a complaint against Debtor, requesting nondischargeability of the debt owed to them pursuant to the Amended Judgment under 11 U.S.C. § 523(a)(2)(A) (the "Albini Adversary Proceeding") [1:18-ap-01081-VK]. On March 25, 2019, the plaintiffs in the Albini Adversary Proceeding filed a motion for summary judgment, asserting the Amended Judgment is preclusive as to their claim for nondischargeability under 11 U.S.C. § 523(a)(2)(A) (the "Albini MSJ") [Albini Adversary Proceeding, doc. 50]. Debtor opposed the Albini MSJ [Albini Adversary Proceeding, doc. 74]. On July 17, 2019, the Court issued a ruling granting the Albini MSJ and detailing why the Amended Judgment precludes relitigation of the plaintiffs' claim under § 523(a)(2)(A) (the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

"Albini Ruling") [Albini Adversary Proceeding, doc. 96]. On July 31, 2019, the Court entered an order granting the Albini MSJ (the "Albini Order") [Albini Adversary Proceeding, doc. 99].

Debtor appealed the Albini Order to the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP"). On April 10, 2020, the BAP issued an opinion affirming the Albini Order (the "BAP Opinion"). *In re Zuckerman*, 613 B.R. 707 (B.A.P. 9th Cir. 2020). On May 8, 2020, Debtor filed a petition for rehearing before the BAP [BAP Docket, doc. 37]. On June 5, 2020, the BAP entered an order denying the petition for hearing [BAP Docket, doc. 39].

B. The Assignment Order and the Judgment Lien

On June 29, 2017, Plaintiff filed a Notice of Judgment Lien with the California Secretary of State (the "Judgment Lien"). RJN, Exhibit C. The Judgment Lien states that it applies to "all property subject to enforcement of a money judgment against the judgment debtor to which a judgment lien on personal property may attach under Section 697.530 of the Code of Civil Procedure...." *Id.*

On January 25, 2018, approximately three months prepetition, the state court entered an assignment order in favor of Plaintiff (the "Assignment Order"). RJN, Exhibit B. In the Assignment Order, the state court noted that Plaintiff was owed a total of \$207,245.98 plus 10% interest. *Id.* The state court stated, in relevant part:

IT IS HEREBY ORDERED that pursuant to Code of Civil Procedure 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT...

Robert Edward Zuckerman

Chapter 7

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.

Id. [FN1]

C. This Adversary Proceeding

On August 2, 2018, Plaintiff filed his own complaint against Debtor and other defendants. On June 7, 2019, Plaintiff filed the operative second amended complaint (the "SAC") [doc. 75]. As concerns Debtor, Plaintiff requested declaratory relief regarding the impact of the Assignment Order and the Judgment Lien and nondischargeability of the debt owed to Plaintiff based on the Amended Judgment pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(2)(B). Through the SAC, Plaintiff also added the chapter 7 trustee (the "Trustee") as a defendant. On June 12, 2019, Plaintiff filed proof that he timely served the Trustee with the summons and the SAC. The Trustee has not filed a response to the SAC.

On November 26, 2019, Plaintiff filed a motion for summary judgment (the "Motion") [docs. 152-157]. Through the Motion, Plaintiff requests a judgment under § 523(a)(2)(A) and (a)(2)(B) based on the Amended Judgment. In addition, Plaintiff appears to request a judgment that states that "the following rights to payment are subject to Plaintiff's Assignment Order," listing Debtor's right to: (A) "receivables" from several entities; (B) receipt of payment from Venmo, as disclosed in Debtor's July 2018 monthly operating report ("MOR"); (C) a commission in the amount of \$35,000; (D) payment for consulting fees; (E) payments collected from Debtor as reported in his MORs; and (F) payment from City National Bank. Finally, Plaintiff appears to request a judgment that states that the Judgment Lien attaches to all of Debtor's personal property.

On March 4, 2020, Debtor filed an opposition to the Motion (the "Opposition") [docs. 183-187]. In the Opposition, Debtor argues that Plaintiff's claims based on the Assignment Order and Judgment Lien are vague and that Plaintiff's interpretation of the Assignment Order and the Judgment Lien is too broad. Regarding Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A), Debtor reiterates his previous arguments from the Albini Adversary Proceeding that have been rejected by this Court and the BAP.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 7

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 show genuine issues of fact remain. *Id.*, at 324; *see also Anderson*, 477 U.S. at 256

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT... **Robert Edward Zuckerman**

Chapter 7

("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. *The Assignment Order and Judgment Lien*

With respect to the Assignment Order, Plaintiff appears to request a judgment that his Assignment Order attached to Debtor's right to payment from the sources identified above. However, Plaintiff has not provided sufficient evidence for the Court to make any such determination. The Assignment Order is dated January 24, 2018. Debtor filed his chapter 11 petition on May 4, 2018, at which time the automatic stay prohibited any further enforcement of collection activity against Debtor or the estate. 11 U.S.C. § 362. As such, to obtain a determination that the Assignment Order attached to any of the interests referenced by Plaintiff, Plaintiff would have to provide evidence demonstrating that Debtor had a right to payment from those sources between January 24, 2018, when the state court entered the Assignment Order, and May 4, 2018, the petition date. Plaintiff offers no such evidence.

In fact, many of the rights to payment listed by Plaintiff appear to have arisen postpetition but preconversion. For example, Plaintiff references Debtor's MORs, filed during the pendency of Debtor's chapter 11 case, to identify certain payments received by Debtor. However, Debtor's postpetition but preconversion right to payment became part of the bankruptcy estate upon conversion of Debtor's case to a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT... **Robert Edward Zuckerman**

Chapter 7

chapter 7 case. *See* 11 U.S.C. § 1115(a)(1); *and In re Roussos*, 2016 WL 5349717, at *5 (Bankr. C.D. Cal. 2016). As such, if the property that generates the right to payment Plaintiff seeks to attach entered the chapter 7 estate, Plaintiff may not enforce the Assignment Order as to that property unless the Trustee explicitly abandons the Property or Plaintiff obtains relief from the automatic stay.

The Court notes that, even if Debtor had a right to payment to which the Assignment Order attached between the period of January 24, 2018 and May 4, 2018, Plaintiff would only be entitled to the right to payment from the identified asset, *not* the asset itself. *See, e.g. AmeriPride Servs. Inc. v. Texas E. Overseas Inc.*, 782 F.3d 474, 491–92 (9th Cir. 2015) (reversing district court judgment that assigned personal property to judgment creditor instead of only the right to payment from that property). Thus, even if the Assignment Order attached to Debtor’s right to payment during the relevant prepetition period, the *property itself* still would become property of the estate, and Plaintiff would still be prohibited from continued enforcement against the asset. In other words, although Plaintiff may have been entitled to intercept certain payments between January 24, 2018 and May 4, 2018 by operation of the Assignment Order, Plaintiff could not continue such activity beyond the petition date. [FN2].

The same is true for Plaintiff’s claim related to the Judgment Lien. Plaintiff has offered no evidence or analysis regarding whether the Judgment Lien attached to any of Debtor’s personal property, including whether such personal property is the type of property under the purview of the Judgment Lien. *See* Cal. Civ. Proc. Code §§ 680.130, 697.530; *and* Cal. Comm. Code § 9102(a)(2). Nevertheless, for the same reasons noted above, if Plaintiff would like to enforce the Judgment Lien against property of the estate, Plaintiff must obtain relief from the automatic stay.

In light of the above, the Court will deny the Motion as to these claims for relief. Rather than continue to pursue the claims via this adversary proceeding, Plaintiff should file a motion for relief from the automatic stay in Debtor’s bankruptcy case. If Plaintiff obtains relief from the automatic stay, Plaintiff may pursue his enforcement efforts pursuant to the Assignment Order and the Judgment Lien in state court.

C. 11 U.S.C. § 523(a)(2)(A)

For the same reasons stated in the Albin Ruling and the BAP Opinion, the Court will

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT...

Robert Edward Zuckerman

Chapter 7

enter judgment in favor of Plaintiff on the basis that the Amended Judgment establishes Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A). The BAP has addressed all of Debtor's arguments in the BAP Opinion. The Court is bound by the BAP's interpretation of the Amended Judgment. Unless the outcome of a further appeal mandates otherwise, the Court will not revisit these issues.

D. 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....

(emphasis added).

Plaintiff bases his § 523(a)(2)(B) claim on appraisals provided by Debtor and his agent which included inaccurate representations. However, Plaintiff has not established that either Debtor or an insider of Debtor owned or had an interest in the Malibu land. Nor does the Amended Judgment include any such findings. Moreover, the Amended Judgment does not include any other statements regarding written false statements regarding Debtor's or an insider's financial condition. As such, Plaintiff has not established a claim under § 523(a)(2)(B).

III. CONCLUSION

The Court will enter judgment in favor of Plaintiff under 11 U.S.C. § 523(a)(2)(A). The Court will otherwise deny the Motion.

The Court will prepare the judgment.

FOOTNOTES

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT...

Robert Edward Zuckerman

Chapter 7

1. The Court will take judicial notice of the Amended Judgment, the Assignment Order and the Judgment Lien.

2. Moreover, under California Code of Civil Procedure § 708.510(d), "[a] right to payment may be assigned pursuant to this article only to the extent necessary to satisfy the money judgment." In the Assignment Order, the state court stated that Plaintiff was owed \$207,245.98 plus 10% interest. As such, the Assignment Order did not serve to transfer all assets that generate a right to payment to Plaintiff; instead, the Assignment Order merely allows Plaintiff to collect up the amount of the judgment.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

Debtor's Evidentiary Objections to the Declaration of Richard Abel
paras. 3-15, 17-18, 20: overrule

Plaintiff's Evidentiary Objections to the Declaration of Robert Edward Zuckerman
paras. 3-4, 9-14: overrule
paras. 5-8: sustain

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

B. Edward McCutchan Jr. an

Represented By
Edward McCutchan

Sunderland/McCutchan LLP, a

Represented By
Edward McCutchan

Phoenix HoldingsFund LLC, a

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman Chapter 7

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
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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, June 17, 2020

Hearing Room 301

2:30 PM

1:18-11150 Robert Edward Zuckerman
Adv#: 1:18-01086 Abel v. Zuckerman et al

Chapter 11

- #20.00** 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; 11/13/19; 1/22/20; 3/25/20; 6/10/20(stip)

Docket 75

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Edward Zuckerman	Represented By Sandford L. Frey Stuart I Koenig
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Defendant(s):

Robert Edward Zuckerman	Pro Se
Continental Communities, LLC, a	Pro Se
Valley Circle Estates Realty Co., a	Pro Se
Zuckerman Building Company, a	Pro Se
Contiental San Jacinto, LLC, a	Pro Se
San Jacinto Z, LLC, a California	Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 17, 2020

Hearing Room 301

2:30 PM

CONT... Robert Edward Zuckerman

Chapter 11

Rezinate San Jacinto, LLC, a	Pro Se
Maravilla Center, LLC, a California	Pro Se
Sunderland/McCutchan, Inc., a	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, June 18, 2020

Hearing Room 301

10:30 AM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#1.00 First and final application by Resnik Hayes Moradi LLP, general bankruptcy counsel for the Debtor, for allowance of fees for the period August 14, 2018 through March 24, 2020

Docket 197

Tentative Ruling:

Applicant, counsel to the debtor and debtor in possession – approve fees in the amount of \$91,257.50 and reimbursement of expenses in the amount of \$2,204.42, pursuant to 11 U.S.C. § 330, on a final basis. For the reasons stated below, the Court will not approve \$622.50 in fees.

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 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;

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 18, 2020

Hearing Room 301

10:30 AM

CONT... **Mr. Tortilla, Inc.**

Chapter 11

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
Case Admin.	8/24/18	RZ	Drafted POS for Schedules and SOFA. Prepared for filing.	0.30	\$135	\$40.50
Case Admin.	9/26/19	RZ	Called client to Schedule office appointment and go over dates and times. Followed up with email.	0.20	\$135	\$27.00
General Creditor Issues	12/4/18	PA	Dropped the 1) Ntc of Shrt Hrg, 2) Dec of Service of Ntc of Shrtnd Hrg, 3) Mtn Extend Time to Assume 4) App Shrt Time re Motion for Judge Kaufman.	0.50	\$175	\$87.50

The Court also will not approve the following because it is a duplicate entry:

Category	Date	Timekeeper	Description	Time	Rate	Fee

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 18, 2020

Hearing Room 301

10:30 AM

CONT...

Mr. Tortilla, Inc.

Chapter 11

Disclosure Statement and Plan of Reorg.	5/2/19	RM	Review and reply to email from atty Kelly re signed stip (.1); finalize the stip and draft the ord and ntc lodge	1.10	\$425	\$467.50
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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):

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 18, 2020

Hearing Room 301

10:30 AM

1:19-11648 Maryam Sheik

Chapter 11

#2.00 First interim application by Resnik Hayes Moradi LLP, debtor's counsel, for allowance of fees and reimbursement of costs for the period July 3, 2019 through February 10, 2020

fr. 4/30/20

Docket 72

Tentative Ruling:

Resnik Hayes Moradi LLP ("Applicant"), counsel to the debtor and the debtor-in-possession – approve fees in the amount of \$30,276 and reimbursement of expenses in the amount of \$1,966.75, pursuant to 11 U.S.C. § 331, for the period between July 3, 2019 and February 10, 2020, on an interim basis. At this time, Applicant may collect 80% of the approved fees and 100% of the approved expenses pursuant to the terms set forth in the supplemental declarations [doc. 96].

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 these authorities, the Court will now allow the following fees billed by Applicant:

Category	Timekeeper	Date	Description	Time	Rate	Fee
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 18, 2020

Hearing Room 301

10:30 AM

CONT...

Maryam Sheik

Chapter 11

Case Administration	RZ	7/3/19	Called Trustee company 2X to confirm sale date and give notice of filing.	0.30	\$135.00	\$40.50
Case Administration	RZ	7/3/19	Faxed Notice of Filing to Trustee. Called to confirm receipt.	0.20	\$135.00	\$27.00
Case Administration	RZ	7/3/19	Drafted fax coversheet to give notice to Trustee co.	0.20	\$135.00	\$27.00
Case Administration	RZ	7/3/19	Email client Notice of BK Stay and VP filing.	0.20	\$135.00	\$27.00
Employment and Fee Applications	RDMB	10/7/19	Draft PFS	0.60	\$425.00	\$255.00

Applicant must submit an 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):

Maryam Sheik

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 18, 2020

Hearing Room 301

10:30 AM

1:19-11902 John Christian Lukes

Chapter 11

#3.00 First interim application by Resnik Hayes Moradi LLP, debtor's counsel, for allowance of fees and reimbursement of costs for the period July 29, 2019 through February 10, 2020

fr. 4/30/20

Docket 113

Tentative Ruling:

Resnik Hayes Moradi, LLP ("Applicant") counsel to the debtor and debtor in possession – approve fees in the amount of \$56,349.50 and reimbursement of expenses in the amount of \$1,717.00, pursuant to 11 U.S.C. § 331, for the period between July 29, 2019 through February 10, 2020, on an interim basis. At this time, Applicant may collect 80% of the approved fees and 100% of the approved expenses pursuant to the terms set forth in Applicant's supplemental declaration [doc. 130]. The Court will not approve \$620.00 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 11 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 18, 2020

Hearing Room 301

10:30 AM

CONT... **John Christian Lukes**

Chapter 11

compensation that is less than the amount of the compensation that is requested.

The Court will reduce the following fees, as they appear excessive in light of Applicant's experience, and the relative complexity of the work performed compared to the time billed:

Category	Date	Timekeeper	Description	Rate	Time	Fee	Adjusted Time	Adjusted Fee
General Creditor Issues	9/24/19	Roksana D. Moradi	Draft ord set bar date and ntc	\$425	0.80	\$340	0.60	\$255.00
General Creditor Issues	9/26/19	Roksana D. Moradi	Rev ent ord bar date and plan accordingly	\$425	0.20	\$85.00	0.10	\$42.50
General Creditor Issues	10/1/19	Roksana D. Moradi	Draft ntc bar date	\$425	0.50	\$212.50	0.30	\$127.50
General Creditor Issues	10/8/19	Roksana D. Moradi	Draft stip move mfr hrg while nego and email atty Darlene for review	\$425	1.20	\$510.00	0.80	\$340.00
General Creditor Issues	10/8/19	Roksana D. Moradi	Draft ord and ntc lodge stip move mfr hrg	\$425	1.10	\$467.50	0.70	\$297.50

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 will not approve the fees billed by Applicant for the services identified below:

Category	Date	Timekeeper	Description	Rate	Time	Fee
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 18, 2020

Hearing Room 301

10:30 AM

CONT... John Christian Lukes

Chapter 11

Case Administration	8/8/19	Rosario Zubia	Emailed updated schedules and SOFA to client for review	\$135	0.20	\$27.00
Case Administration	8/12/19	Rosario Zubia	Drafted POS for schedules and related documents	\$135	0.30	\$40.50

Applicant must submit the order within seven (7) days of the hearing.

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):

John Christian Lukes

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 18, 2020

Hearing Room 301

10:30 AM

1:20-10093 Robert Alderman and Noni Alderman

Chapter 7

#4.00 Application for payment of final fees and/or expenses
by Stephen L Burton

Docket 75

Tentative Ruling:

Pursuant to the stipulation between Stephen L. Burton and the United States Trustee [doc. 87], the Court will deem this motion to have been withdrawn.

Party Information

Debtor(s):

Robert Alderman

Represented By
Stephen L Burton

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 18, 2020

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#5.00 Status conference re: chapter 11 case

fr. 12/19/20; 12/26/19

Docket 1

***** VACATED *** REASON: Order continuing hearing entered 06/08/20**

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, June 18, 2020

Hearing Room 301

1:00 PM

1:20-10543 Amerigrade Corp.

Chapter 11

#6.00 Status conference re: chapter 11 case

fr. 4/30/20

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **August 31, 2020.**

Deadline to mail notice of Bar Date: **June 30, 2020.**

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: **November 2, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on November 19, 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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 18, 2020

Hearing Room 301

1:00 PM

CONT... Amerigrade Corp.

Chapter 11

Party Information

Debtor(s):

Amerigrade Corp.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 18, 2020

Hearing Room 301

2:00 PM

1:10-17214 Darin Davis

Chapter 7

#7.00 Order to show cause why the court should not sanction Ray B. Bowen Jr. pursuant to Federal Rule of Bankruptcy Procedure 9011

fr. 3/19/20

Docket 409

Tentative Ruling:

In light of the affirmance of this Court's rulings by the Ninth Circuit Bankruptcy Appellate Panel and the Ninth Circuit Court of Appeals, and the adjudicated and potential additional liability of Asphalt Professionals, Inc. for payment of much of the debtor's attorneys' fees and costs, the Court will discharge the Order to Show Cause.

Appearances on June 18, 2020 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
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 18, 2020

Hearing Room 301

2:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#8.00 Motion re: objection to claim number 11 by Claimant Kolkel, Inc.,
Christopher Kolson and Debra Kolson

4/16/20

Docket 220

***** VACATED *** REASON: Order entered resolving the motion [doc.
388].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

MidiCi Group, LLC

Represented By
Douglas M Neistat
Yi S Kim
James R Felton
Jeremy H Rothstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

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; 11/6/19; 12/4/19; 1/8/20; 2/26/20; 4/15/20; 5/20/20

Stip to continue filed 6/23/20

Docket 30

***** VACATED *** REASON: continued to 7/29/20 at 9:30 am per order entered on 6/23/20 doc #45**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Ann Irvine

Represented By
Nathan A Berneman

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, June 24, 2020

Hearing Room 301

9:30 AM

1:18-10358 Jeffrey Lerner Stone

Chapter 13

#2.00 Motion for relief from stay [PP]

VW CREDIT LEASING. LTD
VS
DEBTOR

Docket 30

Matter Notes:

Movant _____

Respondent _____

Grant _____ Deny _____ Stip/AP _____

Opposition filed _____yes _____no

Moot _____ withdrawn _____ Deny F/F to appear _____

Continued _____

Submitted on the tentative _____

Order to be submitted by: Plaintiff/Movant - Defendant/Respondent - Court

Evidentiary Hearing _____

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

9:30 AM

CONT... Jeffrey Lerner Stone

Chapter 13

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):

Jeffrey Lerner Stone

Represented By
Steven L Bryson

Trustee(s):

Elizabeth (SV) 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 24, 2020

Hearing Room 301

9:30 AM

1:17-11962 Ruth Ann Brown

Chapter 13

#3.00 Motion for relief from stay [RP]

PINGORA LOAN SERVICING LLC
VS
DEBTOR

Docket 42

Matter Notes:

Movant _____

Respondent _____

Grant _____ Deny _____ Stip/AP _____

Opposition filed _____yes _____no

Moot _____ withdrawn _____ Deny F/F to appear _____

Continued _____

Submitted on the tentative _____

Order to be submitted by: Plaintiff/Movant - Defendant/Respondent - Court

Evidentiary Hearing _____

Tentative Ruling:

On June 9, 2020, the debtor filed a response to the motion for relief from the automatic stay [doc. 44]. The debtor did not include a declaration signed under penalty of perjury authenticating the evidentiary support for the assertions in the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

9:30 AM

CONT... Ruth Ann Brown
response.

Chapter 13

Party Information

Debtor(s):

Ruth Ann Brown

Represented By
Michael E Clark
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**

Wednesday, June 24, 2020

Hearing Room 301

1:30 PM

1:18-11900 Maryam Hadizadeh

Chapter 7

Adv#: 1:19-01009 Goldman v. Pavehzadeh et al

- #4.00** Pretrial 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, 11/20/19, 1/22/19; 3/18/20; 4/29/20(stip)

Stipulation to dismiss complaint filed 6/22/24

CROSS CLAIM

Shahnam Ebrahimi
vs
Houshang Pavehzadeh

FIRST AMENDED COUNTER-CLAIM

Shahnam Ebrahimi
vs
Amy Goldman

Docket 1

***** VACATED *** REASON: Order approving stip to dismiss entered
6/22/20.**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

1:30 PM

CONT... Maryam Hadizadeh

Chapter 7

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, June 24, 2020

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mor et al

- #5.00** Status conference re: amended complaint for:
1. Fraud and Intentional Deceit;
 2. Breach of the Covenant of Good Faith and Fair Dealing;
 3. Agency by Estoppel; and
 4. Financial Elder Abuse

fr. 10/2/19; 11/6/19(stip); 12/4/19; 03/18/20 (stip); 4/15/20(stip);
5/27/20 (stip);

STIP TO CONTINUE FILED 6/8/20 - jc

Docket 25

***** VACATED *** REASON: continued to 8/19/20 at 1:30 pm per order
entered on 6/9/20**

Matter Notes:

- NONE LISTED -

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

1:30 PM

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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

1:30 PM

1:19-11696 Peter M. Seltzer

Chapter 11

Adv#: 1:19-01151 Kessler v. Seltzer

#6.00 Status conference re: first amended complaint for the denial of discharge pursuant to 11 U.S.C. sec 727(a)(2), (a)(4) and (a)(5) and non-dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2), (a) (4) and (a)(6)

fr. 2/19/20; 4/8/20; 4/29/20

Docket 15

Matter Notes:

Discovery cutoff: _____

Last day to file pretrial motions and pretrial order: _____

Status Conference cont'd to: _____

Joint status Report due: _____

Motion for Default Judgement to be filed by: _____

Complete 1 day of mediation by: _____

Order appointing Mediator to be lodged by: _____

Pretrial Conference set for: _____

Trial set for: _____

Scheduling order to be lodged by: _____

Tentative Ruling:

The Court will set the defendant's motion to dismiss [doc. 25] for hearing at **2:30 p.m.**

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

1:30 PM

CONT... Peter M. Seltzer

Chapter 11

on August 5, 2020. The defendant must file and serve notice of the hearing on the plaintiff.

The Court also will continue this status conference to **2:30 p.m. on August 5, 2020.**

Appearances on June 24, 2020 are excused.

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

Defendant(s):

Peter M. Seltzer

Pro Se

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

#7.00 Motion to dismiss adversary proceeding pursuant to
Fed. R. Bankr. P. 7012 by defendant Robert Yaspan

fr. 5/20/20

Docket 4

Matter Notes:

Movant _____

Respondent _____

Grant _____ Deny _____ Stip/AP _____

Opposition filed _____yes _____no

Moot _____ withdrawn _____ Deny F/F to appear _____

Continued _____

Submitted on the tentative _____

Order to be submitted by: Plaintiff/Movant - Defendant/Respondent - Court

Evidentiary Hearing _____

Tentative Ruling:

The Court will continue the hearings on the motions to dismiss to **2:30 p.m. on July 1, 2020.**

Appearances on June 24, 2020 are excused.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Represented By
David D Samani

Elissa Miller

Represented By
Larry W Gabriel

Plaintiff(s):

Deborah Lois Adri

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, June 24, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

#8.00 Motion to dismiss adversary proceeding
by defendant Elissa D. Miller

fr. 5/20/20

Docket 6

Matter Notes:

Movant _____

Respondent _____

Grant _____ Deny _____ Stip/AP _____

Opposition filed _____yes _____no

Moot _____ withdrawn _____ Deny F/F to appear _____

Continued _____

Submitted on the tentative _____

Order to be submitted by: Plaintiff/Movant - Defendant/Respondent - Court

Evidentiary Hearing _____

Tentative Ruling:

See calendar no. 7.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Represented By
David D Samani

Elissa Miller

Represented By
Larry W Gabriel

Plaintiff(s):

Deborah Lois Adri

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, June 24, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

#9.00 Status conference re: complaint for:
1- Unjust Enrichment, 2- Breach of Fiduciary Duty,
3- Professional Negligence, 4- Fraudulent Concelament,
5- Fraudulent Misrepresentation, 6- Constructive Fraud,
7- Attorney's fees for the Tort of Another, 8- Disgorgement of fees,
9- Declaratory Judgment

fr. 4/8/20; 5/5/20; 5/20/20

Docket 1

Matter Notes:

Discovery cutoff: _____

Last day to file pretrial
motions and pretrial order: _____

Status Conference cont'd to: _____

Joint status Report due: _____

Motion for Default Judgement
to be filed by: _____

Complete 1 day of mediation by: _____

Order appointing Mediator
to be lodged by: _____

Pretrial Conference set for: _____

Trial set for: _____

Scheduling order to be lodged by: _____

Tentative Ruling:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

The Court will continue this status conference to **2:30 p.m. on July 1, 2020**, to be held with the continued hearings on the defendants' motions to dismiss.

Appearances on June 24, 2020 are excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Pro Se

Elissa Miller

Pro Se

Plaintiff(s):

Deborah Lois Adri

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, June 24, 2020

Hearing Room 301

2:30 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#10.00 Motion for dismissal of adversary case pursuant to F.R.C.P. Rule 12(b)(6) and F.R.B.P. Rule 7012 for failure to state a claim

Docket 6

Matter Notes:

Movant _____

Respondent _____

Grant _____ Deny _____ Stip/AP _____

Opposition filed _____yes _____no

Moot _____ withdrawn _____ Deny F/F to appear _____

Continued _____

Submitted on the tentative _____

Order to be submitted by: Plaintiff/Movant - Defendant/Respondent - Court

Evidentiary Hearing _____

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion.

I. BACKGROUND

On January 10, 2020, Husnutkin K. Zairov ("Defendant") filed a voluntary chapter 7 petition, initiating bankruptcy case 1:20-bk-10067-VK. On June 8, 2020, Defendant received a discharge [Bankruptcy Case, doc. 37]. On June 12, 2020, Defendant's

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT... Husnutkin K Zairov

Chapter 7

chapter 7 case was closed [Bankruptcy Case, doc. 40].

On March 23, 2020, Alexander Ermakov ("Plaintiff") filed a complaint against Defendant (the "§ 523 Complaint"), seeking nondischargeability of the debt owed to him pursuant to 11 U.S.C. §§ 523(a)(2) and (a)(4), initiating this adversary proceeding. In relevant part, the § 523 Complaint makes the following allegations:

In 2012, Plaintiff and Defendant orally agreed to go into business together. The agreement was that each party would be a 50% owner of the business, as well as that each party would contribute equally in terms of funds and efforts to be invested.

On February 7, 2012, Plaintiff and Defendant formed AAA Plus Limousine and Transportations Services Inc. (the "Company"). Plaintiff and Defendant were each 50% owners of the Company, and Defendant was also an officer and director of the Company.

After several months of operating the Company, Plaintiff noticed some irregularities and questioned Defendant regarding those irregularities. Defendant denied any wrongdoing, but continued to misrepresent and hide facts from Plaintiff. When Plaintiff persisted, Defendant wrongfully ousted Plaintiff from the Company and converted Plaintiff's shares in the Company to himself.

Defendant made statements to Plaintiff in Defendant's personal capacity and as an officer and director of the Company, knowing that the statements were false. Defendant did this with the intent to have Plaintiff rely on those statements in order to misappropriate Plaintiff's shares in the Company. At the time Defendant made the statements to Plaintiff, Defendant intended to defraud Plaintiff. Plaintiff relied on these statements. As a result of Defendant's fraud and misrepresentation, Plaintiff suffered damages in excess of \$117,800.

On July 15, 2015, Plaintiff filed a complaint against Defendant and the Company in the Superior Court of California, County of Los Angeles, for fraud, among other things (the "State Court Action"). In the State Court Action, Defendant appeared and filed an answer on his own

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT...

Husnutkin K Zairov

Chapter 7

behalf and on behalf of the Company. Defendant participated just enough in the litigation to slow down the proceedings, but never offered a coherent defense.

On April 14, 2017, Plaintiff obtained a default judgment at a prove-up hearing against all defendants in the State Court Action, in the amount of \$160,164.14 (the "Judgment"). Plaintiff's expert, Mr. Magidov, testified at the hearing in order to establish the value of the Company.

The § 523 Complaint states that the Judgment is attached as exhibit 1. However, the § 523 Complaint does not include any exhibits.

On April 24, 2020, Defendant filed a *Motion for Dismissal of Adversary Case Pursuant to F.R.C.P. Rule 12(b)(6) and F.R.B.P. Rule 7012 for Failure to State a Claim* (the "Motion") [doc. 6]. In the Motion, Defendant argues that the § 523(a)(2)(A) cause of action should be dismissed for failure to state a claim.

On June 10, 2020, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 10] and a request for judicial notice ("RJN") [doc. 11]. In the Opposition, Plaintiff argues that the Court should deny the Motion because issue preclusion applies to the § 523(a)(2)(A) cause of action.

The RJN includes the following documents: (a) the state court complaint [doc. 11, Exh. 1]; (b) Defendant's answer in the State Court Action [doc. 11, Exh. 2]; (c) a minute order from the State Court Action, dated January 21, 2015, which states that Defendant appeared pro per at a case management conference [doc. 11, Exh. 3]; (d) a substitution of attorney, dated May 6, 2015, which was filed in the State Court Action [doc. 11, Exh. 4]; (e) a minute order from the State Court Action, dated May 5, 2015, which states that an appearance counsel appeared at the matter on behalf of Defendant [doc. 11, Exh. 5]; (f) the first amended complaint in the State Court Action [doc. 11, Exh. 6]; and (g) the Judgment [doc. 11, Exh. 7].

The first amended complaint in the State Court Action [doc. 11, Exh. 6], which was the operative complaint, makes many of the allegations as the § 523

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT... Husnutkin K Zairov

Chapter 7

Complaint. However, it makes further allegations regarding Defendant's alleged statements and conduct.

In relevant part, the Judgment [doc. 11, Exh. 7] [FN1] makes the following findings as to Defendant:

4. Defendants Husnutdin Zairov ousted Plaintiff Alexander Ermakov from [the Company] and converted Plaintiff Alexander Ermakov's shares in the Company to himself.

5. Defendant Husnutdin Zairov made statements to Plaintiff Alexander Ermakov and others, in his personal capacity and as an officer and director of [the Company] knowing that these statements were false and did so with the intent to have Plaintiff rely upon those statements in order for the [d]efendants, and each of them, to misappropriate Plaintiff Alexander Ermakov's shares in the Company. At the time Defendant Husnutdin Zairov made these false statements he intended to defraud Plaintiff Alexander Ermakov. Plaintiff Alexander Ermakov relied upon these false statements.

...

7. The Court further finds that Defendant Husnutdin Zairov is guilty of oppression, malice and fraud with respect to the second cause of action for Breach of Fiduciary Duty and the fourth cause of action for Conversion.

The Judgment was entered in favor of Plaintiff and against Defendant and the Company on four causes of action, including fraud. The state court awarded Plaintiff the following damages: (a) \$93,000 in compensatory damages for the fraud cause of action; (b) \$9,800 in prejudgment interest; (c) \$5,871.67 in court costs; (d) \$34,992.47 in attorneys' fees; and (e) \$1,500 in court-imposed sanctions. Defendant and the Company are jointly and severally liable for those damages. The state court also awarded Plaintiff \$15,000 in punitive damages against Defendant. Defendant did not timely file a reply to the Opposition.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT... Husnutkin K Zairov

Chapter 7

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); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009)). "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 555 (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

"A complaint that merely recites statutory language fails to state a claim under Rule 12(b)(6)." *In re Kubick*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994). This is because "mere statutory language does not plead facts sufficiently so that they may be answered or denied." *Id.* "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Id.*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT... Husnutkin K Zairov

Chapter 7

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. Request for Judicial Notice

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.").

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT... Husnutkin K Zairov

Chapter 7

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).

In the RJN, Plaintiff requests that the Court take judicial notice of several documents that were filed in the State Court Action. As these documents are all court filings, the Court may properly take judicial notice of the requested documents under Federal Rule of Evidence 201.

In addition, the Court may treat the Judgment as part of the § 523 Complaint, and therefore, assume that its contents are true for purposes of the Motion. The § 523 Complaint refers to the Judgment, it is central to Plaintiff's claim, *i.e.*, the Judgment is nondischargeable, and Defendant did not object to its authenticity. Accordingly, for purposes of the Motion, the Court may consider the allegations in the § 523 Complaint and the Judgment in determining whether Plaintiff has stated a claim for relief.

C. 11 U.S.C. § 523(a)(2)(A)

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the 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;
- (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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT...

Husnutkin K Zairov

debtor's statement or conduct

Chapter 7

In re Weinberg, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

i. 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 also can be considered fraudulent when the promisor knew or should have known of his inability to perform. *In re Barrack*, 217 B.R. 598, 606 (B.A.P. 9th Cir. 1998). A promise to perform in the future is not a false representation or false pretense unless the debtor did not have intent to perform at the time he made the representation. *Matter of Bercier*, 934 F.2d 689, 691-92 (5th Cir. 1991) ("A mere promise to be executed in the future is not sufficient to make a debt nondischargeable, even though there is no excuse for the subsequent breach.") (citations omitted).

ii. Justifiable Reliance

To satisfy the reliance requirement of § 523(a)(2)(A), a plaintiff must show "justifiable" reliance, not "reasonable reliance." *Field v. Mans*, 516 U.S. 59, 74-75, 116 S. Ct. 437, 133 L. Ed. 2d 351 (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.

iii. 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). "Further, as the Supreme Court explained in *Field*, a court may turn to the Restatement (Second) of Torts (1976), 'the most widely accepted distillation of the common law of torts,' for guidance on this issue." *In re Russell*, 203 B.R. 303, 313 (Bankr. S.D. Cal. 1996) (citing to *Field*, 516 U.S. at 70).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT... Husnutkin K Zairov

Chapter 7

"Turning to the Restatement, proximate cause entails (1) causation in fact, which requires a defendant's misrepresentations to be a 'substantial factor in determining the course of conduct that results in [the plaintiff's] loss,' § 546; and (2) legal causation, which requires the plaintiff's loss to have been 'reasonably expected to result from the reliance,' § 548A. In determining the presence of proximate cause, however, courts must refrain from relying on speculation to determine whether and to what extent a creditor would have suffered a loss absent fraud. *Id.* (citing to *In re Siriani*, 967 F.2d 302, 306 (9th Cir. 1992)).

iv. Discussion

Plaintiff alleges that Defendant committed fraud and relies on the Judgment to satisfy the elements of 11 U.S.C. § 523(a)(2)(A). Because Plaintiff is alleging fraud, the § 523 Complaint must also meet the heightened pleading standard in Rule 9(b).

Regarding the first element, neither the § 523 Complaint nor the Judgment specify what misrepresentations Defendant made to Plaintiff. The § 523 Complaint and the Judgment merely recite that Defendant made statements to Plaintiff that were false, without specifying what those statements were. In order to meet the heightened pleading standard of Rule 9(b), the § 523 Complaint must state with particularity the circumstances constituting the fraud. The § 523 Complaint does not do so. Accordingly, the § 523 Complaint does not satisfy the first element of § 523(a)(2)(A).

Regarding the second and third elements, the § 523 Complaint and the Judgment state that Defendant knew the statements were false, and that Defendant made the false statements intending to defraud Plaintiff. Pursuant to Rule 9(b), intent and knowledge may be alleged generally. As such, Plaintiff has alleged sufficient facts to satisfy the second and third elements § 523(a)(2)(A).

Regarding the fourth element, the § 523 Complaint and the Judgment state a legal conclusion that Plaintiff relied on the statements made by Defendant. 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. The § 523 Complaint and the Judgment do not allege sufficient factual allegations regarding Plaintiff's justifiable reliance on Defendant's alleged misrepresentations. Accordingly, the Complaint does not satisfy the fourth element of § 523(a)(2)(A).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT... Husnutkin K Zairov

Chapter 7

Regarding the fifth element, in the § 523 Complaint, Plaintiff alleges that he was damaged in excess of \$117,800 as a result of Defendant's alleged misrepresentations. Additionally, the Judgment awards Plaintiff damages from Defendant based on the fraud of action. As such, Plaintiff has alleged sufficient facts to satisfy the fifth element § 523(a)(2)(A).

Based on the foregoing, the § 523 Complaint and the Judgment do not contain sufficient factual allegations to state a claim to relief that is plausible on its face under 11 U.S.C. § 523(a)(2)(A) and satisfy Rule 9(b). However, the deficiencies in the § 523 Complaint may be cured by amendment. Accordingly, the Court will grant the Motion with leave to amend.

D. Issue Preclusion

In the Opposition, Plaintiff argues that the Motion should be denied because issue preclusion applies to this adversary proceeding to bar relitigation of the issues decided in the State Court Action.

"A bankruptcy court may rely on the issue preclusive effect of an existing state court judgment In so doing, the bankruptcy court must apply the forum state's law of issue preclusion." *In re Plyam*, 2015 WL 2124780, at *3 (B.A.P. 9th Cir. May 5, 2015); *see also* 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments).

"The party asserting preclusion bears the burden of establishing the threshold requirements." *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001). "This means providing 'a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action.'" *Plyam*, at *3 (quoting *In re Kelly*, 182 B.R. 255, 258 (B.A.P. 9th Cir. 1995), *aff'd*, 100 F.3d 110 (9th Cir. 1996)). "Any reasonable doubt as to what was decided by a prior judgment should be resolved against allowing the [issue preclusive] effect." *Kelly*, at 258.

The requirements for issue preclusion in California are:

- (1) the issue sought to be precluded from relitigation is identical to that decided in

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT...

Husnutkin K Zairov

Chapter 7

a former proceeding;

- (2) the issue was actually litigated in the former proceeding;
- (3) the issue was necessarily decided in the former proceeding;
- (4) the decision in the former proceeding is final and on the merits; and
- (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

In re Harmon, 250 F.3d at 1245 (citing to *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990)).

At this stage, the Court need not determine whether issue preclusion applies. On a Rule 12(b)(6) motion, the Court assesses the sufficiency of the allegations in the complaint to state a claim to relief that is plausible on its face. The Court's review is limited to the contents of the complaint and the attached exhibits. As discussed above, the § 523 Complaint and the Judgment do not contain sufficient allegations regarding the circumstances constituting fraud and Plaintiff's justifiable reliance.

III. CONCLUSION

The Court will grant the Motion with leave to amend.

Plaintiff will have 14 days from the date of the hearing to file and serve on Defendant and his counsel an amended complaint, or to file and serve notice on Defendant and his counsel that Plaintiff will not do so.

Defendant must submit the order within seven (7) days.

Footnotes

1. The caption of the Judgment states that it a proposed final judgment. Also, it is not a certified copy. In the declaration attached to the RJN, Plaintiff's counsel states that he was unable to obtain a certified copy of the Judgment because the Superior Court of California, County of Los Angeles was closed because of the COVID-19 pandemic [Declaration of Deian V. Kazachki, ¶ 7]. Plaintiff's counsel further states that on May 23, 2020, he mailed a request for

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT...

Husnutkin K Zairov

Chapter 7

a certified copy of the Judgment to the state court. *Id.* at ¶ 8. As of June 9, 2020, Debtor's counsel states that he had not received the certified copy. *Id.* Because Defendant has not objected to the authenticity of the Judgment, for purposes of this Motion, the Court will consider it to be the final judgment from the state court.

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Represented By
Elena Steers

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

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 24, 2020

Hearing Room 301

2:30 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#11.00 Status Conference Re: Complaint to determine dischargeability
and objection to discharge

fr. 5/13/20; 5/20/20

Docket 1

Matter Notes:

Discovery cutoff: _____

Last day to file pretrial
motions and pretrial order: _____

Status Conference cont'd to: _____

Joint status Report due: _____

Motion for Default Judgement
to be filed by: _____

Complete 1 day of mediation by: _____

Order appointing Mediator
to be lodged by: _____

Pretrial Conference set for: _____

Trial set for: _____

Scheduling order to be lodged by: _____

Tentative Ruling:

- NONE LISTED -

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 24, 2020

Hearing Room 301

2:30 PM

CONT... Husnutkin K Zairov

Chapter 7

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Pro Se

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 25, 2020

Hearing Room 301

1:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#1.00 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);
12/12/19; 1/23/20; 3/26/20(stip); 4/9/20

Docket 1

Tentative Ruling:

On June 1, 2020, the debtor timely filed a second amended chapter 11 plan [doc. 256] and related disclosure statement [doc. 258]. The Court intends to set a hearing on the adequacy of the debtor's proposed disclosure statement on **August 13, 2020 at 1:00 p.m.** In accordance with Local Bankruptcy Rule 3017-1, **no later than July 1, 2020**, 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 debtor did not timely file his May 2020 monthly operating report. Has the debtor paid the United States Trustee quarterly fees for the first quarter of 2020?

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, June 25, 2020

Hearing Room 301

1:00 PM

1:20-10093 Robert Alderman and Noni Alderman

Chapter 7

#2.00 U.S. Trustee's motion to disgorge compensation pursuant to 11 U.S.C. § 329
fr. 3/26/20(stip), 4/30/20(stip)

Stip resolving matter filed 6/11/20

Docket 41

***** VACATED *** REASON: Order resolving matter entered 6/16/20 [doc. 87].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Alderman

Represented By
Stephen L Burton

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 25, 2020

Hearing Room 301

2:00 PM

1:11-11603 Kevan Harry Gilman

Chapter 7

#3.00 Judgment Creditors Motion Assignment Order and Restraining Order

fr. 5/14/20; 5/21/20

Docket 735

Tentative Ruling:

I. BACKGROUND

At the last hearing, the Court requested that Tammy Phillips and Tammy Phillips, a Prof. Law Corp. ("Creditors"), file a supplemental brief regarding whether Kevan Harry Gilman ("Debtor") waived his right to claim an exemption in any "Covid-19 economic stimulus checks/payments from the federal government to Debtor," including the stimulus check that Debtor may qualify for under the Coronavirus Aid, Relief, and Economic Security Act (the "Stimulus Check").

On May 28, 2020, Creditors filed a supplemental brief (the "Brief") [doc. 746]. In the Brief, Creditors assert that Debtor waived his right to an exemption by failing to claim one within three days of the hearing on their motion pursuant to California Code of Civil Procedure ("CCP") § 708.550. Creditors also argue that Debtor has waived his right to claim an exemption in any future Covid-19 related federal stimulus payments. Finally, if Debtor is provided with a Stimulus Check, Creditors expressed opposition to the Court's proposed procedure for Creditors to receive the Stimulus Check. [FN1]. Debtor did not file a response to the Brief.

II. ANALYSIS

Pursuant to CCP § 708.550—

- (a) The judgment debtor may claim that all or a portion of the right to payment is exempt from enforcement of a money judgment by application to the court on noticed motion filed not later than three days before the date set for the hearing on the judgment creditor's application for an assignment order. The judgment debtor shall execute an affidavit in support of the application that includes all of the matters set forth in subdivision (b) of Section 703.520. Failure of the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 25, 2020

Hearing Room 301

2:00 PM

CONT...

Kevan Harry Gilman

Chapter 7

judgment debtor to make a claim of exemption is a waiver of the exemption.

- (b) The notice of the motion shall be personally served on the judgment creditor not later than three days before the date set for the hearing.
- (c) The court shall determine any claim of exemption made pursuant to this section at the hearing on issuance of the assignment order.

Creditors did not reference CCP § 708.550 anywhere in the original motion or their reply to Debtor's declaration. Nevertheless, because Debtor did not claim an exemption in his original declaration or in response to the Brief, the Court will allow Creditors to attach the Stimulus Check without providing additional time for Debtor to claim an exemption. Under CCP § 708.550(a), Debtor has waived any claim of an exemption in the Stimulus Check.

The Court will not rule on whether Creditors have a right to attach any future Covid-19 related federal stimulus payments issued to Debtor. "The exercise of judicial power under Art. III of the Constitution depends on the existence of a case or controversy and a federal court lacks the power to render advisory opinions." *U.S. Nat. Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 446, 113 S.Ct. 2173, 2178, 124 L.Ed.2d 402 (1993) (internal quotations omitted). "A court's role is 'neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with the powers granted [by the] Constitution.'" *Potrero Hills Landfill, Inc. v. Cty. of Solano*, 868 F.Supp.2d 1007, 1013 (E.D. Cal. 2012) (quoting *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1123 (9th Cir. 2009)); see also *Thomas v. Union Carbide Agric. Prod., Co.*, 473 U.S. 568, 580–81, 105 S.Ct. 3325, 87 L.Ed.2d 409 (1985) (courts should refrain from deciding cases that "involve contingent future events that may not occur as anticipated, or indeed may not occur at all"). "For example, a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Bova v. City of Medford*, 564 F.3d 1093, 1096 (9th Cir. 2009) (internal quotations omitted).

Congress has yet to pass any legislation providing for additional Covid-19 related stimulus payments to individual taxpayers. Before the issue of Creditors' right to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 25, 2020

Hearing Room 301

2:00 PM

CONT... Kevan Harry Gilman

Chapter 7

attach future, hypothetical Covid-19 related federal stimulus payments is ripe, the Court will not issue an advisory opinion. Without knowing the contours of any such future legislation, the Court is unable to rule on either Creditors' or Debtor's rights vis-à-vis a future stimulus payment which may be issued to Debtor.

Finally, Creditors challenge the Court's proposed procedure for collection of the Stimulus Check, i.e., to obtain the Stimulus Check directly from the United States government. [FN2]. This alternative was suggested to address Creditors' concern that Debtor will dissipate the Stimulus Check, instead of providing it to Creditors.

If Creditors prefer to wait until Debtor receives a Stimulus Check, and then have Debtor forward the Stimulus Check to them (despite their concerns about Debtor's compliance), the Court will instead order Debtor to indorse the Stimulus Check to Creditors and/or their assignees, as requested by Creditors.

III. CONCLUSION

The Court will order that, if Debtor receives a Stimulus Check, Debtor must indorse the Stimulus Check to "Charles Jakob, Attorney, for the benefit of Tammy Phillips and Tammy R. Phillips, a Professional Corporation or their assignees of record."

Creditors must submit an order within seven (7) days.

FOOTNOTES

1. Creditors also argue that the Court should have set their original motion for hearing on an earlier date, noting that "[b]y delaying its ruling, the Court is almost certainly rendering the motion worthless." Brief, p. 5. However, a "trial court possesses the inherent power to control its own docket and calendar," and Creditors did not set forth a reasonable basis to have a hearing set on shortened notice, in connection with pending legislation. Subsequently, the Court continued the hearing on this matter because, at the initial hearing on this motion, for the first time, Creditors referenced CCP § 708.550; the Court required sufficient time to assess the application of that statute to this matter.

2. Creditors state that the Court did not advise Creditors which agency to serve

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 25, 2020

Hearing Room 301

2:00 PM

CONT...

Kevan Harry Gilman

Chapter 7

with the Court's order granting their motion. The Court cannot provide legal advice to Creditors regarding proper service. Creditors are represented by counsel whose role it is to research such issues.

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 25, 2020

Hearing Room 301

2:00 PM

1:14-14573 Hector Aguilar and Rosa Aguilar

Chapter 7

#4.00 Motion to avoid lien under 11 U.S.C. sec 522(f) (Real Property) with Citibank, N.A.

Docket 28

Tentative Ruling:

For the reasons discussed below, the Court will continue this hearing to **July 23, 2020 at 2:00 p.m.**

On April 27, 2020, the debtors filed a *Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* (the "Motion") [doc. 28]. After reviewing the Motion, the Court determined that service of the Motion was not proper under Fed. R. Bankr. P. 7004(h). Accordingly, the Court set the Motion for hearing [doc. 31] and ordered the debtors to serve Citibank, National Association in accordance with Fed. R. Bankr. P. 7004(h), with the Motion, notice of the hearing and deadline to file a response.

On May 27, 2020, the debtors filed a *Declaration of Brigitte Lopez re: Proof of Service of Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f) of Citibank N.A.* [doc. 34]. In that declaration, a secretary at the debtor's counsel's firm states that on May 26, 2020, she served a copy of the Motion to Citibank, National Association by certified mail addressed to an officer of the institution.

On May 27, 2020, the debtors also filed a notice of hearing on the Motion [doc. 33]. The notice indicates that the deadline to file an opposition is June 25, 2020, the date of the hearing. Additionally, the notice was served via United States mail; not certified as required by Fed. R. Bankr. P. 7004(h).

As service of the notice and deadline to file a response were not proper under Fed. R. Bankr. P. 7004(h) and Local Bankruptcy Rule 9013-1(f), the Court will continue this hearing to **July 23, 2020 at 2:00 p.m.** By **July 2, 2020**, the debtor must serve notice of the continued hearing and deadline to file a response, *i.e.* fourteen days prior to the hearing on Citibank, National Association in accordance with Fed. R. Bankr. P. 7004(h).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 25, 2020

Hearing Room 301

2:00 PM

CONT... Hector Aguilar and Rosa Aguilar

Chapter 7

Appearances on June 25, 2020 are excused.

Party Information

Debtor(s):

Hector Aguilar

Represented By
Bernal P Ojeda
Leon D Bayer

Joint Debtor(s):

Rosa Aguilar

Represented By
Bernal P Ojeda
Leon D Bayer

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 25, 2020

Hearing Room 301

2:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#5.00 Motion for final decree and order closing chapter 11 case

Docket 202

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):

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 25, 2020

Hearing Room 301

2:00 PM

1:20-10543 Amerigrade Corp.

Chapter 11

#6.00 Application of Debtor and Debtor-In-Possession for authority to employ Resnik Hayes Moradi LLP as its general bankruptcy counsel effective as of May 21, 2020

Docket 41

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):

Amerigrade Corp.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 25, 2020

Hearing Room 301

2:00 PM

1:20-11048 7171 Bowling Drive, LLC

Chapter 11

#7.00 Motion for Authority for Interim Use of Cash Collateral

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

7171 Bowling Drive, LLC

Represented By
Douglas M Neistat

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 25, 2020

Hearing Room 301

2:00 PM

1:20-11047 4433 Florin Road, LLC

Chapter 11

#8.00 Motion for authority for interim use of cash collateral

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

4433 Florin Road, LLC

Represented By
Douglas M Neistat

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

9:30 AM

1:17-12010 Enrique De Leon and Evelia De Leon

Chapter 13

#1.00 Motion for relief from stay [PP]

ACAR LEASING LTD
VS
DEBTOR

Docket 35

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to 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):

Enrique De Leon

Represented By
D Justin Harelik

Joint Debtor(s):

Evelia De Leon

Represented By
D Justin Harelik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

9:30 AM

CONT... Enrique De Leon and Evelia De Leon

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 1, 2020

Hearing Room 301

9:30 AM

1:19-12851 Neil Iain Barrington Taffe

Chapter 13

#2.00 Amended Motion for relief from stay [RP]

WILMINGTON TRUST, NA
VS
DEBTOR

Docket 49

Tentative Ruling:

The Court will continue this hearing to **July 29, 2020 at 9:30 a.m.**

On June 5, 2020, movant filed a motion for relief from stay as to real property located in Las Vegas, Nevada (the "Motion") [doc. 39]. In the Motion, movant states that cause exists to grant relief from stay because postpetition mortgage payments have not been made. Subsequently, the debtor's chapter 13 case was converted to one under chapter 7 [doc. 42].

On June 19, 2020, movant filed an amended motion for relief from stay (the "Amended Motion") [doc. 49]. In the Amended Motion, movant states that cause exists to grant relief for stay because movant's interest in the Las Vegas property is not protected by an adequate equity cushion.

Pursuant to Local Bankruptcy Rule ("LBR") 4001-1(c) and 9013-1(d), a motion for relief from stay must be filed and served not later than 21 days before the hearing date. Movant did not file and serve the Amended Motion at least 21 days before the hearing.

Accordingly, the Court will continue this hearing to **July 29, 2020 at 9:30 a.m. No later than July 8, 2020**, movant must file and serve notice of the continued hearing and deadline to file a response, *i.e.*, fourteen days prior to the continued hearing, on all parties required under LBR 4001-1(c).

Appearances on July 1, 2020 are excused.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

9:30 AM

CONT... Neil Iain Barrington Taffe

Chapter 13

Debtor(s):

Neil Iain Barrington Taffe

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, July 1, 2020

Hearing Room 301

9:30 AM

1:20-10971 Benjamin Marsh

Chapter 13

#3.00 Motion for relief from stay [RP]

COVE GLOBAL ASSET MANAGEMENT
VS
DEBTOR

Docket 16

Tentative Ruling:

Deny.

On June 10, 2020, Cove Global Asset Management, LLC ("Movant") filed a motion for relief from stay as to vacant real property located in Los Angeles, California (the "Motion") [doc. 16]. In the Motion, Movant requests relief pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4).

On June 17, 2020, the debtor filed an opposition to the Motion (the "Opposition") [doc. 19]. In the Opposition, the debtor details his history of ownership of the subject property. Given the debtor's history with respect to the subject property and the prospect that the debtor may amend his proposed chapter 13 plan, the Court does not find that this case was filed in bad faith. Accordingly, the Court will deny Movant's request for relief under 11 U.S.C. § 362(d)(4).

In the Motion, Movant states that the amount of its claim with respect to the subject property is \$44,182.20. Attached to the Motion as exhibit 2 is the debtor's schedule A/B. In his schedule A/B, the debtor indicated that the subject property is valued at \$125,000. Movant did not present conflicting evidence regarding valuation. Movant also did not provide evidence that the fair market value of the property is declining.

Given the significant equity cushion in the property, it appears that Movant is adequately protected. Accordingly, the Court will deny Movant's request for relief under 11 U.S.C. § 362(d)(1).

Respondent must submit the order within seven (7) days.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

9:30 AM

CONT... Benjamin Marsh

Chapter 13

Debtor(s):

Benjamin Marsh

Represented By
Natalya Vartapetova

Trustee(s):

Elizabeth (SV) 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 1, 2020

Hearing Room 301

9:30 AM

1:20-11045 Joe Lopez, Jr.

Chapter 13

#4.00 Motion for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

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):

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**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#5.00 Plaintiff's motion for summary judgment as to defendants Susan Biddle and Susan Biddle, Trustee of the Biddle 2018 Family Trust, dated November 16, 2018 or, in the alternative, summary of adjudication of issues

fr. 5/27/20;

Docket 34

Tentative Ruling:

The Court will continue the hearing on the motion to **2:30 p.m. on July 22, 2020.**

Appearances on July 1, 2020 are excused.

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
Howard Camhi

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

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, July 1, 2020

Hearing Room 301

2:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#6.00 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; 8/7/19; 4/15/20; 6/17/20(stip)

Docket 7

Tentative Ruling:

The Court will continue the status conference to **2:30 p.m. on July 22, 2020.**

Appearances on July 1, 2020 are excused.

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Susan Biddle

Pro Se

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

#7.00 Motion to dismiss adversary proceeding pursuant to
Fed. R. Bankr. P. 7012 by defendant Robert Yaspan

fr. 5/20/20; 6/24/20

Docket 4

Tentative Ruling:

See calendar no. 8.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Represented By
David D Samani

Elissa Miller

Represented By
Larry W Gabriel

Plaintiff(s):

Deborah Lois Adri

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, July 1, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

#8.00 Motion to dismiss adversary proceeding
by defendant Elissa D. Miller

fr. 5/20/20; 6/24/20

Docket 6

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

A. Relevant Bankruptcy Events

On February 16, 2018, Deborah Lois Adri ("Debtor") filed a voluntary chapter 11 petition. In her schedule E/F, filed with her petition, Debtor scheduled a claim in favor of the Internal Revenue Service (the "IRS") and indicated that \$526,400 of the claim was entitled to priority treatment. Debtor did not designate the claim as disputed, contingent or unliquidated. On February 28, 2018, the IRS filed a proof of claim against the estate in the total amount of \$634,833.87. In the proof of claim, the IRS indicated that \$510,840.42 of its claim was subject to 11 U.S.C. § 507(a)(8).

On April 13, 2018, the Court entered an order approving Robert Yaspan as general bankruptcy counsel as of the petition date [Bankruptcy Docket, doc. 53]. On February 7, 2019, Debtor filed a Substitution of Attorney [Bankruptcy Docket, doc. 275], terminating Mr. Yaspan's representation. On February 8, 2019, the Court entered an order appointing a chapter 11 trustee [Bankruptcy Docket, doc. 278]. On April 8, 2019, the Court converted Debtor's case to a chapter 7 case [Bankruptcy Docket, doc. 305]. Elissa Miller was appointed the chapter 7 trustee (the "Trustee").

Aside from the adversary proceedings discussed below, on July 23, 2019, the Trustee filed a complaint against Debtor, requesting denial of Debtor's discharge under 11 U.S.C. § 727(a)(2)(A) and (a)(3) (the "Discharge Action") [1:19-ap-01088-VK].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

B. The Trustee's Adversary Proceeding against Mr. Yaspan

On October 24, 2019, the Trustee filed a complaint against Mr. Yaspan, initiating adversary 1:19-ap-01128-VK (the "Trustee Action"). In the operative complaint, the Trustee asserted claims for: (A) malpractice based on Mr. Yaspan's alleged failure to advise Debtor regarding the tax consequences of Debtor's petition date; (B) malpractice based on failure to advise Debtor properly, which led to, among other things, the Trustee filing the Discharge Action; and (C) breach of fiduciary duty based on Mr. Yaspan's alleged conduct during the pendency of the chapter 11 case.

Mr. Yaspan filed a motion to dismiss the Trustee Action, asserting, in relevant part, that the Trustee lacks standing to sue Mr. Yaspan [1:19-ap-01128-VK, doc. 28]. On May 6, 2020, the Court held a hearing on Mr. Yaspan's motion and held, in relevant part, that the Trustee has exclusive standing to sue on the malpractice claim based on the tax consequences and the breach of fiduciary duty claim (the "Trustee Action Ruling") [1:19-ap-01128-VK, doc. 35]. The Court also dismissed the Trustee's malpractice claim based on the Discharge Action, holding that it was not ripe for adjudication.

C. This Adversary Proceeding

On February 6, 2020, Debtor filed a complaint against Mr. Yaspan and the Trustee (the "Complaint"). Like the Trustee, Debtor asserts claims for malpractice and breach of fiduciary duty against Mr. Yaspan. In addition, Debtor claims Mr. Yaspan was unjustly enriched by Debtor's payment of \$25,000 in legal fees, requests disgorgement of those funds and asserts claims for fraudulent concealment and constructive fraud, based on Mr. Yaspan's alleged concealment of case developments from Debtor. Finally, Debtor asserts a claim for attorneys' fees incurred because she hired another law firm as a result of Mr. Yaspan's alleged conduct.

On March 9, 2020, Mr. Yaspan filed a motion to dismiss the Complaint (the "Yaspan Motion") [doc. 4]. On the same day, the Trustee filed a motion to dismiss the Complaint (the "Trustee Motion") [doc. 6]. In the Trustee Motion, the Trustee asserts that Debtor does not have standing to pursue her claims. Alternatively, the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Trustee requests that this action be abated until resolution of the other adversary proceedings related to Debtor's case or that this action be consolidated with the Trustee Action.

On June 10, 2020, Debtor filed oppositions to the Trustee Motion and the Yaspan Motion (the "Oppositions") [docs. 14, 15]. In response to the Trustee Motion, Debtor asserts that she has standing because her malpractice claim arose post-*conversion*, when: (1) the Trustee filed the Discharge Action to revoke Debtor's discharge based on Mr. Yaspan's alleged conduct; and (2) Debtor learned her tax liability would not be discharged. Debtor further argues that the malpractice claim against Mr. Yaspan is personal to Debtor and relates solely to Mr. Yaspan's representation of Debtor.

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 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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT... **Deborah Lois Adri**
1937, 173 L.Ed.2d 868 (2009)).

Chapter 7

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). 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). Under the "incorporation by reference" doctrine, a court may look beyond the four corners of the complaint to take into account documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012). The court "may treat the referenced 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.*, quoting *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. The Breach of Fiduciary Duty, Unjust Enrichment, Disgorgement and Fraud-Based Claims

Pursuant to 11 U.S.C. § 541(a), the commencement of a bankruptcy case creates an

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

estate comprised of the following property—

- (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.
...
- (7) Any interest in property that the estate acquires after the commencement of the case.

Pursuant to 11 U.S.C. § 323—

- (a) The trustee in a case under this title is the representative of the estate.
- (b) The trustee in a case under this title has capacity to sue and be sued.

"The scope of section 541 is broad, and includes causes of action." *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 707 (9th Cir.1986) (citing *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983)). In chapter 11 cases, where the debtor is an individual, in addition to prepetition causes of action held by the debtor pursuant to 11 U.S.C. § 541(a)(1), the estate includes "all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7...." 11 U.S.C. § 1115(a)(1) (emphasis added).

"[B]y reason of section 541(a)(7), the bankruptcy estate in Chapter 7 will continue to include the property interests that section 1115 incorporated into the estate during the pendency of Chapter 11." *In re Schichtel*, 556 B.R. 90, 92–93 (Bankr. W.D.N.Y. 2016); see also *In re Roussos*, 2016 WL 5349717, at *5 (Bankr. C.D. Cal. 2016) (citing 11 U.S.C. § 348(d); "in a case that has been converted from Chapter 11 to Chapter 7, claims against the debtor or the estate that arise post-petition but pre-conversion are treated as though they had arisen pre-petition."). Upon conversion, breach of fiduciary duty and malpractice claims against counsel to a debtor in possession, which arise during a chapter 11 case, pass to the chapter 7 trustee. See, e.g. *In re R & R Assocs. of Hampton*, 402 F.3d 257, 265 (1st Cir. 2005).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

"The bankruptcy code endows the bankruptcy trustee with the *exclusive* right to sue on behalf of the estate." *Estate of Spirtos v. One San Bernardino Cty. Superior Court*, 443 F.3d 1172, 1176 (9th Cir. 2006) (emphasis added). "The debtor can pursue such claims only if they are abandoned by the estate." *In re Meehan*, 2014 WL 4801328, at *4 (B.A.P. 9th Cir. 2014) (citing 11 U.S.C. § 554).

With respect to Debtor's breach of fiduciary duty and fraud-based claims, Mr. Yaspan's representation of Debtor ended on February 7, 2019, when Debtor substituted new counsel in place of Mr. Yaspan. The Court did not convert Debtor's case until April 8, 2019, and the allegations relevant to these claims occurred *prior* to conversion of Debtor's case to a chapter 7 case. Consequently, the claims belong to the chapter 7 estate.

The same is true for Debtor's claims for disgorgement and unjust enrichment. Debtor does not allege that she paid Mr. Yaspan after the Court's appointment of a chapter 11 trustee. If Debtor seeks to recover payments she made to Mr. Yaspan either prepetition or during her time as the debtor in possession, those claims have passed to the Trustee. Consequently, the Court will dismiss these claims, with prejudice, for lack of standing.

C. The Malpractice Claim

The parties expend most of their effort discussing the accrual of legal malpractice claims. Debtor first cites *In re Holcomb*, 2018 WL 1976526 (B.A.P. 9th Cir. Apr. 25, 2018), for the proposition that the malpractice claim is personal to Debtor and not property of the estate. However, in *Holcomb*, the allegations regarding malpractice involved the attorney's representation of the debtor during the chapter 7 portion of the case. *Holcomb*, 2018 WL 1976526, at *7. In deciding that the bankruptcy court lacked subject matter jurisdiction over the malpractice claim, the Bankruptcy Appellate Panel of the Ninth Circuit stated:

Debtor's allegations against [the attorney] *pertain solely to his representation as her chapter 7 private attorney*. As such, [the attorney's] duties and representation of Debtor did not involve the administration of the bankruptcy estate as that was the chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

trustee's role. Accordingly, Debtor's claims against [the attorney] do not impact the handling and administration of her estate and thus are easily separable from the bankruptcy case.

Id. (emphasis added). As such, *Holcomb* is inapposite; here, Debtor substituted counsel in place of Mr. Yaspan prior to conversion of Debtor's case, and Mr. Yaspan represented Debtor only during Debtor's status as the debtor in possession.

Debtor then cites several unpublished cases as support for Debtor's contention that Debtor did not suffer "actual injury" by the petition date, and thus the malpractice claims are not property of the estate. In *In re Riche* [2:17-ap-01526-ER, doc. 19], the chapter 7 debtors sued their bankruptcy attorney for malpractice. In connection with filing their chapter 7 petition, the debtors alleged that the attorney assured them their home was not at risk of liquidation. However, the attorney failed to conduct a title search, which would have shown that one of the deeds of trust at issue had not been recorded. Consequently, there would be non-exempt equity for the chapter 7 trustee to recover. The chapter 7 trustee did sell the property.

In deciding whether the malpractice claim was property of the estate, the bankruptcy court referred to *Budd v. Nixen*, 6 Cal.3d 195, 200, 491 P.2d 433 (1971). Relying on *Budd*, the court held:

Nothing about the filing of the petition made the future sale of Plaintiffs' home inevitable. It is possible that the Trustee could have elected not to administer the home; that Plaintiffs' former bankruptcy counsel could have negotiated a stipulation with the Trustee to provide for dismissal of the case; or that counsel could have devised some other strategy to prevent the sale of the home. Thus, as of the date of the petition, the only injury to Plaintiffs was contingent and speculative.

Riche, p. 6. *In re Lipel* [1:19-ap-01041-MT, doc. 97] also involved an attorney's representation of a chapter 7 debtor. [FN1]. As a result, neither of these cases involve application of 11 U.S.C. § 1115(a).

On the other hand, *Lipel* did involve a malpractice claim based on the timing of the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT... **Deborah Lois Adri**

Chapter 7

debtor's bankruptcy filing, and the resulting nondischargeability of tax debt. There, the court stated, in relevant part:

Plaintiff contends that postpetition acts such as Defendants filing of Schedule E evidencing Debtor's liability to the IRS; advice to Debtor after the emergency bankruptcy petition was filed that the IRS debt would be dischargeable in bankruptcy; and the omission of not letting the case result in a Clerk's dismissal constitutes malpractice. There were two months between the Petition Date and the date that Debtor had new counsel substitute into the bankruptcy case... Debtor had no prepetition right or entitlement to commence a malpractice action against Defendants because under California law, without damages, no cause of action existed prepetition. Although it was possible that Debtor would suffer damages based on the petition having been filed too soon for the Tax Debt to be discharged, that possibility had no value on the petition date. As of the date of the petition, the only injury to Plaintiff was contingent and speculative. Therefore, no claim for breach of professional duty existed upon the petition date, given that "the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence." *Budd*, 6 Cal.3d at 200.

Lipel, p. 6.

Both *Riche* and *Lipel* relied heavily on the *Budd* court's language regarding the "actual loss or damage" element of professional negligence. Specifically, both courts relied on the following language as a basis for holding that the debtors' malpractice claims had not arisen as of the petition date:

The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence. Hence, until the client suffers appreciable harm as a consequence of his attorney's negligence, the client cannot establish a cause of action for malpractice.

Budd, 6 Cal.3d at 200. However, in subsequent decisions from California courts and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

federal courts interpreting California law, the application of this language from *Budd* has been further explained.

In 1998, the Supreme Court of California recognized that the "actual loss or damage" and "appreciable harm" language from *Budd* had been incorporated into California Code of Civil Procedure § 340.6, which statute uses the phrase "actual injury"—

Unlike section 340.6, *Budd* does not use the phrase "actual injury," referring instead to "damage," "actual loss or damage," "appreciable harm," and "appreciable and actual harm." (*Budd, supra*, 6 Cal.3d at pp. 198, 200-201.) However, the pertinent legislative history shows how the actual injury tolling provision derived from the holding in *Budd*.

Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison, 18 Cal. 4th 739, 748 (1998). The Supreme Court of California then highlighted other decisions that clarified the definition of "actual injury"—

Subsequent decisions have made explicit what *Budd* implied. Thus, *Davies v. Krasna* held that the existence of appreciable actual injury does not depend on the plaintiff's ability to attribute a quantifiable sum of money to consequential damages. Similarly, *Laird* rejected the claims that actual injury should be defined by a monetary amount and that the limitations period should be tolled if the injury is, in some way, remediable. *Adams* recognized that actual injury may consist of impairment or diminution, as well as the total loss or extinction, of a right or remedy.

Id., at 750 (1998) (citing *Davies v. Krasna*, 14 Cal.3d 502, 514 (1975); *Laird v. Blacker*, 2 Cal.4th 606, 611, 614-17 (1992); and *Adams v. Paul*, 11 Cal.4th 583, 589-90, 591 (1995)).

In *Jordache*, the Supreme Court of California also liberally referenced *Foxborough v. Van Atta*, 26 Cal.App.4th 217 (Ct. App. 1994). In *Foxborough*, the plaintiff hired the defendant-attorney regarding a condominium project. *Foxborough*, 26 Cal.App.4th at 222. In connection with this project, the plaintiff sought the right to automatically

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

annex to the project a smaller parcel. *Id.* However, the attorney allegedly failed to advise the plaintiff of a three-year regulatory deadline applicable to automatic annexations. *Id.*, at 223.

After the expiration of the deadline, the plaintiff sought to exercise its right to automatic annexation. *Id.* Upon learning the annexation period had expired, the plaintiff contacted the attorney to pursue a potential legal remedy. *Id.* The attorney wrote some letters that proved futile, and the plaintiff then pursued litigation to achieve annexation. *Id.* These efforts were unsuccessful. *Id.* The plaintiff then sued the attorney for malpractice. *Id.* The trial court dismissed the malpractice action as time barred. *Id.*

On appeal, the plaintiff argued that "actual injury" did not occur until he lost the annexation litigation. *Id.*, at 225. The court disagreed, stating—

[The attorney's] alleged negligence did not occur in the litigation. Instead, [the plaintiff] alleged that the [underlying] litigation was one of the consequences of that negligence. The judgment in the [underlying] litigation was not the first realization of an injury from the alleged malpractice, but rather the loss of an alternative means for obtaining monetary relief for that injury. Though [the attorney's] alleged negligence may have contributed to the [underlying] litigation judgment, that judgment was but the last in time of the alleged injuries.

Id., at 226. Instead, the court held that the plaintiff suffered "actual injury" as of the expiration of the automatic annexation period. Prior to that time, the plaintiff could have exercised his right. After the pertinent deadline, the plaintiff had to "resort to the more onerous, expensive, and unpredictable task of obtaining annexation approval." *Id.*, at 227.

As support for this holding, the court stated—

[W]hen malpractice results in the loss of a right, remedy, or interest, or in the imposition of a liability, there has been actual injury regardless of whether future events may affect the permanency of the injury or the amount of monetary damages eventually incurred. This approach

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

promotes the legislative goal of requiring diligent prosecution of known claims to provide finality and predictability in legal affairs, and to ensure that claims are resolved while evidence remains reasonably available and fresh.

Id.; see also *U.S. v. Gutterman*, 701 F.2d 104, 106 (9th Cir. 1983) (referencing California authority for the notion that "actual and appreciable harm" occurred "when liability had irrevocably attached" and "not subsequently when the clients had actually been sued for their misdeed"). [FN2].

Here, just as the *Foxborough* plaintiff was damaged upon expiration of the relevant deadline, the damage to Debtor, from adverse tax liability consequences, was established on the petition date. 11 U.S.C. § 523(a)(1), the relevant statute that designated a portion of the IRS's claim against Debtor as nondischargeable, is self-executing. See 11 U.S.C. § 523(c)(1); and *In re Villareal*, 563 B.R. 264, 270 (Bankr. S.D. Ohio 2016). In other words, the IRS does not need to take any action for the pertinent portion of the debt owed to it to be classified as a nondischargeable claim. In addition, although actual injury does not depend on showing a definitive amount of damages, here, the amount of nondischargeable tax debt is readily calculated, by reference to §§ 523(a)(1) and 507(a)(8).

To undo the tax consequences caused by the timing of her bankruptcy filing, Debtor would have to "resort to... more onerous, expensive, and unpredictable tasks." *Foxborough*, 26 Cal.App.4th at 227. At that point, Debtor's options would include incurring fees and costs to: (A) move for dismissal of her case, which is "unpredictable," because the motion is subject to opposition by parties in interest and denial by the Court; (B) file a complaint in an effort to challenge the nondischargeability of the debt, likely to be opposed by the IRS and without any guaranty of success; and (C) wait until her bankruptcy case closed to negotiate with the IRS as to its nondischargeable claim. [FN3]. Similar to creditors having unliquidated claims against an estate, here, as of the petition date, Debtor had a malpractice claim against Mr. Yaspan; although the adverse tax liability caused by the petition date may be ameliorated, the related malpractice claim still arose on that date.

As such, this malpractice claim, based on the adverse tax consequences of the petition date, is property of the chapter 7 estate, and subject to the administration of the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

Trustee. Consequently, the Court will dismiss this malpractice claim, with prejudice, for Debtor's lack of standing.

D. The Malpractice Claim Based on the Discharge Action

As noted in the Trustee Action Ruling, the damages related to Debtor's potential loss of discharge are speculative. As a result, a malpractice claim based on the Discharge Action is not yet ripe. Until the Discharge Action has been concluded, the Court will dismiss this claim, without prejudice.

E. The Claim for Attorneys' Fees for the Tort of Another

Through the Complaint, Debtor requests attorneys' fees and costs incurred defending herself from the Trustee. Because the Trustee filed her adversary proceeding against Debtor post-conversion, and Debtor thereafter incurred attorneys' fees and costs defending herself, this claim belongs to Debtor. Other than noting that it is a remedy instead of a claim, Mr. Yaspan does not directly attack this claim. However, under this theory, California courts allow actions to recover attorneys' fees. *See, e.g. Gray v. Don Miller & Assocs., Inc.*, 35 Cal.3d 498, 505 (1984). Therefore, Debtor may proceed with this claim, subject to any defenses that Mr. Yaspan may have, such as one based on unclean hands. [FN4].

Given that this is Debtor's only claim that the Court is not dismissing at this time, the Trustee's request for a plea in abatement is moot. To the extent California Code of Civil Procedure § 430.10 is applicable to this federal proceeding, the Trustee has not asserted a claim for attorneys' fees for the tort of another against Mr. Yaspan. As such, there is no other "action pending between the same parties on the same cause of action." Cal. Civ. Proc. Code § 430.10(c). For the same reason, Debtor need not file a cross-complaint in the Trustee Action. [FN5].

Because Debtor may continue to incur damages under this remaining claim, the Court intends to stay this adversary proceeding until conclusion of the Trustee Action and the Discharge Action.

III. CONCLUSION

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

The Court will dismiss, with prejudice, Debtor's fraud-based claims and the claims for breach of fiduciary duty, unjust enrichment, disgorgement and malpractice based on the tax consequences of the petition date. The Court will dismiss, without prejudice, the claim for malpractice based on the Discharge Action.

The Court will not dismiss Debtor's claim for attorneys' fees and costs. Mr. Yaspan must file an answer to this claim no later than **July 15, 2020**. After Mr. Yaspan files his answer, the Court will stay this adversary proceeding until conclusion of the Trustee Action and the Discharge Action.

The Trustee must submit an order within seven (7) days.

FOOTNOTES

1. In *In re Glaser*, 2019 WL 1075613 (B.A.P. 9th Cir. Mar. 5, 2019), a chapter 7 case from its inception, the Bankruptcy Appellate Panel applied Nevada law on legal malpractice. This matter involves California law on malpractice. As such, *Glaser* is inapplicable to this case.
2. In *Gutterman*, the Ninth Circuit Court of Appeals held that a malpractice action against an attorney who failed to file an estate tax return timely arose when the IRS assessed the tax penalty against the plaintiff. *Gutterman*, 701 F.2d at 106.
3. See, e.g. *In re Hugger*, 2019 WL 1594017, at *5 (B.A.P. 9th Cir. Apr. 5, 2019) (affirming bankruptcy court's denial of the debtor's request to vacate his discharge and dismiss his case because the debtor filed his case too soon to discharge tax debt).
4. Because the Court is dismissing the remainder of the Complaint, the Court need not address the balance of Mr. Yaspan's arguments. To the extent Mr. Yaspan's arguments mirror his arguments in response to the Trustee's complaint in the Trustee Action, Mr. Yaspan may refer to the Trustee Action Ruling for the Court's assessment of those arguments, including the Court's reasoning as to why ruling on Mr. Yaspan's unclean hands theory is premature.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 1, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

5. In the Complaint, Debtor references *Holcomb* and asserts that this Court does not have subject matter jurisdiction. However, unlike *Holcomb*, because Debtor's claim concerns Mr. Yaspan's representation of her, as a debtor in possession, during a chapter 11 case, the Court has, at a minimum, ancillary jurisdiction over this matter. *See In re Ray*, 624 F.3d 1124, 1135 (9th Cir. 2010) ("Ancillary jurisdiction may rest on one of two bases: (1) to permit disposition by a single court of factually interdependent claims, and (2) to enable a court to vindicate its authority and effectuate its decrees.").

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Represented By
David D Samani

Elissa Miller

Represented By
Larry W Gabriel

Plaintiff(s):

Deborah Lois Adri

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, July 1, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

#9.00 Status conference re: complaint for:
1- Unjust Enrichment, 2- Breach of Fiduciary Duty,
3- Professional Negligence, 4- Fraudulent Concelament,
5- Fraudulent Misrepresentation, 6- Constructive Fraud,
7- Attorney's fees for the Tort of Another, 8- Disgorgement of fees,
9- Declaratory Judgment

fr. 4/8/20; 5/5/20; 5/20/20; 6/24/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Robert Yaspan

Pro Se

Elissa Miller

Pro Se

Plaintiff(s):

Deborah Lois Adri

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, July 1, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 2, 2020

Hearing Room 301

10:30 AM

1:20-10543 Amerigrade Corp.

Chapter 11

#1.00 First and final application for compensation and reimbursement of expenses for Michael Jay Berger, debtor's attorney

Docket 42

Tentative Ruling:

The Court will continue this hearing to 10:30 a.m., on July 23, 2020.

Appearances on July 2, 2020 are excused.

Party Information

Debtor(s):

Amerigrade Corp.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 2, 2020

Hearing Room 301

1:00 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

#2.00 Order to show cause why this case should not be converted to one under chapter 7

fr. 6/11/20

Amended order entered doc # 230

Docket 217

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (b)(4)(A), (b)(4)(I) and (b)(4)(P), the Court will dismiss this case.

On June 15, 2020, the Court entered an *Amended Order to Show Cause Why this Case Should Not Be Dismissed or Converted to One Under Chapter 7* (the "Order") [doc. 230]. Pursuant to the Order, the debtor was to file a response by June 25, 2020. The debtor did not timely file any such response.

Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, filed on March 20, 2018, 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. During the pendency of the debtor's chapter 11 case, the debtor sold the estate's interest in the three real properties identified in his schedule A/B [docs. 126 and 135].

In his schedule A/B, the debtor also indicated interests in two entities, Hartwell Global, Inc. ("Hartwell") and Integrated Dynamic Solutions, Inc. ("IDS"). Hartwell appears to have significant tax debt, and some of that debt has attached to the debtor personally [doc. 227, Declaration of Nasrollah Gashtili, ¶ 6]. IDS has been in its own chapter 11 bankruptcy case, 1:18-bk-12156-VK, which the Court intends to convert to one under chapter 7. Accordingly, there does not appear to be sufficient assets for a chapter 7 trustee to administer for the benefit of creditors.

The Court will prepare the order.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 2, 2020

Hearing Room 301

1:00 PM

CONT... Nasrollah Gashtili

Chapter 11

Party Information

Debtor(s):

Nasrollah Gashtili

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 2, 2020

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;
7/18/19; 10/17/19; 12/5/19; 3/19/20; 4/2/20; 5/21/20; 6/11/20

Docket 1

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 2, 2020

Hearing Room 301

1:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#4.00 Order to show cause why this case should not be dismissed
of converted to one under chapter 7

fr. 6/11/20

Docket 252

Tentative Ruling:

Tentative Ruling from June 11, 2020

In light of the representations made in the debtor's response [doc. 255] to the *Order to Show Cause Why this Case Should not be Dismissed or Converted to One under Chapter 7* [doc. 252], and in the debtor's chapter 11 case status report filed on May 7, 2020, pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (b)(4)(A), the Court will convert this case to one under chapter 7.

Although the debtor represents that its interest in Integrated Dynamic Solutions India Pvt. Ltd. and its causes of action against Automated Systems America, Inc. have little to no value, a chapter 7 trustee should make that determination. Further, there may be avoidance actions that the chapter 7 trustee appropriately could pursue. Accordingly, it appears to be in the best interests of creditors and the estate to convert this case to one under chapter 7.

The Court will prepare the order.

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, July 2, 2020

Hearing Room 301

1:00 PM

1:18-12156 Integrated Dynamic Solutions, Inc.

Chapter 11

#5.00 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; 12/5/19; 3/26/20; 5/21/20; 6/11/20

Docket 1

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, July 2, 2020

Hearing Room 301

1:00 PM

1:20-10924 Tikran Eritsyanyan

Chapter 11

#6.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

The debtor has not timely filed his May 2020 monthly operating report.

Who provides support to the debtor?

Are the debtor's real properties fully renovated, at this time?

If not, will the debtor be selling them in their current condition?

If he plans to continue to renovate them, how will the debtor obtain the funds to finish the renovations?

Deadline to file proof of claim ("Bar Date"): **September 14, 2020.**

Deadline to mail notice of Bar Date: **July 13, 2020.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **October 30, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on November 19, 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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 2, 2020

Hearing Room 301

1:00 PM

CONT... Tikran Eritsyan

Chapter 11

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):

Tikran Eritsyan

Represented By
Vahe Khojayan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 2, 2020

Hearing Room 301

2:00 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

#7.00 Trustee's motion under Fed. R. Bankr. P. 9019 for order approving
1. Settlement agreement between chapter 7 Trustee and
defendants resolving the adversary proceeding; and
2. Settlement agreement between chapter 7 trustee and
Bell Trustee regarding trademark

fr. 6/11/20

Docket 157

*** VACATED *** REASON: Order entered resolving matter [doc. 185].

Tentative Ruling:

- NONE LISTED -

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, July 2, 2020

Hearing Room 301

2:00 PM

1:20-10156 Shalva Tikva

Chapter 13

#8.00 Creditor Jacqueline Stein's objection to claim of homestead exemption

fr. 6/9/20

Docket 35

Tentative Ruling:

Overrule, based on the debtor's amended claim of exemption in the subject real property.

I. BACKGROUND

On January 22, 2020, Shalva Tikva ("Debtor") filed a voluntary chapter 11 petition. The Court has since converted Debtor's case to a chapter 7 case [doc. 44]. In his schedule A/B, Debtor identified a fee simple interest in real property located at 21801 San Miguel Street, Los Angeles, CA 91364 (the "Property"). In his schedule C, Debtor claimed a homestead exemption in the Property pursuant to California Code of Civil Procedure ("CCP") § 704.730.

On May 12, 2020, creditor Jacqueline Stein filed an objection to Debtor's claim of a homestead exemption (the "Objection") [doc. 35]. In the Objection, Ms. Stein contends that Debtor is not entitled to a homestead exemption under CCP § 704.730 because Debtor does not reside at the Property. Ms. Stein also asserts Debtor is not entitled to claim an exemption because he acted in bad faith.

On June 14, 2020, Debtor filed an amended schedule C [doc. 54]. In the amended schedule C, Debtor claimed a \$26,775 exemption in the Property under CCP § 703.140(b)(5).

II. ANALYSIS

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 [\$1,550] plus any unused amount of the exemption provided under paragraph (1), in any property." CCP § 703.140(b)(1), in

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 2, 2020

Hearing Room 301

2:00 PM

CONT... **Shalva Tikva**

Chapter 13

turn, allows debtors to claim an exemption in "[t]he debtor's aggregate interest, not to exceed [\$29,275] in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence...." [FN1].

CCP § 703.140(b)(5) does not require that a debtor reside in the real property in order to claim any real 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").

After Ms. Stein filed the Objection, Debtor amended his schedule C to claim an exemption in the Property under CCP § 703.140(b)(5) instead of CCP § 704.730. Debtor's amendment renders the Objection moot. Moreover, Debtor does not need to reside at the Property to claim an exemption in the Property under CCP § 703.140(b)(5). Finally, bankruptcy courts are not empowered to disallow a debtor's claim of exemption on the basis of bad faith. *See Law v. Siegel*, 134 S. Ct. 1188, 1196-97, 188 L. Ed. 2d 146 (2014).

III. CONCLUSION

The Court will overrule the Objection.

The Court will prepare the order.

FOOTNOTES

1. The bracketed amounts reflect the latest cost of living increases pursuant to CCP § 703.150(a).

Party Information

Debtor(s):

Shalva Tikva

Represented By
Michael R Totaro

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 2, 2020

Hearing Room 301

2:00 PM

CONT... Shalva Tikva

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 2, 2020

Hearing Room 301

2:00 PM

1:18-12939 Arianne Beth Pachter

Chapter 13

#9.00 Debtor's motion for authority to sell or refinance real property under LBR 3015-1 (p)

Docket 44

Tentative Ruling:

Grant, subject to the condition set forth in the secured creditor's limited opposition [doc. 51].

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Arianne Beth Pachter

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**

Monday, July 6, 2020

Hearing Room 301

1:00 PM

1:20-11167 Susana Camacho

Chapter 7

#1.00 Application to have the chapter 7 filing fee waived

Docket 6

*** VACATED *** REASON: Order entered approving fee waiver 7/6/20 -
jc

Party Information

Debtor(s):

Susana Camacho

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 8, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01155 Goldman v. Mandalay Bay, LLC, A Nevada Limited Liability Comp

#1.00 Status conference re: first amended complaint for:
(1) Avoidance of voidable and fraudulent transfers; and
(2) Recovery of avoided transfers for the benefit of
the bankruptcy estate

fr. 3/25/20(stip); 4/29/20(stip); 6/3/20(stip)

Docket 5

***** VACATED *** REASON: Notice rescheduling hearing for 7/15/20 at
1:30 PM entered 6/9/20. [Dkt. 22]**

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

Mandalay Bay, LLC, A Nevada

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 8, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:19-01110 Banc of California, N.A. v. Sheik

#2.00 Pretrial conference re: complaint for fraud and nondischargeability of debt [11 USC sec 523(a)(2)(A), (a)(6), (a)(4)]

fr. 12/4/19

Docket 1

***** VACATED *** REASON: Notice rescheduling hearing for 7/15/20 at 1:30 PM entered 6/9/20. [Dkt. 14]**

Party Information

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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 8, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01041 Sheik v. LBS Financial Credit Union et al

#3.00 Status conference re: complaint by Maryam Sheik
against LBS Financial Credit Union, MDA MOTORS
CORP., Greenwood Pontiac, Inc., Jamshid Lavi, an individual

fr. 4/29/20

Docket 1

***** VACATED *** REASON: Another summons issued 5/27/20. Status
conference scheduled for 7/29/20 at 1:30 PM.**

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Defendant(s):

LBS Financial Credit Union

Pro Se

MDA MOTORS CORP.

Pro Se

Greenwood Pontiac, Inc.

Pro Se

Jamshid Lavi, an individual

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 8, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01050 Sheik v. Does 1 to 10, Inclusive et al

#4.00 Status conference re: complaint for:
1) Quiet title;
2) Declaratory relief

Docket 1

***** VACATED *** REASON: Notice rescheduling hearing for 7/15/20 at
1:30 PM entered 6/3/20.**

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Defendant(s):

Does 1 to 10, Inclusive

Pro Se

Bank of America, N.A. a National

Pro Se

State Of California Franchise Tax

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 8, 2020

Hearing Room 301

1:30 PM

1:19-12563 Norman Preligera Calalang

Chapter 7

Adv#: 1:20-01005 Tizo Design, Inc. v. Calalang et al

#5.00 Pretrial conference re: complaint to determine dischargeability of debt

fr. 3/18/20; 4/1/20

Stipulated judgment filed 5/19/20

Docket 1

***** VACATED *** REASON: Order Approving Stipulated Judgment entered 6/24/20 [Dkt.13]**

Party Information

Debtor(s):

Norman Preligera Calalang

Represented By
Lauren Ross

Defendant(s):

Norman Preligera Calalang

Pro Se

Deona Pagsisihan Calalang

Pro Se

Joint Debtor(s):

Deona Pagsisihan Calalang

Represented By
Lauren Ross

Plaintiff(s):

Tizo Design, Inc.

Represented By
Michael F Chekian

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 8, 2020

Hearing Room 301

1:30 PM

1:20-10069 Shawn Sharon Melamed

Chapter 7

Adv#: 1:20-01046 Mazakoda, Inc. v. Melamed et al

#6.00 Status conference re: complaint objecting to discharge pursuant to 11 U.S.C. sec 727(3)(3), 727(a)(4)(A); 727(a)(4)(D). and 727(a)(5)

fr. 6/17/20

Docket 1

***** VACATED *** REASON: Notice rescheduling hearing for 7/15/20 at 1:30 PM entered 6/11/20. [Dkt. 7]**

Party Information

Debtor(s):

Shawn Sharon Melamed

Represented By
Giovanni Orantes

Defendant(s):

Jenous Tootian

Pro Se

Shawn Sharon Melamed

Pro Se

Joint Debtor(s):

Jenous Tootian

Represented By
Giovanni Orantes

Plaintiff(s):

Mazakoda, Inc.

Represented By
Scott E Gizer

Trustee(s):

Amy L Goldman (TR)

Represented By
Scott E Gizer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 8, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

- #7.00** Defendant's motion to dismiss plaintifff Bright Enabuele's complaint for:
1) Failure to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6); and
2) Insufficient service of plaintiff's complaint pursuant to LBR 7004-1(a)(1)(B) and FRBP 7004(b)(1) and (e)

Docket 11

***** VACATED *** REASON: Notice rescheduling hearing entered 5/28/20.
Hearing rescheduled for 7/15/20 at 2:30 PM.**

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Represented By
Michael Jay Berger

Plaintiff(s):

Bright Enabulele

Represented By
Levi Reuben Uku

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 8, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01039 Lewis v. Vartan

#8.00 Defendant Shobert Vartan's motion to dismiss plaintiff Lester Lewis' adversary complaint pursuant to Fed.R.Civ.P. Rule 12(b)(6)

Docket 10

***** VACATED *** REASON: Notice Rescheduling Haring entered 5/28/20.
Hearing rescheduled for 7/15/20 at 2:30 PM.**

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Represented By
Michael Jay Berger

Plaintiff(s):

Lester L Lewis

Represented By
Elissa Miller

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 8, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#9.00 Status conference re: first amended complaint to determine dischargeability of debt 11 U.S.C. sec 523(a)(2); fraud; fraud or defecation while acting in a fiduciary capacity 11 U.S.C. sec 523(a)(4); and willful and malicious injury 11 U.S.C. sec 523(a)(6)

fr. 5/20/20

Docket 4

***** VACATED *** REASON: Notice rescheduling hearing for 7/15/20 at 2:30 PM entered 6/3/20.**

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Philip Alvarez

Represented By
Fritz J Firman

Philip Alvarez as Successor Trustee

Represented By
Fritz J Firman

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 8, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#10.00 Defendant Shobert Vartans motion to dismiss adversary complaint with prejudice pursuant to FRCP 12(B)(6)

Docket 7

***** VACATED *** REASON: Notice rescheduling hearing for 7/15/20 at 2:30 PM entered 6/3/20.**

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Represented By
Michael Jay Berger

Plaintiff(s):

Philip Alvarez as Successor Trustee

Represented By
Fritz J Firman

Philip Alvarez

Represented By
Fritz J Firman

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 9, 2020

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#1.00 Status conference re: chapter 11 case

fr. 11/21/19; 4/9/20

Docket 1

***** VACATED *** REASON: Hearing rescheduled for 7/16/20 at 1:00 PM**

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**

Tuesday, July 14, 2020

Hearing Room 301

10:30 AM

1:18-10798 Narkell Hobbs-James

Chapter 13

#31.00 Trustee's motion to dismiss case due to material default of the plan pursuant to sec 1307(c)(6) failure to submit all tax refunds

Docket 71

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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 14, 2020

Hearing Room 301

10:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#32.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 1/14/20; 3/10/20; 6/9/20

Docket 56

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, July 14, 2020

Hearing Room 301

10:30 AM

1:19-10589 Paul Anthony Matulewicz

Chapter 13

#33.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 3/10/20; 6/9/20

Docket 59

Tentative Ruling:

- NONE LISTED -

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, July 14, 2020

Hearing Room 301

10:30 AM

1:19-10874 Caridad Salas Hileman

Chapter 13

#34.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 4/14/20

Docket 55

***** VACATED *** REASON: Motion withdrawan 5/18/20. [Doc.69]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Caridad Salas Hileman

Represented By
Ryan A. Stubbe

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 14, 2020

Hearing Room 301

11:00 AM

1:14-15266 Nabiollah Morovati

Chapter 13

#35.00 Hearing on objection to closing of chapter 13 case

fr. 4/14/20; 5/5/20; 6/9/20

Docket 65

Tentative Ruling:

The Court intends to set an evidentiary hearing on **August 21, 2020 at 10:00 a.m.** The evidentiary hearing will be held using ZoomGov, which provides a live video connection with the Court. Consequently, the parties will not appear in person, in the courtroom.

The parties must identify any witnesses they intend to call other than creditor and debtor.

The Court will prepare an order setting the evidentiary hearing, which also will set forth the related appearance procedures.

Tentative Ruling from June 9, 2020

The Court will continue this hearing to **July 14, 2020 at 11:00 a.m.**, to discuss the date for setting an evidentiary hearing, potentially through the use of video appearance technology.

I. BACKGROUND

On November 21, 2014, Nabiollah Morovati (the "Debtor") filed a voluntary chapter 13 petition. In his schedule F, the Debtor listed a nonpriority unsecured claim in favor of Sukari Hayes ("Creditor") in the amount of \$17,932.97 [doc. 1]. The Debtor indicated that he incurred this debt on October 17, 2014 and that it was based on an employment wage claim. The Debtor listed the Creditor's address as:

Sukari Hayes
c/o Khashayar Eshragi, Esq.
520 S. Grand Avenue
Los Angeles, CA 90071

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 14, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati

Chapter 13

The Debtor also listed Creditor at this address in his master mailing list [doc. 1]. In his statement of financial affairs [doc. 1], the Debtor indicated that, within the year preceding the filing of her petition, he was a party to a prepetition nonbankruptcy action between the Debtor and Creditor. The Debtor did not indicate the status or disposition of the nonbankruptcy action.

On November 25, 2014, January 29, 2015 and April 27, 2015, the Debtor served notices of the 11 U.S.C. § 341(a) meeting of creditors and hearing on confirmation of chapter 13 plan, with a copy of the Debtor's chapter 13 plan, on Creditor at the address listed above [docs. 8, 15 and 24]. Creditor did not file an objection to the Debtor's chapter 13 plan. On December 1, 2015, the Court entered an order confirming the Debtor's chapter 13 plan [doc. 50].

Throughout the pendency of the Debtor's bankruptcy case, notices were being sent to Creditor at the address listed above. On November 28, 2018, Creditor filed a notice of change of address stating that her old address was "Khashayar Eshraghi" and her new address is "Sukari M Hayes, 1310 12th Ave., #201, Los Angeles, California 90019" [doc. 59].

On January 17, 2020, the chapter 13 trustee ("Trustee") filed a *Notice of Intent to File Trustee's Final Report and Account, Obtain Discharge of Debtor and Close Case* ("Notice") [doc. 64]. The Notice provided that if no objection was filed within 30 days after the date of the Notice, the Court would discharge the Debtor. The Notice further provided that any objection must be accompanied by a notice of the hearing on the objection.

On January 28, 2020, Creditor timely filed the Objection [doc. 65]. On February 26, 2020, the Court entered an order setting the Objection for hearing, and requiring Creditor to provide notice of the hearing and deadline to file a response on the Debtor, the Debtor's attorney and the Trustee [doc. 67]. As a result of improper service, and because Creditor is self-represented, the Court continued the hearing several times [docs. 72 and 76]. On April 10, 2010, the Debtor filed a response to the Objection (the "Response") [doc. 71].

In the Objection, Creditor objects to the closing of the Debtor's case because she was "not informed to appear in bankruptcy court in 2015." This assertion is not supported

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 14, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati
by a declaration.

Chapter 13

In the Response, the Debtor states that notice of the Debtor's chapter 13 filing was mailed to Creditor in care of the attorney who represented Creditor and assisted her in obtaining a judgment against the Debtor (the "Judgment"). Accordingly, the Debtor contends that serving Creditor at her attorney's address was proper under the circumstances. In his declaration, the Debtor's attorney states that Creditor's attorney's address was the only valid address for Creditor known to either he or the Debtor.

II. DISCUSSION

"A debtor who completes his payments under a Chapter 13 plan is entitled to a broad discharge of 'all debts provided for by the plan or disallowed under section 502 of [the Bankruptcy Code]....'" *Ellett v. Stanislaus*, 506 F.3d 774, 777 (9th Cir. 2007) (quoting 11 U.S.C. § 1328(a)). "[T]he phrase 'provided for' in section 1328(a) simply requires that for a claim to become dischargeable the plan must 'make a provision for' it, *i.e.*, deal with it or refer to it." *Id.* (quoting *Matter of Gregory*, 705 F.2d 1118, 1122 (9th Cir. 1983)).

"[A] claim cannot be considered to have been provided for by the plan **if a creditor does not receive proper notice of the proceedings.**" *Id.* (quoting *In re Hairopoulos*, 118 F.3d 1240, 1244 (8th Cir. 1997)) (emphasis added). "The statutory command for notice embodies a basic principle of justice—that a reasonable opportunity to be heard must precede judicial denial of a party's claimed rights." *Id.* (quoting *City of New York v. New York, N.H. & H.R. Co.*, 344 U.S. 293, 297, 73 S.Ct. 299, 97 L.Ed. 333 (1953)).

"Courts have found that generally 'mailing a notice to a party's last-known address is 'reasonably calculated' to provide actual notice.'" *In re Hernandez*, No. 2:12-BK-47099-RK, 2017 WL 6033409, at *5 (Bankr. C.D. Cal. Dec. 5, 2017) (quoting *In re Freedom Communications Holdings, Inc.*, 472 B.R. 257, 262 (Bankr. D. Del. 2012)). However, "[i]t is not enough merely to rely on one's own knowledge of a creditor's address." *In re Fauchier*, 71 B.R. 212, 215 (B.A.P. 9th Cir. 1987).

In order for a debt to be duly listed, the debtor must state the name and address of the creditor. . . . The burden is on the debtors to use

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 14, 2020

Hearing Room 301

11:00 AM

CONT...

Nabiollah Morovati

Chapter 13

reasonable diligence in completing their schedules and lists. . . . If a creditor proves that an address is incorrect, the debtor must justify the inaccuracy in preparing his schedules. . . . An incorrect or careless omission is not enough.

Id. (citations omitted). *See also In re Haga*, 131 B.R. 320, 327 (Bankr. W.D. Tex. 1991) (noting that "the debtor has the burden to show that the creditor ... had notice or actual knowledge of the case in time to file a proof of claim and request for a determination of dischargeability").

Here, the issue is whether the Debtor provided proper notice of his bankruptcy case to Creditor by serving Creditor care of her state court counsel. In the Reply, the Debtor contends that Creditor's state court counsel had a duty to provide notice to his client of all matters affecting her case, including the judgment she obtained against the Debtor. However, case law states otherwise.

"An attorney who has represented a creditor in state court proceedings does not, by virtue of that relationship alone, represent the creditor with respect to that same debt in a federal bankruptcy proceeding. *Fauchier*, 71 B.R. at 215 (collecting cases). "[O]rdinarily, an attorney-client relationship is terminated once representation is completed." *In re Perle*, 725 F.3d 1023, 1027 (9th Cir. 2013) (quoting *Damron v. Herzog*, 67 F.3d 211, 213 (9th Cir.1995)). "And, generally speaking, a lawyer's authority to represent a client ends 'because the lawyer has completed the contemplated services.'" *Id.* (quoting Restatement (Third) of the Law Governing Lawyers § 31 (2000)). Further, "[a]n attorney owes limited duties to a former client, and keeping the former client apprised of the status of ongoing litigation does not appear to be one of them."

In re: CYNTHIA CREWS, Debtor. CYNTHIA M. QUINTANILLA, Plaintiff, v. CARL M. CREWS, Defendant., No. 11-45982 CN, 2020 WL 1518534, at *7 (Bankr. N.D. Cal. Mar. 30, 2020).

Nevertheless, there are instances when an attorney's knowledge may be imputed to the attorney's client. If the creditor's attorney was **actively** representing the creditor to enforce claims against the debtor, at the time that notice of the bankruptcy was given to that attorney, the creditor's attorney's knowledge of a debtor's bankruptcy proceeding may be imputed to the creditor. *See, e.g., Perle*, 725 F.3d at 1027; *Lompa*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 14, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati

Chapter 13

v. Price, 871 F.2d 97 (9th Cir. 1989); *Maldonado v. Ramirez*, 757 F.2d 48, 51 (3d Cir. 1985); *Hernandez*, 2017 WL 6033409, at *4; *Musacco v. Walden*, No. CIV 13-1053 MV/KBM, 2016 WL 9777182, at *4 (D.N.M. June 17, 2016). Although *Price*, *Perle*, and *Hernandez* are in the context of chapter 7 cases, they are instructive. See *Ellett*, 506 F.3d at 778.

In *Price*, prepetition, the debtor and creditor were engaged in a contract dispute in state court. *Price*, 871 F.2d at 97. Prior to the state court suit being resolved, the debtor filed a chapter 7 petition. *Id.* The debtor did not list the creditor in his schedules or statements. *Id.* However, approximately two months prior to the deadline to file a nondischargeability complaint, the debtor's counsel sent the creditor's counsel a notice that the state court lawsuit would be stayed because of the debtor's bankruptcy case. *Id.* at 97-98. The notice did not contain any deadline dates. *Id.* at 98. After the deadline to file a nondischargeability complaint passed, the creditor filed a motion to file a late complaint. *Id.* The bankruptcy court granted the motion, and the debtor appealed to the Bankruptcy Appellate Panel for the Ninth Circuit ("BAP"). *Id.* The BAP reversed the bankruptcy court's ruling, and held that notice to the creditor's counsel constituted notice to the creditor. *Id.* The creditor appealed to the Ninth Circuit Court of Appeals.

The Court of Appeals affirmed the BAP's ruling. *Id.* at 99. In doing so, the Court of Appeals stated:

Counsel for the [the creditor] 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 creditor] now seeks to have declared nondischargeable. We hold that under these circumstances notice to counsel constituted notice to [the creditor]. See *Maldonado v. Ramirez*, 37 B.R. 219, 221 (D.V.I.1984) (notice to a creditor's attorney of a bankruptcy filing is usually sufficient if the attorney received knowledge of it while representing his client in enforcing a claim against the bankrupt) (citing 3 *Collier on Bankruptcy* ¶ 523.15(5)(c) (15th ed. 1983)), *rev'd on other grounds*, 757 F.2d 48, 51 (3d Cir.1985) (agreeing with premise, but finding the evidence insufficient to indicate that counsel was enforcing the claim for the client when notice was received); *In re Fulton*, 3 B.R. 600, 603-04 (Bankr.E.D.Mich.1980)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 14, 2020

Hearing Room 301

11:00 AM

CONT...

Nabiollah Morovati

Chapter 13

(attorney who represents client in action affected by bankruptcy proceeding is impliedly authorized to receive notice on client's behalf regarding the action).

Id.

In *Perle*, among the debtor's outstanding debts was an arbitration award to the creditor. *Perle*, 725 F.3d at 1025. The award was made three years prior to the debtor filing his petition. *Id.* During the arbitration proceedings, the creditor was represented by counsel, Russo. *Id.* At the time of the debtor filing his petition, Russo did not represent the creditor with regard to enforcement or collection of the arbitration award, but did represent the creditor on other matters. *Id.* at 1025-26. During the debtor's bankruptcy case, Russo, on behalf of a different client, filed a nondischargeability complaint against the debtor. *Id.* at 1026. Russo never informed the creditor of the debtor's bankruptcy filing. *Id.* Four years after he received a discharge, the creditor filed a motion to reopen the debtor's case to challenge dischargeability of the arbitration award. *Id.* The bankruptcy court granted the motion, and the arbitration award was found to be nondischargeable. *Id.* The debtor appealed, arguing, among other things, that even though the arbitration award is of the type that is nondischargeable under 11 U.S.C. §§ 523(a)(3) and (a)(6), that the creditor had notice or actual knowledge of the debtor's bankruptcy case by virtue of Russo's knowledge. *Id.*

The Ninth Circuit Court of Appeals declined to impute Russo's knowledge of the debtor's bankruptcy filing to the creditor. In doing so, the Court of Appeals stated:

Here, the "contemplated services" that Russo performed for [the creditor] consisted of handling the arbitration. Once the arbitration ended, Russo no longer represented [the creditor] with respect to it. He did continue to handle other unrelated matters for [the creditor] but this is of little significance considering that a lawyer's representation of a client is subject-matter specific.

Additionally, Russo learned of [the debtor's] bankruptcy on behalf of a different client, Corsair, who was contesting the dischargeability of its own debt. This distinguishes [the debtor's] case from two cases on which he relies, *Lompa v. Price (In re: Price)*, 871 F.2d 97 (9th Cir.1989) and *In re Linzer*, 264 B.R. 243 (Bankr.E.D.N.Y.2001). In both of those cases, *the lawyer*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 14, 2020

Hearing Room 301

11:00 AM

CONT...

Nabiollah Morovati

Chapter 13

who received notice of the debtor's bankruptcy was still representing the creditor in relation to the debt that was owed. Here, in contrast, Russo received notice of [the debtor's] bankruptcy as Corsair's counsel, not as [the creditor's].

Perle, 725 F.3d at 1027–28 (emphasis added).

In *Hernandez*, the debtor listed two addresses, both of which were incorrect, for the creditors in his schedules. *Hernandez*, 2017 WL 6033409, at *3. One of the addresses was the creditors' attorney. *Id.* The debtor contended that service to the creditors at their attorney's address was proper. *Id.* at *4. The bankruptcy court disagreed, stating:

Unlike the situation in *Lompa v. Price* and *In re Price*, notice to Creditors' attorney did not constitute proper notice here where (1) there is no evidence that shows the attorney was actively representing the creditors to enforce claims against the debtor at the time that notice of the bankruptcy was given to the attorney, and (2) the notice to Creditors at the Attorney Address did not actually list the attorney's name and relationship to Creditors.

Debtor has not shown by clear and convincing evidence that Creditors' former attorney was enforcing a claim against the Debtor *at the time* notice was sent to attorney. Although Creditors state in their declaration that "[the Attorney Address] belongs to David Greenberg, who was Creditors' counsel at the time," *Declaration of Jaime Farias*, ECF 42 at 7, ¶ 3, this statement as well as the other evidence in this case do not demonstrate that Mr. Greenberg was representing Creditors in an action against Debtor at that time Mr. Greenberg allegedly received notice of the bankruptcy case. Indeed, the evidence in the record suggests the opposite: that the Creditors did not have any pending litigation claims against Debtor at the time notice of the bankruptcy case was sent out to the attorney. *Declaration of Jaime Farias*, ECF 42 at 7–8, ¶¶ 3–4. Mr. Farias's testimony that "[h]ad we been given proper notice of Debtor's bankruptcy, we would have commenced an adversary proceeding against the Debtor for non-dischargeability based on fraud and willful malicious injury by the Debtor" makes sense and is credible, a further indication that they did not have prior actual notice of Debtor's bankruptcy case.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 14, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati

Chapter 13

Id. (emphasis in original).

Here, at this point, neither party has presented enough evidence for the Court to determine whether Creditor received sufficient notice for the Debtor's chapter 13 plan to have provided for the Creditor's claim. Creditor has not provided evidence of when she received notice of the Debtor's bankruptcy case, and how she became aware of the Debtor's bankruptcy case. In 2018, Creditor filed a notice of change of address - so she certainly was aware of the Debtor's bankruptcy case by then. Creditor also has not provided evidence of whether the attorney who assisted her, in obtaining the Judgment, had stopped representing her, for the collection of the Judgment, by the date that the Debtor mailed notices regarding the bankruptcy case to that attorney.

Similar to *Hernandez*, the Debtor has not provided evidence that Creditor's attorney was actively representing Creditor, with respect to collection of the Judgment, when notice of the bankruptcy case was sent to the attorney. Nor has the Debtor provided evidence that serving Creditor at her attorney's address was proper under the circumstances. See *In re Schicke*, 290 B.R. 792, 805 (B.A.P. 10th Cir. 2003), *aff'd*, 97 F. App'x 249 (10th Cir. 2004) (concluding that service to former attorney's address was proper when corporation changed its name, and the corporation's address did not appear in any documents in the state court action between the parties). Although the Debtor's attorney contends this was the only *valid* address known to him or the Debtor, because the Judgment is for a wage claim, presumably, the Debtor would have been in possession of personnel records which would contain Creditor's personal address. Consequently, the Debtor has not yet provided a sufficient explanation of why he did not serve Creditor at her last known address.

In order to determine whether the Creditor received sufficient notice, such that the chapter 13 plan provides for the claim, the Court will hold an evidentiary hearing, at which testimony may be provided regarding the issues set forth above.

III. CONCLUSION

The Court will continue this hearing to **July 14, 2020 at 11:00 a.m.**, to discuss the date for setting an evidentiary hearing, potentially through the use of video appearance technology.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 14, 2020

Hearing Room 301

11:00 AM

CONT... Nabiollah Morovati

Chapter 13

Debtor(s):

Nabiollah Morovati

Represented By
Keith F Rouse

Trustee(s):

Elizabeth (SV) 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 14, 2020

Hearing Room 301

11:00 AM

1:19-10681 Jan Bidasha

Chapter 13

#36.00 Motion re: objection to claim number 4 by claimant Novastar
fr. 4/14/20; 6/9/20

Docket 76

***** VACATED *** REASON: Case dismissed on 6/16/20 [doc. 93]. The
motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jan Bidasha

Represented By
Neil C Evans

Trustee(s):

Elizabeth (SV) 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 15, 2020

Hearing Room 301

9:30 AM

1:15-10278 Laura Lee Stone

Chapter 13

#1.00 Debtor's opposition to declaration of Specialized Loan Servicing, LLC
Re: default under adequate protection order; request for entry of
order granting relief from stay

fr. 6/10/20

Docket 62

Tentative Ruling:

On June 25, 2020, the debtor filed a supplemental response [doc. 72]. In that response, the debtor indicates that she is current on her deed of trust payments and arrears payments under the stipulation for adequate protection [doc. 54]. The debtor attached images of cashier's checks in the aggregate amount of \$20,826.43, which were mailed to the lender on June 24, 2020 [doc. 72, Exh. A]. On June 25, 2020, the debtor's counsel received delivery confirmation of the cashier's checks to lender [doc. 72, Exh. B].

Has the lender received these cashier's checks, and credited the debtor's account? If so, does the lender still contend that the debtor is delinquent on her deed of trust payments and arrears payments?

Tentative Ruling from June 10, 2020

On January 29, 2015, the debtor filed a chapter 13 petition. On September 27, 2019, The Bank of America National Association ("Creditor") filed a motion for relief from the automatic stay as to the real property located at 9749 Quakertown Avenue, Chatsworth, California 91311 (the "Property") [doc. 48]. On December 3, 2019, Creditor and the debtor filed a stipulation for adequate protection as to the Property (the "Stipulation") [doc. 54]. On the same day, the Court entered an order approving the Stipulation [doc. 56].

Under the terms of the Stipulation, the debtor must make regular monthly deed of trust payments in the amount of \$2,798.22 commencing on December 1, 2019 ("Deed of Trust Payments"). The debtor also must cure the postpetition arrears of \$14,432.32 in equal monthly installments of \$2,405.39 each commencing on December 15, 2019

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

9:30 AM

CONT...

Laura Lee Stone

Chapter 13

and continuing through April 15, 2020, and by paying a lump sum in the amount of \$2,405.37 by May 15, 2020 ("Arrears Payments").

On April 27, 2020, Creditor filed a *Declaration re: Default Under Adequate Protection Order* (the "Default Declaration") [doc. 62]. In the Default Declaration, Creditor alleges that the debtor failed to make Deed of Trust Payments for February 2020, March 2020 and April 2020 and Arrears Payments for February 2020 and March 2020, totaling \$13,205.44. In the Default Declaration, Creditor attached a notice of default letter addressed to the debtor's counsel and the debtor and the post Stipulation payment history.

On May 6, 2020, the debtor filed an opposition to the Default Declaration (the "Opposition") [doc. 64]. In the Opposition, the debtor claims that she had cured the delinquency before the Default Declaration was filed with the Court and that she is current with Creditor. The debtor also disputes Creditor's accounting of her payments.

The debtor attached two types of proof of payment in support of her position. The first type is in the form of images of checks showing that the debtor made the following payments: (a) \$8,001.83 in January 2020 [Exh. B]; (b) \$10,407.22 in March 2020 [Exh. C]; and (c) \$2,405.39 in April 2020 [Exh. D]. The second type is in the form of images showing proof of delivery by the mail carriers of the checks [Exhs. B, C and D].

Pursuant to the Stipulation, from December 1, 2019 to April 1, 2020, the debtor should have made payments to Creditor in the aggregate amount of \$23,612.66. Based on the debtor's evidence in the Opposition, the debtor has made payments to Creditor in the aggregate amount of \$20,814.44. Accordingly, the debtor is deficient on payments under the Stipulation in the amount of \$2,798.22, or one Deed of Trust Payment.

On May 27, 2020, Creditor filed a reply to the Opposition (the "Reply") [doc. 69]. In the Reply, Creditor states that the payments reflected in the images of the checks for January 2020 and April 2020 were received and credited, but Creditor's records do not show the March 2020 payment being applied to the account. Even if Creditor receives the check written in March 2020, the debtor apparently still would be missing one Deed of Trust Payment.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

9:30 AM

CONT... Laura Lee Stone

Chapter 13

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**

Wednesday, July 15, 2020

Hearing Room 301

9:30 AM

1:16-10630 Gerald E Klein and Norma L Klein

Chapter 13

#2.00 Motion for relief from stay [RP]

MUFG UNION BANK, N.A.
VS
DEBTOR

fr. 9/11/19; 11/13/19; 12/4/19; 2/5/20 (stip); 4/29/20; 6/17/20

Stip to continue filed 7/14/20

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

9:30 AM

CONT... Gerald E Klein and Norma L Klein

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 15, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#3.00 Motion for relief from stay [RP]

BAYVIEW LOAN SERVICING, LLC
VS
DEBTOR

fr: 1/8/20; 2/5/20; 3/4/20; 4/29/20; 6/17/20

Docket 45

***** VACATED *** REASON: Stip entered continuing hearing to 8/26/20 at
9:30 a.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Hernandez

Represented By
Donald E Iwuchuku

Movant(s):

Bayview Loan Servicing, LLC., as

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, July 15, 2020

Hearing Room 301

9:30 AM

1:18-12939 Arianne Beth Pachter

Chapter 13

#4.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC DBA MR. COOPER
VS
DEBTOR

fr. 6/17/20

Order appv stip re adequate protection ent 6/18/20

Docket 37

*** VACATED *** REASON: Order entered 06/18/20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arianne Beth Pachter

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, July 15, 2020

Hearing Room 301

9:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#5.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 6/3/20

Stip to continue filed 7/8/20

Docket 63

***** VACATED *** REASON: Order entered continuing the hearing to
8/26/20 [doc. 74].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mercedes Benitez

Represented By
Matthew D. Resnik

Movant(s):

The Bank of New York Mellon 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 15, 2020

Hearing Room 301

9:30 AM

1:19-12073 Scott Alan Secor and Iman Secor

Chapter 13

#6.00 Motion for relief from stay [RP]

WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR
STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2005-17
VS
DEBTOR

fr. 5/6/20(stip); 6/10/20

Stip for adequate protection filed 7/7/20

Docket 37

*** VACATED *** REASON: Order approving stip entered on 7/8/20 [doc. 56].

Tentative Ruling:

Party Information

Debtor(s):

Scott Alan Secor

Represented By
Stephen L Burton

Joint Debtor(s):

Iman Secor

Represented By
Stephen L Burton

Movant(s):

NATIONSTAR MORTGAGE, LLC

Represented By
Jacky 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, July 15, 2020

Hearing Room 301

9:30 AM

1:20-10269 John Goulter

Chapter 13

#7.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY
VS
DEBTOR

fr. 6/17/20

Docket 22

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Goulter

Represented By
Stella A Havkin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

9:30 AM

1:20-10628 Michelle E. Arreola

Chapter 7

#8.00 Motion for relief from stay [PP]

WELLS FARGO BANK, N.A.
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):

Michelle E. Arreola

Represented By
Stephen Parry

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 15, 2020

Hearing Room 301

9:30 AM

1:18-12112 Jose Luis Alejandres and Zeida Alejandres

Chapter 13

#9.00 Motion for relief from stay [PP]

NISSAN MOTOR ACCEPTANCE CORPORATION
VS
DEBTOR

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Luis Alejandres

Represented By
Erika Luna

Joint Debtor(s):

Zeida Alejandres

Represented By
Erika Luna

Trustee(s):

Elizabeth (SV) 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 15, 2020

Hearing Room 301

9:30 AM

1:16-12523 Brent Carpenter

Chapter 13

#10.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

Docket 68

Tentative Ruling:

The Court will continue this hearing to **August 19, 2020 at 9:30 a.m.** Pursuant to Local Bankruptcy Rule ("LBR") 4001-1(c)(1)(C) and Fed. R. Bankr. P. 4001(a)(1), the movant is required to serve the motion, notice of the hearing and all supporting documents on the junior lienholder, Jay Beynon. Movant served the junior lienholder at an incorrect address.

No later than **July 22, 2020**, the movant must serve the motion, notice of the continued hearing and deadline to file a response on Halavais & Associates, APC, Attn: Coby Halavais, 1 Orchard Rd., Suite 110, Lake Forest, California 92630.

Appearances on July 15, 2020 are excused.

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**

Wednesday, July 15, 2020

Hearing Room 301

9:30 AM

1:18-11921 Guadalupe Yanez Carrasco

Chapter 13

#11.00 Motion for relief from stay [RP]

THE MONEY SOURCE INC.
VS
DEBTOR

Docket 39

*** VACATED *** REASON: Order entered resolving the motion [doc. 43]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Guadalupe Yanez Carrasco

Represented By
Heather J Canning

Trustee(s):

Elizabeth (SV) 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 15, 2020

Hearing Room 301

1:30 PM

1:18-10715 Nasrollah Gashtili

Chapter 11

Adv#: 1:18-01113 VitaVet Labs, Inc. v. Gashtili

- #12.00** Status conference re first amended adversary complaint for non-dischargeability and objection to discharge pursuant to:
1. 11 U.S.C. sec 523 (a)(2)
 2. 11 U.S.C. sec 523 (a)(6)
 3. 11 U.S.C. sec 727 (a)(2)(A)

fr, 12/19/18; 9/18/19; 10/23/19; 1/22/20(stip); 3/4/20(stip);
4/29/20; 6/17/20

Docket 4

***** VACATED *** REASON: Judgment entered on 7/13/20 [doc. 83].**

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, July 15, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01155 Goldman v. Mandalay Bay, LLC, A Nevada Limited Liability Comp

#13.00 Status conference re: first amended complaint for:
(1) Avoidance of voidable and fraudulent transfers; and
(2) Recovery of avoided transfers for the benefit of
the bankruptcy estate

fr. 3/25/20(stip); 4/29/20(stip); 6/3/20(stip); 7/8/20

Docket 5

*** VACATED *** REASON: Stip entered dismissing adversary 7/1/20 - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

Mandalay Bay, LLC, A Nevada

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:19-01110 Banc of California, N.A. v. Sheik

#14.00 Pretrial conference re: complaint for fraud and nondischargeability of debt [11 USC sec 523(a)(2)(A), (a)(6), (a)(4)]

fr. 12/4/19; 7/8/20

Docket 1

Tentative Ruling:

On March 3, 2020, the mediator filed a certificate noting that the parties have settled this matter. What is the status of finalizing the parties' settlement agreement?

Party Information

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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01050 Sheik v. Does 1 to 10, Inclusive et al

#15.00 Status conference re: complaint for:

- 1) Quiet title;
- 2) Declaratory relief

fr. 7/8/20

Stipulation for entry of judgment filed 6/22/20

Docket 1

***** VACATED *** REASON: Judgment Based on Stipulation entered
6/23/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Does 1 to 10, Inclusive

Pro Se

Bank of America, N.A. a National

Pro Se

State Of California Franchise Tax

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By

Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

1:30 PM

1:20-10069 Shawn Sharon Melamed

Chapter 7

Adv#: 1:20-01046 Mazakoda, Inc. v. Melamed et al

#16.00 Status conference re: complaint objecting to discharge pursuant to 11 U.S.C. sec 727(3)(3), 727(a)(4)(A); 727(a)(4)(D). and 727(a)(5)

fr. 6/17/20; 7/8/20

Docket 1

Tentative Ruling:

This adversary proceeding and related bankruptcy case will be reassigned to the Honorable Maureen A. Tighe for all further proceedings. The status conference will be continued to August 19, 2020 at 11:00 a.m. in Courtroom 302, 21041 Burbank Blvd., Woodland Hills, CA 91367.

Appearances on July 15, 2020 are excused.

Party Information

Debtor(s):

Shawn Sharon Melamed

Represented By
Giovanni Orantes

Defendant(s):

Shawn Sharon Melamed

Pro Se

Jenous Tootian

Pro Se

Joint Debtor(s):

Jenous Tootian

Represented By
Giovanni Orantes

Plaintiff(s):

Mazakoda, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

1:30 PM

CONT... Shawn Sharon Melamed

Chapter 7

Scott E Gizer

Trustee(s):

Amy L Goldman (TR)

Represented By
Scott E Gizer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

1:30 PM

1:20-10093 Robert Alderman

Chapter 7

Adv#: 1:20-01054 LBS Financial Credit Union, a California corporati v. Alderman et al

#17.00 Status conference re: complaint to determine dischargeability of debt [11 U.S.C.A.sec523]

Docket 1

***** VACATED *** REASON: Stip entered continuing hearing to 7/29/20 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Alderman

Represented By
Stephen L Burton

Defendant(s):

Robert Alderman

Pro Se

Noni Alderman

Pro Se

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

Plaintiff(s):

LBS Financial Credit Union, a

Represented By
Karel G Rocha

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 15, 2020

Hearing Room 301

1:30 PM

1:20-10384 Amir Zamzelig

Chapter 13

Adv#: 1:20-01052 Peskin et al v. Zamzelig

#18.00 Status conference re: complaint to determine
nondischargeability of debt

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiffs must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 9/30/20.

Deadline to complete one day of mediation: 10/16/20.

Deadline to file pretrial motions: 11/16/20.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 12/2/20.

Pretrial: 12/16/20 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after this status conference, the plaintiffs must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

1:30 PM

CONT... Amir Zamzelig

Chapter 13

Debtor(s):

Amir Zamzelig

Represented By
David A Tilem

Defendant(s):

Amir Zamzelig

Pro Se

Plaintiff(s):

Brent Peskin

Represented By
James B Devine

Dori Peskin

Represented By
James B Devine

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 303 Calendar**

Wednesday, July 15, 2020

Hearing Room 303

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01060 FR LLC v. Lev Investments, LLC et al

#19.00 Order to show cause re: remand and status conference of removed proceeding

Docket 1

Tentative Ruling:

The Court will not remand this matter to state court.

I. BACKGROUND

On December 13, 2019, FR LLC ("FR") filed a complaint in state court against Lev Investments, LLC ("Debtor"), Dmitri Ludkovski, Ruvyn Feygenberg, Michael Leizerovitz and Sensible Consulting and Management, Inc. (collectively, "Defendants"). Notice of Removal, Exhibit 1. Through the state court complaint, FR asserted claims for conversion, negligent bailment, unjust enrichment and quiet title. *Id.* In relevant part, FR alleged—

In December 2018, Defendants approached FR's assignor to obtain a \$119,000 loan secured by the real property located at 13854 Albers Street, Sherman Oaks, CA 91401 (the "Property"). Defendants promised they would make monthly interest payments from February 2019 through July 2019, followed by a balloon payment of the total amount in July 2019.

Defendants also promised that, upon sale of the Property, FR would receive a proportional share of profits. As of the date FR filed the state court complaint, FR's assignor has not been provided the note and deed of trust and has not received any interest payments.

Id. On these allegations, FR prays for, among other relief, a money judgment, a declaration regarding FR's interest in the Property and sale of the Property with proceeds distributed to FR. *Id.* FR also requested a jury trial. *Id.* On December 31, 2019, FR filed a Notice of Pendency of Action (the "Lis Pendens"). *Id.*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 303 Calendar**

Wednesday, July 15, 2020

Hearing Room 303

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

On June 5, 2020, Debtor removed the state court action to this Court. On June 8, 2020, the Court issued an Order to Show Cause re: Remand (the "OSC"), instructing the parties to file brief in support of or in opposition to the removal [doc. 2]. On June 19, 2020, the nondebtor defendants filed a statement of consent to the removal [doc. 7].

On July 2, 2020, FR filed a brief requesting remand of this action to state court (the "FR Brief") [doc. 8]. In the FR Brief, FR argues that abstention is mandatory because this action is noncore. FR also asserts that, even if abstention is not mandatory, the Court should remand this action because FR has requested a jury trial and Debtor and the other Defendants are engaging in dishonesty and gamesmanship. On July 7, 2020, Debtor filed a brief opposing remand of this action [doc. 9]. On July 8, 2020, the remaining Defendants filed a brief opposing remand of this matter [doc. 10].

II. ANALYSIS

A. Subject Matter Jurisdiction

Removal of state court actions to federal district court is governed by 28 U.S.C. §§ 1441 – 1455. Removal and remand of actions related to bankruptcy cases is governed by § 1452.

- (a) A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.
- (b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. . . .

28 U.S.C. § 1452.

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:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 303 Calendar**

Wednesday, July 15, 2020

Hearing Room 303

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

Except as provided by subsection (e)(2) and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

1. Arising Under Jurisdiction

"A matter arises under the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

2. Arising In Jurisdiction

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings" *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11, or 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 303 Calendar**

Wednesday, July 15, 2020

Hearing Room 303

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pegasus Gold Corp., 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

"[C]ivil proceedings are not within 28 U.S.C. § 1334(b)'s grant of jurisdiction if they... 'are so tangential to the title 11 case or the result of which would have so little impact on the administration of the title 11 case... Put another way, litigation that would not have an impact upon the administration of the bankruptcy case, or on property of the estate, or on the distribution to creditors, cannot find a home in the district court based on the court's bankruptcy jurisdiction.'" *In re Wisdom*, 2015 WL 2128830, at *10 (Bankr. D. Idaho May 5, 2015) (quoting 1 Collier on Bankruptcy, ¶ 3.01[3][e][v] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014)).

Here, at a minimum, the Court has "related to" jurisdiction over this matter. FR contends that it made a loan which Debtor used to acquire the Property, and it is entitled to an interest in the Property, or otherwise to receive repayment of its putative loan. FR's claim for repayment will significantly impact administration of the estate; Debtor intends to liquidate the Property for distribution to creditors, and FR's alleged right to any sale proceeds, and its claim against property of the estate, will diminish the pool of funds for other creditors. Consequently, this Court has subject matter jurisdiction over this action.

B. Mandatory Abstention

FR asserts that the Court is required to remand this matter under 28 U.S.C. § 1334(c)(2). However, 28 U.S.C. § 1334(c)(2) does not apply to removed proceedings. *See In re Lazar*, 237 F.3d 967, 981 (9th Cir. 2001). Nevertheless, even if 28 U.S.C. § 1334(c)(2) applied to this proceeding, *all* of the following elements would have to be met to mandate abstention—

- (1) A timely motion;
- (2) a purely state law question;
- (3) a non-core

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 303 Calendar**

Wednesday, July 15, 2020

Hearing Room 303

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

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 (B.A.P. 9th Cir. 2001).

Here, FR has not demonstrated that the state court action may be timely adjudicated. *See In re First All. Mortgage Co.*, 269 B.R. 449, 455 (C.D. Cal. 2001) ("[T]he party moving for abstention will bear the burden of demonstrating that a state court action can be timely adjudicated."). As a result of the COVID-19 pandemic, California courts temporarily closed and, upon reopening, will face a significant backlog of cases. This action did not progress far in state court; in fact, Debtor contends it has not been served with the complaint.

In contrast, this Court has remained open for telephonic and video hearings. The Court continues to calendar matters on a regular basis and is able to adjudicate this matter in a timely fashion. *See 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 adjudicate the matter before the state court). Given that FR has not met its burden of proving that the state court can adjudicate this matter prior to this Court, FR has not satisfied one of the elements of mandatory abstention, and this Court is not obligated to abstain from this proceeding.

C. Remand

"Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground." *In re Enron Corp.*, 296 B.R. 505, 508 (C.D. Cal. 2003). 28 U.S.C. § 1452(b) provides, in pertinent part: "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." "[E]ven where federal jurisdiction attaches in actions 'related to' bankruptcy proceedings, Congress has explicitly provided for courts to find that those matters are more properly adjudicated in state court." *Parke v. Cardsystem Solutions, Inc.*, 2006 WL 2917604 (N.D. Cal. October 11, 2006) (quoting *Williams v. Shell Oil Co.*, 169 B.R. 684, 690 (S.D. Cal. 1994)).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 303 Calendar**

Wednesday, July 15, 2020

Hearing Room 303

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

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).

Here, the factors weigh against remanding this action. As noted above, this action will have a significant impact on administration of the estate. The outcome of this action will dictate the amount of funds available for distribution to creditors. Moreover, for this reason, there is a notable degree of relatedness to the main bankruptcy case. In addition, this action will not burden the bankruptcy court's docket; in fact, it is much more efficient for this Court to adjudicate the various disputes related to the Property in one forum instead of have multiple actions related to the Property proceed in state court.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 303 Calendar**

Wednesday, July 15, 2020

Hearing Room 303

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

There also is no evidence of forum shopping. That Debtor decided to remove the proceeding is not, in and of itself, evidence of forum shopping. Because the state court action had not progressed much prior to removal, there is no indication that Debtor removed the action to avoid an impending decision by the state court. Further, although the complaint involves state law causes of action, the causes of action are neither difficult nor unsettled and this Court routinely adjudicates such issues.

While there are nondebtor parties involved, with the exception of FR, all remaining nondebtor parties have filed a statement consenting to entry of a final judgment by this Court. Finally, the parties may be prejudiced if the Court remands this action because resolution of this action likely will be delayed in state court. The delay is especially harmful with the shortened deadlines associated with subchapter V chapter 11 cases.

The parties dispute whether the causes of action asserted by FR are "core." Although the issues are statutorily core under 28 U.S.C. § 157(b)(2)(A), (B) and (K), the parties have not briefed whether the claims are constitutionally core under *Stern v. Marshall*, 564 U.S. 462, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011). [FN1]. Nevertheless, even if the claims are noncore under *Stern*, the Court "can issue final rulings on pretrial matters, including claim-dispositive motions, that do not require factual findings." *In re AWTR Liquidation Inc.*, 547 B.R. 831, 839 (Bankr. C.D. Cal. 2016). As to factual findings, whether by motion for summary judgment or trial, the Court may submit proposed findings of fact and conclusions of law to the District Court. *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 31, 134 S.Ct. 2165, 2170, 189 L.Ed.2d 83 (2014).

Finally, FR asserts it has a right to a jury trial. Assuming FR has a right to a jury trial, FR did not timely preserve its right to a jury trial after removal of the proceeding. Local Bankruptcy Rule ("LBR") 9027-1(e) ("Within 14 days after service of the notice of removal, a party must comply with LBR 9015-2 to preserve any right to a trial by jury."); *see also* LBR 9015-2(b) (setting forth requirements for demanding a jury trial). Nevertheless, the parties may consent to a jury trial (and/or entry of a final judgment) before this Court. *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 135 S.Ct. 1932, 1943, 191 L.Ed.2d 911 (2015). Otherwise, assuming this matter is set to proceed to trial, any nonconsenting party may move to withdraw the reference. Although a submission to the District Court of proposed findings of fact and conclusions of law or a withdrawal of the reference for a jury trial may cause a slight delay, any such delay is unlikely to surpass the delays expected in state court.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 303 Calendar**

Wednesday, July 15, 2020

Hearing Room 303

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

FR's additional contentions are irrelevant to whether the Court should remand this matter. FR alleges that Debtor has engaged in dishonest conduct. However, this is not cause for remand; this Court is capable of scrutinizing the conduct of parties that appear before it. FR also discusses the conduct of Mr. Sands. However, Mr. Sands is not a party to this action, and the discussion about him has no bearing on the issues before this Court, *i.e.*, remand and abstention. In light of the analysis of the factors above, the Court will not remand this matter to state court.

III. CONCLUSION

The Court will discharge the OSC and will not remand this matter to state court.

The Court also will set an initial status conference for **1:30 p.m. on August 19, 2020**. Pursuant to LBR 7016-1(a), the parties must file a joint status report no later than **August 5, 2020**.

The Court will discharge the OSC. Plaintiff must submit a scheduling order within seven (7) days.

FOOTNOTES

1. FR misinterprets *Matter of Pester Refining Co.*, 66 B.R. 801 (Bankr. S.D. Iowa). There, based on the following facts, the court held that a conversion claim was core: (A) the alleged conversion occurred after the bankruptcy petition had been filed, and (2) the rights being asserted by the alleged wrongdoers were based upon a prepetition debt owed by a debtor in bankruptcy. The court did not hold that these findings are *required* for a court to deem a conversion claim core. In any event, *Pester Refining* is an out-of-circuit case from over 30 years ago, and the United States Supreme Court has since provided additional guidance on the nature of core claims.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 303 Calendar**

Wednesday, July 15, 2020

Hearing Room 303

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

David B Golubchik
Juliet Y Oh

Defendant(s):

Lev Investments, LLC

Represented By
David B Golubchik

DMITRI LUDKOVSKI

Pro Se

RUVIN FEYGENBERG

Pro Se

MICHAEL LEIZEROVITZ

Pro Se

SENSIBLE CONSULTING AND

Pro Se

DOES 1 through 100, inclusive

Pro Se

Plaintiff(s):

FR LLC

Pro Se

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

#20.00 Defendant's motion to dismiss plaintifff Bright Enabuele's complaint for:
1) Failure to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6); and
2) Insufficient service of plaintiff's complaint pursuant to LBR 7004-1(a)(1)(B) and FRBP 7004(b)(1) and (e)

fr. 7/8/20

Stip to continue filed 7/8/20

Docket 11

***** VACATED *** REASON: Order approving stip entered 7/10/20.
Hearing continued to 9/23/20 at 2:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Represented By
Michael Jay Berger

Plaintiff(s):

Bright Enabulele

Represented By
Levi Reuben Uku

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 15, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

#21.00 Status conference re: first amended complaint for non-dischargeability under 11 U.S.C. sec 523(A)(2) (4) and (6)

fr. 5/20/20; 6/3/20

Stip to continue filed 7/8/20

Docket 6

***** VACATED *** REASON: Order approving stip entered 7/10/20.
Hearing continued to 9/23/20 at 2:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Bright Enabulele

Represented By
Levi Reuben Uku

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 15, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01039 Lewis v. Vartan

#22.00 Defendant Shobert Vartan's motion to dismiss plaintiff Lester Lewis' adversary complaint pursuant to Fed.R.Civ.P. Rule 12(b)(6)

fr. 7/8/20

Docket 10

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On December 18, 2019, Shobert Vartan ("Defendant") filed a voluntary chapter 7 petition. On May 7, 2020, Lester Lewis ("Plaintiff") filed a complaint against Defendant (the "Complaint"), seeking nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(2), (a)(4) and (a)(6). In the Complaint, Plaintiff alleges:

Defendant is in the business of making, brokering, arranging and promoting "hard money" loans. Such loans are commonly made to borrowers who are in severe financial distress or possess limited financial resources and sophistication. Defendant knew or should have known that many of his prospective customers, including Plaintiff, are the subject of elder abuse financial predation and that many of the secured loans Defendant made, brokered, arranged and promoted would likely result in foreclosure and the loss of borrowers' residences and life savings.

During the events alleged in the Complaint, Plaintiff was 68 years old. In 2017, Plaintiff received a loan (the "Loan") after consulting with Defendant. The Loan was secured by the Plaintiff's home located in Compton, California. Prior to receiving the Loan, Plaintiff's home was valued at approximately

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

2:30 PM

CONT...

Shobert Vartan

Chapter 7

\$350,000 with two encumbrances: (1) a \$35,000 note secured by a deed of trust owed to the Plaintiff's brother and (2) a purchase mortgage with principal of \$79,600 with 10.5% annual interest. Plaintiff's monthly mortgage payment was approximately \$754.

In February 2017, Plaintiff met with Defendant. Plaintiff told Defendant about the terms of his current loan. Plaintiff told Defendant he wanted to refinance in order to do home repairs, reduce his interest rate to 3% or 4%, reduce his monthly payments, pay off the \$35,000 note and take out \$10,000 to \$20,000 cash. Defendant told Plaintiff he would begin the loan application process. Additionally, Defendant told Plaintiff he thought he could arrange a loan at 3% interest and assigned his colleague, Daniel David Reitberg, to work with Plaintiff and arrange details of the Loan.

Defendant later told Plaintiff that Plaintiff had been approved for a loan and that escrow for the Loan would close on March 27, 2017. Defendant never provided Plaintiff with complete written documentation for the Loan, including any estimates of costs or loan disclosure statements. Defendant never obtained Plaintiff's signature or consent to any complete loan documents.

In preparation for the Loan, Defendant together with Unicitizens Financial, Inc. ("Unicitizens") and Reitberg sent Triplett Homes, LLC ("Triplett Homes") to Plaintiff's home for an estimate of repairs. Plaintiff never met nor spoke with Triplett Homes nor its representative. Triplett Homes produced an estimate of repairs totaling \$18,350. No work was ever authorized by Plaintiff or done on Plaintiff's residence.

In February or March 2017, Defendant prepared fraudulent loan documentation to facilitate a loan which would generate exorbitant fees for the Defendant and others by generating a loan far in excess of the amount desired or intended by Plaintiff and in excess of the amount Plaintiff was capable of repaying. Defendant had Plaintiff sign, initial and place his thumb print on documents missing essential terms such as the interest rate and loan amount. Defendant also completed documents which represented that the Loan was for a business purpose and that Plaintiff rented out his home and did not reside in

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

2:30 PM

CONT...

Shobert Vartan

Chapter 7

it. Defendant did not explain the purpose of this documentation to Plaintiff. However, Defendant represented to Plaintiff that Plaintiff would receive an estimate or statement which contained the Loan terms prior to the Loan's completion.

Pursuant to this scheme, Defendant caused Unicitizens and REO Group, Inc. ("REO Group") to each prepare an "Agreement to Procure a Loan & Lender-Borrower Escrow Instructions" which allowed them to control the loan process and which became riders to the Note and Deed of Trust, and purported to make them beneficiaries and owners of a security interest in Plaintiff's home. On February 28, 2017 a Deed of Trust in favor of REO Group as lender and Adenheim, Inc. ("Adenheim") as trustee was executed. The Deed of Trust purported to secure a loan of \$180,000 at 12% annual interest, with 23 monthly interest payments of \$1,800 and a balloon payment of \$181,000 due on April 1, 2019. This document was fraudulently notarized.

At the direction of Defendant, Unicitizens and Rose Escrow, Inc. (a company owned and operated by Defendant's mother) prepared escrow instructions authorizing the distribution of the \$180,000 loan proceeds. These distributions included: \$17,500 brokerage fee, \$997.50 underwriting fee, \$997.50 document fee and \$997.50 processing fee to Unicitizens; \$17,500 brokerage fee, \$997.50 underwriting fee, \$997.50 document fee and \$997.50 processing fee to Adenheim; \$18,350 to Triplett Homes; \$800 escrow fee to Rose Escrow and \$11,000 additional costs of refinancing. The cash remaining to Plaintiff after these disbursements was \$404.69.

On March 9, 2017, Defendant, together with Unicitizens, instructed Rose Escrow to close escrow and disburse the above funds. This was done without Plaintiff's knowledge or consent. All funds were disbursed, except for the \$18,350 sum to Triplett Homes for repairs never made. On March 12, 2017, Plaintiff called Rose Escrow and instructed it not to disburse funds from the Loan. Plaintiff then learned about the above disbursements. Plaintiff subsequently refinanced his home with another lender to avoid foreclosure. As a proximate result of Defendant's actions, Plaintiff has been damaged by an amount no less than \$5 million.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

2:30 PM

CONT... Shobert Vartan

Chapter 7

To the Complaint, Plaintiff attached a copy of a complaint he filed against defendant and others in state court; it does not appear the state court has adjudicated the state court complaint.

On May 7, 2020, Defendant filed a motion to dismiss the Complaint (the "Motion") [doc 10], arguing that Plaintiff failed to state a claim for relief. On July 1, 2020, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 17].

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 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); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009)). "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 555 (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v.*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

2:30 PM

CONT... **Shobert Vartan**

Chapter 7

Fed. Dep. Ins. Corp. (In re Kubick), 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). 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).

"A complaint that merely recites statutory language fails to state a claim under Rule 12(b)(6)." *In re Kubick*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994). This is because "mere statutory language does not plead facts sufficiently so that they may be answered or denied." *Id.* "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Id.*

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)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

2:30 PM

CONT... Shobert Vartan

Chapter 7

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the Plaintiffs must prove the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct

In re Weinberg, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

Plaintiff appears to rest his § 523(a)(2)(A) claim on a fraudulent "scheme" involving Defendant and other entities. However, Plaintiff does not clearly explain Defendant's relationship to the other entities identified in the Complaint. To adequately hold Defendant liable under § 523(a)(2)(A), Plaintiff would have to allege that "(1) the debtor personally commits actual, positive fraud, or (2) the actual fraud of another is imputed to the debtor under partnership/agency principles." *In re Tsurukawa*, 287 B.R. 515, 525 (9th Cir. 2002).

Nevertheless, Plaintiff does make the following allegations regarding *Defendant's* actions: (1) Defendant's representation to Plaintiff prior to the loan application process about the possibility of obtaining a loan with a 3% interest rate; and (2) Defendant's failure to inform Plaintiff about the terms of the Loan, which would generate exorbitant fees for Defendant and result in a loan amount far in excess of the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

2:30 PM

CONT... Shobert Vartan

Chapter 7

amount Plaintiff was capable of repaying. [FN1].

Regarding statements made about the possibility of securing a loan with a 3% interest rate, Plaintiff has not adequately alleged that Defendant made a fraudulent misrepresentation. Plaintiff alleges that Defendant represented he "thought" he could secure a loan at 3% interest. In so stating, Defendant merely expressed an opinion about possible future loan terms. Without additional allegations regarding how reliance on such a statement would result in damages to Plaintiff, Plaintiff has not satisfied the specificity requirement of Rule 9(b) and failed to state a claim under § 523(a)(2)(A) on this basis.

However, Plaintiff has adequately stated a claim for relief based on Defendant's alleged omissions. Plaintiff alleges that Defendant omitted material facts, such as the amount of the Loan and interest rate, from the documents presented to Plaintiff. Plaintiff also sufficiently alleges that he justifiably relied upon Defendant's omissions; Plaintiff alleges he is 68 years old and relied on Defendant, a mortgage broker, for information about a home loan. Plaintiff's age, limited financial sophistication and reliance on Defendant for information directly related to Defendant's profession indicate that Plaintiff's reliance was justifiable.

Finally, Plaintiff has adequately alleged damages proximately caused by Defendant's alleged fraudulent omission. Plaintiff alleges significant financial loss. Defendant's failure to disclose the alleged oppressive loan terms was a substantial factor leading to Plaintiff's injury. Financial loss also could be reasonably expected if the Defendant made the alleged fraudulent omission. As such, the Court will not dismiss Plaintiff's claim under § 523(a)(2)(A) based on the alleged omissions.

C. 11 U.S.C. § 523(a)(4)

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." In the Complaint, Plaintiff appears to base his § 523(a)(4) claim solely on embezzlement. However, in the Opposition, Plaintiff also mentions larceny.

"Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1) property rightfully in the possession of the non-owner debtor, (2) the non-owner's

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

2:30 PM

CONT...

Shobert Vartan

Chapter 7

misappropriation of the property to a use other than that for which it was entrusted, and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). "The elements of larceny differ only in that a larcenous debtor has come into possession of funds wrongfully." *In re Mickens*, 312 B.R. 666, 680 (Bankr. N.D. Cal. 2004).

Plaintiff does not adequately allege embezzlement. Plaintiff alleges Defendant had a role in the disbursement of the Loan. However, Plaintiff does not allege that Defendant was rightfully in possession of any funds or any other property belonging to Plaintiff. As to larceny, the Complaint does not include any allegations that Defendant himself came into possession of any funds. The allegations regarding disbursements of the funds refer to disbursements to other entities. Although Defendant may control these entities, the allegations in the Complaint do not adequately establish any such relationship.

Plaintiff requests leave to amend the Complaint to add allegations regarding fraud or defalcation while acting in a fiduciary duty. The Court will dismiss the § 523(a)(4) claim and allow Plaintiff leave to amend.

D. 11 U.S.C. § 523(a)(6)

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 140 L.Ed. 2d 90 (1998). In the Ninth Circuit, " § 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Ormsby*, 591 F.3d at 1206 (quoting *In re Su*, 290 F.3d 1140, 1142 (9th Cir.2002)). "The Debtor is charged with the knowledge of the natural consequences of his actions." *Id.* (citing *In re Cohen*, 121 B.R. 267, 271 (Bankr.E.D.N.Y.1990)). *See also Su*, 290 F.3d at 1146 ("In addition to what a debtor may admit to knowing, the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

2:30 PM

CONT... Shobert Vartan

Chapter 7

injury-producing action.").

Under § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.* at 1147. Maliciousness does not require "personal hatred, spite, or ill-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

Here, Plaintiff makes a claim under § 523(a)(6) based on elder abuse financial predation. Under California law, financial abuse of an elder occurs when a person or entity "takes, secretes, appropriates, obtains or retains real or personal property of an elder for a wrongful use or with intent to defraud, or both." [Cal. Welfare and Inst. Code § 15610.30 (West 2020)]. A person or entity who assists in the foregoing conduct is also liable. *Id.* A wrongful use occurs when the person or entity knew or should have known that their conduct was likely to be harmful to the elder. *Id.* The statute defines an elder as any person residing in California 65 years of age or older. [Cal. Welfare and Inst. Code § 15610.27 (West 2020)]. A lender who holds a secured interest in property can satisfy the statutory taking requirement. *Consumer Solutions REO, LLC v. Hillery*, 658 F.Supp.2d 1002,1017 (N.D. Cal. 2009).

Plaintiff sufficiently alleges a wrongful act by alleging the necessary elements of financial abuse of an elder under California Welfare and Institutions Code § 15610.30. Plaintiff was 68 years old and residing in California at the time of the events alleged, making him an elder as defined by the statute. Plaintiff alleges Defendant, as president and managing officer of Unicitizens, assisted others in taking a secured interest in Plaintiff's real property. Finally, Plaintiff alleges that Defendant knew Plaintiff could not pay the Loan back and foreclosure and loss of equity was likely to occur. Because Plaintiff alleges that Defendant assisted in the taking of the elder Plaintiff's real property for a wrongful use, Plaintiff sufficiently alleges a wrongful act.

At the motion to dismiss stage, "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Rule 9(b). Here, Plaintiff alleges that Defendant willfully and maliciously injured Plaintiff, that Defendant intended the consequences of his actions and that injury was substantially certain to result from Defendant's conduct. Thus, the Complaint includes sufficient allegations regarding the intent elements of § 523(a)(6). Accordingly, the Court will deny the Motion as to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

2:30 PM

CONT... **Shobert Vartan**
Plaintiff's § 523(a)(6) claim.

Chapter 7

III. CONCLUSION

The Court will dismiss Plaintiff's claim under 11 U.S.C. § 523(a)(4) with leave to amend. The Court will not dismiss Plaintiff's claims under 11 U.S.C. §§ 523(a)(2)(A) and (a)(6).

If Plaintiff elects to amend the Complaint, Plaintiff must file and serve an amended complaint **no later than August 5, 2020**. Any response to an amended complaint must be filed and served **no later than August 26, 2020**. If Plaintiff does not intend to file an amended complaint, Plaintiff must file and serve a notice to proceed with the Complaint **no later than July 22, 2020**. In that case, Defendant must file and serve an answer **no later than August 12, 2020**.

Plaintiff must submit an order within seven (7) days.

FOOTNOTES

1. Defendant argues that, in the state court complaint attached to the Complaint, Plaintiff alleged that multiple individuals and entities perpetrated the alleged fraud whereas, in the Complaint, Plaintiff attributes much of the alleged conduct to Defendant. Because the state court did not enter a judgment on the state court complaint, this Court is not bound by the allegations made before the state court. To the extent Defendant argues that the attached, incorporated state court complaint contradicts the allegations in the Complaint, Plaintiff may omit the attachment if he chooses to amend the Complaint and incorporate any relevant allegations therein into the body of the amended complaint.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 15, 2020

Hearing Room 301

2:30 PM

CONT... Shobert Vartan

Chapter 7

Defendant(s):

Shobert Vartan

Represented By
Michael Jay Berger

Plaintiff(s):

Lester L Lewis

Represented By
Elissa Miller

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 15, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01039 Lewis v. Vartan

#23.00 Status conference re: first amended complaint to determine dischargeability of debt 11 U.S.C. § 523(a)(2)(A); fraud; fraud or defecation while acting in a fudiciary capacity 11 U.S.C. § 523 (a)(4) and wilful and malicious injury 11 U.S.C. §523(a)(6)

fr. 5/20/20(stip); 6/10/20

Docket 4

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Lester L Lewis

Represented By
Elissa Miller

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 15, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#24.00 Defendant Shobert Vartans motion to dismiss adversary complaint with prejudice pursuant to FRCP 12(B)(6)

fr. 7/8/20

Order appr stip to cont ent 7/10/20

Docket 7

***** VACATED *** REASON: Order appr stip to cont hrg to 8/19/20 (doc # 22)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Represented By
Michael Jay Berger

Plaintiff(s):

Philip Alvarez

Represented By
Fritz J Firman

Philip Alvarez as Successor Trustee

Represented By
Fritz J Firman

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 15, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#25.00 Status conference re: first amended complaint to determine dischargeability of debt 11 U.S.C. sec 523(a)(2); fraud; fraud or defecation while acting in a fiduciary capacity 11 U.S.C. sec 523(a)(4); and willful and malicious injury 11 U.S.C. sec 523(a)(6)

fr. 5/20/20; 7/8/20

Order appv stip to cont ent 07/10/20

Docket 4

***** VACATED *** REASON: Order appr stip to cont hrg to 8/19/20 (doc # 22)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Philip Alvarez

Represented By
Fritz J Firman

Philip Alvarez as Successor Trustee

Represented By
Fritz J Firman

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:00 PM

1:17-13142 Amir Elosseini

Chapter 11

#1.00 Second amended disclosure statement in support of
plan of reorganization

Docket 218

Tentative Ruling:

The Court will not approve the proposed disclosure statement as containing adequate information. Taking into account the objections to the proposed disclosure statement filed by HSBC Bank USA, N.A. [doc. 237], the disclosure statement does not currently contain adequate information. Moreover, it is apparent that the Court cannot confirm the amended chapter 11 plan.

Postpetition Efforts to Sell the Real Property. The amended disclosure statement does not discuss the efforts taken to market and to sell the debtor's real property, and any offers received, following the employment of the real estate broker.

Chase/Bank One Card Serv. Claim. In the debtor's amended schedule E/F [doc. 67], 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.

Class 3. On the petition date, the debtor indicated that his principal residence was 3541 Eddingham Avenue, Calabasas, California 91302 (the "Property"). Since the petition date, the debtor has moved out of the Property [doc. 167]. However, "whether a claim is secured by a debtor's principal residence is, like all claims, fixed at the petition date." *In re Abdelgadir*, 455 B.R. 896, 903 (B.A.P. 9th Cir. 2011). Accordingly, the Property is the debtor's principal residence for purposes of the treatment of claims secured by the Property in a chapter 11 plan of reorganization. However, in the amended chapter 11 plan [doc. 219], the debtor lists HSBC Bank USA, N.A. and Wells Fargo Bank N.A.'s claims in class 3 (unimpaired secured claims on property other than the debtor's principal residence) rather than in class 2

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:00 PM

CONT... Amir Elosseini

Chapter 11

(secured claims on the debtor's principal residence).

Class 5. On December 7, 2017, the Internal Revenue Service filed proof of claim 1-1, asserting a \$65,941.46 claim secured by the Property and a \$16,804.62 priority unsecured claim (the "IRS Claim"). The disclosure statement lists the secured portion of the IRS Claim in class 5 (claims secured by a lien on property other than secured claim in class 2). The secured portion of the IRS Claim must be listed in class 2.

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, July 16, 2020

Hearing Room 301

1:00 PM

1:17-13142 Amir Elosseini

Chapter 11

#2.00 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; 11/14/19; 2/6/20; 4/9/20; 6/4/20;

Docket 1

Tentative Ruling:

Pursuant to the ruling at the prior status conference on June 4, 2020, the debtor was to file an updated status report, supported by evidence, by June 2, 2020. The debtor did not timely file any such status report.

At this point, the debtor is unemployed, and his proposed method for paying claims secured by real property and priority tax claims is to sell his former residence, following confirmation of a chapter 11 plan. Pursuant to the proposed plan, the debtor will surrender that real property, if it is not sold by the effective date.

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1), the Court intends to convert this case to one under chapter 7, in order for a chapter 7 trustee to liquidate the debtor's former residence, through engaging a realtor with sufficient expertise in the context of selling real property as property of the estate. The debtor will retain his rights to a homestead exemption, as well as other claimed exemptions. Creditors and employed professionals will be paid in the manner set forth in chapter 7 of the Bankruptcy Code, and the debtor will have the ability to obtain a discharge pursuant to 11 U.S.C. § 727(a).

The Court will prepare the order.

June 4, 2020 Tentative Ruling

The Court is considering the issuance of an Order to Show Cause, why this case should not be converted to one under chapter 7, or dismissed, pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (4)(E), (F) and (H).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:00 PM

CONT...

Amir Elosseini

Chapter 11

Pursuant to the ruling at the prior status conference held on April 9, 2020, the debtor was to file an updated status report, supported by evidence, by May 21, 2020. The debtor did not timely file any such status report.

Additionally, the debtor was to file amended monthly operating reports that reflect the debtor's income received from his employment. As of May 28, 2020, the debtor has not filed any such amended monthly operating reports.

Moreover, because that income is property of the estate, the Court ordered the debtor to deposit his employment income into a debtor in possession account. The debtor's March 2020 and April 2020 monthly operating reports do not indicate any of his income from his post-petition employment.

Ruling from April 9, 2020

Pursuant to the ruling at the prior chapter 11 case status conference held on February 6, 2020, the debtor was to file an updated status report by March 26, 2020. The debtor has not timely done so.

In the debtor's amended disclosure statement [doc. 188], the debtor indicates that he is receiving income in the amount of \$5,000 per month plus commission of 25% of gross revenues from new patient treatment from Beverly Hills Cancer Center. The debtor indicates that he has deposited this income into the debtor's "corporate account." That account is not reflected in the debtor's monthly operating reports.

As property of the estate, that income must be deposited into a debtor in possession account. To reflect this income, the debtor must file amended monthly operating reports.

Party Information

Debtor(s):

Amir Elosseini

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:00 PM

CONT...

Amir Elosseini

Kevin Tang

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 11/21/19; 4/9/20; 7/9/20

Docket 1

Tentative Ruling:

On June 16, 2020, the debtors timely filed a chapter 11 plan of reorganization [doc. 118] and related disclosure statement [doc. 117]. The Court intends to set a hearing on the adequacy of the debtor's proposed disclosure statement on **September 10, 2020 at 1:00 p.m.** In accordance with Local Bankruptcy Rule 3017-1, **no later than July 27, 2020**, the debtors must provide notice of the hearing, the ability of creditors to receive, on request, copies of the plan and related proposed disclosure statement, and the deadline to file any objections to the proposed disclosure statement.

Party Information

Debtor(s):

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**

Thursday, July 16, 2020

Hearing Room 301

1:00 PM

1:20-10678 John Michael Smith, Jr and Rebecca Phelps Smith

Chapter 11

#4.00 Status conference re chapter 11 case

Docket 36

Tentative Ruling:

The parties should address the following:

Have the debtors filed their 2019 tax returns?

Do the debtors lease the real property located at 22190 Tumbleweed Drive, Canyon Lake, CA 82587, as reflected in their *Change of Mailing Address* [doc. 44] and their *Chapter 11 Status Conference Report (Initial)* [doc. 48]? If so, when did they enter into that lease?

In light of their dispute with the Internal Revenue Service, as well as their ongoing obligation to file income tax returns and their scheduled claims to unpaid wages [Schedule B, item 33 - doc. 13], do the debtors intend to employ an accountant, special tax counsel and/or other special counsel?

If not by filing an objection to claim, how do the debtors intend to have their dispute(s) with the IRS resolved or adjudicated?

If the debtors will be filing an objection to the claim of the IRS, by when do they intend to do so?

Deadline to file proof of claim ("Bar Date"): **September 28, 2020.**

Deadline to mail notice of Bar Date: **July 27, 2020.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Continued chapter 11 case status conference to be held at **1:00 p.m. on November 5, 2020.**

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:00 PM

CONT... John Michael Smith, Jr and Rebecca Phelps Smith Chapter 11

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's(s') 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. **The status report must be supported by evidence in the form of declarations and supporting documents.**

The debtor(s) must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

Party Information

Debtor(s):

John Michael Smith Jr

Represented By
Louis J Esbin

Joint Debtor(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

Trustee(s):

Elizabeth (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 16, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#5.00 Motion to disqualify debtor as a debtor in possession and to disqualify case as a ch 11 subchapter V case

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Meeting URL: <https://cacb.zoomgov.com/j/1601814433>

Meeting ID: 160 181 4433

Password: 549488

Docket 21

Tentative Ruling:

Deny.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor"), filed a voluntary petition under subchapter V of chapter 11.

On June 17, 2020, The Sands Law Group APLC ("Sands Law") filed a motion to disqualify Debtor as a debtor under subchapter V of chapter 11 and to appoint a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

chapter 11 trustee (the "Motion") [doc. 21]. [FN1]. Through the Motion, Sands Law requests that Debtor cannot be a debtor under subchapter V of chapter 11 because Debtor's debts exceed the \$7.5 million limit.

Sands Law also requests appointment of a chapter 11 trustee for the following reasons: (A) Debtor has scheduled insiders as creditors of the estate and improperly included them in its Form 204; (B) Debtor indicated in its schedule A/B that it does not have any investments, but, in November 2019, Debtor obtained a Trustee's Deed Upon Sale for a parcel of land in Riverside (the "Riverside Land"); (C) Debtor did not attach an appraisal of the real property located at 13854 Albers Street, Sherman Oaks, CA 91401 (the "Albers Property") to its schedule A/B; (D) Debtor did not check the box for Form 204 in its Declaration Under Penalty of Perjury for Non-Individual Debtors (the "Declaration"); (E) Debtor did not disclose certain lawsuits in its schedules; (F) Debtor's principal, Dmitri Lioudkouski, and another entity owned by Mr. Lioudkouski are defendants in a lawsuit before another bankruptcy judge; (G) Mr. Lioudkouski does not speak English; and (H) Debtor has not timely paid its taxes or other debts.

On July 2, 2020, Debtor filed an opposition to the Motion (the "Opposition") [doc. 81]. On July 9, 2020, Mike Kemel and Mariya Ayzenberg, along with Sands Law, filed a "joint reply" to the Opposition (the "Reply") [doc. 92]. Mr. Kemel and Ms. Ayzenberg previously did not file a joinder to the Motion. For the first time in the Reply, these entities contend that Debtor also should be disqualified as a debtor in possession because Debtor attempted to employ Prime Capital Group, Inc. ("Prime Capital") as a real estate broker without disclosing its prior connection to Prime Capital, namely, that Prime Capital, Mr. Lioudkouski and another of Mr. Lioudkouski's entities are defendants in the same lawsuit.

II. ANALYSIS

A. Whether Debtor Qualifies as a Subchapter V Debtor

Pursuant to 11 U.S.C. § 1182(1)(A), a debtor under subchapter V of chapter 11—

... means a person engaged in commercial or business activities... that has aggregate *noncontingent liquidated* secured and unsecured debts as

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor....

(emphasis added). Sands Law contends that Debtor does not qualify as a subchapter V debtor because Debtor has excluded in its calculation of debt certain lawsuits to which it or its principal and affiliate(s) are parties. Section 1182(1)(A) states that a debtor qualifies if the *noncontingent* and *liquidated* debts exceed \$7.5 million. Debtor's potential liability from pending lawsuits does not factor into this calculation. As such, Debtor is not disqualified as a subchapter V debtor because its contingent or unliquidated debts may exceed \$7.5 million.

B. Removal of a Subchapter V Debtor in Possession

Pursuant to 11 U.S.C. § 1185(a)—

On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case, or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter.

Here, Sands Law has not demonstrated that Debtor has committed "fraud, dishonesty, incompetence, or gross mismanagement of the affairs of" Debtor. First, regarding Sands Law's contention that Debtor's principal does not speak English, Mr. Lioudkouski has provided a declaration stating that, although his English comprehension is poor, he is able to read English and receives assistance from counsel and Google Translate if he does not understand specific terms.

Sands Law's legal authority regarding interpreters pertains to situations that require complete translations from one language to another, not to individuals who require some assistance with understanding specific words or phrases. Moreover, Sands Law has set forth no authority that a debtor in possession may not maintain that role if its principal is not fluent in English. Instead, a certified interpreter may be required to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

assist Mr. Lioudkouski in situations where an interpreter might be particularly useful, such as during live testimony.

Sands Law also contends Debtor should not be a debtor in possession because Debtor included insiders as creditors of the estate and included such insiders in Form 204. However, the Bankruptcy Code does not exclude insiders from being creditors of the estate. Although Form 204 instructs Debtor to omit insiders from the list of creditors who have the 20 largest unsecured claims, here, Debtor's inclusion of any such insiders is not sufficient cause to remove Debtor as a debtor in possession. Nevertheless, Debtor should file an amended Form 204 that omits any insider creditors and includes the additional unsecured creditors included in Debtor's amended schedule E/F, filed on June 25, 2020 [doc. 48].

In addition, Sands Law contends that Debtor did not attach an appraisal of the Albers Property to its schedules. Item 58 of schedule A/B asks: "Has any of the property listed in Part 9 been appraised by a professional within the last year?" Debtor answered no. Sands Law contends that Debtor obtained an appraisal on May 1, 2019, *over* one year before the petition date, and that Debtor should have responded "yes" and attached the appraisal - even if the appraisal does not fall within the purview of item 58. Given that Debtor accurately answered the question, the Court will not remove Debtor as a debtor in possession, based on this answer.

Sands Law also states that Debtor did not schedule an investment in the Riverside Land. In the Opposition, Mr. Lioudkouski states, under penalty of perjury, that the related Trustee's Deed of Sale was rescinded prepetition, and attaches the Rescission of Trustee's Deed to his declaration. Debtor also notes that it mentioned the note receivable in its schedule A/B, i.e., in item 11. As such, on this basis, there is not cause to remove Debtor as a debtor in possession.

Further, Sands Law states that, in the Declaration, Debtor did not check the box for Form 204 when it testified that certain documents are true and correct. However, as noted above, Form 204 includes the same information as schedule E/F, for which schedule Debtor *did* check the box attesting that the information is true and correct. Debtor may amend the Declaration to check all applicable boxes. This omission alone is insufficient to constitute cause for removal of a debtor in possession under § 1185(a).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Sands Law also argues that Debtor did not disclose certain lawsuits in its schedules. However, all of the referenced lawsuits are included either in Debtor's schedule A/B or in Debtor's Statement of Financial Affairs [doc. 17]. As to the lawsuit before another bankruptcy judge, Debtor apparently is not a party. As such, neither of these bases militate removal of Debtor as a debtor in possession.

Finally, Sands Law has set forth no authority that Debtor's prepetition failure to pay debts, including taxes, must result in removal of debtor as a debtor in possession. If that were the law, most, if not all, debtors would be unable to act as debtors in possession in a chapter 11 case.

The Court need not address the arguments in the Reply because they were raised for the first time in the Reply, and by parties who did not move for removal under § 1185(a) (or join Sands Law's motion). However, even if the Court considers the assertions in the Reply, the replying entities have not provided cause for removal of Debtor as a debtor in possession.

With the exception of irrelevant statements regarding Sands Law's conduct and Mr. Kemel's and Ms. Ayzenberg's standing (which are not at issue because they are not the movants), the only pertinent issue raised in the Reply is that Debtor did not disclose its relationship with Prime Capital in its application to employ Prime Capital as a broker. However, the nature of this "relationship" is that Mr. Lioudekouski and another entity in which Mr. Lioudekouski has an interest are defendants, along with Prime Capital, in a pending lawsuit before another bankruptcy judge. There is no other evidence of a relationship between Prime Capital and *Debtor*. In addition, Debtor already agreed to withdraw the application to employ Prime Capital. Consequently, this is not a reason to remove Debtor as a debtor in possession.

The Court notes that, as with all cases under subchapter V of chapter 11, there is a trustee employed pursuant to 11 U.S.C. § 1183. Under 11 U.S.C. § 1183(b), which outlines a subchapter V trustee's duties, the trustee shall—

- (1) perform the duties specified in paragraphs (2), (5), (6), (7), and (9) of section 704(a) of this title;

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

- (2) perform the duties specified in paragraphs (3), (4), and (7) of section 1106(a) of this title, if the court, for cause and on request of a party in interest, the trustee, or the United States trustee, so orders;
- (3) appear and be heard at the status conference under section 1188 of this title and any hearing that concerns—
 - (A) the value of property subject to a lien;
 - (B) confirmation of a plan filed under this subchapter;
 - (C) modification of the plan after confirmation; or
 - (D) the sale of property of the estate;
- (4) ensure that the debtor commences making timely payments required by a plan confirmed under this subchapter;
- (5) if the debtor ceases to be a debtor in possession, perform the duties specified in section 704(a)(8) and paragraphs (1), (2), and (6) of section 1106(a) of this title, including operating the business of the debtor;
- (6) if there is a claim for a domestic support obligation with respect to the debtor, perform the duties specified in section 704(c) of this title; and
- (7) facilitate the development of a consensual plan of reorganization.

The duties specified in 11 U.S.C. § 704(a)(2), (5)-(7) and (9), which the subchapter V trustee is required to perform under § 1183(b)(1), are—

- (2) be accountable for all property received;
- (5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;
- (6) if advisable, oppose the discharge of the debtor;

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

- (7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;
- (9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee;

As such, subchapter V of chapter 11 already provides for the subchapter V trustee to perform certain oversight functions. At this time, there is no cause to remove debtor as a debtor in possession and expand the subchapter V trustee's role under § 1183(b) (2) and (b)(5).

III. CONCLUSION

The Court will deny the Motion.

Debtor must submit an order within seven (7) days.

FOOTNOTES

1. Sands Law did not file a proof of service of the Motion. However, in light of Debtor's timely response, the Court will assess the merits of the Motion.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declaration of Thomas D. Sands set forth below:

Debtor's Evidentiary Objections to the Declaration of Thomas D. Sands
paras. 3, 5, 7-11, 17, 25, 31, 34, 36-38, 40-41, 47: sustain
paras. 12 and 13: overrule

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Juliet Y Oh

Chapter 11

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#6.00 Application to Employ Levene, Neale, Bender,
Yoo & Brill L.L.P. as Bankruptcy Counsel

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Call. All parties participating in these hearings may connect from the zoom link
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Docket 10

Tentative Ruling:

On June 10, 2020, the debtor's proposed counsel filed an employment application (the "Application") [doc. 10]. On June 20, 2020, Thomas Sands filed an objection to the Application [doc. 28]. On June 26, 2020, Mike Kemel and Mariya Ayzenberg filed an objection to the Application [doc. 57].

On June 26, 2020, Mr. Kemel and Ms. Ayzenberg also filed an *Emergency Motion to Recuse David Golubchik and the Law Firm of Levene, Neale, Bender Yoo & Brill LLP, From All Further Participation in this Case, All Related Cases, and for an*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Order Disgorging All Funds Received by the Firm Due to Undisclosed Conflicted Representation of the Debtor In re Weibel, Inc. (9th Cir. BAP 1994) 176 B.R. 209 the "Motion") [doc. 56]. Mr. Kemel and Ms. Ayzenberg have not set the Motion for hearing.

The Court will set a hearing on the Motion for **August 27, 2020 at 1:30 p.m.** The Court will continue the hearing on the Application to **August 27, 2020 at 1:30 p.m.**, to be held in connection with the hearing on the Motion.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#7.00 Motion By Debtor For Order Approving Compromise
Of Controversy Pursuant To Federal Rule Of
Bankruptcy Procedure 9019

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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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#8.00 Status conference re chapter 11 case

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Docket 1

Tentative Ruling:

Although the debtor attached its 2018 tax return to its petition, the debtor has not discussed its 2019 tax returns in the status report. Has the debtor filed its 2019 tax return? Does the debtor intend to hire a professional to assist with the preparation of its 2019 tax return?

Pursuant to 11 U.S.C. § 1189(b), the debtor's deadline to file a proposed plan is **August 28, 2020**.

What efforts has the debtor taken so far to obtain the consent of creditors for a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC
consensual plan?

Chapter 11

What efforts will the debtor take in the future to obtain the consent of creditors for a consensual plan?

If the debtor expects that the plan will be nonconsensual plan, i.e., a plan confirmed under 11 U.S.C. section 1191(b)), why does it expect that?

With which parties has the debtor discussed a plan?

When does the debtor anticipate filing a plan?

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#9.00 Application to Employ Nodd Law Group as Special Litigation Counsel

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Docket 25

Tentative Ruling:

Grant.

On June 19, 2020, Lev Investments, LLC ("Debtor") filed an application to employ Nodd Law Group ("Nodd Law" as special litigation counsel (the "Application") [doc. 25]. On June 27, 2020, The Sands Law Group, APLC ("Sands Law") filed an opposition to the Application [doc. 58]. On June 28, 2020, Mike Kemel and Mariya Ayzenberg filed a joinder to Sands Law's opposition [doc. 59]. Together, these objecting entities assert: (A) attorney Jeffrey Nodd's real name is "Dimitry Nudelman;" (B) Debtor's principal does not understand the English retainer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

agreement; (C) Mr. Nodd referenced the wrong date and/or time of a mediation in a declaration he submitted in support of an unrelated motion; (D) Nodd Law has a claim against the estate arising from its prepetition representation of Debtor and, as a result, is not disinterested; (E) Nodd Law's retainer agreement with Debtor includes a charging lien that Nodd Law cannot unilaterally waive; and (F) Nodd Law's employment is not necessary to the estate. Sands Law also devotes a portion of its objection to disputing an unrelated declaration filed by the subchapter V trustee regarding a § 341(a) meeting of creditors.

The arguments regarding Mr. Nodd's name and Debtor's principal's comprehension of English, and Sands Law's comments concerning the subchapter V trustee's unrelated declaration, have little to no bearing on whether Nodd Law may be employed as special litigation counsel. As to the contention that Mr. Nodd referenced the wrong date and time in an unrelated declaration, Mr. Nodd has submitted a supplemental declaration that the inclusion of an incorrect date was a typographical error. Such a typographical error does not disqualify Nodd Law from employment by the estate.

With respect to the assertion that Nodd Law is not disinterested, holding a claim against the estate does not, in and of itself, disqualify attorneys from serving as special litigation counsel. Section 327(e) "permits post-petition representation by the debtor's pre-petition attorney for a special purpose where he holds no adverse interest to the debtor *within the scope of the representation.*" *In re Film Ventures Int'l, Inc.*, 75 B.R. 250, 252 (B.A.P. 9th Cir. 1987) (emphasis added). "Section 327(e) contains less restrictive requirements than Section 327(a) which governs the employment of general counsel as there is no requirement of disinterestedness." *Id.*

Here, Debtor seeks to employ Nodd Law for the limited purpose of representing Debtor in connection with Debtor's insurance claim with Lloyd's of London ("Lloyd's"). Prepetition, Nodd Law represented Debtor in connection with the claim and a mediation of the dispute between Lloyd's and Debtor. The parties have reached a compromise, subject to the approval of the Court. If the Court approves the compromise, the dispute with Lloyd's will be resolved, and through effectuation of the compromise, the estate will receive \$250,000.

Nothing in the record suggests that Nodd Law holds an interest adverse to Debtor's

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

interests *in the litigation between Debtor and Lloyd's*. That Nodd Law has a claim for payment of its fees and costs does not mean that Nodd Law has an interest adverse to Debtor in the dispute against Lloyd's. In fact, the existence of a contingency agreement indicates that Debtor and Nodd Law have a joint interest in maximizing recovery from Lloyd's.

Moreover, because Nodd Law has represented Debtor since the inception of the dispute between Lloyd's and Debtor, and the dispute may soon be resolved by compromise, employing Nodd Law is in the best interest of the estate. Neither objecting entity has set forth a sound reason why the attorney that has represented Debtor during the entirety of this dispute should not continue to represent Debtor towards a potential recovery of \$250,000 for the estate. *In re Goldstein*, 383 B.R. 496, 501-02 (Bankr. C.D. Cal. 2007) ("[W]hen counsel is very familiar with the non-bankruptcy litigation because counsel has previously performed legal services for the debtor; it is obvious that the continuation of counsel's special services is in the best interest of the estate. Special counsel's familiarity with case would expedite the process of resolving matters and will lead to advantages for the estate and the creditors.").

Finally, the objecting entities' arguments regarding the charging lien are moot; Nodd Law and Debtor have agreed to nullify the charging lien provision in the retainer agreement. Inexplicably, Sands Law filed a request to strike Debtor's reply to the objections, asserting that Debtor presented the information regarding waiver of the charging lien for the first time in the reply. However, the Application explicitly stated that Nodd Law waived its charging lien. Application, p. 7, ¶ 31.

In any event, an attorney's charging lien would not automatically disqualify an attorney from representing a debtor for a limited purpose under § 327(e). *See Film Ventures*, 75 B.R. at 252 (holding that the attorney's secured interest in estate assets did not disqualify the attorney under § 327(e) because the estate's and the attorney's interest in preserving the security were aligned). Moreover, because Nodd Law's representation is for a limited purpose and Debtor is requesting employment of a different firm as general bankruptcy counsel, "[a]t any time general counsel for the Debtor could... [bring] an avoidance lien action attacking the transfer if it had been improper." *Id.* However, because the parties have agreed to nullify Nodd Law's lien, and the Court is approving the modification of the retainer agreement to eliminate that

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 16, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC
provision, this issue is moot.

Chapter 11

Consequently, the Court will grant the Application.

Debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 21, 2020

Hearing Room 301

8:30 AM

1:19-12784 David Bergantino

Chapter 7

#1.00 Reaffirmation agreement between debtor and
BMW Bank of North America

fr. 3/17/20; 4/21/20, 6/16/20

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Dial: US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 768 3051

Password: 937978

Docket 10

Party Information

Debtor(s):

David Bergantino

Represented By
Steven A Wolvek

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 21, 2020

Hearing Room 301

8:30 AM

1:19-13056 Cruz A Cortez

Chapter 7

#2.00 Reaffirmation agreement between debtor and Santander Consumer USA Inc.

fr. 3/17/20; 6/16/20

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Docket 16

Party Information

Debtor(s):

Cruz A Cortez

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 21, 2020

Hearing Room 301

8:30 AM

1:20-10126 Carlos Rene Herrera

Chapter 7

#3.00 Reaffirmation agreement between debtor and
Federal Home Loan Mortgage Corp.

fr. 4/21/20; 6/16/20

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Docket 16

Party Information

Debtor(s):

Carlos Rene Herrera

Represented By
Francis Guilardi

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 21, 2020

Hearing Room 301

8:30 AM

CONT... Carlos Rene Herrera

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**

Tuesday, July 21, 2020

Hearing Room 301

8:30 AM

1:20-10183 Julio C. Quequezana and Raquel Quequezana

Chapter 7

#4.00 Reaffirmation agreement between debtor and
Capital One Auto Finance

fr. 4/21/20; 6/16/20

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Docket 13

Party Information

Debtor(s):

Julio C. Quequezana

Represented By
R Grace Rodriguez

Joint Debtor(s):

Raquel Quequezana

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 21, 2020

Hearing Room 301

8:30 AM

**CONT... Julio C. Quequezana and Raquel Quequezana
R Grace Rodriguez**

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**

Tuesday, July 21, 2020

Hearing Room 301

8:30 AM

1:20-10196 Cassady L Dill

Chapter 7

#5.00 Reaffirmation agreement between debtor and
Toyota Motor Credit Corporation

fr. 4/21/20; 6/16/20

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Docket 17

Party Information

Debtor(s):

Cassady L Dill Pro Se

Trustee(s):

David Keith Gottlieb (TR) Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 21, 2020

Hearing Room 301

8:30 AM

1:20-10840 Jess Richard Carmona, Jr and Jayleen Carmona

Chapter 7

**#6.00 Reaffirmation Agreement Between Debtor
and Nuvision Credit Union**

[2015 Infiniti Q50]

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Docket 15

Party Information

Debtor(s):

Jess Richard Carmona Jr

Represented By
Sanaz S Bereliani

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 21, 2020

Hearing Room 301

8:30 AM

CONT... Jess Richard Carmona, Jr and Jayleen Carmona

Chapter 7

Joint Debtor(s):

Jayleen Carmona

Represented By
Sanaz S Bereliani

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, July 21, 2020

Hearing Room 301

8:30 AM

1:20-10840 Jess Richard Carmona, Jr and Jayleen Carmona

Chapter 7

**#7.00 Reaffirmation Agreement Between Debtor
and Nuvision Credit Union**

[2014 Toyota Tacoma]

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Password: 937978

Docket 16

Party Information

Debtor(s):

Jess Richard Carmona Jr

Represented By
Sanaz S Bereliani

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, July 21, 2020

Hearing Room 301

8:30 AM

CONT... Jess Richard Carmona, Jr and Jayleen Carmona

Chapter 7

Joint Debtor(s):

Jayleen Carmona

Represented By
Sanaz S Bereliani

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 22, 2020

Hearing Room 301

2:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#1.00 Plaintiff's motion for summary judgment as to defendants Susan Biddle and Susan Biddle, Trustee of the Biddle 2018 Family Trust, dated November 16, 2018 or, in the alternative, summary of adjudication of issues

fr. 5/27/20; 7/1/20

Docket 34

Tentative Ruling:

Deny.

I. BACKGROUND

On June 12, 2018, Christopher Anderson ("Debtor") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee"). On April 17, 2019, the Trustee filed a complaint against Jerome Biddle, Susan Biddle and Susan Biddle, Trustee of the Biddle 2018 Family Trust, Dated November 16, 2018 (collectively referred to as the "Biddles"). [FN1].

A. The Property, the Anderson Trust and the Power of Attorney

In 1986, Debtor and Kelli Anderson were married. Uncontroverted Fact ("UF") [docs. 48, 56], ¶ 11. On June 16, 1989, Debtor and Ms. Anderson purchased real property located at 10000 Nita Avenue, Chatsworth, California (the "Property"). UF, ¶ 12.

In January 2014, Debtor and Ms. Anderson created the Anderson Trust Dated January 30, 2014 (the "Anderson Trust"). Declaration of Lisa Ann Coe ("Coe Declaration"), ¶ 3, Exhibit D. On the same day, Ms. Anderson also executed a Power of Attorney. Coe Declaration, ¶ 3, Exhibit E. Through the Power of Attorney, Ms. Anderson appointed Debtor as her attorney-in-fact as to several subjects, including "real property transactions." *Id.* The Power of Attorney provided that Debtor had authority to "do anything [Ms. Anderson] could do and in the opinion of [Debtor] ought to be done, as

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... **Christopher Anderson**

Chapter 7

fully and effectively as [Ms. Anderson] could do it" herself. *Id.*

On February 7, 2014, Debtor and Ms. Anderson transferred title to the Property to "Christopher S. Anderson and Kelli A. Anderson, Trustees of the Anderson Trust dated January 30, 2014, as community property." UF, ¶ 15. As relevant to this action, the Anderson Trust defined "Trustee" to be either: (A) Ms. Anderson and Debtor; (B) Debtor alone; *or* (C) any successor trustee or co-trustee. Coe Declaration, ¶ 3, Exhibit D. In addition, the Anderson Trust provided that the "Trustee may borrow money... and encumber the trust property by mortgage, deed of trust, pledge, or otherwise for the debts of the trust or of us." *Id.* Regarding revocation, the Anderson Trust provided—

During our joint lifetimes, we may revoke this trust by a writing (other than a will) delivered to the Trustee... with respect to community property, signed by either of us and delivered also to the other spouse....

Id. Similarly, to revoke the Power of Attorney, Ms. Anderson was required to deliver a notice of revocation, in writing, to Debtor. Coe Declaration, ¶ 3, Exhibit E.

B. The Dissolution Action

On July 20, 2016, Ms. Anderson filed a petition for dissolution of her marriage to Debtor (the "Dissolution Action"). UF, ¶ 16. At this time, the Property was still held by the Anderson Trust "as community property." UF, ¶ 17. On August 18, 2016, Thomas A. Warden, one of Ms. Anderson's attorneys in the Dissolution Action, recorded with the Los Angeles County Recorder's Office a "Notice of Pending Action" (the "Lis Pendens"), indicating the Dissolution Action affected title to the Property. UF, ¶ 18.

In connection with the Dissolution Action, Debtor filed yearly income and expense declarations. Request for Judicial Notice ("RJN"), ¶¶ 16-17, Exhibits 11-12. In his 2016 income and expense declaration (the "2016 IED"), Debtor identified \$1,685,000 in assets, a judgment that Debtor valued at over \$44 million (discussed below) and several other assets that Debtor valued as "unknown." RJN, ¶ 16, Exhibit 11. Debtor also indicated that he did not receive any income and identified \$8,298,576 in

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Anderson

Chapter 7

liabilities. *Id.* In his 2017 income and expense declaration (the "2017 IED"), Debtor again indicated he was not receiving any income; this time, Debtor valued his real and personal property as "TBD." *Id.*

C. The Transaction with the Biddles

In June 2017, Debtor contacted Jeff Prather of The FHL Financial Group ("FHL") to obtain a loan secured by the Property. UF, ¶ 147. FHL acted as the Biddles' agent in the loan transaction as well as the escrow for the loan transaction. UF, ¶¶ 24-25, 61. Mr. Prather arranges private loans that are asset-based and does not generally consider a borrower's income if the loan he arranges is adequately secured by the borrower's assets. Declaration of Jeff Prather ("Prather Declaration"), ¶¶ 3-4.

As part of investigating Debtor's assets, Mr. Prather contacted a title company and obtained a preliminary report, which reflected that the Property was owned by the Anderson Trust. UF, ¶ 149. The title report reflected the following encumbrances against the Property: (A) the Lis Pendens; (B) a \$170,000 deed of trust in favor of Surfside Funding; (C) a \$12,022.52 judgment lien in favor of Fidelity Capital Holdings; and (D) a \$119,064.76 judgment lien in favor of Juan Flores. Prather Declaration, ¶ 15.

Mr. Prather also obtained an appraisal of the Property. Prather Declaration, ¶ 13, Exhibit A. The appraisal indicated the Property was worth \$1,520,000 as of June 22, 2017. *Id.* Subsequently, Mr. Prather informed Debtor that a loan could be made to the Anderson Trust; alternatively, Mr. Prather stated he could arrange a loan to Debtor directly if the Property was transferred to Debtor's name. Prather Declaration, ¶ 16.

In September 2017, Debtor contacted Mr. Prather to proceed with the \$525,000 loan. UF, ¶ 151. At that time, Debtor presented the following documents to Mr. Prather to demonstrate that the Property was held by Debtor alone: (A) a Release of Notice of Pendency of Action (the "Release of Notice") to release the Lis Pendens; (B) a Subordination Agreement through which Mr. Flores subordinated his lien to the Biddles' lien; (C) a grant deed transferring title to the Property from the Anderson Trust to Debtor as his sole and separate property (the "Grant Deed"); and (D) a revocation of the Anderson Trust dated August 28, 2017 (the "2017 Revocation of Trust"). Prather Declaration, ¶¶ 18-19, 23.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

The Trustee also references three unattached jurats that were in Mr. Prather's file. Prather Declaration, ¶ 24. However, according to Mr. Prather, FHL would not have accepted signed but unattached jurats. Mr. Prather believes the jurats became unattached during copying of FHL's files. *Id.*

Debtor also informed Mr. Prather that the \$170,000 deed of trust had been satisfied, which information Mr. Prather verified by contacting the lender and confirming the same. Prather Declaration, ¶ 19. With respect to the \$12,022.52 judgment lien, Debtor requested that it be paid off using the loan proceeds funded by the Biddles. *Id.* As such, in light of the purported satisfaction, release or subordination of the other liens against the Property, Mr. Prather proceeded with arranging the loan and preparing a deed of trust. UF, ¶ 154; Prather Declaration, ¶¶ 18-19.

On September 11, 2017, Debtor executed a Note Secured by a Deed of Trust (the "Biddles' Note"), pursuant to which Debtor promised to pay the Biddles \$525,000 for funds lent by the Biddles to Debtor. UF, ¶ 103. Pursuant to the Biddles' Note, Debtor was to make monthly interest only payments of \$4,703.12 per month for 11 months, followed by a principal and interest payment of \$529,703.12. UF, ¶ 105. On the same day, Debtor also executed a deed of trust securing the Note with the Property (the "Biddles' Deed of Trust"). Prather Declaration, ¶ 22, Exhibit C. The Biddles' Deed of Trust was signed by Debtor and notarized by a notary public named Alan Kaminsky. *Id.* The Biddles' Deed of Trust is signed only by Debtor and Mr. Kaminsky; neither party contends that the Biddles' Deed of Trust bears a forged signature or a fraudulent notarization. In connection with this transaction, on September 18, 2017, the Release of Notice, the Subordination Agreement, the Grant Deed and the Biddles' Deed of Trust were recorded with the Los Angeles County Recorder's Office. UF ¶ 26.

Although the Grant Deed, the Release of Notice, the Subordination Agreement and the 2017 Revocation of Trust bear Ms. Anderson's signature, the parties acknowledge that Ms. Anderson did not actually sign these documents. UF, ¶¶ 32-33, 40-41, 51-53, 62-63. In addition, although the documents include a notarization by Blanca Lopez, Ms. Lopez did not actually notarize the documents. UF, ¶¶ 34-35, 37, 43-46, 54-57, 64-68. Debtor's signature is not on the Release of Notice; however, Debtor himself signed the Grant Deed, the 2017 Revocation of Trust and the Subordination Agreement. Anderson Declaration, ¶¶ 11-13, Exhibits 6-8.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

D. Debtor's Use of the Loan Funds

Debtor and Ms. Anderson owned Sharp Image Gaming, Inc. ("Sharp Image"). UF, ¶ 134. In December 2011, Sharp Image obtained a \$30,442,964.39 verdict in its favor (the "Sharp Image Judgment") against Shingle Springs Band of Miwok Indians (the "Tribe"). UF, ¶ 135.

Debtor apparently anticipated collection of nearly \$50 million from the Sharp Image Judgment. Coe Declaration, ¶¶ 13-14, Exhibit L, p. 142. In June 2017, a California appellate court presiding over the appeal of the Sharp Image Judgment held oral argument. The Biddles' Request for Judicial Notice ("Biddle RJN") [doc. 50], Exhibit Y. (As discussed above, it was around this time Debtor contacted Mr. Prather to arrange a private loan.) In September 2017, the appellate court reversed the Sharp Image Judgment. UF, ¶ 157.

During the course of the Dissolution Action, Debtor stated that, to appeal the appellate court's reversal, Debtor had to pay taxes to the Franchise Tax Board to maintain Sharp Image's legal status and ability to litigate. Coe Declaration, ¶¶ 13-14, Exhibit L, p. 142. In addition, Debtor needed money to pay his appellate attorneys. *Id.* As such, Debtor testified that he used \$160,337.52 of the Biddles' loan to pay the Franchise Tax Board and \$50,000 of the funds to pay his attorneys. *Id.*, p. 144. [FN2].

In January 2017, Mr. Flores had obtained a judgment against Debtor, Ms. Anderson and an entity they owned for \$119,064.76. UF, ¶ 21. On May 10, 2017, Mr. Flores recorded an abstract of judgment against the Property and, as noted above, obtained a judgment lien against the Property. UF, ¶ 22. According to Debtor, at the time he sought a loan from the Biddles, Mr. Flores was threatening to force the sale of the Property to satisfy his judgment. Coe Declaration, ¶¶ 13-14, Exhibit L, p. 143. As such, according to Debtor, from September 18, 2017 through November 14, 2017, Debtor paid Mr. Flores a total of \$103,000. *Id.* Aside from these payments, Debtor stated that the remaining funds went towards payment of property taxes, community debts owed towards credit cards, maintenance of the Property and "necessities of life," with a balance of \$5,915 remaining at the time these issues were raised before the family court. *Id.*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Anderson

Chapter 7

E. Ms. Anderson Learns of the Transfer to the Biddles

On September 30, 2017, Ms. Anderson received the Release of Notice in the mail. Declaration of Kelli Anderson ("Anderson Declaration"), ¶ 11. This was the first time Ms. Anderson had seen the Release of Notice. *Id.* Subsequently, Ms. Anderson also learned of the Grant Deed, the Biddles' Deed of Trust, the 2017 Revocation of Trust and the Subordination Agreement.

On November 14, 2017, Ms. Anderson filed a request for an order: (A) transferring title to the Property back to both Debtor and Ms. Anderson; (B) appointing a receiver and selling the Property; (C) requiring Debtor to pay the \$525,000 he received to Ms. Anderson; (D) sanctioning Debtor; and (E) requiring Debtor to pay Ms. Anderson's attorneys' fees and costs. Biddle RJN, Exhibit I. In connection with this filing, Ms. Anderson also asserted that Debtor violated the automatic temporary restraining order under California Family Code § 2040. Biddle RJN, Exhibit N. On January 11, 2018, the family court entered an order: (A) directing the Property be listed for sale; (B) appointing a receiver; (C) holding Debtor responsible for the monthly payments owed to the Biddles; and (D) sanctioning Debtor. Biddle RJN, Exhibit P.

In March 2018, Ms. Anderson filed a request for, among other things, an order that she receive an abstract of judgment and a total of \$525,000 from escrow upon the sale of the Property. Biddle RJN, Exhibit R. On March 23, 2018, the family court entered an order awarding Ms. Anderson \$525,000. Biddle RJN, Exhibit S. On the same day, Ms. Anderson obtained an abstract of judgment against the Property. Biddle RJN, Exhibit T.

F. Debtor's Bankruptcy Case

On June 12, 2018, Debtor filed his chapter 7 petition. In his schedules filed with his petition, Debtor identified \$76,683,569 in assets, including the Property. In his schedule I, Debtor indicated he was not receiving any income. In his Statement of Financial Affairs, Debtor further indicated that he did not receive any income the two years preceding the petition date.

On January 23, 2019, the Trustee obtained a judgment against Plummer Group, LLC ("Plummer"), avoiding its judgment lien against the Property pursuant to 11 U.S.C. §

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Anderson

Chapter 7

547 and preserving the lien for the benefit of the estate [1:18-ap-01123-VK, doc. 10]. According to Plummer Group's proof of claim, the judgment lien is worth \$117,612.50 and is alleged by the Trustee to have been recorded on May 23, 2018 [1:18-ap-01123-VK, doc. 10, doc. 1].

On April 26, 2019, the Trustee filed a motion to sell the Property for \$1,115,000 (the "Sale Motion") [Bankruptcy Docket, doc. 112]. In connection with the Sale Motion, the Trustee noted the following encumbrances against the Property—

- (A) a \$2,022.52 abstract of judgment in favor of Fidelity Capital Holdings, Inc., which the Trustee believed had already been paid;
- (B) the Biddles' Deed of Trust;
- (C) a \$50,000 lien in favor of a family law attorney to Ms. Anderson, Denise A. Houghton;
- (D) the \$119,064,76 abstract of judgment in favor of Mr. Flores;
- (E) the \$525,000 abstract of judgment in favor of Ms. Anderson;
- (F) another abstract of judgment in favor of Ms. Anderson in the amount of \$4,000 arising from the family court's award of sanctions to Ms. Anderson;
- (G) the Lis Pendens, which the Trustee asserted no longer applied to the Property, because the Property was no longer subject to division by the family court;
- (H) an abstract of judgment in favor of Plummer Group, which the Court already had avoided as a preferential transfer.

Sale Motion, p. 9.

Around the same time the Trustee filed the Sale Motion, the Trustee also filed a motion to approve a compromise with Mr. Flores (the "Flores Compromise")

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

[Bankruptcy Docket, doc. 101]. The Flores Compromise sought to resolve an adversary proceeding the Trustee had filed against Mr. Flores [1:19-ap-01011-VK], through which the Trustee alleged that Mr. Flores had been paid \$103,000 of the amount owed to him. Through the Flores Compromise, Mr. Flores and the Trustee agreed that Mr. Flores would be paid \$20,000 from the sale of the Property in full satisfaction of his secured claim, and would have an allowed unsecured claim of \$100,000. On April 30, 2019, the Court entered an order approving the Flores Compromise [Bankruptcy Docket, doc. 122].

In addition, the Trustee also initiated an adversary proceeding against Ms. Anderson [1:19-ap-01018-VK], requesting avoidance of the \$525,000 and \$4,000 abstracts of judgment against the Property, preservation of the liens for the benefit of the estate under 11 U.S.C. § 551 and turnover of other assets. On May 20, 2019, the Trustee filed a motion to approve a compromise with Ms. Anderson (the "Anderson Compromise") [Bankruptcy Docket, doc. 130]. Through the Anderson Compromise, Ms. Anderson and the Trustee agreed that the abstracts of judgment were avoided as preferential transfers and preserved for the benefit of the estate and that Ms. Anderson would not have any claim against the estate. In return, Ms. Anderson would keep assets that were the subject of the Trustee's turnover claim. The Court approved the Anderson Compromise [Bankruptcy Docket, doc. 139].

On May 31, 2019, the Court entered an order approving the Sale Motion free and clear of liens, with the liens identified above attaching to the sale proceeds [Bankruptcy Docket, doc. 135]. On June 11, 2019, the Trustee obtained a judgment against Ms. Houghton, avoiding her judgment lien under 11 U.S.C. §§ 544 and 545 and preserving the lien for the benefit of the estate [1:19-ap-01043-VK, doc. 13].

G. This Adversary Proceeding

On April 17, 2019, the Trustee filed a complaint against the Biddles, initiating this adversary proceeding. On February 19, 2020, the Trustee filed a motion for summary judgment (the "MSJ") [doc. 34]. The Trustee asserts that the Biddles' Deed of Trust is void or should be avoided because: (A) Debtor forged certain documents associated with the transfer; (B) California community property law prevented Debtor from transferring the Property without Ms. Anderson's consent; (C) the automatic temporary restraining order in place during the Dissolution Action prevented the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

transfer; (D) the transfer was a fraudulent transfer under 11 U.S.C. § 548(a)(1)(A); and (E) the transfer violated California Civil Code § 1227.

In addition, the Trustee asserts that, if the Court holds that the Biddles' claim is not secured, the Court should deem the loan usurious. The Trustee also argues that three interest payments Debtor made to the Biddles within 90 days of the petition date should be avoided as preferential transfers.

The Biddles oppose the MSJ [doc. 47]. Specifically, they contend that: (A) Debtor had authority under the Anderson Trust and the Power of Attorney to act as he did; (B) the Trustee and third party creditors do not have standing to pursue Ms. Anderson's community property rights; (C) Ms. Anderson ratified the transfer to the Biddles; (D) the family court's orders are res judicata; (E) the Trustee has not met his burden as to the § 548(a)(1)(A) claim and the Biddles have a defense under § 548(c); (F) the Trustee has not met his burden as to the California Civil Code § 1227 claim; (G) the usury claim is defeated because the Biddles' loan was arranged by a licensed real estate broker; and (H) the Trustee has not met his burden as to the preferential transfer claim because the Biddles are secured creditors.

On May 13, 2020, in connection with his reply, the Trustee filed evidence of *another* revocation of trust, for the Anderson Trust, dated September 2, 2016 (the "2016 Revocation of Trust") [doc. 55]. The 2016 Revocation of Trust is signed only by Debtor and notarized by Mr. Kaminsky.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." 477 U.S. at 247–48 (emphasis in original).

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . . [S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. . . .

Id. at 248–50 (internal citations omitted). Additionally, issues of law are appropriate to be decided in a motion for summary judgment. *See Camacho v. Du Sung Corp.*, 121 F.3d 1315, 1317 (9th Cir. 1997).

The initial burden is on the moving party to show that no genuine issues of material fact exist based on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed. 265 (1986). Once the moving party meets its initial burden, the nonmoving party bearing "the burden of proof at trial on a dispositive issue" must identify facts beyond what is contained in the pleadings that show genuine issues of fact remain. *Id.*, at 324; *see also Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.").

The nonmoving party meets this burden through the presentation of "evidentiary materials" listed in Rule 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, and interrogatory answers. *Id.* To establish a genuine issue, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electrical Industry Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

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. *Whether Debtor Had Authority to Transfer Community Property*

i. *Authority under the Anderson Trust and/or Power of Attorney*

The parties do not dispute that Ms. Anderson did not sign some of the documents associated with the Biddles’ loan, namely, the Grant Deed, the 2017 Revocation of Trust and the Release of Notice. Nevertheless, the Biddles contend that Debtor had authority to encumber the Property without Ms. Anderson’s consent and, as a result, the fact that Ms. Anderson did not actually sign the documents is not fatal to the validity of the Biddles’ Deed of Trust.

For purposes of this analysis, the Court will assume that the Grant Deed is void, because it contains a forgery. [FN3]. Nevertheless, in this instance, the immediate impact of the forged Grant Deed is not that the Biddles’ Deed of Trust also is void. The Trustee is correct that the "validity of the title of a subsequent purchaser or encumbrancer *depends upon the validity of his grantor's title.*" *Wutzke v. Bill Reid Painting Serv., Inc.*, 151 Cal.App.3d 36, 44 (Ct. App. 1984) (emphasis added). In other words, the validity of the Biddles’ Deed of Trust depends on the validity of Debtor’s title. However, in this case, if the Grant Deed is void, title would revert either to the Anderson Trust or, if the Anderson Trust was revoked, the Property would constitute community property of Debtor and Ms. Anderson.

As discussed below, pursuant to the Anderson Trust, Debtor had authority to encumber the Property, without Ms. Anderson’s consent. If the Anderson Trust was revoked, and title to the Property was held as community property, Debtor had authority to encumber it on behalf of Ms. Anderson, pursuant to the Power of Attorney.

Under the terms of the Anderson Trust, both Debtor and Ms. Anderson were designated as co-trustees. However, the terms specified that any reference to the "Trustee" meant both Debtor and Ms. Anderson, *Debtor alone* or any successor trustee. Anderson Trust, p. 1. In relevant part, the Anderson Trust also provided that

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

the "Trustee," including Debtor acting alone, had the power to "borrow money... and encumber the trust property by mortgage, deed of trust, pledge, or otherwise for the debts of the trust or of us." Anderson Property, p. 3. As such, pursuant to the terms of the Anderson Trust, Debtor had the authority to encumber the Property, which was included as property of the Anderson Trust, without Ms. Anderson's consent.

If the Anderson Trust remained valid at the time the Biddles' Deed of Trust was executed, on September 11, 2017, the forged documents would not have an impact on the Biddles' liens. The Biddles' Deed of Trust itself does not include a forged signature; it is signed by Debtor alone and notarized by Alan Kaminsky. [FN4]. Thus, *even if* the Grant Deed and the 2017 Revocation of Trust were invalid, Debtor still could have authority, under the Anderson Trust, to execute the Biddles' Deed of Trust – which does not contain a forged signature or forged notarization.

Nevertheless, there is a genuine dispute of material fact as to whether, at the time Debtor executed the Biddles' Deed of Trust, the Anderson Trust was revoked. Pursuant to the terms of the Anderson Trust, revocation of the Anderson Trust required "a writing (other than a will) delivered to the Trustee... with respect to community property, signed by either of [Debtor or Ms. Anderson] *and delivered also to the other spouse.*" Anderson Trust, p. 2 (emphasis added).

The Trustee disputes the validity of the 2017 Revocation of Trust. However, in connection with his reply, the Trustee presents the 2016 Revocation of Trust. In the record, there is no evidence regarding *when* Debtor, the only party to sign both the 2016 Revocation of Trust and 2017 Revocation of Trust, delivered either revocation to Ms. Anderson. [FN5]. The Trustee contends that, because Ms. Anderson's attorney produced the revocations to the Trustee during discovery, Debtor must have delivered the revocations to Ms. Anderson. Without establishing the date of delivery, the fact that one or both revocations eventually were delivered to Ms. Anderson does not aid the Trustee. Consequently, the Trustee has not met his burden of proving that revocation occurred, prior to execution of the Biddles' Deed of Trust.

If the Court assumes that the Anderson Trust was revoked prior to execution of the Biddles' Deed of Trust, the Trustee has not adequately addressed the Power of Attorney. With respect to numerous matters, including "real property transactions," the Power of Attorney explicitly appointed Debtor as Ms. Anderson's attorney-in-fact.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Anderson

Chapter 7

Power of Attorney, pp. 1-2. The Power of Attorney also broadly stated that Debtor had authority to "*do anything [Ms. Anderson] could do and in the opinion of [Debtor] ought to be done*, as fully and effectively as [Ms. Anderson] could do it" herself. Power of Attorney, p. 3 (emphasis added).

In light of this language, Debtor had broad authority to act on behalf of Ms. Anderson, including explicit authority to act on behalf of Ms. Anderson with respect to all real property transactions. Moreover, to revoke the Power of Attorney, Ms. Anderson would have to deliver a notice of revocation, in writing, to Debtor. Power of Attorney, p. 3. There is no evidence that Ms. Anderson ever revoked the Power of Attorney, let alone revoked it *prior* to the execution of the Biddles' Deed of Trust. [FN6].

The Trustee's sole argument is that Debtor, by failing to act in Ms. Anderson's best interest, breached the fiduciary duties he owed her as her agent and attorney-in-fact. However, there is a genuine issue of material fact regarding Debtor's reasons to obtain the \$525,000 loan from the Biddles. Debtor used at least a portion of the funds to defend the Sharp Image Judgment, in the amount of over \$30 million, and to pay off community debts. As such, it is not evident that Debtor's decision to borrow from the Biddles, and to encumber the Property, was not in Ms. Anderson's best interest. [FN7].

ii. The Impact of the Release of Notice and Subordination Agreement

There is no genuine issue of material fact that the Release of Notice was forged. The Biddles have not set forth any evidence that Debtor had authority to invalidate the Lis Pendens on Ms. Anderson's behalf. As such, because Debtor did not have authority to execute the Release of Notice, the Release of Notice is void. *Wutzke*, 151 Cal.App.3d at 43-44.

"Because a lis pendens provides constructive notice of the litigation, 'any judgment later obtained in the action relates back to the filing of the lis pendens.'" *Mira Overseas Consulting Ltd. v. Muse Family Enterprises, Ltd.*, 237 Cal.App.4th 378, 383-84 (Ct. App. 2015) (quoting *Slintak v. Buckeye Retirement Co., L.L.C., Ltd.*, 139 Cal.App.4th 575, 586 (Ct. App. 2006)). "A lis pendens clouds title until the litigation is resolved or the lis pendens is expunged, and any party acquiring an interest in the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

property after the action is filed will be bound by the judgment." *Slintak*, 139 Cal.App.4th at 586-87. "A judgment favorable to the plaintiff relates to, and receives its priority from, the date the lis pendens is recorded, and is senior and prior to any interests in the property acquired after that date" *Stagen v. Stewart–West Coast Title Co.*, 149 Cal.App.3d 114, 123 (Ct. App. 1983); *see also* California Code of Civil Procedure § 405.24 ("The rights and interest of the claimant in the property, as ultimately determined in the pending noticed action, shall relate back to the date of the recording of the notice.").

Here, as the Trustee acknowledged in the Sale Motion, the family court did not enter a judgment regarding ownership of the Property. The only "right and interest" adjudicated by the family court was the award of a judgment and judgment lien against the Property in favor of Ms. Anderson. Because the Release of Notice is void, and the Lis Pendens remained in effect at the time Debtor executed the Biddles' Deed of Trust, Ms. Anderson's judgment lien relates back to the date of the Lis Pendens. In other words, Ms. Anderson's judgment lien predates the Biddles' Deed of Trust and would be entitled to priority over the Biddles' Deed of Trust.

Although the Trustee, through the Anderson Compromise, obtained the release of Ms. Anderson's judgment lien, the Trustee preserved the lien for the benefit of the estate. Pursuant to 11 U.S.C. § 551—

Any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate.

The Anderson Compromise explicitly provided that Ms. Anderson's lien may be avoided under 11 U.S.C. § 547, one of the statutes listed in § 551, and that the Trustee intended to preserve the lien for the benefit of the estate under § 551. As such, although the judgment lien has been avoided, Ms. Anderson's \$525,000 senior lien remains relevant for purposes of calculating how much the Biddles would be entitled to be paid from the sale of the Property, based on the available sale proceeds. [FN8].

It does not appear, however, that the Trustee preserved the judgment lien claimed by Mr. Flores for the benefit of the estate or that the Trustee would have the ability to do

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

so under § 551. Although the Trustee referenced 11 U.S.C. § 506 in his complaint against Mr. Flores, the Trustee did not specify that he was requesting relief under § 506(d), the only subsection that would lead to preservation under § 551. Moreover, nothing in the Flores Compromise established that the Trustee avoided the judgment lien in favor of Mr. Flores under 11 U.S.C. § 506(d); the Flores Compromise does not refer to any specific Code section. As such, if the Subordination Agreement is invalid, Mr. Flores's judgment lien would take priority over the Biddles' Deed of Trust in the amount of \$20,000 only, as set forth in the Flores Compromise.

However, the Trustee has not disputed the validity of the Subordination Agreement. Given that Debtor may have had authority to enter into the Subordination Agreement, for the reasons stated above, if Mr. Flores *agreed* to subordinate his lien, the Biddles' Deed of Trust would take priority over the \$20,000 to be paid to Mr. Flores.

In the Sale Motion, the Trustee indicated that the liens against the Property total \$718,635.02 (without including the Biddles' Deed of Trust – and counting Mr. Flores's compromised lien as securing \$20,000). With the Biddles' Deed of Trust included, the encumbrances would total \$1,243,635.02, i.e., \$128,635.02 more than the sale price of \$1,115,000. Although Plummer Group apparently recorded its judgment subsequent to the Biddles, the parties have not provided evidence of the recordation date. In addition, there is no analysis regarding the priority of Ms. Houghton's lien. If the Biddles have a valid lien against the proceeds from the sale of the Property, these outstanding issues could impact the amount to be paid to them.

iii. Authority under Community Property Laws

The Trustee also asserts that Debtor did not have authority to encumber the Property under California Family Code ("Cal. Fam. Code") §§ 1102 and 2040. [FN9]. Under Cal. Fam. Code § 1102(a)—

Except as provided in Sections 761 and 1103, either spouse has the management and control of the community real property, whether acquired prior to, or on or after January 1, 1975, but both spouses, either personally *or by a duly authorized agent*, are required to join in executing an instrument by which that community real property or an interest therein is leased for a longer period than one year, or is

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Anderson

Chapter 7

sold, conveyed, or encumbered.

(emphasis added). [FN10]. Pursuant to Cal. Fam. Code § 2040(a)(2)(A), a summons initiating a dissolution proceeding includes a temporary restraining order—

Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of, any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

Prior to evaluating the application of these statutes, it is important to acknowledge the specific nature of the Trustee's standing under 11 U.S.C. § 544. Section 544 provides the Trustee two avenues for avoiding transfers: 11 U.S.C. § 544(a) and 544(b). Under § 544(a), the Trustee inherits the rights and powers of either a hypothetical lien creditor or a hypothetical bona fide purchaser, whether or not such a creditor actually exists. 11 U.S.C. § 544(a)(1)-(3). If such a hypothetical lien creditor or bona fide purchaser could avoid the subject transfer under applicable state law, the Trustee is empowered to do the same by § 544(a). [FN11]. However, the Trustee has not provided any authority stating that any party, other than the non-consenting spouse, may move for relief under either Cal. Fam. Code § 1102 or 2040. [FN12].

Under § 544(b)(1), 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 that is allowable under section 502 of this title...."

By its terms, Section 544(b)(1) requires the existence of an actual creditor who could avoid the transfer. In other words, the effect of this section is to clothe the trustee with no new or additional right in the premises over that possessed by a creditor, but simply puts him in the shoes of the latter. If the actual creditor could not succeed for any

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Anderson

Chapter 7

reason—whether due to the statute of limitations, estoppel, res judicata, waiver, or any other defense—then the trustee is similarly barred and cannot avoid the transfer.

In re DBSI, Inc., 869 F.3d 1004, 1009 (9th Cir. 2017) (internal quotations omitted); see also *In re Acequia, Inc.*, 34 F.3d 800, 809 (9th Cir. 1994) ("[T]he trustee is chained to the rights of creditors when invoking section 544(b)."). "[T]he existence of a section 544(b) cause of action depends upon whether a creditor existing at the time the transfers were made still had a viable claim against the debtor *at the time the bankruptcy petition was filed.*" *Acequia*, 34 F.3d at 807 (emphasis in *Acequia*) (internal quotations omitted).

The Trustee appears to assert he is stepping into the shoes of Ms. Anderson. However, on the petition date, Ms. Anderson was not an *unsecured* creditor. Nevertheless, if Ms. Anderson qualifies as an unsecured creditor under § 544(b) (i.e., because she agreed to waive her judicial lien as a preferential transfer), the Trustee has not demonstrated that Ms. Anderson could successfully avoid the Biddles' Deed of Trust under Cal. Fam. Code §§ 1102 or 2040 *on the petition date*. [FN13].

As noted above, under § 544(b), the Trustee is bound by all the defenses available against Ms. Anderson. The Biddles have raised a genuine issue of material fact as to whether Ms. Anderson's claims under Cal. Fam. Code §§ 1102 and 2040 were fully litigated prepetition. 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). 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... **Christopher Anderson**

Chapter 7

in fact expressly pleaded or otherwise urged.") (emphasis in *Tensor*).

Before the family court, Ms. Anderson raised the issues currently raised by the Trustee. Ms. Anderson explicitly raised Debtor's violation of the temporary restraining order under Family Code § 2040. Ms. Anderson also could have raised Family Code § 1102(d), if she wanted to avoid the Biddles' Deed of Trust. Instead, Ms. Anderson requested different remedies, such as a money judgment, a judgment lien, sanctions and appointment of a receiver to sell the Property. The family court entered an order granting Ms. Anderson these remedies. That order has not been appealed.

In response, the Trustee states that he is not in privity with the parties to the dissolution action. However, as explained above, the Trustee is stepping into the shoes of Ms. Anderson, an actual party to the dissolution action. Because Ms. Anderson would be barred from relitigating these issues, the Trustee also is barred. *See DBSI*, 869 F.3d at 1009 ("If the actual creditor could not succeed for any reason—whether due to the statute of limitations, estoppel, *res judicata*, waiver, or any other defense—then the trustee is similarly barred and cannot avoid the transfer.") (emphasis added).

The Biddles also contend that Ms. Anderson ratified Debtor's conduct. However, the Biddles reference conduct by Ms. Anderson that constitutes waiver of an available remedy and *res judicata*, not ratification. "Ratification is the voluntary election by a person to adopt in some manner as his or her own an act that was purportedly done on his or her behalf by another person, the effect of which, as to some of all persons, is to treat the act as if originally authorized by him or her." *Estate of Stephens*, 28 Cal.4th 665, 673 (2002) (citing *Rakestraw v. Rodrigues*, 8 Cal.3d 67, 73 (1972)). An agent's act "may be adopted expressly or it may be adopted by implication based on conduct of the purported principal from which an intention to consent to or adopt the act may be fairly inferred." *Rakestraw*, 8 Cal.3d at 73.

Here, Ms. Anderson did not adopt Debtor's conduct. After learning about the documents signed on her behalf, Ms. Anderson immediately raised the issues before the family court. Because Ms. Anderson neither approved of Debtor's conduct nor remained silent, the Court cannot infer an "intention to consent to or adopt" Debtor's actions. *Rakestraw*, 8 Cal.3d at 73. The Biddles' arguments more closely reflect

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

waiver of a remedy than ratification of the act.

For instance, in *Hyatt v. Mabie*, 24 Cal.App.4th 541 (Ct. App. 1994), just prior to a dissolution trial, the husband borrowed \$24,750 from the defendants and secured the loan with a deed of trust against a residence held as community property. *Hyatt*, 24 Cal.App.4th at 543. The wife did not know about this transfer. *Id.* Subsequently, in connection with a sale of the residence, the wife signed escrow instructions directing that the defendants' note be paid from the proceeds of sale. *Id.* After the sale of the residence, the plaintiff filed a complaint against the defendants seeking to recover the \$24,750 paid to the defendants from the sale. *Id.*, at 545. On appeal, the California appellate court held that—

[T]he record supports the trial court's factual finding that plaintiff waived a known remedy. Plaintiff first discovered the encumbrance in June 1990 after the dissolution but before the property had been sold. The dissolution court had reserved jurisdiction over the sale and its proceeds to make appropriate orders on application of either party. Plaintiff could have requested a modification of the judgment to adjust the division of the community property to take account of the newly discovered encumbrance. Instead plaintiff signed instructions directing the escrowee to pay off defendants' encumbrance from the sale proceeds. The defendants were paid in full and the deed of trust reconveyed. Rather than seeking relief from the dissolution court, plaintiff chose to proceed with the sale, knowing Hyatt's share of the proceeds would be used to pay off the note owing to defendants. Plaintiff's remedy was to move the dissolution court for a modification of the decree to equalize the property division in light of the newly discovered encumbrance. We conclude plaintiff waived her remedy.

Id., at 547.

Here, Ms. Anderson chose to obtain a judgment and judgment lien in the amount of \$525,000 (and the same with respect to the \$4,000 in sanctions) rather than to seek cancellation of the Biddles' Deed of Trust. Thus, the evidence indicates that Ms. Anderson waived cancellation of the Biddles' Deed of Trust as a remedy. In any event, because the family court entered a prepetition order adjudicating the same

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

rights that the Trustee asserts here, and because Ms. Anderson could have raised cancellation before entry of that order, the family court's order precludes this Court from reassessing these issues.

C. Fraudulent Transfer

To prevail on a claim under 11 U.S.C. § 548(a)(1)(A), the Trustee must prove, by a preponderance of the evidence, that: (1) the Property was property of the estate; (2) there was a transfer of such property; (3) the transfer occurred within two years before the petition date; and (4) the transfer was made with the actual intent to hinder, delay or defraud Debtor's creditors. *In re GGW Brands, LLC*, 504 B.R. 577, 607 (Bankr. C.D. Cal. 2013). Courts generally consider the following badges of fraud when assessing intent to hinder, delay or defraud—

1. Actual or threatened litigation against the Debtor;
2. A purported transfer of all or substantially all of the Debtor's property;
3. Insolvency or other unmanageable indebtedness on the part of the Debtor;
4. A special relationship between the Debtor and the transferee; and
5. After the transfer, retention by the Debtor of the property involved in the putative transfer.

Id., at 607-08.

Here, there is a genuine issue of material fact as to whether Debtor executed the Biddles' Deed of Trust with actual intent to hinder, delay or defraud his creditors. The Trustee asserts that the Court need not consider the badges of fraud, because Debtor's forgery is conclusive as to his intent. The Trustee has not provided any legal support for his proposition that evidence of forgery conclusively establishes fraudulent intent. The evidence of forgery on some of the documents certainly is relevant to the Court's overall analysis. However, here, it does not establish the requisite intent.

First, the specific transfer the Trustee seeks to avoid is the execution of the Biddles' Deed of Trust. The Biddles' Deed of Trust itself does not contain a forged signature or notarization. In addition, there is a genuine issue of material fact as to whether Debtor had authority, under either the Anderson Trust or the Power of Attorney, to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

execute documents on Ms. Anderson's behalf. If Debtor believed he had authority to execute the transfers, the fact that the documents contain a forgery, standing alone, would not establish intent to hinder, delay or defraud.

Debtor used a significant portion of the subject funds to fund the Sharp Image litigation, to pay property taxes on the Property and to satisfy community debts. As such, the Court cannot conclude that Debtor intended to hinder, delay or defraud creditors; Debtor's intent may have been to preserve a valuable judgment in the Sharp Image Litigation.

Although Debtor was involved in litigation at the time of the subject transfer, the Trustee has not shown that the transfer to the Biddles was of substantially all of Debtor's property or that Debtor was insolvent and/or unable to manage his debt. Debtor's financial condition at the time of the transfer is reflected in the income and expense declarations and Debtor's schedules filed in his bankruptcy case. The Trustee relies on these documents to discuss Debtor's lack of income and liabilities, yet the Trustee does not account for Debtor's *assets*.

For instance, in the 2017 IED, Debtor stated that he had no income. On the other hand, in the assets section, when prompted to value his real and personal property, he wrote in "TBD." There is no other evidence regarding the value of Debtor's assets in or around September 2017, i.e., the relevant time period. In the 2016 IED, Debtor listed \$1,685,500 in assets; this amount does not include the Sharp Image Judgment (which Debtor valued highly at the time) or several assets, such as a Jaguar, an Audi, an interest in a business and multiple Wells Fargo accounts, which Debtor valued as "unknown." Moreover, in his bankruptcy schedules, although Debtor stated he did not receive any income during the two years preceding the petition date, Debtor also scheduled \$76,683,569 in assets, including \$300,000 in crystals, paintings and jewelry. Finally, in connection with the transfer to the Biddles, Debtor paid off and eliminated two liens against the Property; as such, although the Biddles' Deed of Trust encumbered the Property, the Biddles' loan was used to release other encumbrances against the Property.

Taking these facts into account, the Trustee has not adequately addressed Debtor's assets, including whether Debtor overvalued his assets and their actual value, whether the assets were encumbered and whether the Biddles' \$525,000 loan, which also

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

served to eliminate some of Debtor's liabilities, rendered Debtor insolvent or constituted a transfer of "substantially all" of Debtor's assets.

The Trustee also has not demonstrated that there was a special relationship between Debtor and *the Biddles*. Instead, the Trustee states that there was a special relationship between Debtor and the Anderson Trust. While true, the transferees at issue here are the Biddles, and the Trustee does not contend that the Biddles and Debtor had a special relationship. In fact, as discussed by Mr. Prather, Debtor contacted FHL and arranged the loan with Mr. Prather, not with the Biddles. There is no evidence Debtor personally knew the Biddles.

Finally, Debtor did not secretly retain the property involved in the transfer. Consequently, at this time, the Trustee has not met his burden of proving that the transfer to the Biddles was fraudulent under § 548(a)(1).

Even if the Trustee had met his burden of proof under § 548(a)(1), the Biddles have raised a genuine issue of material fact as to whether they were good faith transferees. Pursuant to 11 U.S.C. § 548(c)—

Except to the extent that a transfer or obligation voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

"[G]ood faith is not susceptible of precise definition." *In re Agricultural Research & Tech. Group, Inc.*, 916 F.2d 528, 536 (9th Cir. 1990) (internal quotation omitted). "[K]nowledge or actual notice of circumstances sufficient to put [the transferee], as a prudent man, upon inquiry as to whether [the transferor] intended to delay or defraud his creditors... should be deemed to have notice...." *Id.* (quoting *Shauer v. Alerton*, 151 U.S. 607, 621, 14 S.Ct. 442, 446, 38 L.Ed. 286 (1894)).

The parties do not dispute that the Biddles provided value for the Biddles' Deed of Trust. Nonetheless, the Trustee asserts that the Biddles did not act in good faith.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

According to the Trustee, the unattached jurats should have been a "red flag," and the Biddles should have further investigated the accuracy of the documents given to Mr. Prather by Debtor.

As to the jurats, Mr. Prather has testified that the jurats came unattached during copying of the documents. In essence, the Trustee states that this contention is not credible. However, at this summary judgment stage, the Court cannot ascertain credibility.

As to the Trustee's assertion that Mr. Prather should have been more diligent, Mr. Prather stated that he ran a title report and, based on the title report, instructed Debtor to transfer the Property to his name. Upon receiving documents that purported to show such a transfer, Mr. Prather sent them to a title company for approval. In addition, Mr. Prather verified Debtor's representation that the \$170,000 deed of trust was paid. Moreover, because Mr. Prather focused on asset-based financing, he obtained an appraisal of the Property.

The Trustee asserts that Mr. Prather was obligated to further investigate the documents handed to him. However, with the possible exception of the jurats, there is nothing in the record that demonstrates that Mr. Prather had "knowledge or actual notice" that Debtor was attempting to delay or defraud his creditors. From Mr. Prather's perspective, the other encumbrances against the Property had either been satisfied, subordinated or released. As such, even if the Trustee had proven his case in chief, the Court could not hold, at this time, that the Biddles acted without good faith.

D. California Civil Code § 1227

Pursuant to California Civil Code § 1227—

CERTAIN INSTRUMENTS VOID AGAINST PURCHASERS,
ETC. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, *made with intent to defraud prior or subsequent purchasers thereof*, or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value, of the same property, or the rents or profits thereof.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

(emphasis added).

Here, it does not appear that Debtor intended to defraud "prior or subsequent purchasers" of the Property. As noted above, the Biddles have raised a genuine issue of material fact as to Debtor's intent for encumbering the Property; specifically, the Biddles have shown that Debtor spent a portion of the funds on the Sharp Image litigation and paying off community debts. As such, there is insufficient evidence demonstrating that Debtor intended to defraud Ms. Anderson, as a prior purchaser. There also is no evidence that Debtor intended to defraud other prior or subsequent purchasers.

Moreover, because the Trustee has not specified any prior or subsequent purchasers, other than Ms. Anderson, this statute poses the same issues as the community property statutes. Given that Ms. Anderson, as the allegedly defrauded prior purchaser, already has adjudicated her claim against Debtor and received her chosen remedies from the family court, the Trustee could not step into Ms. Anderson's shoes to avoid the Biddles' Deed of Trust.

E. Preferential Transfers

Pursuant to 11 U.S.C. § 547(b)—

Except as provided in subsections (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

- (1) to or for the benefit of a creditors;
- (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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Anderson

Chapter 7

- (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if—
- (A) the case were a case under chapter 7 of this title;
- (B) the transfer had not been made; and
- (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

Here, the parties dispute the third and fifth elements. As to insolvency, under 11 U.S.C. § 547(f), "[f]or the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition." Although the Biddles dispute this element, they do not provide evidence to rebut the presumption that Debtor was insolvent during the 90 days preceding the petition date. As such, there is no genuine issue of material fact as to this element.

However, there is a genuine issue of material fact regarding § 547(b)(5). The Trustee's argument under § 547(b)(5) appears to rest on the presumption that the Biddles' claim is unsecured. But, as discussed above, the Trustee has not met his burden of proving the priority of critical encumbrances against the Property. The encumbrances against the Property exceed the sale price by \$128,635.02. If Plummer Group's and Mr. Flores's liens, which total \$137,612.50, are junior to the Biddles' lien, the Biddles would be fully secured. [FN14].

If the Biddles are fully secured, the subject transfers would not have enabled the Biddles to receive more than they would in a chapter 7 liquidation. *See, e.g. In re Imagine Fulfillment Servs., LLC*, 489 B.R. 136, 151 (Bankr. C.D. Cal. 2013) ("[B]ecause a fully-secured creditor will always receive payment in full on its claim in a chapter 7 case, a payment to a fully-secured creditor would not be preferential."). Consequently, the Trustee has not demonstrated that the prepetition transfers at issue were preferential.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

F. Usury

"Whether a transaction is usurious must be determined as of the time of the transaction." *First Am. Title Ins. & Tr. Co. v. Cook*, 12 Cal.App.3d 592, 596 (Ct. App. 1970). Here, the Trustee's usury claim is dependent on the Court deeming the Biddles' Deed of Trust *void*. The Trustee's theories that may result in *avoidance* of the Deed of Trust would be insufficient to designate the loan usurious; a subsequent avoidance would not change the nature of the loan as secured at the time of the subject transaction. At this time, the Trustee has not demonstrated that the Deed of Trust is void and, as a result, has not shown that the loan was usurious.

III. CONCLUSION

The Court will deny the MSJ.

The Biddles must submit an order within seven (7) days.

FOOTNOTES

1. During the course of this adversary proceeding, Mr. Biddle passed away.
2. Despite reinstating its corporate status and numerous petitions for rehearing and review, Sharp Image's efforts to reverse the appellate court's decision were unsuccessful. UF, ¶¶ 160, 162, 165-167. On June 25, 2018, the Supreme Court of the United States denied a writ of certiorari filed by Sharp Image, concluding the Sharp Image litigation. UF, ¶ 173.
3. Inclusion of a spouse's forged signature does not necessarily render the document void. For instance, if the forging spouse had implied authority, or if the forgery benefitted the non-forging spouse, the transfer still may be valid, despite the forgery. *See In re Nelson*, 761 F.2d 1320 (9th Cir. 1985).
4. The Trustee does not contend that Debtor forged Mr. Kaminsky's signature in this notarization.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Anderson

Chapter 7

5. Because the parties agree that Ms. Anderson and Ms. Lopez did not sign the 2017 Revocation of Trust, Debtor was the only party to sign the 2017 Revocation of Trust.
6. The Biddles reference California Probate Code § 18100, which protects third parties from trustees who act beyond the scope of their authority, if the third parties act in good faith, for valuable consideration and without actual knowledge that the trustee is exceeding his or her power. The Court need not reach this issue because the record is insufficient as to whether, at the time of the subject transfer, the Anderson Trust remained in effect.
7. The Court queries whether the automatic temporary restraining order, which arose when Ms. Anderson filed for dissolution of marriage, invalidated the Power of Attorney. Neither party has addressed this issue.
8. The same is true for the avoided liens of Plummer Group and Ms. Houghton (if the liens were senior to the Biddles' Deed of Trust).
9. As a preliminary matter, a claim under Cal. Fam. Code § 1102(d) is not time barred despite the one-year limitations period set forth in the statute. Debtor filed his bankruptcy petition within the one-year period. As a result, the limitations period was tolled pursuant to 11 U.S.C. §§ 108(a) and 546.
10. As discussed above, Debtor was a "duly authorized agent" pursuant to the Power of Attorney. For purposes of the analysis in this section, the Court will presume that the Power of Attorney was invalid when Debtor executed the Biddles' Deed of Trust.
11. Because a hypothetical lien creditor or bona fide purchaser could challenge a deed in the chain of title on the basis that it is void, the Trustee has standing under § 544(a) to challenge the Biddles' Deed of Trust on his theory of forgery.
12. In fact, with respect to Cal. Fam. Code § 1102, California courts have held that the statute "has never been interpreted in such a way as to provide a means whereby a third party creditor of the married couple may challenge and void

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT...

Christopher Anderson

Chapter 7

instruments signed by only one of the spouses." *Safarian v. Govgassian*, 47 Cal.App.5th 1053, 1070 (Ct. App. 2020) (quoting *Clar v. Cacciola*, 193 Cal.App.3d 1032, 1037 (Ct. App. 1987)). As to Cal. Fam. Code § 2040, the Court did not find any reported decisions where a third party creditor attempted to invoke the statute to invalidate a lien.

13. Violations of Cal. Fam. Code § 1102 are *voidable*, not void. *Clar*, 193 Cal.App.3d at 1036.

14. The Court is using the \$20,000 value of Mr. Flores's lien, in accordance with the Flores Compromise. As discussed above, because Mr. Flores apparently agreed to subordinate his lien, the Biddles' Deed of Trust would be senior to his lien.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

The Biddles' Evidentiary Objections to the Trustee's Statement of Uncontroverted Facts

statement 33, 38, 42, 47, 53, 58, 63, 68, 73, 78, 83: sustain to the extent "forgery" is used as a legal conclusion; otherwise overrule

The Court will otherwise overrule the disputes regarding proper recitation of evidence. The Court assessed the evidence itself and did not rely on either party's interpretation of the evidence.

The Biddles' Evidentiary Objections to the Declaration of Kelli Anderson

paras. 11-14: sustain to the extent "forgery" is used as a legal conclusion; otherwise overrule

Trustee's Evidentiary Objections to the Biddles' Statement of Uncontroverted Facts

statement 134-135, 138, 140-142, 148, 152, 157-160, 162-168, 170-178: overrule statement 136, 144, 153: sustain

statement 150: admit not for truth of the matter but for Mr. Prather's state of mind statement 169: sustain as to "and Kelli 'explicitly told' him to do whatever was necessary to protect their Sharp Image judgment;" overrule as to the rest under FRE 804(b)(1)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

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
Howard Camhi

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, July 22, 2020

Hearing Room 301

2:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#2.00 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; 8/7/19; 4/15/20; 6/17/20(stip); 7/1/20

Docket 7

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 9/9/20.

Pretrial: 9/23/20 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), 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

Susan Biddle, Trustee of the Biddle

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 22, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Anderson

Chapter 7

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**

Thursday, July 23, 2020

Hearing Room 301

10:30 AM

1:16-13069 Jesus Rivera

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David K. Gottlieb, Chapter 7 Trustee

Docket 35

Tentative Ruling:

David Keith Gottlieb, chapter 7 trustee - approve fees of \$1,023.77 and reimbursement of expenses of \$57.01, 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):

Jesus Rivera

Represented By
Juan Castillo-Onofre

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 23, 2020

Hearing Room 301

10:30 AM

1:17-13142 Amir Elosseini

Chapter 11

#2.00 Application for payment of interim fees and/or expenses
for Tang & Associates, debtor's attorney

Docket 212

Tentative Ruling:

The Court will continue this hearing to **August 20, 2020 at 10:30 a.m. By August 6, 2020**, the applicant must cure the deficiencies noted below.

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. In addition, contrary to LBR 2016-1(a)(1)(A)(iii), the application does not discuss the estimated amount of other accrued expenses of administration.

Appearances on July 23, 2020 are excused.

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, July 23, 2020

Hearing Room 301

10:30 AM

1:19-11830 Leandro Velando Arjona, Jr.

Chapter 7

#3.00 Trustee's Final Report and Applications for Compensation

Nancy J Zamora, Chapter 7 Trustee

Docket 17

Tentative Ruling:

Nancy Zamora, chapter 7 trustee - approve fees of \$580.77 and reimbursement of expenses of \$295.80, 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):

Leandro Velando Arjona Jr.

Represented By
David H Chung

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 23, 2020

Hearing Room 301

10:30 AM

1:20-10543 Amerigrade Corp.

Chapter 11

#4.00 First and final application for compensation and reimbursement
of expenses for Michael Jay Berger, debtor's attorney

fr. 7/2/20

Docket 42

Tentative Ruling:

The Court will continue this hearing to 10:30 a.m., on August 6, 2020.

Appearances on July 23, 2020 are excused.

Party Information

Debtor(s):

Amerigrade Corp.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 23, 2020

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#5.00 Status conference re: chapter 11 case

fr. 12/19/20; 12/26/19; 6/18/20

Docket 1

Tentative Ruling:

Contrary to the Court's order dated June 8, 2020 (the "Order") [doc. 67], the debtor did not timely file a proposed chapter 11 plan and disclosure statement. In addition, contrary to the Order, the debtor did not timely file a status report.

The Court intends to issue an Order to Show Cause why this case should not be dismissed or converted pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(4)(E) and (J).

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, July 23, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#6.00 Motion for an order quashing "Notice of deposition, of person most knowledgeable of The Sands Law Group APLC and request for production of documents" Initiated by the Debtor-In-Possession and Dmitri Lioudkovski and his attorney David B. Golubchik

Docket 51

Tentative Ruling:

Deny.

Given that the Court resolved the contested matter from which this discovery dispute arose, the debtor's notice of deposition and the motion to quash that notice are moot.

The movant did not timely file a reply to the debtor's opposition. To the extent the movant is still requesting sanctions against the debtor, the request is denied. The movant requests sanctions on two bases: (A) failure to comply with Local Bankruptcy Rule ("LBR") 7026-1(c); and (B) failure to send a notice to Gina Lisitsa under California Code of Civil Procedure ("CCP") § 1987.2.

Pursuant to LBR 7026-1(c)(1):

Unless excused from complying with this rule by order of the court for good cause shown, a party must seek to resolve any dispute arising under FRBP 7026-7037 or FRBP 2004 in accordance with this rule.

LBR 7026-1(c)(2) requires the following:

Prior to the filing of any motion relating to discovery, counsel for the parties must meet in person or by telephone in a good faith effort to resolve a recovery dispute. *It is the responsibility of counsel for the moving party to arrange the conference.* Unless altered by agreement of the parties or by order of the court for cause shown, counsel for the opposing party must meet with the counsel for the moving party within 7 days of service upon counsel of a letter requesting such meeting and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 23, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

specifying the terms of the discovery order to be sought.

(emphasis added). Should no resolution be reached, LBR 7026-1(c)(3) requires the parties provide a joint stipulation between the parties setting forth the disputed issues.

The movant contends that the debtor did not respond to its efforts to meet and confer. However, in a declaration attached to the motion, Thomas Sands appears to state that the debtor did not respond to meet and confer requests regarding the movant's unrelated request for an examination under Federal Rule of Bankruptcy Procedure 2004. There is nothing in the record demonstrating that the movant attempted to meet and confer with the debtor regarding this discovery dispute.

The movant cites CCP § 1987.2 as an alternative basis for sanctions, asserting that the debtor sought to obtain private information about Ms. Lisitsa, and that the debtor should have sent a consumer notice to Ms. Lisitsa regarding the debtor's discovery requests. However, under CCP § 1985.3(a)(3), the debtor does not qualify as a "subpoenaing party" required to send such a notice because a "subpoenaing party" is defined as "the person or persons causing a subpoena duces tecum to be issued or served *in connection with any civil action or proceeding pursuant to this code....*" (emphasis added). "[T]his code" refers to the CCP. Given that the contested matter at issue was the Motion to Disqualify, which was based entirely on federal law, the CCP is inapplicable. *See, e.g. Kaur v. City of Lodi*, 2016 WL 10679575, at *1 (E.D. Cal. Jan. 28, 2016) ("Cal. Civ. Proc. Code § 1985.3(a) is, by its terms, inapplicable to subpoenas issued in federal court cases.").

In addition, a consumer entitled to such notice "means any individual, partnership of five or fewer persons, association, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary." CCP § 1985.3(a)(2). Nothing in the record before the Court suggests that the movant acted as an agent or fiduciary for Ms. Lisitsa.

Finally, the notice of deposition requested production of documents, correspondence and materials between the movant and Ms. Lisitsa "*with respect to the Debtor including, without limitation, any managers or members of the Debtor.*" Notice of Deposition, p. 3 (emphasis added). Given that the request pertains solely to materials related to the debtor and/or its members, it is unclear which of Ms. Lisitsa's "private

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 23, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

affairs" were at risk of exposure. Consequently, the movant has not provided cause to sanction the debtor.

The Court will deny the movant's request for sanctions and will deny as moot the movant's request to quash the notice of deposition.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 23, 2020

Hearing Room 301

2:00 PM

1:14-14573 Hector Aguilar and Rosa Aguilar

Chapter 7

#7.00 Motion to avoid lien under 11 U.S.C. sec 522(f) (Real Property)
with Citibank, N.A.

fr. 6/25/20

Docket 28

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):

Hector Aguilar

Represented By
Bernal P Ojeda
Leon D Bayer

Joint Debtor(s):

Rosa Aguilar

Represented By
Bernal P Ojeda
Leon D Bayer

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 23, 2020

Hearing Room 301

2:00 PM

CONT... Hector Aguilar and Rosa Aguilar

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 23, 2020

Hearing Room 301

2:00 PM

1:16-11174 Alfredo Delgado

Chapter 11

#8.00 Motion by Reorganized Debtor for Entry of discharge and entry of final decree

Docket 120

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Alfredo Delgado

Represented By

Matthew D. Resnik

M. Jonathan Hayes

Matthew D. Resnik

Roksana D. Moradi-Brovia

Kevin T Simon

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 23, 2020

Hearing Room 301

2:00 PM

1:14-10079 Sos S Arutyunyan

Chapter 11

#9.00 Debtor's 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 142

Tentative Ruling:

I. BACKGROUND

On January 6, 2014, Sos S. Arutyunyan ("Debtor") filed a voluntary chapter 11 petition. On November 5, 2014, Debtor, on the one hand, and secured creditors Jimmy Lee Grand McCoy and Myrtle Marie McCoy (the "McCoys"), on the other hand, executed a settlement agreement regarding treatment of the McCoys' claim (the "Settlement Agreement"). In relevant part, the Settlement Agreement provided—

Debtor shall pay all property taxes when due, and provide Creditor with evidence of payment within ten (10) days of the payment date. In addition, Debtor shall maintain all required property insurance reflecting Creditor as the "loss payee," and provide Creditor with evidence of insurance coverage within ten (10) days of the request by Creditor.

...

Debtor stipulates to immediate relief from the automatic stay effective upon seven (7) days' written notice from Creditor to Debtor in the event Debtor defaults under the terms of this Agreement. If Debtor fails to cure said default within seven (7) days, Creditor[s] may submit to the Court and the Court may enter an order granting relief from the automatic stay. Parties agree to the entry of a stipulated order granting relief from the automatic stay (the "Order")....

Settlement Agreement, p. 2.

On November 26, 2014, Debtor filed the *Individual Debtor's First Amended Chapter*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 23, 2020

Hearing Room 301

2:00 PM

CONT... Sos S Arutyunyan

Chapter 11

11 Plan of Reorganization Dated November 26, 2014 (the "Plan") [doc. 98]. In the Plan, Debtor classified the McCoys as secured creditors in Class 5(b). Other than the McCoys, the Plan designated a class of unsecured creditors as Class 6(b). On April 2, 2015, the Court entered an order confirming the Plan (the "Confirmation Order") [doc. 122]. The Confirmation Order provided that Debtor "shall not be entitled to receive a discharge until all payments required to be made under the Plan *to the holders of unclassified claims, priority claims and general unsecured claims* have been paid in full." Confirmation Order, p. 2 (emphasis added).

On June 10, 2020, Debtor filed a motion for entry of a discharge and final decree (the "Motion") [doc. 142]. In a declaration attached to the Motion, Debtor stated that he "completed making Class 6(b) payments to general unsecured creditors." Declaration of Sos S. Arutyunyan, ¶ 11.

On June 24, 2020, the McCoys filed an opposition to the Motion (the "Opposition") [doc. 144]. In the Opposition, the McCoys contend that Debtor has not timely made property tax payments and has not timely provided proof of current insurance to the McCoys. As such, the McCoys assert that Debtor has breached the Settlement Agreement and entry of a discharge is premature.

II. ANALYSIS

Pursuant to the Settlement Agreement, the remedy for Debtor's default under the Settlement Agreement is for Debtor to stipulate "to immediate relief from the automatic stay upon seven (7) days' written notice from" the McCoys to Debtor. Debtor then has seven days to cure any such default. As such, if the McCoys believe Debtor has breached the Settlement Agreement and would like to pursue enforcement of the terms therein, the McCoys must employ the procedures set forth in the Settlement Agreement.

The Settlement Agreement does not provide for denial of Debtor's discharge as a consequence for breaching the terms of the Settlement Agreement. Moreover, the Confirmation Order explicitly states that Debtor may receive a discharge upon completing payments to "holders of unclassified claims, priority claims and general unsecured claims." Confirmation Order, p. 2. The McCoys' claim is not an unclassified, priority or general unsecured claim. Because Debtor states in his

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 23, 2020

Hearing Room 301

2:00 PM

CONT... Sos S Arutyunyan

Chapter 11

declaration that he has completed payments of unclassified, priority or general unsecured claims, Debtor is entitled to a discharge.

III. CONCLUSION

The Court will grant the Motion. The McCoys may pursue other remedies available to them.

Debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Sos S Arutyunyan

Represented By
Anthony Obehi Egbase
Onyinye N Anyama

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, July 29, 2020

Hearing Room 301

9:30 AM

1:18-12112 Jose Luis Alejandres and Zeida Alejandres

Chapter 13

#1.00 Motion for relief from stay [PP]

NISSAN MOTOR ACCEPTANCE CORPORATION
VS
DEBTOR

fr. 7/15/20

Stip for adequate protection

Docket 42

*** VACATED *** REASON: Order entered resolving the motion [doc. 54].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Luis Alejandres

Represented By
Erika Luna

Joint Debtor(s):

Zeida Alejandres

Represented By
Erika Luna

Trustee(s):

Elizabeth (SV) 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 29, 2020

Hearing Room 301

9:30 AM

1:18-12689 Mary Ann Irvine

Chapter 13

#2.00 Motion for relief from stay [RP]

CITIBANK, NA
VS
DEBTOR

fr. 11/6/19; 11/6/19; 12/4/19; 1/8/20; 2/26/20; 4/15/20; 5/20/20;
6/24/20

Stip to continue filed 7/27/20

Docket 30

*** VACATED *** REASON: continued to 9/9/20 at 9:30 am per order
entered on 7/28/20 doc #49

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Ann Irvine

Represented By
Nathan A Berneman

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, July 29, 2020

Hearing Room 301

9:30 AM

1:19-12851 Neil Iain Barrington Taffe

Chapter 13

#3.00 Amended Motion for relief from stay [RP]

WILMINGTON TRUST, NA
VS
DEBTOR

fr. 7/1/20

Docket 49

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to 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):

Neil Iain Barrington Taffe

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

9:30 AM

CONT... Neil Iain Barrington Taffe

Elena Steers

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 29, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#4.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Hernandez

Represented By
Donald E Iwuchuku

Movant(s):

U.S. Bank Trust 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, July 29, 2020

Hearing Room 301

1:30 PM

1:18-11342 Victory Entertainment Inc

Chapter 7

Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

- #5.00** Status conference re: complaint for:
- 1) Avoidance and recovery of fraudulent transfers pursuant to Title 11 U.S.C. sec 544(a) and (b), 548 and 550; Title 26 U.S.C. sec 6502(a) and Cal. Civ. Code sec 3439.04 3439.07 and 3439.09;
 - 2) Avoidance and recovery of preferential transfer pursuant to Title 11 U.S.C. sec 547 and 550;
 - 3) Preservation of avoided transfers pursuant to Title 11 U.S.c sec 551;
 - 4) Declaratory relief re alter ego liability; and
 - 5) Turnover of property

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on August 26, 2020**, to be held with the hearing on the defendants' motion to dismiss [doc. 8].

Appearances on July 29, 2020 are excused.

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By
George J Paukert
Lewis R Landau

Defendant(s):

HALA Enterprises, LLC

Pro Se

Agassi Halajyan, an Individual

Pro Se

Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

1:30 PM

CONT... Victory Entertainment Inc

Chapter 7

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Elissa Miller
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01041 Sheik v. MDA Motors Corp., a California corporation et al

- #6.00** Status conference re: complaint for
1) Quit title;
2) Slander of title;
3) Declaratory relief

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 7, 2020.**

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 **August 14, 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 July 29, 2020 is excused.

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

MDA Motors Corp., a California

Pro Se

Greenwood Pontiac, Inc. a dissolved

Pro Se

Jamshid Lavi, an individual

Pro Se

All Persons Or Entities Unknown

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

1:30 PM

CONT... Maryam Sheik

Chapter 11

Does 1-10, Inclusive

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01042 Sheik v. Protax, LLC, a California Limited Liability Compan

- #7.00** Status conference re: complaint for
1) Quiet title;
2) Slander of title;
3) Declaratory relief

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 7, 2020.**

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 **August 14, 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 July 29, 2020 is excused.

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Protax, LLC, a California Limited

Pro Se

All Persons or Entities Unknown

Pro Se

Does 1 to 10, Inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

1:30 PM

CONT... Maryam Sheik

Chapter 11

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01043 Sheik v. Lilly Group, a trust et al

- #8.00** Status conference re: complaint for:
- 1) Fraud;
 - 2) Fraud based on forgery
 - 3) Civil conspiracy
 - 4) Quiet title
 - 5) Cancellation of instruments
 - 6) Slander of title
 - 7) Declaratory relief
 - 8) Injunctive relief

fr: 6/3/20;

Docket 1

Tentative Ruling:

In the executed summons [doc. 22], the plaintiff indicates that she served two of the defendants, Lilly Group and Lavender Enterprises, "c/o Maryam Sheik." What is the plaintiff's relationship to these entities?

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Lilly Group, a trust

Pro Se

Lavender Enterprises, a trust

Pro Se

RA Sterling Investments & Holdings

Pro Se

Andrew Alcaraz, an individual

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

1:30 PM

CONT... Maryam Sheik

Chapter 11

All Persons or Entities Unknown

Pro Se

Does 1 to 10, Inclusive

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

1:30 PM

1:19-11921 Breann Castillo

Chapter 7

Adv#: 1:20-01058 Campolong v. Castillo

#9.00 Status conference re: complaint to determine dischargeability of debt pursuant to code sections 523(a)(2), (a)(4), (a)(6) and also to revoke discharge per code section 727(d)(1)

Docket 1

Tentative Ruling:

The Court will set the defendant's motion to dismiss [doc. 4] for hearing at **2:30 p.m. on August 26, 2020**. The defendant must file and serve notice of the hearing on the plaintiff. The Court also will continue this status conference to the same time and date.

Appearances on July 29, 2020 are excused.

Party Information

Debtor(s):

Breann Castillo

Represented By
David S Hagen

Defendant(s):

Breann Castillo

Pro Se

Plaintiff(s):

Andrew Campolong

Represented By
Michael F Chekian

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 29, 2020

Hearing Room 301

1:30 PM

1:19-12517 Hayde Rodriguez Barahona

Chapter 7

Adv#: 1:20-01016 Zamora, Chapter 7 Trustee v. Rodriguez Barahona et al

- #10.00** Status conference re: complaint to:
(1) Obtain declaratory relief as to estate's ownership interest in real property; and
(2) Authorize sale of property owned in part by non-debtor

fr. 4/8/20; 5/6/20

Docket 1

***** VACATED *** REASON: Adversary dismissed 07/28/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hayde Rodriguez Barahona

Represented By
Navid Kohan

Defendant(s):

Hayde Rodriguez Barahona

Pro Se

Juan Manuel Barahona Garcia

Pro Se

Plaintiff(s):

Nancy J Zamora, Chapter 7 Trustee

Represented By
Larry D Simons

Trustee(s):

Nancy J Zamora (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

1:30 PM

1:20-10093 Robert Alderman

Chapter 7

Adv#: 1:20-01054 LBS Financial Credit Union, a California corporati v. Alderman et al

#11.00 Status conference re: complaint to determine dischargeability
of debt [11 U.S.C.A.sec523]

fr. 7/15/20

Docket 1

Tentative Ruling:

In their stipulation filed on July 13, 2020 [doc. 9], the parties stated that they were in the process of resolving this matter. What is the status of the parties' settlement efforts?

Party Information

Debtor(s):

Robert Alderman

Represented By
Stephen L Burton

Defendant(s):

Robert Alderman

Pro Se

Noni Alderman

Pro Se

Joint Debtor(s):

Noni Alderman

Represented By
Stephen L Burton

Plaintiff(s):

LBS Financial Credit Union, a

Represented By
Karel G Rocha

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 29, 2020

Hearing Room 301

1:30 PM

1:20-10346 Alan Gene Lau

Chapter 7

Adv#: 1:20-01053 Prior et al v. Lau et al

#12.00 Status conference re complaint to determine the dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiffs must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 12/18/20.

Deadline to complete one day of mediation: 1/15/21.

Deadline to file pretrial motions: 2/1/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 2/24/21.

Pretrial: 3/10/21 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after this status conference, the plaintiffs must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

1:30 PM

CONT... Alan Gene Lau

Chapter 7

Debtor(s):

Alan Gene Lau

Represented By
Kevin T Simon

Defendant(s):

Alan Gene Lau

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Amber Ann Waddell Lau

Represented By
Kevin T Simon

Plaintiff(s):

Cheryl Prior

Represented By
Alana B Anaya

Russell Prior

Represented By
Alana B Anaya

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 29, 2020

Hearing Room 301

1:30 PM

1:20-10855 Patricia Esmeralda Rangel

Chapter 7

Adv#: 1:20-01055 Rangel v. Navient Solutions LLC., dba Navient, Navient Solut

#13.00 Status conference re complaint to determine dischargeability of student loans under 11 U.S.C> sec 523(a)(8)(A)(i)(ii) and (B)

Docket 1

***** VACATED *** REASON: Another summons issued 7/10/20. Status conference reset to 8/26/20 at 1:30 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Esmeralda Rangel	Pro Se
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Defendant(s):

Navient Solutions LLC., dba	Pro Se
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U.S. Department of Education	Pro Se
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Plaintiff(s):

Patricia Esmeralda Rangel	Pro Se
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Trustee(s):

David Keith Gottlieb (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, July 29, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01062 AYZENBERG v. Lev Investments, LLC et al

#14.00 Status conference re: notice of removal of state court
civil action pursuant to rule 9027 of the FRBP

Docket 1

Tentative Ruling:

In light of the fact that the plaintiff and the debtor agree to remand this matter, and because the other defendants did not timely respond to the Court's Order to Show Cause, the Court will remand this action.

The Court will prepare the Order.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik

DMITRI LUDKOVSKI

Pro Se

RUVIN FEYGENBERG

Pro Se

MICHAEL LEIZEROVITZ

Pro Se

SENSIBLE CONSULTING AND

Pro Se

DOES 1 through 100, inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Plaintiff(s):

MARIYA AYZENBERG Pro Se

Trustee(s):

Caroline Renee Djang (TR) Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

1:19-13145 Daniel Michael Uzan

Chapter 7

Adv#: 1:20-01035 Mitchell et al v. Uzan

#15.00 Defendant Daniel Michael Uzan's motion to dismiss plaintiffs complaint or in the alternative for a more definite statement (Fed. R. Civ. P. 12(b)(6) and 12(e), Fed. R. Bank. P. 7012(b))

Docket 8

Tentative Ruling:

Grant.

I. BACKGROUND

On December 18, 2019, Daniel Michael Uzan ("Defendant") filed a voluntary chapter 7 petition. On March 23, 2020, Jason Mitchell and JHM Ventures ("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)(4) and (a)(6). In relevant part, the Complaint includes the following factual allegations:

Mr. Mitchell is President of JHM. In February 2015, Mr. Mitchell and Defendant agreed to go into business together for the purpose of providing home automation services. Mr. Mitchell and Defendant entered into a written shareholder agreement ("Shareholder Agreement") as equal shareholders of TRU Smart Home Installations, Inc. (the "Corporation"). The Shareholder Agreement stipulated that consent of all shareholders was required to approve the voluntary dissolution of the Corporation.

At the time that Mr. Mitchell and Defendant agreed to go into business together, Defendant represented to Mr. Mitchell that he annually performed between \$150,000 and \$200,000 in electrical projects. Defendant further represented that he had agreements for projects with an electrical union for \$2 million as well as an existing \$500,000 project. Defendant represented that he routinely received referrals for home automation services and that he had several clients who were in the process of hiring him to install home automation services. These representations were false, and Defendant was aware of the falsity and misleading nature of his statements at the time that

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Daniel Michael Uzan

Chapter 7

they were made.

In February 2015, Defendant entered into a written guaranty agreement ("Guaranty Agreement") with JHM, pursuant to which Defendant became the guarantor of a \$300,000 loan to the Corporation. Defendant has refused to pay the loan that is the subject of the Guaranty Agreement.

In entering into the Shareholder Agreement and Guaranty Agreement, Plaintiffs relied on Defendant's representations to their detriment. Plaintiffs have been damaged in the sum of at least \$472,938.

In addition, Mr. Mitchell contributed between \$50,000 and \$60,000 to the Corporation. Defendant was required to contribute inventory to the Corporation to offset this monetary contribution. As an equal shareholder in the Corporation, Mr. Mitchell had an equal ownership in these assets. Defendant misappropriated these assets by taking them for his own personal use and for the use of Defendant's other companies. Defendant has refused to return the inventory or monetary contributions to Mr. Mitchell. As a direct and proximate result of the foregoing, Mr. Mitchell has suffered damages of not less than \$60,000.

In addition to making false representations and misappropriating the Corporation's property, Defendant breached his fiduciary duty owed to Mr. Mitchell by: (1) failing to properly manage and operate the business and affairs of the Corporation, (2) dissolving the Corporation and changing its name to "Elements Smart Homes Solutions, Inc." ("Elements") without Mr. Mitchell's consent, (3) failing to follow winding up procedures and (4) failing to exercise actions required of him as a Director, Managing Shareholder and President of the Corporation.

On May 26, 2020, Defendant filed a motion to dismiss the Complaint [doc 8]. On July 15, 2020, Plaintiffs filed an opposition to the Motion (the "Opposition") [doc. 12].

II. ANALYSIS

A. General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Daniel Michael Uzan

Chapter 7

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); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009)). "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 555 (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... Daniel Michael Uzan

Chapter 7

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).

"A complaint that merely recites statutory language fails to state a claim under Rule 12(b)(6)." *In re Kubick*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994). This is because "mere statutory language does not plead facts sufficiently so that they may be answered or denied." *Id.* "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Id.*

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)

In the Complaint, Plaintiffs do not specify on which subsection their § 523(a)(2) claims are based. 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*" (emphasis added).

[A] statement is "respecting" a debtor's financial condition if it has a direct relation to or impact on the debtor's overall financial status. A single asset has a direct relation to and impact on aggregate financial condition, so a statement about a single asset bears on a debtor's overall financial condition and can help indicate whether a debtor is solvent or

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Daniel Michael Uzan

Chapter 7

insolvent, able to repay a given debt or not. Naturally, then, a statement about a single asset can be a "statement respecting the debtor's financial condition."

Lamar, Archer & Cofrin, LLP v. Appling, 138 S.Ct. 1752, 1761, 201 L.Ed.2d 102 (2018).

Here, Plaintiffs allege that Defendant represented that he: (A) annually performed between \$150,000 and \$200,000 in electrical projects; (B) had agreements with an electrical union for projects worth \$2 million; (C) had an existing \$500,000 project; and (D) routinely received referrals and had several clients who were in the process of hiring him to install home automation services. Under the broad reading of "a statement respecting a debtor's financial condition" set forth by *Appling*, these statements directly relate to Defendant's financial condition. As a result, the representations fall outside the purview of § 523(a)(2)(A). In the Opposition, Plaintiffs do not argue otherwise. Thus, to proceed with a claim under § 523(a)(2), Plaintiffs must include sufficient allegations under § 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....

As noted above, Plaintiffs have alleged several material misrepresentations respecting Defendant's financial condition. Plaintiffs also adequately allege reliance on those representations, and generally allege that Defendant intended to deceive Plaintiffs. Because Plaintiffs allege they would not have entered into their agreements with Defendant but for the representations, the Complaint also includes adequate allegations regarding causation.

However, as acknowledged by Plaintiffs in the Opposition, the issue is that Plaintiffs do not allege that any of the subject misrepresentations were in writing.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... Daniel Michael Uzan

Chapter 7

Consequently, the Court will dismiss Plaintiffs' § 523(a)(2) claim with leave to amend.

C. 11 U.S.C. § 523(a)(4)

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); *see also In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) ("The definition of 'fiduciary capacity' under § 523(a)(4) is governed by federal law."). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796; *see also In re Stern*, 403 B.R. 58, 66 (Bankr. C.D. Cal. 2009) ("In order for the debt to be actionable for nondischargeability, the debtor must have been a trustee before the alleged wrong and without reference thereto; the debtor must have already been a trustee before the debt was created."); *Cantrell*, 269 B.R. at 420 ("Only relationships arising from express or technical trusts qualify as fiduciary relationships under § 523(a)(4)."). Under § 523(a)(4), a court must consider state law to ascertain whether there is the required express or technical trust. *In re Honkanen*, 446 B.R. 373, 379 (B.A.P. 9th Cir. 2011). "A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. California law does not recognize "officers, directors or controlling shareholders as trustees of either an express or a statutory trust." *Id.*, 421-22.

In the Complaint, Mr. Mitchell's claim under § 523(a)(4) is based on fraud or defalcation while acting in a fiduciary duty. [FN1]. However, corporate officers, directors or shareholders do not owe the type of fiduciary duty contemplated by § 523(a)(4). Mr. Mitchell has not otherwise alleged a fiduciary duty, arising from an express, statutory or technical trust, owed by Defendant to Mr. Mitchell. Plaintiffs do

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... Daniel Michael Uzan

Chapter 7

not address this issue in their Opposition.

Instead, in the Opposition, Plaintiffs contend Mr. Mitchell is asserting a claim for embezzlement and/or larceny. "Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1) property rightfully in the possession of the non-owner debtor, (2) the non-owner's misappropriation of the property to a use other than that for which it was entrusted, and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). "The elements of larceny differ only in that a larcenous debtor has come into possession of funds wrongfully." *In re Mickens*, 312 B.R. 666, 680 (Bankr. N.D. Cal. 2004). For purposes of embezzlement and larceny, a fiduciary relationship is not required. *Littleton*, 942 F.2d at 555.

Mr. Mitchell does not mention embezzlement or larceny in connection with his claim under 11 U.S.C. § 523(a)(4). Nevertheless, in the Opposition, Plaintiff contends that the Complaint includes sufficient allegations regarding embezzlement and/or larceny. The Complaint does include adequate allegations as to certain elements of embezzlement; for instance, Mr. Mitchell alleges that Defendant was tasked with management and control of the Corporation and, as a result, the Corporation's cash and assets were rightfully in Defendant's possession. Mr. Mitchell also alleges that Defendant misappropriated those assets to other uses. Further, Mr. Mitchell alleges "circumstances indicating fraud" by alleging that Defendant induced Mr. Mitchell to contribute money by intentionally misrepresenting pertinent facts.

However, Mr. Mitchell has not alleged how *he*, instead of the Corporation, was damaged by the misappropriation. Mr. Mitchell does not allege that he ever owned the Corporation's inventory; instead, Mr. Mitchell alleges he had an "ownership interest" as a shareholder. As to the funds Mr. Mitchell alleges he loaned to the Corporation, the Corporation owned those funds at the time of the alleged misappropriation. Shareholders do not own corporate assets. *Eagle v. Am. Tel. & Tel. Co.*, 769 F.2d 541, 546-47 (9th Cir. 1985) ("Because shareholders do not own the corporation's assets, the wrongful depletion of corporate assets is an injury to the corporation and only an indirect injury to the shareholders.").

While Defendant's alleged misappropriation of the Corporation's assets may have reduced the value of Mr. Mitchell's shares, Mr. Mitchell has not alleged a theory of embezzlement on this basis or explained if any such theory is plausible under

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Daniel Michael Uzan

Chapter 7

applicable law. *See, e.g. Eagle*, 769 F.2d at 547 ("[S]hareholders normally cannot recover in their individual capacities for a wrongful depletion of corporate assets."). Mr. Mitchell also has not alleged an independent ownership interest in the subject assets. Consequently, the Court will dismiss Mr. Mitchell's claim under § 523(a)(4) with leave to amend.

D. 11 U.S.C. § 523(a)(6)

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 140 L.Ed. 2d 90 (1998). In the Ninth Circuit, "§ 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Ormsby*, 591 F.3d at 1206 (quoting *In re Su*, 290 F.3d 1140, 1142 (9th Cir.2002)). "The Debtor is charged with the knowledge of the natural consequences of his actions." *Id.* (citing *In re Cohen*, 121 B.R. 267, 271 (Bankr.E.D.N.Y.1990)).

Under § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.* at 1147. Maliciousness does not require "personal hatred, spite, or ill-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

Mr. Mitchell alleges that Defendant willfully and maliciously injured him, that Defendant intended the consequences of his actions and that the injury was substantially certain to result from Defendant's conduct. At the motion to dismiss stage, "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Rule 9(b). As such, the Complaint includes adequate allegations regarding the intent elements of § 523(a)(6).

As the "wrongful act," Mr. Mitchell alleges that Defendant misappropriated Mr. Mitchell's cash and ownership interest in the Corporation's inventory by taking such

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... Daniel Michael Uzan

Chapter 7

assets for his own personal use. While the Complaint includes sufficient allegations regarding Defendant's disposition of property, Mr. Mitchell has not adequately alleged that he was damaged from the alleged misappropriation.

Once again, Mr. Mitchell alleges he was damaged by Defendant's alleged misappropriation of the Corporation's inventory and the cash Mr. Mitchell loaned to the Corporation. As discussed above, Mr. Mitchell's ownership interest was in the *shares* of the Corporation, not the cash and inventory owned by the Corporation. Mr. Mitchell has not alleged that he held an interest in these assets for any reason other than he was a shareholder of the Corporation. Mr. Mitchell has not alleged why he was damaged by misappropriation of assets that he did not own.

To the extent applicable authority allows Mr. Mitchell to claim damages for misappropriation of corporate assets, the damage to Mr. Mitchell would be loss of value in the shares, not loss of the value of the assets themselves. Otherwise, Mr. Mitchell would have to allege that he had an independent interest in these assets, or that, upon dissolution of the Corporation and but for the alleged misappropriation, Mr. Mitchell would have received more money than he did. Such allegations are not in the Complaint.

In the Opposition, Plaintiffs also argue that the allegations regarding Defendant unilaterally changing the Corporation's name serve as another basis for their § 523(a)(6) claim. However, the Complaint does not include any allegations that the name change resulted in Mr. Mitchell losing his shares in the Corporation (or any other loss to Mr. Mitchell stemming from this conduct). If Mr. Mitchell intends to use the alleged name change as a basis for his § 523(a)(6) claim, he must allege how he was damaged by the change. In light of the above, the Court also will dismiss this claim with leave to amend.

III. CONCLUSION

The Court will dismiss Plaintiffs' claims with leave to amend. If Plaintiffs elect to amend the Complaint, they must file and serve an amended complaint **no later than August 19, 2020**. If Plaintiffs file an amended complaint, Defendant must file and serve a response **no later than September 9, 2020**.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... Daniel Michael Uzan

Chapter 7

Defendant must submit an order within seven (7) days.

FOOTNOTES

1. The § 523(a)(4) and (a)(6) claims are asserted by Mr. Mitchell alone.

Party Information

Debtor(s):

Daniel Michael Uzan

Represented By
Mark T Jessee

Defendant(s):

Daniel Michael Uzan

Represented By
Mark T Jessee

Plaintiff(s):

Jason Mitchell

Represented By
Stella A Havkin

JHM Ventures, a California

Represented By
Stella A Havkin

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 29, 2020

Hearing Room 301

2:30 PM

1:19-13145 Daniel Michael Uzan

Chapter 7

Adv#: 1:20-01035 Mitchell et al v. Uzan

#16.00 Status conference re: complaint for determination of nondischargeability pursuant to 11 U.S.C. sec 523(a)(2)(A), 523(a)(4) and 523(a)(6)

fr. 5/20/20; 6/17/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on September 23, 2020**, to assess if the parties have timely filed their pleadings.

Party Information

Debtor(s):

Daniel Michael Uzan

Represented By
Mark T Jessee

Defendant(s):

Daniel Michael Uzan

Pro Se

Plaintiff(s):

Jason Mitchell

Represented By
Stella A Havkin

JHM Ventures, a California

Represented By
Stella A Havkin

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 29, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#17.00 Motion to compel further responses to requests for production of documents, set no. 1, to debtor Kenneth C. Scott, and for production of documents, and for imposition of monetary sanctions

Docket 46

Tentative Ruling:

The Court will deny in part and grant in part the motion to compel, filed by H. Samuel Hopper, and the motions to quash, filed by the debtor, Kenneth C. Scott ("Debtor").

I. BACKGROUND

A. Bankruptcy Case

On December 18, 2018 (the "Petition Date"), Debtor filed a voluntary chapter 13 petition, initiating case 1:18-bk-13024-VK. Prior to Debtor filing his petition, on November 7, 2018, H. Samuel Hopper ("Creditor") filed a complaint in the California Superior Court, County of Los Angeles against Debtor for, among other things, various wage claims, civil penalties, statutory penalties, interest and attorneys' fees and costs (the "State Court Action") [Bankruptcy Case, doc. 70, Exh. 1]. On December 11, 2018, Debtor apparently was served with the summons and the complaint in the State Court Action [Bankruptcy Case, doc. 20, Exh. 2].

On the Petition Date, Debtor filed his original bankruptcy schedules and statements [Bankruptcy Case, doc. 1]. In his schedule A/B, Debtor scheduled an interest in personal property with an aggregate value of \$126,817.28, including a 100% interest in My Private Practice, Inc. ("MPPI") valued at \$0.00. [FN1]. Debtor also scheduled an interest in "monies in business account," valued at \$17,274.00 (the "Funds"). In his latest-amended schedule C [Bankruptcy Case, doc. 35], Debtor claimed exemptions in \$126,817.28 of that personal property.

In his schedule D [Bankruptcy Case, doc. 1], Debtor did not list any secured creditors. In his schedule E/F [Bankruptcy Case, doc. 1], Debtor listed nonpriority unsecured

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

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 Creditor for the State Court Action; (3) a \$35,600.00 claim in favor of JoAnn Scott, who is Debtor's mother; and (4) a \$49,172.73 claim in favor of Johanna Scott, Debtor's estranged wife. In his statement of financial affairs ("SOFA") [Bankruptcy Case, doc. 1], Debtor indicated that he is married.

In his original schedule I [Bankruptcy Case, doc. 1], Debtor indicated that he was employed as a therapist at MPPI. In his latest-amended schedules I and J, filed on May 17, 2019 [Bankruptcy Case, docs. 95 and 96], Debtor represented that his monthly income, as of the Petition Date, was \$5,005.30 and his monthly expenses were \$4,511.69, leaving net monthly income of \$493.61. In his latest-amended SOFA, filed on March 6, 2019 [Bankruptcy Case, doc. 34], Debtor indicated that, along with MPPI, Debtor was involved in the business of "Kenneth Scott - Psy'd, Inc." ("Scott Psy.D"). [FN2].

B. Proofs of Claim

Five creditors have filed proofs of claim in Debtor's bankruptcy case. American Honda Finance Corporation filed proof of claim 1-1, which indicates that it holds a secured claim (arising from a lease) in the amount of \$19,469.73. Bank of America, N.A. filed proof of claim 2-1, which indicates that it holds a nonpriority unsecured claim in the amount of \$8,944.00.

On December 16, 2019, Creditor filed an amended proof of claim 3-3, asserting a nonpriority unsecured claim in the amount of \$169,432.60 [Claim 3-3]. JoAnn Scott filed proof of claim 4-1, which indicates that she holds a nonpriority unsecured claim in the amount of \$35,600.00.

Johanna Scott filed proof of claim 5-1, which indicates that she holds a nonpriority unsecured claim in the amount of \$49,172.00. At the Meeting of Creditors, Debtor testified that he and Johanna Scott have been separated since 2012 and that he moved out in 2012 [Adversary Proceeding, doc. 41, Exh. 1, p. 4:1-5]. In a declaration filed on August 28, 2019, Debtor testified that he and Ms. Scott executed a marital separation agreement on April 24, 2014 (the "MSA") [Bankruptcy Case, doc. 167, ¶ 2]. Ms. Scott's proof of claim is based on the MSA.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

C. Motion to Dismiss Chapter 13 Case

On April 19, 2019, Creditor filed a motion to dismiss Debtor's bankruptcy case, which was based, in part, on bad faith (the "Motion to Dismiss Bankruptcy Case") [Bankruptcy Case, doc. 70]. Creditor argued, among other things, that: (A) Debtor's schedules were false or incomplete; (B) Debtor may be misrepresenting/manipulating his income from MPPI and/or Scott Psy.D; (C) Debtor produced no evidence of his right to receive the Funds; (E) Debtor has produced no evidence that Scott Psy.D is a viable entity and that his income from that entity can fund a feasible chapter 13 plan; (F) JoAnn Scott and Johanna Scott's claims may be fraudulent; and (G) Debtor does not need to reorganize his debts, and he filed his bankruptcy case to delay and hinder the State Court Action.

Prior to the May 14, 2019 hearing on the Motion to Dismiss Bankruptcy Case, the Court posted a tentative ruling denying the motion. However, based on Creditor's oral argument at that hearing, the Court continued the hearing on the Motion to Dismiss Bankruptcy Case for the Creditor to take discovery regarding the issue of bad faith [Bankruptcy Case, doc. 123].

On November 13, 2019, the Court held a continued status conference on the Motion to Dismiss Bankruptcy Case. Creditor's counsel was present at that status conference. At that status conference, the Court set a continued status conference for December 10, 2019 and ordered the parties to file a joint status report by November 26, 2019, two weeks prior to the continued status conference, regarding the discovery that Creditor would take in connection with the Motion to Dismiss Bankruptcy Case. On November 26, 2019, the Court entered a *Scheduling Order re Motion to Dismiss Debtor Kenneth C. Scott's Chapter 13 Petition*, which addressed the continued status conference date and extended the deadline for the parties to file a joint status report (the "Scheduling Order") [Bankruptcy Case, doc. 180]. [FN3].

On November 20, 2019, Debtor filed a motion for summary judgment on the issue of bad faith (the "MSJ") [Bankruptcy Case, doc. 174]. A continued hearing on the MSJ is set for July 29, 2020 at 2:30 p.m.

On November 26, 2019, Debtor and Creditor filed a joint status report [Bankruptcy

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

Case, doc. 181]. In that joint status report, Creditor stated that he intended to take written discovery, including interrogatories, requests for admission and document requests, and depositions of Debtor, Niaz Khnai, JoAnn Scott and the person most knowledgeable at Fenton & Ross, CPA ("Fenton"), Debtor's accountant.

On December 10, 2019, the Court held a continued status conference on the Motion to Dismiss Bankruptcy Case. Prior to the status conference, the Court posted a tentative ruling regarding Debtor's objections to Creditor's proposed discovery. Creditor's counsel did not appear at that status conference. At the status conference, the Court set February 1, 2020, as the last day for discovery to be completed on the issue of bad faith [Bankruptcy Case, doc. 183].

D. Related Adversary Proceeding

On April 19, 2019, Creditor filed a complaint against Debtor and Debtor's corporation, MPPI, initiating adversary proceeding 1:19-ap-01046-VK (the "Adversary Proceeding"). On July 13, 2019, Creditor filed a first amended complaint (the "FAC") [Adversary Proceeding, doc. 8]. On June 16, 2020, the Court entered an order granting in part and denying in part the motion to dismiss the FAC [Adversary Proceeding, doc. 61].

On June 17, 2020, Creditor filed a second amended complaint ("SAC") [Adversary Proceeding, doc. 62]. On July 17, 2020, Debtor filed a motion to dismiss the SAC. That motion is pending, and no hearing on that motion has been set.

According to the parties' most recently filed status report [Adversary Proceeding, docs. 14 and 15], the parties have not met and conferred in compliance with Local Bankruptcy Rule 7026-1.

At the status conference held on June 3, 2020, the Court stated that it would stay all matters related to the Adversary Proceeding until the MSJ and Motion to Dismiss Bankruptcy Case have been resolved.

E. Motion to Compel

On December 20, 2019, Creditor served on Debtor *Plaintiff H. Samuel Hopper's*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

Request for Production of Documents, Set No. 1, to Debtor Kenneth C. Scott (the "Debtor RFPD") [Adversary Proceeding, doc. 48, Exh. 19]. On January 22, 2020, Debtor's counsel emailed Creditor's counsel Debtor's responses to the Debtor RFPD [Adversary Proceeding, doc. 48, Exh. 27]. Debtor responded by objecting to each request.

On March 2, 2020, Creditor filed a *Motion to Compel Further Responses to Requests for Production of Documents, Set No. 1, to Debtor Kenneth C. Scott, and for Production of Documents, and for Imposition of Monetary Sanctions* (the "Motion to Compel") [Adversary Proceeding, doc. 46]. On the same day, Creditor filed a joint statement of questions and answers in dispute (the "Debtor Joint Statement") [Adversary Proceeding, doc. 47] and a declaration of Debtor's counsel [Adversary Proceeding, doc. 48].

In the Debtor Joint Statement, Debtor objects to the document production requests based on: (a) relevance; (b) overbreadth; (c) financial privacy; (d) marital communications privilege; (e) attorney-client privilege; and (f) third-party privacy of information.

F. The Motions to Quash

On December 30, 2019, Creditor served Johanna Scott with a subpoena requesting attendance at a deposition, scheduled for January 30, 2020, and the production of documents ("Johanna Subpoena") [Adversary Proceeding, doc. 41, Exhs. 11 and 12]. On December 31, 2019, Creditor served Fenton with a subpoena requesting attendance at a deposition, scheduled for January 30, 2020, and the production of documents (together with the Johanna Subpoena, the "Subpoenas") [Adversary Proceeding, doc. 41, Exhs. 13 and 14]. Neither Ms. Scott nor Fenton filed objections to the Subpoenas.

On January 27, 2020, Debtor filed a *Motion to Quash Subpoena for Documents and Deposition Subpoena for Johanna Scott* (the "Motion to Quash Johanna Subpoena") [Adversary Proceeding, doc. 29] and a *Motion to Quash Subpoena for Documents and Deposition Subpoena for Fenton & Ross* (the "Motion to Quash Fenton Subpoena," together with the Motion to Quash Johanna Subpoena, the "Motions to Quash") [Adversary Proceeding, doc. 28].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

On January 29, 2020, the Court entered two orders setting hearing on the Motions to Quash (the "Orders Setting Hearings") [Adversary Proceeding, docs. 31 and 32]. In the Orders Setting Hearings, the Court noted that in light of the parties' history, the pending MSJ and the discovery deadline of February 1, 2020, the Court would waive the requirement, in accordance with Local Bankruptcy Rule ("LBR") 7026-1(c)(3), for the parties to file a written stipulation concerning the disputed discovery. The Court also set the hearings on the Motion to Quash on March 4, 2020.

On February 19, 2020, Creditor filed oppositions to Motions to Quash (the "Oppositions") [Adversary Proceeding, docs. 39 and 40]. On the same day, Creditor also filed a *Declaration of Daniel Parker Jett in Support of Plaintiff H. Samuel Hopper's Opposition to Debtor's Motions to Quash Deposition Subpoenas Issued to Third-Party Witnesses Johanna Scott and Fenton & Ross, CPA, and Request for Imposition of Monetary Sanctions* [Adversary Proceeding, doc. 41]. On February 26, 2020, Debtor filed replies to the Oppositions [Adversary Proceeding, docs. 42 and 43].

On March 4, 2020, the Court held a hearing on the Motions to Quash. At the hearings, the Court determined, after reviewing the Motions to Quash, the Oppositions and the Replies, that the parties must file a written stipulation identifying each discovery dispute in accordance with LBR 7026-1. The Court also ordered the parties to mediation and stayed all pending matters until the mediation was concluded.

On May 15, 2020, the parties participated in mediation, with a recalled bankruptcy judge [Adversary Proceeding, doc. 53]. However, the parties were unable to settle their disputes. Accordingly, at the June 3 status conference on the Motion to Dismiss Bankruptcy Case, the Court ordered the parties to file the joint statements on the Motions to Quash. Specifically, the Court ordered Debtor to serve his portion of the joint statements on Creditor by June 12, 2020, and Creditor was to serve his portion on Debtor by June 26, 2020. The Court also ordered Debtor to file the joint statements by June 30, 2020.

Debtor did not timely file the joint statements. Nor did he request an extension from the Court. Instead, on July 6, 2020, Debtor filed two statements [Adversary Proceeding, docs. 64 and 65, filed correctly as docs. 71 and 72], which did not include

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

Creditor's counsel's signature. Debtor's counsel also filed two declarations regarding the Motions to Quash (the "Debtor Declarations") [Adversary Proceeding, docs. 66 and 67]. In the Debtor Declarations, Debtor requests monetary sanctions against Creditor and Creditor's counsel for "being forced" to file the Motions to Quash. Debtor also argues that subpoenas are not authorized under the Bankruptcy Code in contested matters.

On July 8, 2020, Creditor's counsel filed an objection to those statements [doc. 69] and a supplemental declaration (the "Supplement Declaration") [doc. 70]. In that objection, Creditor's counsel states that Debtor timely sent his portion of the joint statements to Creditor and that Creditor timely sent his portion of the joint statements to Debtor. However, on July 1, 2020, Debtor's counsel sent further revised versions of the joint statements to Creditor's counsel. After reviewing the revised joint statements, Creditor's counsel noticed that Debtor's counsel inserted new arguments in the joint statements. As such, Creditor's counsel refused to sign the joint statements. Attached to the Supplemental Declaration as exhibit 4 is the joint statement regarding the Motion to Quash Fenton Subpoena, which includes both parties' signatures, that Creditor's counsel sent to Debtor's counsel on June 26, 2020 (the "Fenton Joint Statement"). Attached to the Supplemental Declaration as exhibit 6 is the joint statement regarding the Motion to Quash Johanna Subpoena, which includes both parties' signatures, that Creditor's counsel sent to Debtor's counsel on June 26, 2020 (the "Johanna Joint Statement").

The statements submitted by Debtor's counsel were untimely and included arguments added after Debtor's deadline to submit his portion of the joint statements. Consequently, in ruling on the Motions to Quash, the Court will strike those statements from the record and use the Fenton Joint Statement and Johanna Joint Statement.

In the Fenton Joint Statement, Debtor objects to the requests based on: (a) relevance; (b) overbreadth; (c) financial privacy; (d) accountant-client privilege; (e) tax privilege; and/or (f) third-party privacy of information.

In the Johanna Joint Statement, Debtor objects to the document production requests based on: (a) relevance; (b) overbreadth; (c) financial privacy; (d) marital communications privilege; and/or (e) third-party privacy of information.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

II. DISCUSSION

A. Subpoenas are Authorized in Contested Matters

In the Fenton Joint Statement, Debtor argues that the use of a subpoena for personal records is not authorized by the Bankruptcy Code. Debtor is incorrect. In relevant part, Fed. R. Bankr. P. ("FRBP") 9014 states that FRBP 7030 shall apply in contested matters. FRBP 7030 in turn incorporates Fed. R. Civ. P. ("FRCP") 30, which incorporates FRCP 45. Accordingly, a subpoena served in compliance with FRCP 45 is enforceable by the Court in contested matters, such as the Motion to Dismiss Bankruptcy Case.

B. Debtor's Standing to Object to the Subpoenas

Pursuant to FRCP 26(c)(1):

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending -- or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (A) forbidding the disclosure or discovery;
- (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

(F) requiring that a deposition be sealed and opened only on court order;
(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

In the Oppositions, Creditor asserts that Debtor does not have standing under FRCP 45 to move to quash the Subpoenas based on relevance or overbreadth. There appears to be no binding authority from the Ninth Circuit Court of Appeals or the Supreme Court of the United States regarding whether a party has standing to move to quash a subpoena issued to a non-party. *See Terteryan v. Nissan Motor Acceptance Corp.*, No. CV 16-2029-GW (KS), 2017 WL 3576844, at *2 (C.D. Cal. July 5, 2017) ("The Ninth Circuit has yet to address the question of whether a party has standing to bring a motion to quash.").

Courts within the Ninth Circuit have taken different approaches to the issue of standing. Most courts appear to take the view that "a party lacks standing under [FRCP] 45(c)(3) to challenge a subpoena issued to a non-party unless the party claims a personal right or privilege with respect to the documents requested in the subpoena," but "has standing under [FRCP] 26(c) to seek a protective order regarding subpoenas issued to non-parties which seek irrelevant information." *In re REMEC, Inc. Sec. Litig.*, No. CIV 04CV1948 JLS AJB, 2008 WL 2282647, at *1 (S.D. Cal. May 30, 2008); *see also Eric v. Van Cleave*, No. C16-1278RSM, 2017 WL 553276, at *6 (W.D. Wash. Feb. 10, 2017); *Clair v. Schlachter*, No. 213CV804KJMEFBPTMP, 2016 WL 2984107, at *5 (E.D. Cal. May 23, 2016); *and F.T.C. v. AMG Servs., Inc.*, 291 F.R.D. 544, 552-53 (D. Nev. 2013) (holding that a party may bring a motion for protective order under FRCP 26(c) to quash non-party subpoenas).

Another court held that, although subpoenas were issued to non-parties, there was good cause to allow the defendant to move to quash non-party subpoenas because the subpoenas included requests that were irrelevant and overbroad. *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636-38 (C.D. Cal. 2005). Another court decided that the standing conferred on a party by operation of FRCP 26(c) serves to furnish standing on a party moving to quash a subpoena under FRCP 45. *Firetrace USA, LLC v. Jesciard*, No. CV-07-2001-PHX-ROS, 2008 WL 5146691, at *1-2 (D. Ariz. Dec. 8,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

2008). Finally, at least one court held that, even if a party does not have standing to object to a non-party subpoena, courts may *sua sponte* assess the relevance of the information sought via the non-party subpoenas. *Rodriguez v. El Toro Med. Inv'rs Ltd. P'ship*, No. 816CV00059JLSKESX, 2017 WL 2495171, at *2 (C.D. Cal. May 11, 2017).

Courts outside the Ninth Circuit also have taken different approaches to the issue of standing in this context. For instance, one court found that, although parties have limited standing under FRCP 45, courts may assess a motion to quash under FRCP 45 as a motion for a protective order under FRCP 26(c), under which rule parties do have standing. *Auto-Owners Ins. Co. v. Southeast Floating Docks, Inc.*, 231 F.R.D. 426, 429 (M.D. Fla. 2005) ("As parties, Defendants clearly have standing to move for a protective order if the subpoenas seek irrelevant information."); *see also Washington v. Thurgood Marshall Acad.*, 230 F.R.D. 18, 22 (D.D.C. 2005) (construing motion to quash under FRCP 45 as motion for protective order under FRCP 26).

Given that numerous decisions within and outside the Ninth Circuit provide that parties have standing to object to subpoenas on the grounds of relevance and overbreadth, pursuant to FRCP 26(c), the Court need not reach the question of standing under FRCP 45(d). As aptly stated by one court:

Although the relief obtained by Seagate in its motion for a protective order is similar to the relief that could have been obtained by the individuals and entities named in the subpoenas had they brought motions to quash under [FRCP] 45, courts have recognized an important distinction between requests to quash a subpoena and motions for protective orders requesting the court to control discovery more generally under [FRCP] 16 and 26. The mere fact that subpoenas are the type of discovery at issue does not limit parties and the court to the relief provided for in [FRCP] 45. ... Where a party, such as Seagate, contends that subpoena requests are irrelevant, cumulative, and burdensome, they are not simply asserting the rights of the third party, but their own right to reasonable discovery and efficient disposition of the case. *See Fed.R.Civ.P. 1.* ("These rules ... should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding."). Furthermore, unlike undue burden,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

which is a fact potentially best known to the party receiving the subpoena, Seagate, as a party to the present litigation, is the only entity as between itself and third parties with the appropriate knowledge to assert an objection based on relevance or cumulative discovery. Therefore, where a party does not seek to quash a subpoena under [FRCP] 45(c) "the issue is not one of privity between a party and the subpoenaed third-person, but is one of case management under [FRCP] 16 and 26." *Marvin Lumber*, 177 F.R.D. at 444. Because the Court finds that Seagate is entitled, as a party to the litigation, to limit irrelevant and cumulative discovery, the Court concludes that the Magistrate Judge did not err in finding that Seagate had standing to bring its motion for a protective order.

Shukh v. Seagate Tech., LLC, 295 F.R.D. 228, 236–37 (D. Minn. 2013).

Based on the authorities above, the Court may assess the Motions to Quash as motions for protective orders under FRCP 26(c). Debtor has standing to object to the Subpoenas under FRCP 26, including on the basis that the Subpoenas are irrelevant and overbroad. FRCP 26(c)(1) ("A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending....") (emphasis added). Because Debtor, as a party, is the "only entity... with the appropriate knowledge to assert an objection based on relevance" and to request that the "court... control discovery... under [FRCP] 16 and 26," *Shukh*, 295 F.R.D. at 236-37, this standing extends to Debtor's objections to the Subpoenas.

C. Timeliness of the Motions to Quash

In the Oppositions, Creditor argues that Debtor's objection to the Subpoenas is untimely. Because the Court is assessing the Motions to Quash as motions for protective orders, even if the request to quash the Subpoenas is untimely under FRCP 45, the request for a protective order is timely under FRCP 26(c).

FRCP 26(c) does not prescribe a deadline by which a party must file a motion for protective order. *See, e.g. Solis v. Tomco Auto Products, Inc.*, 2012 WL 12878752, at *4 (C.D. Cal. Sep. 20, 2012) (finding that FRCP 26(c) "does not contain a deadline;" "[t]he cases do not explicitly require a party to file a motion for protective order

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

before the deadline for serving a written response to discovery" and noting that the court "is not inclined to adopt a requirement that is not found in the Federal Rules of Civil Procedure or local rules, and that would routinely require the filing of ex parte applications").

D. FRCP 26 and FRCP 37

Pursuant to FRCP 26(b)(1):

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter *that is relevant to any party's claim or defense and proportional to the needs of the case*, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. (emphasis added).

"Relevant information for purposes of discovery is information reasonably calculated to lead to the discovery of admissible evidence." *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005) (internal quotation omitted). "District courts have broad discretion in determining relevancy for discovery purposes." *Id.*

Pursuant to FRCP 26(b)(2)(C)(iii), "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that...the proposed discovery is outside the scope permitted by Rule 26(b)(1)."

Pursuant to FRCP 26(b)(2)(B):

On a motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause. Alternatively, the court may impose conditions on such

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott
discovery.

Chapter 13

"FRCP 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984). The party seeking the protective order has the burden "to 'show good cause' by demonstrating harm or prejudice that will result from the discovery." *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir.2004).

Pursuant to FRCP 34, a party may serve on any other party a request within the scope of FRCP 26(b) to "produce and permit the requesting party or its representative to inspect, copy, test, or sample" items in the "responding party's possession, custody, or control." In response, a party is obligated to produce all specified relevant and nonprivileged documents or other things that are in his or her possession, custody or control.

Pursuant to FRCP 37 (in pertinent part):

(a) Motion for an Order Compelling Disclosure or Discovery

(1) *In General*. On notice to other parties and affected person, a party may move for an order compelling disclosure or discovery. The motion must include certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

...

(3) *Specific Motions*

(A) *To Compel Disclosure*. If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response*. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... **Kenneth C. Scott**

Chapter 13

...

- iv. a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34. . . .

E. Federal Privacy and Privilege Law Applies

In the Debtor Joint Statement, Debtor objects to many of the requests for production of documents based on privacy protections including those under California law, such as California's protection of financial privacy. However, pursuant to Federal Rule of Evidence ("FRE") 501, testimonial privileges in federal question cases are governed by federal common law.

A federal question case is one that arises under federal law. 28 U.S.C. § 1331 (giving district courts original jurisdiction over all civil actions arising under federal law). The Motion to Dismiss Bankruptcy Case was brought under 11 U.S.C. § 1307. Because this is federal bankruptcy statutory provision, the case presents federal questions under 28 U.S.C. § 1331. Consequently, Debtor's reliance on the State of California's privacy protections is misplaced. [FN4].

i. Financial Privacy

In the Debtor Joint Statement, the Johanna Joint Statement and the Fenton Joint Statement, Debtor argues that some of the requests violate his right to privacy, including his right to financial privacy, tax privilege and accountant-client privilege. As pertains to the Motion to Dismiss Bankruptcy Case, Debtor additionally argues that some of the requests violate JoAnn Scott and Johanna Scott's rights to privacy.

Federal courts generally recognize a right of privacy that can be raised in response to discovery requests. *Johnson by Johnson v. Thompson*, 971 F.2d 1487, 1497 (10th Cir. 1992). However, unlike a privilege, the right of privacy is not an absolute bar to discovery. "Resolution of a privacy objection ... requires a balancing of the need for the information sought against the privacy right asserted." *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 191 (C.D. Cal. 2006) (citing *Keith H. v. Long Beach*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... **Kenneth C. Scott**

Chapter 13

Unified Sch. Dist., 228 F.R.D. 652, 657 (C.D. Cal. 2005)). *See also Johnson by Johnson*, 971 F.2d at 1497.

However, "[d]ebtors who have filed for bankruptcy relief must have a significantly reduced expectation of privacy in their houses, papers, and effects that society is prepared to recognize as reasonable. The reduced expectation of privacy is a natural consequence of the substantial and detailed disclosures that are inherent in the bankruptcy process." *In re Kerlo*, 311 B.R. 256, 266 (Bankr. C.D. Cal. 2004) (quoting *In re Barman*, 252 B.R. 403, 414 (Bankr. E.D. Mich. 2000)).

In addition, under federal law, tax returns are not privileged from discovery. *Hernandez v. Yon Hoon Cho*, 867 F.2d 613 (9th Cir. 1989) (citing *Heathman v. United States District Court*, 503 F.2d 1032, 1034–35 (9th Cir.1974)). Moreover, federal law does not recognize an accountant-client privilege. *Couch v. United States*, 409 U.S. 322, 335, 935 S.Ct. 611, 34, L.Ed.2d 548 (1973).

Applying these standards, Creditor's need for information relevant to the Motion to Dismiss Bankruptcy Case (when proportional to the needs of the case), outweighs Debtor's reduced expectation of privacy in his financial information. Debtor's concerns regarding privacy may be addressed with an appropriate protective order, and Creditor has submitted such a proposed stipulated protective order [Adversary Proceeding, doc. 48, Exh. 32]. [FN5].

Regarding JoAnn Scott and Johanna Scott's rights to privacy, to the extent that Debtor has standing to assert a right to privacy on their behalf, given that JoAnn Scott and Johanna Scott each have filed a proof of claim in Debtor's bankruptcy case, Creditor's need for the information to assess the basis of the proofs of claim outweighs their rights to privacy, if any, regarding the basis of the proofs claim.

ii. Marital Communications Privilege

In the Debtor Joint Statement and the Johanna Joint Statement, Debtor asserts that some of the requests violate his marital communications privilege. There are two marital privileges recognized by the federal common law. The first, usually called the "adverse spousal testimony" privilege, allows a spouse to refuse to testify adversely to his or her spouse during a valid marriage. *United States v. Griffin*, 440 F.3d 1138, 1143–44 (9th Cir. 2006). The adverse testimonial privilege only applies in criminal

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

cases. *See Trammel v. United States*, 445 U.S. 40, 100 S. Ct. 906, 63 L. Ed. 2d 186 (1980).

"The second, usually called the 'marital communications' privilege, protects from disclosure private communications between spouses." *Griffin*, 440 F.3d at 1143–44. "The privilege exists 'to protect the integrity of marriages and ensure that spouses freely communicate with one another.'" *Id.* "This privilege (1) 'extends only to words or acts intended as communication to the other spouse'; (2) 'covers only those communications made during a valid marriage'; and (3) 'applies only to those marital communications which are confidential.'" *Ross v. Santa Clara Cty. Sheriff's Dep't (SCCSD)*, 2015 WL 4484152, at *3 (N.D. Cal. July 22, 2015) (citing *United States v. Marashi*, 913 F.2d 724, 729-30 (9th Cir. 1990)).

Unlike the adverse testimony privilege, the marital communications privilege may be asserted even after the marriage has been terminated. *See Pereira v. United States*, 347 U.S. 1, 6, 74 S.Ct. 358, 361, 98 L.Ed. 435 (1954). Additionally, courts have applied the marital communications privilege in civil cases. *See, e.g.*, *Ross*, 2015 WL 4484152, at *3; *Knepp v. United Stone Veneer, LLC.*, No. CIV. A. 4:06-CV-1018, 2007 WL 2597936, at *4 (M.D. Pa. Sept. 5, 2007); *Andrews v. Holloway*, 256 F.R.D. 136, 146-47 (D.N.J. 2009) (following *Knepp*); *Bickoff v. Wells Fargo Bank, N.A.*, No. 14-CV-1065-BEN WVG, 2015 WL 1256360, at *2 (S.D. Cal. Mar. 18, 2015) (applying the marital communications privilege to a civil case).

"Like all other privileges, the marital communications privilege is subject to waiver." *Knepp*, 2007 WL 2597936, at *4. Though waiver applies if a spouse has not timely made an objection, "the privilege is held by both spouses" and waiver by one spouse does not constitute waiver by the other spouse. *Andrews*, 256 F.R.D. at 147. If there is an objection at the time the testimony is offered, the objection is timely. *United States v. Vo*, 413 F.3d 1010, 1017 (9th Cir. 2005).

However, the marital communications privilege does not apply if the couple is separated and the marriage is irreconcilable at the time of the communication. *United States v. Fomichev*, 899 F.3d 766, 771 (9th Cir.), *opinion amended on denial of reh'g*, 909 F.3d 1078 (9th Cir. 2018); *United States v. Roberson*, 859 F.2d 1376, 1380–81 (9th Cir. 1988) ("[s]ociety's interest in protecting the confidentiality of the relationships of permanently separated spouses is outweighed by the need to secure

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

evidence in the search for truth....").

"Several factors guide a court's determination whether a marriage is irreconcilable. Those factors include the duration of the separation, the stability of the marriage at the time of the communication, whether a divorce action had been filed and the conduct of the parties since that filing, whether a property settlement had been proposed, and, finally, any statements by the parties regarding irreconcilability or the reasons for separation." *Murphy*, 65 F.3d at 761 (citing *Roberson*, 859 F.2d at 1381).

Debtor asserts that some of the discovery sought in the Johanna Subpoena and the Debtor RFPD is protected by the marital communications privilege. Although Ms. Scott did not file an objection to the Johanna Subpoena asserting the privilege, Debtor has made such an objection. As stated above, either spouse may invoke the marital communications privilege.

Based on testimony given by Debtor, Debtor and Johanna Scott have been separated and living apart since 2012, and on April 24, 2014, they executed the MSA. As of their execution of the MSA, it is evident that the marriage was irreconcilable, for purposes of applying the marital communications privilege. Consequently, from and following no later than April 24, 2014, communications between Debtor and Johanna Scott are no longer protected by the marital communications privilege.

Regarding communications between Debtor and Johanna Scott prior to April 24, 2014, they do not appear to be pertinent to the Motion to Dismiss Bankruptcy Case. Debtor filed his chapter 13 petition in December 2018, *i.e.*, more than four years after execution of the MSA. Considering the amount of time that has past, the burden of producing the requested discovery is outweighed by its likely benefit.

F. The Motion to Compel

In accordance with the Court's decision to stay matters concerning the Adversary Proceeding, until resolution of the MSJ and the Motion to Dismiss Bankruptcy Case, the Court will not rule on the discovery disputes which possibly are pertinent to the Adversary Proceeding, and not the Motion to Dismiss Bankruptcy Case. [FN6]. Accordingly, at this time, the Court will not rule on the following requests for production of documents: 1, 12, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 44, 45, 46, 48, 49, 50, 51, 52, 53, 56, 57, 58, 59, 60, 61, 62, 63, 64,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 81, 82, 83, 84 and 88.

Regarding Debtor's objections in the Debtor Joint Statement to the balance of the requests:

13, 14, 15, 55, 86 and 87: overruled.

16, 17 and 18: overruled with respect to communications and documents from April 24, 2014 through the petition date.

39: sustained.

40: overruled, but the Court will limit this request to documents related to legal actions taken against Debtor within one year before he filed his chapter 13 petition.

41 and 43: overruled, but the Court will limit these requests to the years 2017 and 2018. The Court notes that under 11 U.S.C. § 521(e)(2)(ii), Debtor is obligated to provide a copy of his tax return to Creditor upon a timely request.

42: overruled, but the Court will limit this request to production of MPPI's 2017 and 2018 federal tax returns. Debtor is the sole shareholder of MPPI, and as such, is in control of its federal tax returns.

47, 54 and 78: overruled, but the Court will limit these requests to the years 2017 and 2018.

79 and 80: sustained.

G. The Motion to Quash Fenton Subpoena

Regarding Debtor's objections in the Fenton Joint Statement to categories of testimony:

1: overruled.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

2, 3, 4, 13, 16 and 22: overruled, but the Court will limit these requests to the years 2017 and 2018.

8, 9, 11 and 12: overruled, but the Court will limit these requests to as of November 7, 2018.

10: overruled, but the Court will limit this request to on January 1, 2018.

5, 6, 7, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24 and 25: sustained. At this time, the Court is not ruling on the requests to the extent, if any, that the requests are pertinent to the Adversary Proceeding.

Regarding Debtor's objections in the Fenton Joint Statement to the requests for production of documents:

1 and 4: overruled.

2, 5, 6, 19, 20, 28, 30 and 38: overruled, but the Court will limit these requests to the years 2017 and 2018.

3, 7, 8, 9, 10, 11, 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 29, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42 and 43: sustained. At this time, the Court is not ruling on the requests to the extent, if any, that the requests are pertinent to the Adversary Proceeding.

15, 16, 17 and 18: overruled, but the Court will limit these requests to as of November 7, 2018.

H. The Motion to Quash Johanna Subpoena

In accordance with the foregoing, the Court will not rule on the following requests, as they concern the Adversary Proceeding: 15 and 17.

Regarding Debtor's objections in the Johanna Joint Statement as to the balance of the requests:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

1, 4, 5, 6, and 7: overruled.

2, 3, 8 and 18: overruled with respect to documents and communications from April 24, 2014 through the petition date.

9, 10, 11, 12, 13, 14 and 16: overruled, but the Court will limit these requests to the years 2017 and 2018. At this time, to the extent, if any, that communications or documents prior to 2017 may be pertinent to the Adversary Proceeding, the Court will not rule on those issues.

19, 20 and 21: sustained.

I. Requests for Sanctions

In the Debtor Declarations, Debtor requests monetary sanctions against Creditor for his attorneys' fees in filing and defending the Motions to Quash. In the Oppositions, Creditor requests that the Court impose monetary sanctions against Debtor and/or Debtor's counsel under LBR 7026-1 for Debtor's counsel's failure to request a meet and confer prior to filing the Motions to Quash and under LBR 9011-3(c) for filing a frivolous motion.

LBR 7026-1(c)(1):

Unless excused from complying with this rule by order of the court for good cause shown, a party must seek to resolve any dispute arising under FRBP 7026-7037 or FRBP 2004 in accordance with this rule.

LBR 7026-1(c)(2) provides as follows:

Prior to the filing of any motion relating to discovery, counsel for the parties must meet in person or by telephone in a good faith effort to resolve a recovery dispute. It is the responsibility of counsel for the moving party to arrange the conference. Unless altered by agreement of the parties *or by order of the court* for cause shown, counsel for the opposing party must meet with the counsel for the moving party within 7 days of service upon counsel of a letter requesting such meeting and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

specifying the terms of the discovery order to be sought (emphasis added).

Pursuant to LBR 7026-1(c)(3), if counsel are unable to resolve the dispute, in connection with a discovery motion, the party seeking the discovery must file and serve a notice of motion together with a written stipulation by the parties identifying any disputed discovery issues, with contentions and points and authorities of each party as to each issue.

Pursuant to LBR 9011-3(c), "[t]he presentation to the court of an unnecessary motion and the unwarranted opposition to a motion, which unduly delays the course of an action or proceeding, or failure to fully comply with these rules, subjects the offender and attorney *at the discretion of the court* to appropriate discipline, including the imposition of costs and the award of attorneys' fees to opposing counsel, . . . and such other sanctions, including denial of the motion or dismissal of the proceeding, *as may appear proper to the court under the circumstances.*" (emphasis added).

Debtor has not provided the Court with any basis to impose monetary sanctions against Creditor or Creditor's counsel. Regarding Creditor's request, in the Orders Setting Hearing, the Court initially waived the requirement for the parties meet and confer and to file a written stipulation concerning the disputed discovery issues. Accordingly, the Court will not award either side attorneys' fees and costs or sanctions authorized by LBR 7026-1(c)(4), for the parties' noncompliance with procedures in LBR 7026-1. Additionally, the Motions to Quash are not frivolous. In accordance with this ruling, the Court will grant the Motions to Quash in part, and deny in part. As such, the Court also will not award attorneys' fees under LBR 9011-3.

III. CONCLUSION

The Court will grant in part and deny in part the Motion to Compel and the Motions to Quash.

Creditor must submit the order within seven (7) days.

FOOTNOTES

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

1. In a declaration filed on August 28, 2019 [Bankruptcy Case, doc. 167], Debtor discusses this valuation of MPPI.
2. On May 17, 2019, Debtor filed a declaration [Bankruptcy Case, doc. 100] in which he further described the income he received from MPPI in 2017 and 2018, based on his gross wages and profit distributions. In that declaration, Debtor also stated that, in 2019, MPPI "closed its doors, and he "started doing business" as Scott Psy.D.
3. The Court served the Scheduling Order on Creditor's counsel at the address provided by Creditor's counsel in the *bankruptcy case*. On October 22, 2019, Creditor's counsel filed a notice of change of address in the parties' related *adversary proceeding* [1:19-ap-01046-VK, doc. 23]; Creditor's counsel has not filed a change of address in the *bankruptcy case*. The Court must serve Creditor's counsel at the address provided in the relevant case.
4. Debtor argues that "California law protects against financial disclosure and is not preempted by Federal law." Debtor cites to *Am. Bankers Ass'n v. Lockyer*, 541 F.3d 1214 (9th Cir. 2008) for this proposition. *American Bankers* is inapposite. In *American Bankers*, the Ninth Circuit Court of Appeals was evaluating whether the California Financial Information Privacy Act was preempted by the federal Fair Credit Reporting Act. This case presents no such questions.
5. Although the Court has stricken the Fenton Statement submitted by Debtor's counsel, in that statement, Debtor argues that Creditor did not serve a notice to consumer on Debtor as required by Cal. Civ. Proc. ("CCP") § 1983.5. However, under CCP § 1985.3(a)(3), Creditor does not qualify as a "subpoenaing party" required to send such a notice because a "subpoenaing party" is defined as "the person or persons causing a subpoena duces tecum to be issued or served *in connection with any civil action or proceeding pursuant to this code....*" (emphasis added). "[T]his code" refers to the CCP. Given that the contested matter at issue is the Motion to Dismiss Bankruptcy Case, which is based entirely on federal law, the CCP is inapplicable. *See, e.g. Kaur v. City of Lodi*, 2016 WL 10679575, at *1 (E.D. Cal. Jan. 28, 2016)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

("Cal. Civ. Proc. Code § 1985.3(a) is, by its terms, inapplicable to subpoenas issued in federal court cases.").

6. Moreover, the discovery requests concerning the Adversary Proceeding are premature. Pursuant to FRBP 7026, which incorporates FRCP 26, unless a party obtains a stipulation or court order, discovery is not permitted before the parties have conferred pursuant to FRCP 26(f). According to the parties' most recently filed status reports in the Adversary Proceeding [Adversary Proceeding, docs. 14 and 15], the parties have not conferred pursuant to FRCP 26(f). Additionally, regarding the Adversary Proceeding, Creditor did not obtain a stipulation or Court order permitting him to conduct discovery before the parties engaged in a FRCP 26(f) conference.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Defendant(s):

My Private Practice, Inc. a

Represented By
Arash Shirdel

Kenneth Scott, PSY.D. a California

Represented By
Arash Shirdel

Kenneth C. Scott

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 29, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#18.00 Debtor's motion to quash subpoena for documents and deposition subpoena for Johanna Scott

fr. 3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20; 6/3/20;

Docket 29

Tentative Ruling:

See calendar no. 17.

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, July 29, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#19.00 Debtor's motion to quash subpoena for documents and deposition
subpoena for Fenton & Ross

fr. 3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20; 6/3/20;

Docket 28

Tentative Ruling:

See calendar no. 17.

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, July 29, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #20.00** Status conference re second amended complaint for:
- (1) Avoidance of Transfer in Fraud of Creditors [Cal Civ. Code sections 3439, *et seq.*];
 - (2) Fraud & Deceit [Cal. Civ. Code sections 1572-1573, 1709-1710];
 - (3) Unlawful Retaliation [Cal. Lab. Code section 98.6];
 - (4) Unlawful Retaliation [Cal. Lab. Code section 1102.5];
 - (5) Failure to Maintain and Timely Produce Personnel Records [Cal. Lab. Code section 1198.5(k)];
 - (6) Failure to Maintain and Timely Produce Wage and Hour Records [Cal. Lab. Code, section 226(f)];
 - (7) Wrongful Constructive Termination in Violation of Public Policy;
 - (8) Unlawful Deductions from Wages [Cal. Lab. Code sections 216, 221];
 - (9) Breach of Written Contract;
 - (10) Conversion;
 - (11) Reimbursement of Business Expenses [Cal. Lab. Code section 2802];
 - (12) Waiting Time Penalties [Cal. Lab. Code section 203]; and
 - (13) Unfair Business Practices [Cal. Bus. & Prof. Code sections 17200, *et seq.*]
- fr. 9/4/19; 10/2/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20;
3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20; 6/3/20;

Docket 62

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, July 29, 2020

Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

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, July 29, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#21.00 Motion re: objection to amended claim number 3 by claimant H. Samuel Hopper

fr. 5/14/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20;
3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20; 6/3/20

Docket 55

Tentative Ruling:

At the prior hearing on June 3, 2020, the debtor indicated that, by June 30, 2020, he would file an objection to Mr. Hopper's amended proof of claim 3-3, filed on December 16, 2019. The debtor did not file any such objection.

If the debtor will not object to Mr. Hopper's latest amended proof of claim, the adversary proceeding need not concern the allowed amount of the claim against debtor, as an alter ego or otherwise (which claim would be paid in accordance with a confirmed chapter 13 plan), but only the *dischargeability* of the claim, in accordance with the Bankruptcy Code.

Once the Court determines the dischargeability of the claim against the debtor (as an alter ego or otherwise), the Court could allow the state court action to go forward against the nondebtor defendants.

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 29, 2020

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, July 29, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#22.00 Debtor's motion for summary judgment and/or summary adjudication of facts

fr. 2/5/20; 2/26/20; 3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20; 6/3/20

Docket 174

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 29, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#23.00 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, 12/18/19; 2/5/20; 2/26/20; 3/4/20;
3/18/20; 4/1/20; 4/8/20; 5/6/20; 6/3/20;

Docket 64

Tentative Ruling:

The parties should be prepared to discuss the status of the appeal.

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 29, 2020

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#24.00 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; 12/10/19;
2/5/20; 2/26/20; 3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20;
6/3/20;

Docket 70

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**

Thursday, July 30, 2020

Hearing Room 301

1:00 PM

1:20-11134 Helping Others International, LLC

Chapter 11

#1.00 U.S. Trustee's motion to appoint trustee pursuant to 11 U.S.C. § 1104, or in the alternative, motion under 11 U.S.C. § 1112(b) to convert case

Docket 14

Tentative Ruling:

Pursuant to 11 U.S.C. § 1104(a)(1) and (a)(2), the Court will order the appointment of a chapter 11 trustee.

I. BACKGROUND

A. Debtor's Bankruptcy Case

On June 29, 2020, Helping Others International, LLC ("Debtor") filed a voluntary chapter 11 petition. On the same day, Debtor filed its schedules and statement of financial affairs [doc. 1]. According to Debtor's petition, The Megan Zucaro Living Trust (the "Trust") is the sole member of Debtor, holding a 100% interest [doc. 1, p. 12]. In its statement of financial affairs, Debtor indicated that Megan Zucaro is Debtor's manager and is trustee of the Trust [doc. 1, p. 37].

In its schedule A/B, Debtor indicated that it has \$7,301,000 in assets, which includes \$6,400,000 in real property, consisting of two single family residences, a boarding house and a condominium, and \$901,000 in personal property, of which \$350,000 is for accounts receivable. Debtor also listed a cause of action against Ahn Thuy Nguyen and Thuy Rucks for conversion and fraud related to Debtor's alleged purchase of a detox center in Huntington Beach, California, which is no longer operating. Debtor indicated that it is seeking \$4,000,000 in that state court action.

In its schedule D, Debtor indicated that it has \$7,016,030.02 in claims secured by the real properties. In its schedule E/F, Debtor indicated that it has \$170,000 in nonpriority unsecured claims.

In its schedule G, Debtor indicated that it has no executory contracts or unexpired leases. However, at its initial debtor interview on July 10, 2020, Ms. Zucaro testified

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 30, 2020

Hearing Room 301

1:00 PM

CONT... **Helping Others International, LLC**

Chapter 11

that Debtor is renting two of the four parcels of real property and collecting between \$4,500 and \$5,500 in monthly rental income [Declaration of Maria D. Marquez, doc. 14, ¶ 11].

In its statement of financial affairs, Debtor indicated that it received \$73,500 in gross revenue from January 1, 2020 to the petition date, \$95,000 in 2019 and \$125,000 in 2018. Yet Debtor indicated that no accountants or bookkeepers have maintained Debtor's book and records within two years before filing its chapter 11 petition. Debtor also indicated that within two years before filing its petition, Debtor encumbered three of the real properties with deeds of trust. Some of the encumbrances occurred only a few months before Debtor filed its petition. Debtor did not list the individuals who were granted the deeds of trust in its schedule D; rather Debtor listed the individuals in its schedule E/F, as holding nonpriority unsecured claims.

On July 17, 2020, United Lender, LLC initiated adversary proceeding 1:20-ap-01070-VK, by removing a pending state court action to this Court (the "Adversary Proceeding"). Debtor and Ms. Zucaro are named as defendants in that action. On July 24, 2020, the Court entered an *Order to Show Cause re: Remand and Notice of Setting Status Conference (Removed Proceeding)* (the "OSC") [1:20-ap-01070-VK, doc. 5]. On September 9, 2020, the Court will hold a hearing on the OSC.

B. Ms. Zucaro's Felony Conviction

On March 4, 2020, the Ventura County District Attorney filed a three-count criminal complaint against Ms. Zucaro (the "Criminal Action") [doc. 14, Exh. C]. The Criminal Action concerns Ms. Zucaro's conduct in a real estate transaction in 2018. In the Criminal Action, the district attorney alleged that Ms. Zucaro, a licensed real-estate agent, through a series of false pretenses, stripped the equity from real property owned by a Pedro Becerra, 91 year-old man, for her own personal gain.

The district attorney alleged that after Ms. Zucaro was unable to sell the real property, she told Mr. Becerra that she would complete development of the property by obtaining a loan and constructing a group home for the elderly. Ms. Zucaro allegedly convinced Mr. Becerra to sign a grant deed transferring a 50% interest in the property to Ms. Zucaro. Ms. Zucaro allegedly paid nothing for this interest, even though the property was appraised for \$2,000,000. Allegedly, at Ms. Zucaro's request, Mr.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 30, 2020

Hearing Room 301

1:00 PM

CONT... **Helping Others International, LLC**

Chapter 11

Becerra signed additional documents to support what he believed was Ms. Zucaro's own loan. However, Mr. Becerrea was actually signing documentation making him a co-borrower on the loan. After the loan was approved and the mortgage on the property was paid off, approximately \$165,000 in net equity was wired to Ms. Zucaro's account. The funds were supposed to be used to develop the property. When the money was wired into her account, the account allegedly contained only \$109. Within 30 days of receiving the funds, Ms. Zucaro's ending account balance was allegedly \$1,699. Ms. Zucaro allegedly did not use the funds to construct the group home; rather she used them for personal expenditures. Mr. Becerra's property is now encumbered with a loan that he can neither service nor refinance.

On June 10, 2020, in the Criminal Action, Ms. Zucaro pled guilty to one felony count of diversion of construction funds [doc. 14, Exhs. D and E]. On July 8, 2020, Ms. Zucaro was sentenced to 365 days in jail and placed on 60 months' probation, ordered to surrender her real estate license and ordered to pay \$300,255 in restitution [doc. 14, Exh. E]. On August 7, 2020, Ms. Zucaro is required to report to begin her jail sentence. *Id.* In pertinent part, the state court also ordered that Ms. Zucaro is:

prohibited from participating, in any manner, whether or not for commercial gain, in any transaction involving the purchase or sale of real estate, real estate loan modification, or bankruptcy services, including, but not limited to, soliciting, advertising, offering, engaging, referring, or providing services. This includes, but is not limited to, the following services: loan modification; loss litigation; foreclosure rescue; short sale consulting; forensic loan audits; counseling, preparation, filing, or consulting regarding bankruptcy actions; counseling, preparation, filing, or consulting regarding proposed, anticipated, or actual litigation on behalf of a residential loan borrower against lender(s) or servicer(s) of their loans. (emphasis added).

C. Ms. Zucaro's Bankruptcy Case

On June 8, 2020, Ms. Zucaro filed a voluntary chapter 11 petition, initiating case 9:20-bk-10714-MB (the "Zucaro Bankruptcy Case"). Ms. Zucaro is represented by Debtor's proposed counsel (who has not filed an employment application in Debtor's case).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 30, 2020

Hearing Room 301

1:00 PM

CONT... Helping Others International, LLC

Chapter 11

On June 22, 2020, the UST filed a motion to dismiss or convert the Zucaro Bankruptcy Case to one under chapter 7 [Zucaro Bankruptcy Case, doc. 14]. The basis of that motion was that Ms. Zucaro failed to comply with the United States Trustee's Guidelines and/or Local Bankruptcy Rules. On June 30, 2020, Ms. Zucaro filed a non-opposition to that motion [Zucaro Bankruptcy Case, doc. 18]. Accordingly, on July 16, 2020, the court entered an ordering converting the Zucaro Bankruptcy Case to one under chapter 7 [Zucaro Bankruptcy Case, doc. 20].

D. The Motion, Opposition and Responses

On July 13, 2020, the UST filed a *Motion for the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104, or in the Alternative, Motion Under 11 U.S.C. § 1112(b) to Convert Case* (the "Motion") [doc. 14]. In the Motion, the UST argues that the judgment in the Criminal Action shows fraud, dishonesty and gross mismanagement of Debtor by Ms. Zucaro before the commencement of the case, which warrants the appointment of a chapter 11 trustee under 11 U.S.C. § 1104(a)(1). The UST additionally argues that appointment of a chapter 11 trustee is warranted under 11 U.S.C. § 1104(a)(2) because the Criminal Action raises questions as to Ms. Zucaro's ability to be a reliable fiduciary with control over estate assets and on her ability to manage and reorganize Debtor. The UST points to the state court order that prohibits Ms. Zucaro from participating: (i) in any bankruptcy services, including preparation, filing and consulting regarding bankruptcy actions; and (ii) in any transaction involving the sale or purchase of real estate.

Alternatively, in the Motion, the UST argues that cause exists under 11 U.S.C. §§ 1112(b)(4)(C), (b)(4)(H) and (b)(4)(J) to convert Debtor's case to one under chapter 7. The UST argues that there is reason to believe that Debtor will be unable to effectuate a plan of reorganization because Ms. Zucaro is prohibited from participating in any transaction involving the purchase or sale of real estate, which would be necessary for Debtor to confirm a chapter 11 plan. The UST also argues that Debtor failed to comply with the requirements of the United States Trustee's Guidelines and/or Local Bankruptcy Rules by failing to provide: (i) sufficient evidence of opening and maintenance of debtor in possession bank accounts; (ii) proof of appropriate insurance coverage for the four parcels of real property; (ii) proof of required certificates and licenses; (iv) a projected cash flow statement for the first 90 days of operation under chapter 11; (v) copies of the two most recent federal tax returns; and (vi) conformed

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 30, 2020

Hearing Room 301

1:00 PM

CONT... Helping Others International, LLC

Chapter 11

copies of recorded petition in each county in which real property is owned.

On July 27, 2020, Debtor filed an opposition to the Motion (the "Opposition") [doc. 25]. In the Opposition, Debtor argues, among other things, that Debtor is a separate legal entity from Ms. Zucaro and that Debtor has not been found to be involved in any fraudulent activity. Debtor also argues that there is a possibility that Debtor can be reorganized through obtaining debtor in possession financing to pay off the secured creditors and to develop auxiliary units on the real properties. Opposition, ¶¶ 52-54. In relevant part, Debtor states:

Although Ms. Zucaro will not be managing the Debtor for a period of 30 days while she resides in custody at the Ventura County Jail, Todd Road facility, she has been informed by the Ventura County Sheriff that she will be released in 30 days on probation and placed on house arrest for 5 months. Ms. Zucaro will be available to meet and confer on all matters from home after September 4, 2020. Ms. Zucaro has contacted numerous architects, builders and contractors who have indicated a willingness to undertake the development of Auxiliary Dwelling Units on the properties owned by Helping Others International, LLC. Nader Safa of Altair Group and Lorraine Alderette have expressed an interest in the project. Ms. Zucaro has received basic drawings indicating layout, profile, and cost estimates for adding ADUs to the Moreno Valley property and the Soto property. There is good reason to retain Ms. Zucaro in management of the Debtor in that she can add value to the reorganization through her contacts and experience with the properties.

Opposition, ¶ 12. Debtor did not respond to the UST arguments concerning compliance with the United States Trustee's Guidelines and/or the Local Bankruptcy Rules.

Attached to the Opposition is a declaration by Ms. Zucaro. In that declaration, Ms. Zucaro states that her usual course of business to purchase real estate is for her private lender to give her a loan for 65% of the appraised value of the real property and the seller to carry back 35% of the second note [Declaration of Megan Zucaro, doc. 25, ¶ 8]. Ms. Zucaro states this is the only way she has ever purchased real property. *Id.*

On July 27, 2020, secured creditor Anh Thy Song Nguyen, Trustee of Mother Nature

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 30, 2020

Hearing Room 301

1:00 PM

CONT... Helping Others International, LLC

Chapter 11

Trust, filed a response to the Motion (the "Nguyen Response") [doc. 30], a declaration in support of the Nguyen Response [doc. 32] and a request for judicial notice [doc. 33]. In the Nguyen Response, the secured creditor states that it intends to file a motion to dismiss Debtor's bankruptcy case, but in the meantime Debtor's case should be converted to one under chapter 7. Regarding the Adversary Proceeding, the secured creditor states, in relevant part:

Nguyen filed the state court action that was recently removed to this Court by Debtor's coconspirator, United Lender, LLC. Nguyen's state court action was filed January 15, 2020 and is styled Nguyen v. United Lender, LLC, et al., Orange County Superior Court case number 30-2020- 01124778-CU-FR-CJC. Nguyen alleges that she sold a \$3.1 million home located in Huntington Beach, California to Debtor, which is owned and operated by debtor, defendant and convicted felon Megan Zucaro ("Zucaro"). Zucaro/Debtor received from United Lender, LLC, a Nevada limited liability company ("United Lender"), who is a hard money lender, a purchase loan in the amount of \$1.9 million. Zucaro talked Nguyen into seller carryback financing wherein Nguyen funded a \$1.2 million loan to the buyer of record, Debtor, secured by a second deed of trust to cover the balance of the \$3.1 purchase price. Debtor defaulted on the first payments due on United Lender's and Nguyen's loans. United Lender promptly commenced foreclosure proceedings on its first deed of trust, seeking to eliminate Nguyen's junior deed of trust. Nguyen further alleges in the state court action that the defendants have engaged in this equity theft fraud scheme with respect to not only Nguyen, but at least four other home sellers in Southern California. Specifically, United Lender and Zucaro/Debtor have engaged in this real estate equity fraud scheme whereby sellers were talked into carryback financing secured by a second deed of trust behind United Lender's (or an alter ego entity) first deed of trust.

Nguyen Response, pp. 2-3.

On July 27, 2020, creditor American Financial Center, Inc. ("American Financial") filed a response to the Motion (the "American Response") [doc. 31]. In the American Response, American Financial states that it does not dispute the need for third-party oversight of the estate assets. However, American Financial argues that it is difficult to assess, under 11 U.S.C. § 1104(a)(2), the likely benefits derived by the appointment

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 30, 2020

Hearing Room 301

1:00 PM

CONT... **Helping Others International, LLC**

Chapter 11

of a trustee, balanced against the cost of appointment, because Debtor failed to provide the Court and creditors with information regarding its operating income and expenses.

II. DISCUSSION

A. 11 U.S.C. § 1104

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.
- ...
- (e) The United States trustee shall move for the appointment of a trustee under subsection (a) if there are reasonable grounds to suspect that current members of the governing body of the debtor, the debtor's chief executive or chief financial officer, or members of the governing body who selected the debtor's chief executive or chief financial officer, participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or the debtor's public financial reporting.

"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*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 30, 2020

Hearing Room 301

1:00 PM

CONT... Helping Others International, LLC

Chapter 11

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)).

"With respect to whether a trustee should be appointed under Code § 1104(a)(2), courts eschew rigid absolutes and look to the practical realities and necessities." *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 168 (Bankr. S.D.N.Y. 1990) (citing *In re Hotel Associates, Inc.*, 3 B.R. 343, 345 (Bankr.E.D.Pa.1980)) (internal quotations omitted). "Among the factors considered are: (i) the trustworthiness of the debtor...; (ii) the debtor in possession's past and present performance and prospects for the debtor's rehabilitation...; (iii) the confidence—or lack thereof—of the business community and of creditors in present management...; and (iv) the benefits derived by the appointment of a trustee, balanced against the cost of the appointment. . . ." *Id.* (internal citations omitted).

"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) (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 appoint a chapter 11 trustee under 11 U.S.C. § 1104(a)(1). Although Debtor argues that the Criminal Action was not related to Ms. Zucaro's management of Debtor, the list of enumerated causes under 11 U.S.C. § 1104(a)(1) is nonexhaustive. Given that Ms. Zucaro is the manager of Debtor, and in light of Ms. Zucaro's criminal conviction, it appears that Ms. Zucaro cannot be expected to perform her fiduciary duties as manager of a debtor in possession.

Furthermore, pursuant to the state court order in the Criminal Action, Ms. Zucaro is prohibited from participating in any bankruptcy actions and from any transaction involving the sale or purchase of real property. Despite Ms. Zucaro being prohibited

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 30, 2020

Hearing Room 301

1:00 PM

CONT... Helping Others International, LLC

Chapter 11

from participating in the sale or purchase of real property, Debtor has offered no alternative manager or explained how it can proceed with its intended plan of reorganization. Additionally, at this point, Debtor apparently lacks qualified counsel to represent it in the bankruptcy case. Debtor's proposed bankruptcy counsel also represents Ms. Zucaro in her bankruptcy case; consequently, under the standards set forth in 11 U.S.C. § 327(a), he may not be qualified to represent Debtor concurrently, as general counsel to a debtor in possession.

Pursuant to 11 U.S.C. § 1104(a)(2), it appears to be in the best interests of creditors to appoint a chapter 11 trustee. Debtor lacks competent management.

An objective chapter 11 trustee is necessary to investigate Debtor's assets, liabilities and income. A chapter 11 trustee also may investigate whether there are potential transfers to avoid and can represent the estate's interest in the Adversary Proceeding.

B. 11 U.S.C. § 1112(b)

11 U.S.C. § 1112(b) provides in pertinent part:

- (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 a reasonable period of time; and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 30, 2020

Hearing Room 301

1:00 PM

CONT...

Helping Others International, LLC

Chapter 11

(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 . . .

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

...

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

...

(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. . . .

"[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, there is cause under 11 U.S.C. §§ 1112(b)(1), (b)(4)(C) and (b)(4)(H) to dismiss

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, July 30, 2020

Hearing Room 301

1:00 PM

CONT... Helping Others International, LLC

Chapter 11

or convert this case to one under chapter 7. In addition to Ms. Zucaro not being capable of performing her fiduciary duties as manager of debtor in possession, the UST provided evidence that Debtor has not complied with the United States Trustee Guidelines and/or Local Bankruptcy Rules and has not provided evidence that it maintains appropriate insurance coverage on the four real properties. Moreover, Debtor does not dispute that it has not complied with the United States Trustee Guidelines and/or Local Bankruptcy Rules.

However, pursuant to 11 U.S.C. § 1112(b)(1), the Court has found that appointment of a chapter 11 trustee is in the best interests of creditors and the estate. Consequently, the Court will not convert this case to one under chapter 7.

III. CONCLUSION

Pursuant to 11 U.S.C. § 1104(a)(1) and (a)(2), the Court will order the appointment of a chapter 11 trustee.

The UST must submit the order within seven (7) days.

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

9:30 AM

1:17-11962 Ruth Ann Brown

Chapter 13

#1.00 Motion for relief from stay [RP]

PINGORA LOAN SERVICING LLC
VS
DEBTOR

fr. 6/24/20

Docket 42

Tentative Ruling:

On June 9, 2020, the debtor filed a response to the motion for relief from the automatic stay [doc. 44]. The debtor did not include a declaration signed under penalty of perjury authenticating the evidentiary support for the assertions in the response.

Party Information

Debtor(s):

Ruth Ann Brown

Represented By
Michael E Clark
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**

Wednesday, August 5, 2020

Hearing Room 301

9:30 AM

1:19-11273 Emmalyn Valencia Tolentino

Chapter 13

#2.00 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
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 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):

Emmalyn Valencia Tolentino

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**

Wednesday, August 5, 2020

Hearing Room 301

9:30 AM

1:17-13028 Hector Garcia and Edelmira Avila Garcia

Chapter 13

#3.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

Docket 62

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

Wednesday, August 5, 2020

Hearing Room 301

9:30 AM

1:20-10406 Anne Barker

Chapter 13

#4.00 Motion for relief from stay [RP]

PHH MORTGAGE CORPORATION
VS
DEBTOR

Stip to cont hrg fld 07/31/20

Docket 26

*** VACATED *** REASON: continued to 9/16/20 at 9:30 am per order
entered on 7/31/20 doc #35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Barker

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 5, 2020

Hearing Room 301

9:30 AM

1:20-11172 Mirna Patricia Avelar

Chapter 7

#5.00 Motion for relief from stay [PP]

THE GOLDEN ONE CREDIT UNION
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):

Mirna Patricia Avelar

Represented By
Daniel F Jimenez
Rebecca M Wicks

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 5, 2020

Hearing Room 301

9:30 AM

CONT... Mirna Patricia Avelar

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01154 Goldman v. S&A Polacheck & Associates, Inc.

- #6.00** Pre-trial conference re: Complaint for:
1. Avoidance of voidable and fraudulent transfers; and
2. Recovery of avoided transfers for the benefit of the bankruptcy estate

fr. 3/4/20

Stip to dismiss filed 7/23/20 - jc

Docket 1

*** VACATED *** REASON: Order dismissing adversary entered 7/29/20
[doc. 14].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

S&A Polacheck & Associates, Inc.

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

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, August 5, 2020

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

#7.00 Pretrial conference re: complaint to determine dischargeability of debt under 11 U.S.C. sec 523(a)(2), (4), (6)

fr. 4/3/19; 10/2/19; 2/19/20(stip); 4/29/20(stip)

Stip to continue filed 7/22/20 - jc

Docket 1

***** VACATED *** REASON: Order approving stip entered 7/29/20.
Hearing conitnued to 11/4/20 at 1:30 PM.**

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
Randye B Soref

Nilay Patel

Represented By
Randye B Soref

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

1:30 PM

CONT... Remon Ramzy Hanna

Chapter 7

Mark Ross, Jr.

Represented By
Randy B Soref

Raied Francis

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, August 5, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01041 Sheik v. LBS Financial Credit Union, a California corporati

#8.00 Status conference re: complaint for:
1) Quiet title;
2) Slander of title;
3) Declaratory relief

fr. 5/20/20

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 14, 2020.**

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 30, 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 August 5, 2020 is excused.

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

LBS Financial Credit Union, a

Pro Se

MDA Motors Corp., a California

Pro Se

Greenwood Pontiac, Inc. a dissolved

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

1:30 PM

CONT... Maryam Sheik

Chapter 11

Jamshid Lavi, an individual	Pro Se
All Persons Or Entities Unknown	Pro Se
Does 1-10, Inclusive	Pro Se

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

1:30 PM

1:20-10422 Rita J. Patel

Chapter 7

Adv#: 1:20-01059 LOGIX FEDERAL CREDIT UNION, its successors and/or v. Patel

#9.00 Status conference re: complaint to determine dischargeability of debt
[11 U.S.C.sec 523(a)(2)(A) and sec 523 (a)(2)(C)]

Docket 1

Tentative Ruling:

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 30, 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).

Party Information

Debtor(s):

Rita J. Patel

Represented By
Steven A Alpert

Defendant(s):

Rita J. Patel

Pro Se

Plaintiff(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, August 5, 2020

Hearing Room 301

1:30 PM

CONT... Rita J. Patel

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, August 5, 2020

Hearing Room 301

1:30 PM

1:20-10659 Nasrin Nino

Chapter 7

Adv#: 1:20-01061 GOTTLIEB v. Bilal

- #10.00** Status conference re: complaint for
1) Avoidance and recovery of preferential transfer
[11 U.S.C. sec 547(b), 550(a), and 551],
2) Avoidance and recovery of post-petition transfer
[11 U.S.C. sec 549(a), 550(a), and 551] and
3) Disallowance of any claim held by defendant
[11 U.S.C. sec 502(d)]

Stip to continued filed 7/17/20 - jc

Docket 1

***** VACATED *** REASON: Order approving stip entered 7/21/20.
Hearing continued to 10/7/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Defendant(s):

Kamal Bilal

Pro Se

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Carmela Pagay

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

1:18-11620 Antoine R Chamoun

Chapter 7

Adv#: 1:19-01105 Seror, Chapter 7 Trustee v. Chamoun et al

#11.00 Motion for leave to file first amended complaint to avoid fraudulent transfers filed on September 16, 2019

Docket 21

Tentative Ruling:

Grant.

I. BACKGROUND

On June 26, 2018, Antoine R. Chamoun filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee").

On September 16, 2019, the Trustee filed a complaint against Walid R. Chamoun and Patricia Chamoun ("Defendants"), requesting avoidance of fraudulent and preferential transfers. On October 24, 2019, Defendants filed an answer to the original complaint [doc. 8]. On June 3, 2020, the Court entered an order approving a stipulation by the parties and extending the deadlines to: (A) August 28, 2020 to complete discovery; (B) September 30, 2020 to file pretrial motions; and (C) October 16, 2020 to submit a pretrial stipulation [doc. 19].

On July 15, 2020, the Trustee filed a motion to amend the original complaint (the "Motion") [doc. 21], requesting leave to add claims for relief for breach of contract, unjust enrichment and turnover of property. On July 29, 2020, Defendants filed an untimely opposition to the Motion (the "Opposition") [doc. 23]. In the Opposition, Defendants mainly discuss their analysis of the merits of the original claims. Defendants also contend that the amendments are not material to the Trustee's fraudulent transfer claims. Although the Opposition was not timely filed, the Court considered the arguments in reaching the decision below.

II. ANALYSIS

Pursuant to Federal Rule of Civil Procedure ("Rule") 15(a), applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7015—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Antoine R Chamoun

Chapter 7

(1) Amending as a Matter of Course.

A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments.

In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Courts have the discretion to grant or deny leave to amend a complaint. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). "In exercising this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). The factors courts commonly consider when determining whether to grant leave to amend are:

1. Bad faith;
2. Undue delay;
3. Prejudice to the opposing party; and
4. Futility of amendment.

Ditto v. McCurdy, 510 F.3d 1070, 1079 (9th Cir. 2007) (internal citations omitted).

Here, the Trustee has demonstrated that leave to amend is proper. There is no indication of bad faith on the record. Moreover, given that the parties stipulated to a continuance of all deadlines in this adversary proceeding, the amendment will not cause undue delay.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Antoine R Chamoun

Chapter 7

Defendants contend they will be prejudiced by the amendment because Defendants will be subject to discovery on "immaterial" matters, and the allegations are not relevant to the Trustee's fraudulent transfer claims. However, the Trustee is not adding allegations related to his original fraudulent transfer claims; instead, the Trustee seeks to add new claims for breach of contract, turnover and unjust enrichment. The new allegations relate to these new claims.

Defendants also note that they will "suffer" from an extension of the resolution of this proceeding. However, the parties already stipulated to an extension of all deadlines, and filing an amended complaint will not automatically trigger a need for a further extension. Finally, the proposed amendments are not futile. Once again, Defendants' sole argument related to futility appears to be that the proposed amendments are immaterial to the Trustee's fraudulent transfer claim. Because the new allegations are relevant to the Trustee's new claims, and Defendants have not articulated any other reason an amendment would be futile, this factor also weights in favor of granting the Trustee's request to file an amended complaint.

Defendants' remaining arguments about the merits of the Trustee's original claims are not relevant to this Motion. Defendants may make these arguments when the merits of the Trustee's claims are properly before the Court.

III. CONCLUSION

The Court will grant the Motion.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Defendant(s):

Walid R. Chamoun

Represented By
Robert S Altagen

Patricia Chamoun

Represented By
Robert S Altagen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT... Antoine R Chamoun

Chapter 7

Plaintiff(s):

David Seror, Chapter 7 Trustee

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

1:19-11696 Peter M. Seltzer

Chapter 7

Adv#: 1:19-01151 Kessler v. Seltzer

#12.00 Motion to dismiss first amended complaint for the denial of discharge

Docket 25

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion in part and deny the motion in part.

I. BACKGROUND

On July 9, 2019, Peter M. Seltzer ("Defendant") filed a voluntary chapter 11 petition, initiating bankruptcy case 1:19-bk-11696-VK. On December 26, 2019, the Court entered an order converting Defendant's bankruptcy case to one under chapter 7 [Bankruptcy Case, doc. 98].

On December 16, 2019, Darren Kessler ("Plaintiff") filed a complaint against Defendant (the "Complaint"), seeking nondischargeability of the debt owed to him pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4) and (a)(6) and for denial of discharge pursuant to 11 U.S.C. §§ 727(a)(2), (a)(4)(A) and (a)(5). In relevant part, the Complaint made the following allegations:

On May 20, 2014, Defendant executed and delivered to Plaintiff a promissory note/equity agreement (the "May Note") [Complaint, Exh. A]. Under the terms of the May Note, Defendant borrowed and agreed to pay Plaintiff the principal sum of \$800,000 (the "Principal"). The May Note provided that Plaintiff would immediately receive a 14% equity interest in ACC Enterprises, LLC ("ACC"). Defendant was to pay off the Principal upon receipt of payment from ACC. The payments were to be made on a cyclical basis based on disbursement made via K-1 by ACC to Defendant within thirty days of Defendant being paid.

On October 1, 2014, Defendant and Plaintiff agreed to modify the May Note, and entered into a new promissory note (the "October Note") [Complaint, Exh. B]. The October Note provided that in addition to the previously acquired 14% interest in ACC, Defendant also personally agreed to repay Plaintiff the sum of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

\$800,000 along with an equity interest in the "stock of the makers" [*sic*]. All principal and accrued interest in the October Note was due and payable by October 1, 2017, and the October Note states that repayment of the Principal is "in addition to" the transfer of equity.

On July 10, 2014, Plaintiff transferred \$300,000 to ACC Industries, Inc. On November 21, 2014, Plaintiff transferred an additional \$500,000 to Defendant's corporation, Jakdyl, Inc. [Complaint, Exh. C]. ACC Industries, Inc. and Jakdyl, Inc. are listed on Defendant's statement of financial affairs, item #27.

On August 18, 2015, Defendant emailed Plaintiff reaffirming that he "anticipate[d] paying [Plaintiff] back \$800,000 principle [*sic*] by end of Dec 2015... (Remainder will be paid from Vegas Building \$250k)." (the "2015 Email") [Complaint, Exh. D].

Defendant defaulted in his performance of the October Note by failing to pay the note in full when due. Prior to filing the Complaint, Plaintiff made a demand for the balance due on the October Note, but no part of said balance has been paid. Consequently, Plaintiff filed a complaint against Defendant in the superior court for the state of California for breach of contract, money had and received and unjust enrichment.

In statements made in the state court action, Defendant denied executing the May Note and the October Note. Defendant also stated that the company in which Plaintiff was to receive distributions and an equity interest did not exist at the time Plaintiff transferred funds to Defendant. Defendant further stated that the emails affirming his obligation to Plaintiff were "altered." Thus, when Defendant made the representations in the May Note and the October Note, he knew them to be false, and made these representations with the intent to induce Plaintiff to enter into the notes.

After the petition date, Defendant filed his original schedules and statement of financial affairs ("SOFA") [Bankruptcy Case, doc. 10]. Defendant signed his schedules and SOFA under penalty of perjury as true and accurate.

Defendant's SOFA, listed, among other things: (i) no income from employment or operation of a business in 2019; (ii) no payments to insiders within one year

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

prior to the petition date; (iii) no gifts within the two years prior to the petition date; (iv) no loss or insurance coverage from theft, fire or other disaster; (v) no transfers within the two years prior to the petition date; (vi) no accounts with financial institutions closed within the one year prior to the petition date; and (vii) interest in three business entities – Indiana Texas Management ("ITM"), 2305 LLC and Jakdyl LLC.

On August 15, 2019, Defendant appeared for his § 341(a) meeting of creditors, where he testified under oath about his assets and liabilities (the "Meeting"). At the Meeting, Defendant revealed that he had an interest in over 20 business entities as well as additional pending litigation, which he failed to disclose in his original schedules.

Following the Meeting, Plaintiff filed several motions for Fed. R. Bankr. P. ("FRBP") 2004 examinations, mainly against financial institutions where Defendant currently had (or had in the past) accounts and where Defendant's entities currently had (or had in the past) accounts.

On October 15, 2019, Defendant filed amended schedules and SOFA [Bankruptcy Case, doc. 56]. Defendant filed the amended schedules two months after the Meeting and after the Court granted several of Plaintiff's FRBP 2004 examinations.

The amended schedules and SOFA disclosed the following, which were not included in the original schedules: (i) transfer of \$50,000 to Brian Burr; (ii) four litigation claims against third parties; \$6,850 gross income in the last calendar year from operating a business; (iii) \$150,000 received in the last year from a legal settlement; (iv) \$300,000 property damage from the November 2018 Woolsey fire; (v) two transfers including a \$550,000 transfer to Neil Harris in February 2019 as a business investment to be repaid and a \$50,000 transfer to Brian Burr "temporarily" in May 2019; and (vi) an additional nine business entities which he had an interest within the four years prior to the petition date.

Defendant's July 2019 and August 2019 monthly operating reports ("MOR") reflect that beyond receipt of one insurance proceed check in the amount of \$121,000, Defendant had no income. Those MORs also reflect that Defendant retained accounts under the name of 2305 LLC and ITM, neither of which were

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

designated debtor-in-possession accounts, to transact for general personal expenses. The August 2019 MOR also reflects that Defendant withdrew \$66,010 for a "price lift." Defendant has submitted no evidence that such funds were used for Woolsey fire damage repairs.

Defendant's September 2019 and October 2019 MORs reflect, among other things, that Defendant: (i) received another alleged insurance proceeds check in the amount of \$134,162.70; (ii) made a cash withdrawal from the 2305 LLC account in the amount of \$9,510 rendering the account closed; (iii) closed his Wells Fargo debtor-in-possession account and opened a new account at Union Bank; (iv) paid \$15,000 to "tactical mitigation" for purported home damage repairs; and (v) paid an additional \$15,000 for "price lift" for alleged home repairs.

Based on the discovery Plaintiff received from his FRBP 2004 examinations, many (if not all) of Defendant's entities are the alter ego of the other. Defendant often and freely moved funds in and out of his entities and into and out of Defendant's personal accounts to hide funds from creditors, and for his own personal use.

Defendant maintained a bank account, in his name, at Chase during the pendency of his bankruptcy case and immediately prior to the petition date. On May 21, 2019, Defendant received over \$178,759 in insurance proceeds. Only \$126,000 of these funds were deposited in the debtor-in-possession account, as Defendant withdrew \$40,000 on May 29, 2019, an additional \$9,866.64 on the day prior to the petition date, and a further \$2,832 after the petition date (collectively, the "Insurance Proceed Transfers").

Between March 2019 and the petition date, Defendant made the following withdrawals and/or transfers from the 2305 LLC account, none of which were disclosed in Defendant's original or amended schedules: (i) March 18, 2019, wire to ETF Management in the amount of \$150,000; (ii) April 19, 2019, wire to Harris Ritoff in the amount of \$100,000; (iii) May 20, 2019, two withdrawals in the amounts of \$28,000 and \$7,000; and (iv) May 28, 2019, a withdrawal in the amount of \$4,000 (collectively, the "Pre-Petition Transfers").

As of January 1, 2019, Defendant had \$1,048,301.55 in the ITM and 2305 LLC

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

bank accounts. About six months later, on the petition date, Defendant only had \$128,857.76, which funds consisted solely of insurance proceeds. Defendant has not provided a justification or explanation for the dissipation of \$900,000.

In his amended SOFA, Defendant asserts that he received \$250,000 in income in 2018 and that ACG Industries was shut down in 2017. However, a review of the ITM bank account reveals that from March 2018 to May 2018, Defendant received \$905,000 from ACG Industries. This demonstrates that Defendant received three times the amount of income disclosed in his amended SOFA and that ACG Industries was still operating in 2018.

Attached to the Complaint were the May Note [Exh. A], the October Note [Exh. B], bank statements [Exh. C] and the 2015 Email [Exh. D]. The May Note provides that Defendant "promises to get re payment to the order of [Plaintiff], or his successors in interest, the sum of EIGHT HUNDRED THOUSAND (\$800,000.) DOLLARS through revenues generated by [ACC]. Along with securing an equity stake of 14% in the makers INVESTMENT in [ACC]...." The May Note further provides, that "[a]ll principal and accrued interest shall be due and payable on a cyclical basis based on disbursement made via K-1 by ACC to 'maker' within 30 days of 'maker' being paid." On May 22, 2014, Plaintiff and Defendant apparently signed the May Note.

The October Note provides that Defendant and ACC "promises to pay to the order of [Plaintiff], or his successors in interest, the sum of Eight hundred thousand (\$800,000.) DOLLARS along with an equity interest of 14% in the makers...." The October Note provides that interest will accrue for three years, "payable annually on the anniversary date at the rate of five percent (1%) [sic] per annum." The October Note further provides that: "[a]ll principal and accrued interest shall be due and payable by Oct 1, 2017." On October 1, 2014, Plaintiff and Defendant apparently signed the October Note.

Based on the bank statements, on July 10, 2014, Plaintiff made a \$300,000 transfer to ACC Industries, Inc., and on November 21, 2014, he made a \$500,000 transfer to Jakdyl, Inc.

On February 4, 2020, Defendant filed a motion to dismiss the Complaint (the "First Motion to Dismiss") [doc. 5]. On April 29, 2020, the Court held a hearing

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

on the First Motion to Dismiss [doc. 12]. On May 13, 2020, the Court entered an order granting in part and denying in part the First Motion to Dismiss (the "Order") [doc. 16]. Pursuant to the Order, the Court granted the First Motion to Dismiss as to Plaintiff's claims under 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6) and 727(a)(5) with leave to amend, and denied the motion as to Plaintiff's claims under 11 U.S.C. §§ 727(a)(2) and (a)(4).

On May 12, 2020, Plaintiff filed a first amended complaint (the "FAC") [doc. 15]. Attached to the FAC is the same exhibits as were attached to the Complaint. In relevant part, the FAC makes the following new allegations:

In May 2014, Plaintiff was introduced to Defendant in connection with making investments into cannabis growing operations in Nevada. Plaintiff and Defendant discussed the appropriate manner in which Plaintiff could transfer funds and obtain a return. Defendant requested that Plaintiff directly loan the money to Defendant, so that Defendant could receive a higher percentage of ownership in the ventures, thereby, obtaining a higher level of control in the resulting investment.

In May 2014, in connection with these discussions, Plaintiff expressed that he wanted a guaranty that his money would be returned with profit. Plaintiff recognized that making a direct equity investment came with more risk than he was willing to undertake. Plaintiff further recognized, and relied upon Defendant's representation, that Defendant would obtain significant control in the underlying investment specifically because Plaintiff was willing to loan the funds to Defendant. Plaintiff expressly stated that he wanted a return of his capital, with interest, and did not want to bear the risk associated with a direct equity investment.

Plaintiff was advised by Defendant prior to the execution of the May Note and October Note that Defendant was an officer, director and controlling member of ACC.

Defendant has now confirmed that at no time did he ever intend to abide by the terms of the May Note or October Note. Rather, he always intended to treat Plaintiff's funds as a direct equity investment in the underlying entities. Defendant prepared the May Note and October Note which expressly state that

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

the funds would be treated as a loan, and not merely a direct equity investment into risky entities. In documenting the May Note and October Note, Defendant falsely assured Plaintiff that the transfer of funds was a safe transaction and that Defendant would guaranty Plaintiff would not suffer any loss.

As of September 20, 2018, ACC was insolvent as its assets were less than its liabilities and/or it could not pay its debts as they became due. Upon the insolvency of ACC, a fiduciary trust relationship was created whereby ACC's officers, directors and controlling members (including Defendant) owed a fiduciary duty to ACC's creditors, including Plaintiff.

Based on Defendant's original schedules and bank statements, in 2018, Defendant took over \$90,000 from ACC, thus committing an act of defalcation to the detriment of ACC's creditors. Defendant as an officer, director and/or controlling member of an insolvent company, owing a fiduciary duty to its creditors, deposited the funds into an account in the name of ITM. ITM is the alter ego of Defendant and vice versa.

Defendant received the Principal from Plaintiff, with the understanding that such funds were to be invested for the benefit of Plaintiff, and would be returned to Plaintiff by October 1, 2017, pursuant to the October Note. Plaintiff has a right, at minimum, to the Principal by virtue of the October Note, when it was converted by Defendant. Defendant wrongfully took the Principal and improperly interfered with Plaintiff's ability to use it, and converted such funds for his owner personal benefit and use, when such funds rightfully belonged to Plaintiff. Defendant took Plaintiff's funds without his consent or authorization.

On June 16, 2020, Defendant filed an amended motion to dismiss the FAC (the "Motion") [doc. 25]. In the Motion, Defendant argues that Plaintiff has failed to state a claim under Fed. R. Civ. P. 12(b)(6) and that Plaintiff has failed to plead the fraud-based claims with particularity as required by Fed. R. Civ. P. 9(b). On July 22, 2020, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 31]. Defendant did not timely file a reply to the Opposition.

II. DISCUSSION

A. General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

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); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009)). "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 555 (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. See *Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

dismiss under Rule 12(b)(6)." *Id.* (internal quotation marks omitted).

"A complaint that merely recites statutory language fails to state a claim under Rule 12(b)(6)." *In re Kubick*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994). This is because "mere statutory language does not plead facts sufficiently so that they may be answered or denied." *Id.* "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Id.*

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged...." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

B. 11 U.S.C. §§ 727(a)(2) and (a)(4)

In ruling on the First Motion to Dismiss, the Court stated that the Complaint contained sufficient allegations to state a claim for relief under §§ 727(a)(2) and (a)(4) [doc. 12]. The FAC does not add any new allegations pertinent to these claims, and the Motion did not include new arguments concerning dismissal of these claims. Accordingly, the Court will not revisit the merits of its prior ruling. The Court will deny the Motion as to these claims.

C. 11 U.S.C. § 523(a)(2)(A)

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

To prevail on a § 523(a)(2)(A) claim, the 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;
- (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)).

i. 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 also can be considered fraudulent when the promisor knew or should have known of his inability to perform. *In re Barrack*, 217 B.R. 598, 606 (B.A.P. 9th Cir. 1998). A promise to perform in the future is not a false representation or false pretense unless the debtor did not have intent to perform at the time he made the representation. *Matter of Bercier*, 934 F.2d 689, 691-92 (5th Cir. 1991) ("A mere promise to be executed in the future is not sufficient to make a debt nondischargeable, even though there is no excuse for the subsequent breach.") (citations omitted).

ii. Justifiable Reliance

To satisfy the reliance requirement of § 523(a)(2)(A), a plaintiff must show "justifiable" reliance, not "reasonable reliance." *Field v. Mans*, 516 U.S. 59, 74-75, 116 S. Ct. 437, 133 L. Ed. 2d 351 (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.

iii. Proximate Causation/Damages

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

Section 523(a)(2)(A) requires that the damage to the creditor be proximately caused by the debtor's fraud. *In re Sabban*, 600 F.3d 1219, 1223 (9th Cir. 2010) (explaining that the debtor will not receive a discharge of debts "resulting from" or "traceable" to fraud). "Further, as the Supreme Court explained in *Field*, a court may turn to the Restatement (Second) of Torts (1976), 'the most widely accepted distillation of the common law of torts,' for guidance on this issue." *In re Russell*, 203 B.R. 303, 313 (Bankr. S.D. Cal. 1996) (citing to *Field*, 516 U.S. at 70).

"Turning to the Restatement, proximate cause entails (1) causation in fact, which requires a defendant's misrepresentations to be a 'substantial factor in determining the course of conduct that results in [the plaintiff's] loss,' § 546; and (2) legal causation, which requires the plaintiff's loss to have been 'reasonably expected to result from the reliance,' § 548A. In determining the presence of proximate cause, however, courts must refrain from relying on speculation to determine whether and to what extent a creditor would have suffered a loss absent fraud. *Id.* (citing to *In re Siriani*, 967 F.2d 302, 306 (9th Cir. 1992)).

Here, the FAC fails to cure the deficiencies the Court noted in its ruling on the First Motion to Dismiss [doc. 12]. Specifically, Plaintiff alleges:

[W]hen Defendant made the representations in the May Note and October Note to Plaintiff, he knew them to be false, and made these representations with the intent to defraud and deceive Plaintiff and with the intent to and with intent to [*sic*] induce Plaintiff to enter into the above-described May Note and October Note.

Plaintiff believed the representations and relied on the truth of them in entering into the May Note and October Note. Plaintiff would not have given his consent to the May Note or October Note, nor would he have provided the \$800,000 in funds, had it not been for [Defendant's] statements and actions to induce Plaintiff (the fraud).

The reliance by Plaintiff was justified because at the time the representations were made, Defendant personally assured [Plaintiff] that the funds would be treated as a loan to [Defendant], and not a direct equity investment into any third-party entities. [Defendant] prepared the May Note and October Note which expressly state that the funds would be treated as a loan, and not merely a direct

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

equity investment into risky entities. In documenting the May Note and October Note, [Defendant] falsely assured Plaintiff that the transfer of funds was a safe transaction and [Defendant] would guaranty that Plaintiff would not suffer any loss.

As concerns the representations in the May Note, as the Court previously stated, the Complaint does not make sufficient allegations regarding whether the condition precedent was met, *i.e.*, that ACC generated revenue and that disbursements were made to Defendant within the pertinent time frame, *i.e.*, before the October Note went into effect. Moreover, the May Note contains no deadline for the payment in full of any accrued interest and principal.

As concerns the October Note, Plaintiff has not alleged what false representations Defendant made specifically concerning the October Note that Plaintiff relied on when transferring \$500,000 in November 2014 to Jakdyl, Inc. (not Defendant). In the October Note, Defendant represented that he would repay the Principal and transfer an equity interest in ACC to Plaintiff. Failure to repay the Principal or to transfer an equity interest is a breach of contract. Not every breach of contract amounts to fraud.

In the FAC, Plaintiff alleges that he relied on Defendant's representation that Defendant "would obtain significant control in the underlying investment because Plaintiff was willing to loan" the Principal to Defendant. However, Plaintiff does not allege that this was false or that Defendant had knowledge of the falsity and an intent to deceive Plaintiff at the time the representation was made. Plaintiff also does not allege when this representation was made.

Similarly, in the FAC, Plaintiff alleges that in documenting the May Note and October Note, Defendant falsely assured Plaintiff that the transfer of the Principal was a safe transaction and that Defendant would guaranty Plaintiff would not suffer any loss. However, Plaintiff does not allege that he relied on this representation, and that Defendant intended to deceive Plaintiff with this representation. Plaintiff also does not specify when this representation was made.

The other new allegations in the FAC concern what *Plaintiff* expressed to Defendant. As with the Complaint, the FAC does not sufficiently identify what false statements or misrepresentations *Defendant* made to Plaintiff *before* Plaintiff transferred the pertinent funds in July 2014 and November 2014, when Defendant did so, and that Plaintiff relied

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

on those statements.

Consequently, as to the § 523(a)(2) cause of action, the Court will grant the Motion, with leave to amend. As to the May Note, in particular, if Plaintiff chooses to pursue a § 523(a)(2) cause of action, Plaintiff must address, among other things, the specific payment provisions of that note and whether any default occurred, based on those payment provisions.

D. 11 U.S.C. § 523(a)(4)

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

In the Opposition, Plaintiff argues that the FAC contains sufficient allegations concerning Defendant's defalcation while acting in a fiduciary capacity. Accordingly, the focus of the inquiry will be on the existence of fiduciary relationship and defalcation.

i. Existence of Trust/Fiduciary Relationship

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); *see also In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) ("The definition of 'fiduciary capacity' under § 523(a)(4) is governed by federal law."). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796; *see also In re Stern*, 403 B.R. 58, 66 (Bankr. C.D. Cal. 2009) ("In order for the debt to be actionable for nondischargeability, the debtor must have been a trustee before the alleged wrong and without reference thereto; the debtor must have already been a trustee before the debt was created."); *Cantrell*, 269 B.R. at 420 ("Only relationships arising from express or technical trusts qualify as fiduciary relationships under § 523(a)(4).").

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

Under § 523(a)(4), a court must consider state law to ascertain whether there is the required express or technical trust. *In re Honkanen*, 446 B.R. 373, 379 (B.A.P. 9th Cir. 2011). "If state law does not 'clearly and expressly impose trust-like obligations on a party,' courts 'will not assume that such duties exist and will not find that there was a fiduciary relationship.'" *In re Houng*, 636 F. App'x 396, 398 (9th Cir. 2016) (quoting 4 Collier on Bankruptcy, ¶ 523.10 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.)).

"A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. An express trust under California law requires the following five elements: (1) present intent to create a trust; (2) a trustee; (3) trust property; (4) a proper legal purpose; and (5) a beneficiary. *Honkanen*, at 379 n.6 (citing Cal. Prob. Code §§ 15201–15205). A technical trust under California law is one "arising from the relation of attorney, executor, or guardian, and not to debts due by a bankrupt in the character of an agent, factor, commission merchant, and the like." *Id.*, at n.7 (quoting *Royal Indemnity Co. v. Sherman*, 269 P.2d 123, 125 (Cal. Ct. App. 1954)).

Additionally, "[t]rusts arising as remedial devices to breaches of implied or express contracts—such as resulting or constructive trusts—are excluded, while statutory trusts that bear the hallmarks of an express trust are not." *Id.* (citing *In re Pedrazzini*, 644 F.2d 756, 759 (9th Cir. 1981)).

ii. Defalcation

Defalcation is defined as the "misappropriation of trust funds or money held in any fiduciary capacity; the failure to properly account for such funds." *Weinberg*, 410 B.R. at 28 (quoting *In re Lewis*, 97 F.3d 1182, 1186 (9th Cir. 1996)). "A defalcation may include innocent, as well as intentional or negligent, defaults in performing trust duties." *Id.*

In the FAC, Plaintiff alleges two bases for the requisite fiduciary relationship: (i) Defendant agreed to act as Plaintiff's agent for purposes of ensuring Plaintiff was repaid the Principal; and (ii) upon the insolvency of ACC, ACC's officers, directors and controlling members owed a fiduciary duty to ACC's creditors.

As to the Plaintiff's first allegation, as stated above, and as noted in the Court's ruling on the First Motion to Dismiss [doc. 12], any such agreement would not create the required technical trust within the purview of § 523(a)(4). Moreover, Plaintiff characterizes the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

debt as a loan. Accepting a loan, without more, does not create a fiduciary relationship. *See In re Mbunda*, 484 B.R. 344 (B.A.P. 9th Cir. 2012). As to Plaintiff's second allegation, the FAC contains sufficient allegations to state a claim for relief.

Under California common law, "courts adhere to the 'trust fund doctrine,' pursuant to which 'all of the assets of a corporation, immediately upon becoming insolvent, become a trust fund for the benefit of all [of the corporation's] creditors [].'" *Houng*, 636 F. App'x at 398 (quoting *Berg & Berg Enter., LLC v. Boyle*, 100 Cal.Rptr.3d, 875, 893 (2009)). The duties directors owe to creditors upon insolvency are generally limited to "avoidance of actions that divert, dissipate, or unduly risk corporate assets that might otherwise be used to pay creditors ['] claims," by "divert[ing] assets of the corporation for the benefit of insiders or preferred creditors." *Berg*, 100 Cal.Rptr.3d at 893–94 (emphasis in original).

In *Houng*, the Ninth Circuit Court of Appeals addressed whether California's trust fund doctrine established a fiduciary relationship within the meaning of 11 U.S.C. § 523(a) (4). In relevant part, the Ninth Circuit stated:

The trust fund doctrine "clearly and expressly impose[s] trust-like obligations" on the controllers of an insolvent entity. 4 Collier on Bankruptcy, ¶ 523.10. Because the duties arise at insolvency, *see Berg*, 100 Cal.Rptr.3d at 893, and require the avoidance of "divert[ing], dissipat[ing], or unduly risk[ing] corporate assets," *id.* at 894, the fiduciary relationship exists "prior to any wrongdoing" and "without reference to [the wrong]," as required by § 523(a)(4). *Ragsdale*, 780 F.2d at 796. This is in contrast to a trust "ex maleficio," *i.e.*, a trust that arises "by operation of law upon a wrongful act," that we have held is outside of § 523(a)(4)'s purview. *Blyler v. Hemmeter (In re Hemmeter)*, 242 F.3d 1186, 1189–90 (9th Cir.2001).

With regard to whether the trust doctrine creates an "express or technical" trust, "[m]ost courts ... recognize that the 'technical' or 'express' trust requirement [for nondischargeability] is not limited to trusts that arise by virtue of a formal trust agreement, but includes relationships in which trust-type obligations are imposed pursuant to statute or common law." *LSP Inv. P'ship v. Bennett (In re Bennett)*, 989 F.2d 779, 784–85 (5th Cir.1993); *see also, e.g., Lovell v. Stanifer (In re Stanifer)*, 236 B.R. 709, 714 (9th Cir. BAP 1999). Indeed, decades ago our court recognized that qualifying as a "fiduciary" for

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

nondischargeability purposes does not require formalistically satisfying the technical requirements of specific categories of trusts. *Runnion v. Pedrazzini (In re Pedrazzini)*, 644 F.2d 756, 758 n. 2 (9th Cir.1981). Instead, in analyzing whether certain California statutory law could satisfy the precursor to § 523(a)(4), we held that "[t]he precise manner in which a trust is created ... is of little importance. Rather, the focus should be on whether true fiduciary responsibilities have been imposed." *Id.* We held that the "core requirements" for determining whether the requisite "trust-like obligations" are imposed, "are that the relationship exhibit characteristics of the traditional trust relationship, and that the fiduciary duties be created before the act of wrongdoing and not as a result of the act of wrongdoing." *Id.* at 758–59. We have continued to apply these same standards to determine whether a trust is sufficient to create a "fiduciary" relationship within the meaning of § 523(a)(4). *See In re Hemmeter*, 242 F.3d at 1189–90; *Ragsdale*, 780 F.2d at 796.

Accordingly, in more recent cases, we have looked to state common law in applying the trust requirement of § 523(a)(4), without strict regard to whether the trust created by common law was "express" or "technical." *See Ragsdale*, 780 F.2d at 797; *In re Lewis*, 97 F.3d at 1186; *Lewis v. Short (In re Short)*, 818 F.2d 693, 695 (9th Cir.1987). Here, because California's common law trust fund doctrine imposes "true fiduciary responsibilities" prior to "the act of wrongdoing and not as a result of the act of wrongdoing," *In re Pedrazzini*, 644 F.2d at 758, 758 n. 2, the "express or technical" trust requirement for nondischargeability is satisfied.

Houng, 636 F. App'x at 399.

In the FAC, Plaintiff alleges that in September 2018, ACC was insolvent, that Defendant told Plaintiff that he was an officer, director and controlling member of ACC and that while ACC was insolvent, Defendant took \$90,000 from ACC and deposited those funds into the account of ITM (an alleged alter ego of Defendant). When ruling on a Rule 12(b)(6) motion, the Court must accept these allegations as true.

Under California's trust fund doctrine, immediately upon ACC allegedly becoming insolvent, all of ACC's assets became a trust fund for the benefit of ACC's creditors, such as Plaintiff. [FN1] Defendant being the officer, director or controlling member of ACC, had a fiduciary duty not to divert, dissipate or unduly risk ACC's assets that might

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

otherwise be paid to creditors. Although the fiduciary duties may be limited, as stated above, the duties created by California's trust fund doctrine satisfy the criteria for a "fiduciary" relationship under § 523(a)(4). [FN2]

Further, Plaintiff alleges that Defendant committed an act of defalcation while in that fiduciary capacity by misappropriating \$90,000 to his own personal use. Consequently, as to the § 523(a)(4) cause of action, the Court will deny the Motion.

E. 11 U.S.C. § 523(a)(6)

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." As in any § 523(a) action, the plaintiff bears the burden of proof by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 286, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991).

i. Willfulness

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, 140 L.Ed. 2d 90 (1998). In the Ninth Circuit, " § 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Ormsby*, 591 F.3d at 1206 (quoting *In re Su*, 290 F.3d 1140, 1142 (9th Cir.2002)). "The Debtor is charged with the knowledge of the natural consequences of his actions." *Id.* (citing *In re Cohen*, 121 B.R. 267, 271 (Bankr.E.D.N.Y.1990)). *See also Su*, 290 F.3d at 1146 ("In addition to what a debtor may admit to knowing, the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action.").

ii. Maliciousness

Under § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.* at 1147. Maliciousness does not require "personal hatred, spite, or ill-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

Section 523(a)(6) generally applies to torts rather than to contracts. An intentional breach of contract generally will not give rise to a nondischargeable debt, unless it is accompanied by tortious conduct which results in willful and malicious injury. *Jercich*, at 1205; *Lockerby v. Sierra*, 555 F.3d 1038, 1040 (9th Cir. 2008) ("an intentional breach of contract cannot give rise to nondischargeability under § 523(a)(6) unless it is accompanied by conduct that constitutes a tort under state law").

Here, Plaintiff makes a claim under § 523(a)(6) based on conversion. "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)). "[A] mere contractual right of payment, without more, will not suffice" to support a claim for conversion. *Farmers Ins. Exchange v. Zerin*, 53 Cal. App. 4th 445, 452 (1997).

"[T]he specific thing at issue must be a thing to which the plaintiff has a right of ownership or possession—a right with which the defendant has interfered by virtue of its own disposition of the property." *Voris v. Lampert*, 7 Cal. 5th 1141, 1151–52, 446 P.3d 284, 291 (2019), *reh'g denied* (Oct. 23, 2019) (internal citations and quotations omitted). "This means that a cause of action for conversion of money can be stated only where a defendant interferes with the plaintiff's possessory interest in a specific, identifiable sum; the simple failure to pay money owed does not constitute conversion." *Id.* (internal citations and quotations omitted). "Were it otherwise, the tort of conversion would swallow the significant category of contract claims that are based on the failure to satisfy mere contractual rights of payment." *Id.* (internal citations and quotations omitted). "[T]o put the matter simply, a plaintiff has no claim for conversion merely because the defendant has a bank account and owes the plaintiff money." *Id.* (internal citations and quotations omitted).

At the motion to dismiss stage, "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). The FAC alleges that Defendant willfully and maliciously injured Plaintiff, that Defendant intended the consequences of his actions and that injury was substantially certain to result from Defendant's conduct. Thus, the FAC sufficiently alleges the intent elements of § 523(a)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer
(6).

Chapter 7

However, even with the amendments, the FAC fails to allege the elements of conversion. Plaintiff alleges that he loaned the Principal to Defendant, and that Defendant was to repay the Principal to Plaintiff based on the terms in the October Note. Plaintiff alleges that, at a minimum, he has a right to the Principal by virtue of the October Note, when it was "converted" by Defendant. Plaintiff transferred the Principal to ACC Industries, Inc. and Jakdyl, Inc. in 2014. Plaintiff does not allege that Defendant used the Principal in any way other than to which the parties agreed. As stated above, a mere contractual right to payment, without more, will not support a claim for conversion.

Consequently, as to the § 523(a)(6) cause of action, the Court will grant the Motion. Because the Court already granted Plaintiff leave to amend the Complaint and the deficiencies were not cured by an amendment, the Court will dismiss this claim without leave to amend.

F. 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.

Retz, 606 F.3d at 1205.

Here, the FAC makes sufficient allegations under § 727(a)(5). Plaintiff alleges that Defendant has failed to explain satisfactorily the loss of assets from: (i) the Insurance Proceed Transfers; (ii) the Pre-Petition Transfers; (iii) a \$550,000 transfer to Neil Harris in February 2019 as a "[b]usiness investment to be repaid;" and (iv) a \$50,000 transfer to Brian Burr "temporarily" in May 2019.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

With the exception of the \$2,832 transfer of insurance proceeds that occurred after the petition date, the FAC contains sufficient factual allegations as to the Insurance Proceed Transfers and the Pre-Petition Transfers. *See In re Choy*, 569 B.R. 169, 184-185 (Bankr. N.D. Cal. 2017) (stating that Ninth Circuit Court of Appeals precedent limits § 727(a)(5) to a debtor's inexplicable, *pre-petition* loss of assets). Plaintiff alleges that Defendant a few months prior to the petition date owned the funds, that on the petition date Defendant no longer owned the funds, and Defendant's schedules and SOFA do not provide an adequate explanation for the disposition of the funds.

Similarly, Plaintiff has adequately alleged the elements with regard to the transfer to Neal Harris and the transfer to Brian Burr. The transfers were not too remote in time from the petition date and Defendant's amended SOFA does not adequately explain the loss of the funds. Consequently, as to the § 727(a)(5) cause of action, the Court will deny the Motion.

III. CONCLUSION

For the reasons stated above, the Court will grant the Motion as to the § 523(a)(2)(A) claim with leave to amend and the § 523(a)(6) claim without leave to amend. The Court will deny the Motion as to the §§ 523(a)(4) and 727(a)(2), (a)(4) and (a)(5) claims.

Plaintiff will have 14 days from the date of the hearing to file and serve on Defendant and his counsel an amended complaint, or to file and serve notice on Defendant and his counsel that Plaintiff will not do so.

Plaintiff must submit the order within seven (7) days.

FOOTNOTES

1. Pursuant to the October Note, Defendant *and ACC* promised to repay Plaintiff the Principal and to transfer a 25.5% equity interest in ACC to Plaintiff. Neither Defendant nor ACC repaid the Principal to Plaintiff by the October 1, 2017 due date. As such, in 2018, Plaintiff would have been a creditor of ACC, as well as a stockholder (if Plaintiff received an equity interest in accordance with the terms of the October Note).
2. In the Motion, in footnote 6, Defendant cites to *In re Cantrell*, 329 F.3d

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

1119 (9th Cir. 2003) for the proposition that a corporate officer is only an agent and not a fiduciary within the meaning of § 523(a)(4). While it is true that the Ninth Circuit Court of Appeals held in *Cantrell* that a corporate officer is not a fiduciary to the *corporation or its shareholders* for purposes of § 523(a)(4), *Cantrell* is inapposite to this case. In *Cantrell*, the plaintiff was the corporation itself—not a creditor. Further, the corporation was not insolvent, and therefore, *Cantrell* did not discuss California’s trust fund doctrine.

Party Information

Debtor(s):

Peter M. Seltzer

Pro Se

Defendant(s):

Peter M. Seltzer

Represented By
Kathleen C Hipps

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies
Noreen A Madoyan

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 5, 2020

Hearing Room 301

2:30 PM

1:19-11696 Peter M. Seltzer

Chapter 11

Adv#: 1:19-01151 Kessler v. Seltzer

#13.00 Status conference re: first amended complaint for the denial of discharge pursuant to 11 U.S.C. sec 727(a)(2), (a)(4) and (a)(5) and non-dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2), (a) (4) and (a)(6)

fr. 2/19/20; 4/8/20; 4/29/20; 6/24/20

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Michael H Raichelson

Defendant(s):

Peter M. Seltzer

Pro Se

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

1:17-13142 Amir Elosseini

Chapter 11

#1.00 Amended application for payment of final fees and/or expenses

Docket 247

Tentative Ruling:

Grant in part, at this time.

LibertyBell Law Group, P.C. ("Applicant"), special litigation counsel to the debtor – approve fees in the amount of \$40,000 and reimbursement of expenses in the amount of \$2,408.50 (for Aptus Court Reporting), pursuant to 11 U.S.C. § 330, on a final basis. At this time, the Court will not approve \$7,255.50 in fees for D.W. Pyne, CPA and reimbursement of expenses in the amount of \$3,962.82 for the reasons stated below.

D.W. Pyne, CPA is a professional employed by the estate [doc. 136]. As such, pursuant to 11 U.S.C. § 330, in order for Mr. Pyne to receive compensation, Mr. Pyne must file a final fee application that complies with the requirements of LBR 2016-1.

Pursuant to 11 U.S.C. § 330(a)(1), a court may award a professional person employed under § 327 "reimbursement for actual, necessary expenses." Factors relevant to determining if an expense is proper, include: "(i) whether the expense is reasonable and economical, (ii) whether the applicant has provided a detailed itemization of expenses, (iii) whether the expenses appear to be in the nature of non-reimbursable overhead, and (iv) whether the applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court." *In re GSC Group, Inc.*, 502 B.R. 673, 743 (Bankr. S.D.N.Y. 2013).

Regarding Applicant's request for reimbursement of expenses in the amount of \$3,962.82, the application does not include a description of the expenses. Without further explanation, the Court cannot determine whether the expenses are reasonable and whether they are non-compensable overhead.

The Court will continue this hearing to **September 17, 2020 at 10:30 a.m. By**

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

CONT... Amir Elosseini

Chapter 11

September 3, 2020, Applicant must file and serve a supplement to the application, which includes a detailed itemization of the requested expenses as required by LBR 2016-1(a)(1)(F). Pursuant to Local Bankruptcy Rule ("LBR") 2016-1(a)(1)(F), the application must include a summary listing of all expenses by category (*i.e.*, long distance telephone, photocopy costs, facsimile charges, travel, messenger and computer research). As to each unusual or costly expense item, the application must state: (i) the date the expense was incurred; (ii) a description of the expense; (iii) the amount of the expense; and (iv) an explanation of the expense.

The Court will prepare the order.

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, August 6, 2020

Hearing Room 301

10:30 AM

1:19-11900 Juan Lopez Alvareztostado

Chapter 7

#2.00 Trustee's final report and applications for compensation

Nancy Zamora, Chapter 7 Trustee

Docket 17

Tentative Ruling:

Nancy J. Zamora, chapter 7 trustee - approve fees of \$657.50 and reimbursement of expenses of \$23.50, 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):

Juan Lopez Alvareztostado

Represented By
Hector Vega

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

1:20-10007 Jason Scott Fontaine

Chapter 7

#3.00 Trustee's final report and applications for compensation

Nancy Zamora - Chapter 7 Trustee

Docket 76

Tentative Ruling:

Nancy J. Zamora, chapter 7 trustee - approve fees of \$958.25 and reimbursement of expenses of \$30.50, 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):

Jason Scott Fontaine

Represented By
Leonard Pena

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

1:20-10543 Amerigrade Corp.

Chapter 11

#4.00 First and final application for compensation and reimbursement of expenses for Law Offices of Michael Jay Berger

fr. 7/2/20; 07/23/2020;

Docket 42

Tentative Ruling:

The Court will grant the fee application in part and deny it in part.

A. Background

On March 5, 2020, Amerigrade Corp. ("Debtor") filed a voluntary chapter 11 petition. At that time, Debtor was represented by Resnik Hayes Moradi LLP ("Resnik Hayes"). On April 24, 2020, Debtor filed a substitution of attorney, indicating that The Law Offices of Michael J. Berger ("Applicant") was substituted as attorney of record in place of Resnik Hayes [doc. 22].

On May 1, 2020, Applicant filed an application requesting Court approval to be employed by the estate (the "Employment Application") [doc. 25]. In the Employment Application, Applicant disclosed that its retainer of \$15,000 was paid by Evette Adawalla, Debtor's principal's mother and a creditor of the estate [Declaration of Michael Jay Berger, doc. 25, ¶ 13]. Ms. Adawalla allegedly is the beneficiary of a second position deed of trust against certain real property, in which Debtor claims an interest, located at 13219 Filmore Avenue, Pacoima, California (the "Property").

Attached to the Employment Application was a declaration by Ms. Adawalla. In that declaration, Ms. Adawalla states that her interest is not inconsistent to that of Debtor's bankruptcy estate [Declaration of Evette Adawalla, doc. 25, ¶ 4]. Additionally, Ms. Adawalla states that the payment of the retainer was a gift contribution to Debtor and that she would not be seeking repayment from Debtor. *Id.* at ¶ 3.

Also attached to the Employment Application is the signed written fee contract between Debtor and Applicant (the "Retainer Agreement") [doc. 25, Exh. 4]. Pursuant

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

CONT... Amerigrade Corp.

Chapter 11

to the Retainer Agreement, \$10,000 of the retainer was for Applicant's representation of Debtor in its chapter 11 case and \$5,000 of the retainer was for the possible prosecution of an adversary proceeding, regarding a prepetition nonjudicial foreclosure sale.

In relevant part, the Retainer Agreement states:

In addition to the above referenced services, *if I determine there is merit* to the proposed adversary proceeding against Mr. Cooper for unlawful foreclosure on your property located at 13217 Filmore Street Pacoima, CA 91331, against the new owners of the property, and against any other appropriate parties. I will represent you in an adversary proceeding against Mr. Cooper and any other party that should be held accountable for the improper foreclosure and taking of your personal property. This planned adversary proceeding will include all appropriate causes of action. This acknowledges my receipt of payment of \$15,00 from you last night, retaining me both for the Chapter 11 case (\$10,000) and the planned adversary proceeding (\$5,000).

(emphasis added). The Employment Application and notice of the opportunity to request a hearing was served on the United States Trustee, Debtor, Resnik Hayes, Ms. Adawalla and other creditors. No opposition to the Employment Application was timely filed. Accordingly, on May 26, 2020, the Court entered an order granting the Employment Application [doc. 39].

While Applicant was employed by the estate, Applicant filed the Employment Application, two monthly operating reports [docs. 33 and 34] and an opposition to a motion for relief from stay [doc. 30]. The opposition was 31 pages, inclusive of exhibits. Based on certain issues raised in the opposition, the Court continued the hearing on the motion for relief from stay.

On May 21, 2020, Debtor filed another substitution of attorney, indicating that Resnik Hayes was substituted as attorney of record in place of Applicant [doc. 36].

B. The Fee Application

On May 29, 2020, Applicant filed a first and final application for compensation,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

CONT... Amerigrade Corp.

Chapter 11

requesting approval of \$21,851 in fees and reimbursement of \$139.82 in expenses for the period between April 24, 2020 and May 26, 2020 (the "Fee Application") [doc. 42].

On June 18, 2020, Debtor filed an objection to the Fee Application (the "Debtor Objection") [doc. 55]. In the Debtor Objection, Debtor objects to the Fee Application because: (i) the fees sought are not reasonable; (ii) Applicant billed for services in violation of the parties' agreement; (iii) Applicant is not disinterested; and (iv) an adversary complaint was never filed by Applicant. Debtor also details several questionable representations supposedly made by Applicant to induce Debtor to retain Applicant.

In the Debtor Objection, Debtor states that Debtor and Applicant had an agreement that Sofya Davtyan, Esq. would review Debtor's monthly operating reports ("MORs") and be the only point of contact so as to limit fees. Debtor objects to Applicant's billing entries for its senior paralegal, as related to reviewing Debtor's MORs.

On June 23, 2020, Ms. Adawalla filed an untimely objection to the Fee Application (the "Creditor Objection") [doc. 63]. In the Creditor Objection, Ms. Adawalla objects to the Fee Application because: (i) Applicant did not file an adversary proceeding complaint; (ii) Applicant made various representations to induce Ms. Adawalla to retain Applicant; (iii) Applicant was never properly hired; (iv) Applicant regularly induces his clients to retain his girlfriend as an accountant; and (v) Applicant's billing records show lumped billing.

On June 25, 2020, Applicant filed a declaration in reply to the Debtor Objection and the Creditor Objection (the "Reply") [doc. 67]. In the Reply, among other things, Applicant disputes that Mr. Berger made particular representations to Debtor and Ms. Adawalla. Applicant also disputes that it had an agreement with Debtor that it would never use paralegals to provide services.

C. Applicant's Alleged Conduct

Although the Court is concerned by the alleged representations detailed in the Debtor Objection and Creditor Objection, Applicant disputes that those representations were made. If Debtor is concerned about Applicant's conduct or representations in

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

CONT... Amerigrade Corp.

Chapter 11

connection with this bankruptcy case, Debtor may present those issues to the California State Bar.

In addition, whether Applicant "regularly induces" its clients to retain Jenny Liu as an accountant, as a result of her alleged relationship with Mr. Berger, is not relevant to the Court's assessment of the Fee Application. In this case, no employment application to retain Ms. Liu as an accountant was submitted.

Regarding Debtor's contention that Applicant billed for services in violation of the parties' agreement, there is nothing in the Retainer Agreement to indicate that any such agreement was made. Accordingly, the Court will not disallow the fees billed by Applicant's paralegal on that basis alone. As set forth below, the Court will assess the Fee Application based on the standards set forth in 11 U.S.C. § 330.

D. The \$5,000 Retainer for the Adversary Proceeding Complaint

The Court will not order Applicant to return \$5,000 of the retainer. Pursuant to the Retainer Agreement, Applicant was to file the adversary proceeding complaint *if* Applicant determined that the claims were meritorious. As detailed in the Reply and based on the billing entries in the Fee Application, Applicant spent substantial time assessing whether the proposed adversary proceeding had merit, and the opposition to the motion for relief from stay discussed issues regarding the unlawful foreclosure claims. Even though no adversary proceeding complaint was filed, Applicant may be compensated for the time spent investigating and advising the Court of the claims.

Additionally, Applicant's allowed fees are more than the \$15,000 retainer Applicant received. Pursuant to the Retainer Agreement, Debtor agreed to timely pay Applicant's fees. Applicant may use the full \$15,000 retainer to satisfy its approved fees.

E. 11 U.S.C. § 328(c)

"A debtor-in-possession, through the rights granted under 11 U.S.C. § 1107, may employ its own attorney pursuant to § 327(a) by filing an application and obtaining the courts [*sic*] approval." *In re Dynamark, Ltd.*, 137 B.R. 380, 380–81 (Bankr. S.D. Cal. 1991). "Under § 327(a), an attorney must not hold or represent an interest adverse

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

CONT... Amerigrade Corp.

Chapter 11

to the estate and must be a disinterested person." *Id.* Section 101(14)(E) defines 'disinterested person' "as one who does not have a materially adverse interest to the estate by reason of any direct or indirect relationship to or connection with the debtor." *Dynamark, Ltd.*, 137 B.R. at 380–81. "A disinterested professional is one that can make unbiased decisions, free from personal interest, in any matter pertaining to the debtor's estate." *Id.* (citing *In re Kuykendahl Place Associates, Ltd.*, 112 B.R. 847, 850 (Bankr.S.D.Tex.1989)).

Pursuant to Fed. R. Bankr. P. 2014(a), an application for an order of employment "shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee."

Pursuant to 11 U.S.C. § 328(c):

Except as provided in section 327(c), 327(e), or 1107(b) of this title, the court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 or 1103 of this title if, at any time during such professional person's employment under section 327 or 1103 of this title, such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.

Contrary to Debtor's assertion, payment of a debtor's counsel's retainer by a creditor does not necessarily create a disqualifying interest. *See In re Am. Int'l Refinery, Inc.*, 676 F.3d 455, 464 (5th Cir. 2012) (finding that under the totality of the circumstances, creditor's payment of debtor's counsel's retainer did not create a disqualifying interest). Courts apply a totality-of-circumstances approach to determine lack of disinterestedness under § 101(14)(E). *In re AFI Holding, Inc.*, 355 B.R. 139, 152 (B.A.P. 9th Cir. 2006), *aff'd and adopted*, 530 F.3d 832 (9th Cir. 2008).

Here, under the totality of the circumstances, it does not appear that there is a disqualifying interest that would require the Court to deny the Fee Application. In the Employment Application, Applicant properly disclosed that its retainer was paid by Ms. Adawalla. Neither the United States Trustee nor any other party opposed the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

CONT... Amerigrade Corp.

Chapter 11

Employment Application. Further, there is no evidence that Applicant acted contrary to the interests of the estate or gave legal advice that was colored by any loyalty to Ms. Adawalla. Accordingly, based on the source of the retainer provided to Applicant, the Court will not deny the Fee Application.

F. Standards the Court Must Apply to Assess the Fee Application

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 11 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

In addition, secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, *11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, *1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) ("Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant's firm as an overhead expense. Fees

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

CONT... Amerigrade Corp.

Chapter 11

for services that are purely clerical, ministerial, or administrative should be disallowed.").

Moreover, 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).

G. Approval of Administrative Expenses

Having reviewed the pleadings submitted, and based on the standards noted above, the Court will approve Applicant's fees in the amount of \$18,314.90 and reimbursement of Applicant's expenses in the amount of \$139.82, pursuant to 11 U.S.C. § 330, for the period between April 23, 2020 and May 22, 2020, on a final basis. At this time, Applicant may collect 80% of the approved fees and 100% of the approved expenses. The Court will not approve \$3,536.10 in fees for the reasons stated below.

In the Fee Application, Applicant attached billing records indicating that Applicant billed 21.30 hours, totaling \$8,219, in connection with the motion for relief from stay. Considering the standards set forth in § 330(a)(1)(A), this amount is excessive. Accordingly, the Court will allow \$6,000 in fees, for this category.

In addition, Applicant billed 2.40 hours, totaling \$1,428.00, in connection with reviewing Resnik Hayes' employment application. Considering the standards set forth in § 330(a)(1)(A), this amount is excessive. Accordingly, the Court will allow only \$595.00 in fees, for this category.

In accordance with the foregoing, the Court does not approve the fees billed for the services identified below because they are secretarial.

Category	Date	Timekeeper	Description	Rate	Time	Fee
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

CONT... Amerigrade Corp.

Chapter 11

Business Operations	5/20/20	EG	Redact and compile bank statements into 1 PDF, draft E-Mail to Y. Nipha re: same	\$200	0.20	\$40.00
Case Administration	4/29/20	MJB	Forward emails from Roksana Moradi and Matt Resnick to the client per Olivia's request	\$595	0.10	\$59.50
Case Administration	5/18/20	MJB	Exchange emails with Erol G to follow up getting the RHM files for the Amerigrade case	\$595	0.10	\$59.50
Fee/Employment Applications	4/30/20	SD	Back and forth email and text communications with Debtor's principal regarding signatures for Michael Berger's Employment Application	\$495	0.20	\$99.00
Fee/Employment Objections	5/8/20	MJB	Review Amended Notice of Hearing on Application to be Employed as Counsel, calendar hearing date, calendar opposition	\$595	0.10	\$59.50

The following billing entry contains lumped services. Accordingly, the Court will reduce the fees based on lumped billing by 20%, which will reduce the fees sought by \$166.60. *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	Rate	Time	Fee	Reduced Fee
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

10:30 AM

CONT... Amerigrade Corp.

Chapter 11

Category	Date	Timekeeper	Description	Rate	Time	Fee	Reduced Fee
Business Operations	4/29/20	MJB	Review 3 emails from clients while talking on the telephone to the client re a draft email to Frank Lara of LA City re compliance issues with the 2 Filmore street properties of the debtor, draft email to Frank Lara re same and first send the draft to the client to have it approved and then send the final draft to Frank Lara., also discuss the delinquent March MOR and the Motion for Relief from Stay and what will happen next	\$595	1.40	\$833.00	\$666.40

Applicant must submit the order within seven (7) days.

Party Information

Debtor(s):

Amerigrade Corp.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

1:00 PM

1:20-11134 Helping Others International, LLC

Chapter 11

#5.00 Status conference re: chapter 11 case

Docket 1

***** VACATED *** REASON: continued to 8/27/20 per order entered on
8/4/20 doc #39**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

2:00 PM

1:18-10417 Deborah Lois Adri

Chapter 7

#6.00 Creditor Moshe Adri's motion for allowance of administrative expense claim

fr. 7/18/19; 1/23/20(stip); 4/30/20(stip)

Ord appr stip to cont hrg ent 7/28/20

Docket 335

***** VACATED *** REASON: Order continuing to 12/10/20 at 2:30 pm [doc. 373].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub

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**

Thursday, August 6, 2020

Hearing Room 301

2:00 PM

1:19-11777 Winters-Schram & Associates

Chapter 7

- #7.00** Chapter 7 trustee's motion for order:
- (1) Authorizing trustee to sell and assign the estate's rights, title and interest in claims against Arrowhead Investments, LLC;
 - (2) Approving overbid procedures;
 - (3) Finding purchaser is a good faith purchaser; and
 - (4) Authorizing the compromise of certain claims

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):

Winters-Schram & Associates

Represented By
Daniel H Reiss
Lindsey L Smith

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan
Jeremy Faith

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

2:00 PM

1:20-10910 Thomas A Perez

Chapter 7

#8.00 Application by Nancy Hoffmeier Zamora, Chapter 7 Trustee, for approval to employ Rodeo Realty, Inc. as Real Estate Broker

Order appr stip to cont hrg ent 08/04/20

Docket 15

***** VACATED *** REASON: Continued hearing to 08/13/20 per order doc # 42.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

2:00 PM

1:20-11047 4433 Florin Road, LLC

Chapter 11

#9.00 Motion for authority for interim use of cash collateral
fr. 6/25/20

Docket 16

Tentative Ruling:

Grant in part and deny in part.

Objecting secured creditor Community Commerce Bank ("Community") acknowledges that the debtor must use cash collateral for certain expenses to maintain the debtor's office building. At this time, the Court will allow the debtor's use of cash collateral in accordance with the proposed budget, with the exception that, at this time, the Court will not approve the use of cash collateral to pay legal and/or accounting fees and expenses.

Pursuant to 11 U.S.C. § 327, the employment of lawyers and accountants requires the approval of the Court, and pursuant to 11 U.S.C. § 330, their fees and expenses are subject to approval by the Court. Consequently, the debtor may not use cash collateral for payment of professionals' fees and expenses, unless and until the Court enters an order allowing such payment, after concluding that the requested professional fees and expenses are reasonable, **and** that any objecting creditors with an interest in that cash collateral are adequately protected for that use.

Regarding Community's contention that there is cause to dismiss this case, the Court will address those arguments in connection with a motion to dismiss.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

4433 Florin Road, LLC

Represented By
Douglas M Neistat

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 6, 2020

Hearing Room 301

2:00 PM

1:20-11048 7171 Bowling Drive, LLC

Chapter 11

#10.00 Motion for authority for interim use of cash collateral
fr. 6/25/20

Docket 9

Tentative Ruling:

Grant in part and deny in part.

Objecting secured creditor Community Commerce Bank ("Community") acknowledges that the debtor must use cash collateral for certain expenses to maintain the debtor's office building. At this time, the Court will allow the debtor's use of cash collateral in accordance with the proposed budget, with the exception that, at this time, the Court will not approve the use of cash collateral to pay legal and/or accounting fees and expenses.

Pursuant to 11 U.S.C. § 327, the employment of lawyers and accountants requires the approval of the Court, and pursuant to 11 U.S.C. § 330, their fees and expenses are subject to approval by the Court. Consequently, the debtor may not use cash collateral for payment of professionals' fees and expenses, unless and until the Court enters an order allowing such payment, after concluding that the requested professional fees and expenses are reasonable, **and** that any objecting creditors with an interest in that cash collateral are adequately protected for that use.

Regarding Community's contention that there is cause to dismiss this case, the Court will address those arguments in connection with a motion to dismiss.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

7171 Bowling Drive, LLC

Represented By
Douglas M Neistat

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 11, 2020

Hearing Room 301

9:30 AM

1:00-00000

Chapter

#0.00 PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:
JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR
(WWW.CACB.USCOURTS.GOV)

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 11, 2020

Hearing Room 301

10:30 AM

1:14-15290 Adan Ramon Rosales and Blanca Estela Rosales

Chapter 13

#20.00 Trustee's motion to dismiss case due to expiration of plan
fr. 4/14/20; 7/14/20

Docket 75

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adan Ramon Rosales

Represented By
Donald E Iwuchuku

Joint Debtor(s):

Blanca Estela Rosales

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 11, 2020

Hearing Room 301

10:30 AM

1:17-12163 Cynthia Ann Donahue

Chapter 13

#21.00 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 refunds

fr. 2/11/20; 4/14/20; 6/9/20

Docket 49

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, August 11, 2020

Hearing Room 301

10:30 AM

1:17-13413 Mark Efrem Rosenberg

Chapter 13

#22.00 Trustee's Motion to dismiss case due to material default of the plan pursuant to §1307(c)(6) failure to submit all tax refunds

fr. 2/11/20; 5/5/20; 7/14/20

Docket 142

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
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 11, 2020

Hearing Room 301

10:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

#23.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 12/10/19; 2/11/20; 3/10/20; 4/14/20; 6/9/20

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 11, 2020

Hearing Room 301

10:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#24.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 1/14/20; 3/10/20; 6/9/20; 7/14/20

Docket 56

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, August 11, 2020

Hearing Room 301

10:30 AM

1:18-11251 James Lemond Robinson

Chapter 13

#24.10 Trustee's motion to dsmiss case for failure to make plan payments

Docket 48

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 11, 2020

Hearing Room 301

11:00 AM

1:15-12329 Rene Dashiell

Chapter 13

#25.00 Application of attorney for debtor for additional fees and related expenses in a pending chapter 13 case subject to a rights and responsibilities agreement (RARA)

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):

Rene Dashiell

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 11, 2020

Hearing Room 301

11:00 AM

1:15-12329 Rene Dashiell

Chapter 13

#25.10 Opposition to Trustee's notice of intent to increase the percentage to unsecured creditors

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rene Dashiell

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 11, 2020

Hearing Room 301

11:00 AM

1:17-10822 Anselmo A Baca and Maria De Lourdes Mendoza

Chapter 13

#26.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 37

Tentative Ruling:

Grant, subject to the conditions in the chapter 13 trustee's comment [doc. 41].

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):

Anselmo A Baca

Represented By
Lauren Ross

Joint Debtor(s):

Maria De Lourdes Mendoza

Represented By
Lauren Ross

Trustee(s):

Elizabeth (SV) 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 11, 2020

Hearing Room 301

11:00 AM

1:19-11540 Justin Taeseung Lee and Anh Quynh Lee

Chapter 13

#27.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w)
to modify plan or suspend plan payments

Docket 33

Tentative Ruling:

On October 3, 2019, the Court entered an order confirming the debtors' chapter 13 plan (the "Order") [doc. 26]. Pursuant to the Order, the debtors are to pay \$4,648 per month for 55 months. The plan is a 100% plan. The Order also provides that the applicable commitment period is five years if the plan pays less than 100%.

On July 6, 2020, the debtors filed a motion to modify their chapter 13 plan (the "Motion") [doc. 33]. In the Motion, the debtors propose to reduce the plan payment to \$1,876 per month from July 2020 to July 2024. If the Motion is granted, the last plan payment due would be payable 54 months after the first plan payment was due. The proposed modification will reduce the percentage paid to general unsecured creditors from 100% to 41%. The debtors state that they are requesting a modification of their plan because their income has decreased. The debtors do not explain why their income has decreased or whether this is a temporary decrease.

On July 21, 2020, the chapter 13 trustee filed an objection to the Motion (the "Objection") [doc. 34]. In the Objection, the chapter 13 trustee states that she disapproves of the proposed modification because: (1) the modification would reduce the percentage paid to unsecured creditors without providing for a five year commitment period as required by the Order; and (2) the debtors have not explained why their income was reduced and the expected duration of their reduced income.

The Court will continue this hearing to **September 8, 2020 at 11:00 a.m. By August 25, 2020**, the debtors must file a response to the Objection addressing the issues raised by the chapter 13 trustee.

Appearances on August 11, 2020 are excused.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 11, 2020

Hearing Room 301

11:00 AM

CONT... Justin Taeseung Lee and Anh Quynh Lee

Chapter 13

Debtor(s):

Justin Taeseung Lee

Represented By
Barry E Borowitz

Joint Debtor(s):

Anh Quynh Lee

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, August 11, 2020

Hearing Room 301

11:00 AM

1:19-11998 Joseph Lisi and Cynthia Lisi

Chapter 13

#28.00 Motion re: objection to claim number 4 by claimant Heriberto Perez
fr, 12/10/19; 2/11/20; 5/5/20;

Docket 25

Tentative Ruling:

Given the United State District Court's order denying the stipulation to withdraw the reference regarding liquidation of the creditor's wrongful death claim, the Court will set the following dates and deadlines:

Within seven (7) days after this hearing, the debtors must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the hearing, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the hearing to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 11/13/20.

Deadline to complete one day of mediation: 11/30/20.

Deadline to file status report: 12/3/20.

Continued status conference date: 12/10/20 at 1:30 p.m.

At the continued status conference, the Court will assess how to proceed to trial.

Within seven (7) days after this hearing, the debtors must submit a Scheduling Order.

Party Information

Debtor(s):

Joseph Lisi

Represented By
David S Hagen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 11, 2020

Hearing Room 301

11:00 AM

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 11, 2020

Hearing Room 301

11:00 AM

1:20-10024 Antonio Jesus Almeida

Chapter 13

#29.00 Motion under 11 U.S.C. sec 110 for fines and disgorgement of fees against bankruptcy petition preparer Jenny Casco

fr. 6/9/20

Docket 33

Tentative Ruling:

Grant.

At the prior hearing on June 9, 2020, the Court continued the hearing for Jenny Casco ("Respondent") to file a response to the motion. On July 28, 2020, Respondent timely filed a response (the "Response") [doc. 36].

Pursuant to 11 U.S.C. § 110(a):

- (1) "bankruptcy petition preparer" means a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing; and
- (2) "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

In the Response, Respondent admits that she prepared the debtor's bankruptcy documents and collected monies to prepare those documents, including collecting the filing fee. Response, ¶¶ 6-7. Nowhere in the Response does Respondent state that she is a licensed attorney or that she is an employee of an attorney under the direct supervision of that attorney.

Accordingly, Respondent is a bankruptcy petition preparer as defined in § 110(a)(1). As such, Respondent was required to comply with the provisions of 11 U.S.C. § 110. Respondent did not and is subject to fines for her noncompliance. Pursuant to 11 U.S.C. § 110(h)(5), Respondent must remit the fines set forth below to the Office of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 11, 2020

Hearing Room 301

11:00 AM

CONT... **Antonio Jesus Almeida**
the U.S. Trustee:

Chapter 13

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): **\$100.00** (\$50.00 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): **\$100.00** (\$50.00 per violation)
3. Respondent failed to provide the debtor a copy of the documents filed on his behalf as commanded by 11 U.S.C. § 110(d): **\$50.00**. Pursuant to 11 U.S.C. § 110(d), Respondent was required to provide the debtor with a copy of each document filed on his behalf *not later* than the time at which the document was filed. In the Response, Respondent states that she provided the debtor with copies of the documents on his last visit to Respondent's office. This does not comply with the provisions in 11 U.S.C. § 110(d).
4. Respondent executed ten documents on behalf of the debtor in violation of 11 U.S.C. § 110(e)(1): **\$500.00** (\$50.00 per violation). Respondent did not address the debtor's testimony regarding his signature being forged on ten documents [Declaration of Antonio Jesus Almeida, doc. 34, ¶ 29].
5. Respondent gave legal advice in violation of 11 U.S.C. § 110(e)(2): **\$50.00**. In the Response, Respondent admits that she "advised Mr. Almeida that he should proceed with filing a lawsuit against foreclosing entities, and both parties discussed the option of filing a new Bankruptcy Chapter 13 in order to stop the January 7, 2020 lockout on Hayward property." Response, ¶ 6.
6. 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): **\$50.00**. In the Response, Respondent states that she informed the debtor that the cost of the lawsuit would be \$2,500, plus a filing fee of \$310 for filing the bankruptcy petition. Response, ¶ 6.
7. Respondent failed to file an accurate declaration under penalty of perjury disclosing

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 11, 2020

Hearing Room 301

11:00 AM

CONT... Antonio Jesus Almeida

Chapter 13

the fee she received on behalf of the debtor(s) as dictated by 11 U.S.C. § 110(h)(2):
\$50.00

Because respondent did not disclose her identity, the Court will triple these fines pursuant to 11 U.S.C. § 110(l)(2)(D), for a total of **\$2,700.00**. Pursuant to 11 U.S.C. § 110(h)(3)(A)(i), the Court will also require disgorgement of **\$1,100.00** in unreasonable fees paid by the debtor.

In addition, by forging the debtor's signature on ten documents filed in this case, 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.

Thus, respondent must remit the following amounts to the Office of the U.S. Trustee: **\$3,100.00 to the debtor pursuant to 11 U.S.C. § 110(h)(3) and 11 U.S.C. § 110(i) and \$2,700.00 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):

Antonio Jesus Almeida	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, August 11, 2020

Hearing Room 301

11:30 AM

1:12-17282 Humberto B Flores and Ema R Flores

Chapter 13

#30.00 Motion to avoid lien property lien with FIA Card Services, N.A.

Docket 95

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):

Humberto B Flores

Represented By
Matthew D. Resnik

Joint Debtor(s):

Ema R Flores

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 12, 2020

Hearing Room 301

9:30 AM

1:20-10269 John Goulter

Chapter 13

#1.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY
VS
DEBTOR

fr. 6/17/20; 7/15/20

Stip resolving motion filed 7/27/20

Docket 22

***** VACATED *** REASON: Order entered resolving motion [doc. 35].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Goulter

Represented By
Stella A Havkin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

Adv#: 1:17-01017 Weil v. Cazares et al

- #2.00** 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);
11/6/19; 1/8/20; 03/04/20 (stip); 6/10/20

Docket 78

***** VACATED *** REASON: Adversary dismissed 7/13/2020 (doc # 126)**

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT... Dean Albert Maury Cazares

Chapter 7

Stanley Vincent

Pro Se

Plaintiff(s):

Diane C. Weil

Represented By
C John M Melissinos

Trustee(s):

Diane Weil (TR)

Represented By
C John M Melissinos

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01019 Miller, Chapter 7 Trustee v. Ride on Autos. a California corporation

#3.00 Status conference re: complaint for 1. breach of oral contract;
2. money had and received; 3. open book account; 4. accounting;
5. declaratory relief; 6. turnover of property of the estate; 7. avoidance
of postpetition transfers; 8. recovery of postpetition transfers; and
9. preservation of postpetition transfers

fr. 4/15/20(stip), 4/29/20; 6/17/20

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 21, 2020.**

To date, the Court has not entered default under Local Bankruptcy Rule 7055-1(a) [see doc. 18]. 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 18, 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 August 12, 2020 is excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT... Deborah Lois Adri

Chapter 7

James R Selth

Defendant(s):

Ride on Autos. a California

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Cathy Ta

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, August 12, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01065 Lev Investments, LLC v. SENSIBLE CONSULTING AND

#4.00 Order to show cause re: remand and status conference
re: removed proceeding

Docket 1

Tentative Ruling:

The Court will sever the claims and remand this action in part.

I. BACKGROUND

A. The State Court Complaint

On June 20, 2019, Lev Investments, LLC ("Debtor") filed a complaint in state court against Michael Leizerovitz, Sensible Consulting and Management, Inc. ("Sensible Consulting"), Ruvin Feygenberg and Ming Zhu, LLC ("Ming Zhu"), initiating this lawsuit (the "State Court Action"). Notice of Removal, Exhibit 1. The defendants filed demurrers to the complaint. *Id.* After hearings on the demurrers, the state court sustained the demurrers with leave to amend. *Id.*

On September 27, 2019, Debtor filed a first amended complaint (the "Complaint"). *Id.* Through the Complaint, Debtor asserted claims for breach of implied covenant against encumbrances, quiet title, usury and declaratory relief. *Id.* In relevant part, Debtor alleged—

On January 31, 2019, Mr. Feygenberg and Mr. Leizerovitz signed a grant deed transferring the real property located at 13854 Albers Street, Sherman Oaks, CA 91401 (the "Albers Property") to Debtor. Mr. Feygenberg and Sensible Consulting provided a loan secured by the Albers Property. Pursuant to the loan agreement, the interest rate amounted to 23% per annum. Mr. Feygenberg then assigned his interest in the deed of trust to Sensible Consulting.

At the time Mr. Feygenberg and Mr. Leizerovitz executed the grant

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

deed, they covenanted that the Albers Property was free of liens and encumbrances. However, the Albers Property was encumbered by taxes and a judgment in favor of Ming Zhu. Debtor requests a judgment that it is the owner in fee simple of the Albers Property and that Defendants do not have an interest in the Albers Property.

Id.

On October 24, 2019, Ming Zhu filed a demurrer to the Complaint, and on November 1, 2019, Mr. Leizerovitz, Mr. Feygenberg and Sensible ("Defendants") filed their demurrer to the Complaint. *Id.* On February 18, 2020, the state court held hearings on the demurrers. *Id.* At that time, the state court sustained Ming Zhu's demurrer without leave to amend, dismissing Ming Zhu from this action. *Id.* The state court also dismissed the quiet title cause of action without leave to amend. *Id.* As to Mr. Feygenberg and Mr. Leizerovitz, the state court dismissed the usury and declaratory relief causes of action without leave to amend, but overruled the demurrer as to the breach of implied covenant against encumbrances claim. *Id.* Finally, as to Sensible, the state court overruled the demurrer as to the breach of implied covenant and usury claims, sustained the demurrer as to the quiet title claim without leave to amend and sustained the demurrer as to the declaratory relief claim with leave to amend. *Id.*

B. The Cross-Complaint

On March 20, 2020, Defendants filed an answer to the Complaint. *Id.* Concurrently, Defendants filed a cross-complaint (the "Cross-Complaint") against Debtor, Dmitri Lioudkovski, Yevgeniya Lisitsa and Lisitsa Law, Inc. (the "Lisitsa Parties") and Real Property Trustee, Inc. ("RPT") and Mike Kemel (the "RPT Parties"). *Id.* In the Cross-Complaint, Defendants asserted causes of action for breach of contract, breach of fiduciary duty, concealment, indemnity, declaratory relief, quiet title, cancellation of instruments, wrongful foreclosure and declaratory relief. *Id.*

In December 2018, Mr. Feygenberg and Mr. Leizerovitz entered into an agreement with Debtor for Debtor's acquisition of the Albers Property. The parties planned to purchase a defaulted promissory note secured by a first position deed of trust (the "Note" and the "DOT"), which was in the process of foreclosure. The parties planned to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

complete the non-judicial foreclosure for Debtor to obtain title to the Albers Property.

Mr. Feygenberg and Mr. Leizerovitz acted as lenders secured by the Albers Property. Ms. Lisitsa and Lisitsa Law acted as counsel for all parties to the agreement. Pursuant to the agreement, Debtor was to contribute \$1,022,500 towards the purchase of the Note and the DOT. However, unbeknownst to Mr. Feygenberg and Mr. Leizerovitz, Mr. Lioudkovski made secret deals with others to obtain the funds Debtor needed to purchase the Note and the DOT and promised the secret lenders first position deeds of trust. Ms. Lisitsa was aware of the secret loans, and cross-complainants believe one of the secret lenders is a relative of Ms. Lisitsa.

On December 31, 2018, Debtor, Mr. Feygenberg and Mr. Leizerovitz acquired the Note and the DOT. On January 30, 2019, after Ms. Lisitsa represented these parties in litigation against the owner of the Albers Property, the foreclosure sale occurred. Despite the agreement that only Debtor would take title to the Albers Property, the foreclosure trustee, under the direction of Debtor and Mr. Lioudkovski, issued a Trustee's Deed naming Debtor, Mr. Feygenberg and Mr. Leizerovitz as owners. One day later, Ms. Lisitsa prepared a grant deed to divest Mr. Feygenberg's and Mr. Leizerovitz's interest in the Albers Property, and a deed of trust in favor of Mr. Feygenberg and Mr. Leizerovitz. However, Ms. Lisitsa, acting in concert with Debtor and Mr. Lioudkovski, did not record these documents until March 22, 2019, after multiple demands from cross-complainants.

In early March 2019, Debtor, acting through Ms. Lisitsa, asked the cross-complainants to provide a pay-off demand. Debtor also informed the cross-complainants that there was a problem because there was a judgment lien against Mr. Feygenberg; however, the problem would not have arisen had Mr. Feygenberg never been placed on title to the Albers Property.

Debtor failed to contribute the \$1,022,500 of its own funds and, as a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

result, breached the agreement between the parties. Debtor, Mr. Lioudkovski and the Lisitsa Parties also breached fiduciary duties owed to Defendants by concealing the secret loans, and these parties should indemnify Defendants for any costs incurred litigating the secret loans.

In addition to these allegations regarding the Albers Property, Mr. Leizerovitz also asserted causes of action for quiet title, cancellation of instruments, wrongful foreclosure and injunctive relief based on the following allegations regarding a different transaction—

Coachella Vineyard Luxury RV Park, LLC ("RV") owned vacant land in Coachella, California (the "RV Property"). Prior to July 2018, Mr. Leizerovitz held deeds of trust encumbering the RV Property. Mr. Leizerovitz agreed to release his deed of trust to allow RV to obtain new financing for development of the RV Property. The new financing included a loan, made by Debtor on July 31, 2018, in the principal amount of \$2 million. This loan was secured by a first position deed of trust against the RV Property.

In return for releasing his deeds of trust, Mr. Leizerovitz received an unsecured promissory note in the amount of \$400,000 and a promissory note secured by a deed of trust against the RV Property in the amount of \$500,000. In February 2019, RV agreed that the unsecured note would be secured by the RV Property as an extension of credit. Additionally, Mr. Leizerovitz agreed to provide RV with another \$50,000 loan secured by the deed trust. As such, the deed of trust in favor of Mr. Leizerovitz totaled \$950,000 as a third position lien.

On June 17, 2019, Debtor declared its loan in default. The Notice of Default was prepared by RPT and Mr. Kemel and was in the amount of \$2,450,244.27. On September 19, 2019, Debtor recorded a Notice of Sale set for October 15, 2019. RV then filed a lawsuit against Debtor in state court. The state court allowed a foreclosure, but reduced Debtor's demand amount.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

Mr. Leizerovitz was interested in acquiring the RV Property through the foreclosure. However, on November 12, 2019, Mr. Leizerovitz learned that the RPT Parties conducted the foreclosure for Debtor on November 7, 2019, in violation of California Civil Code § 2924g(d); Mr. Leizerovitz was denied the opportunity to attend the foreclosure and purchase the RV Property. In addition, Debtor credit bid \$2.5 million, an amount in excess of the amount allowed by the state court.

RV demanded that the foreclosure be set aside, but cross-defendants have failed to cancel the Trustee's Deed or confirm RV's title to the RV Property, which would restore Mr. Leizerovitz's secured interest in the RV Property.

C. Miscellaneous State Court Matters

On January 19, 2020, while litigating the State Court Action, Defendants filed a complaint against the Lisitsa Parties for legal malpractice (the "Malpractice Action"). Request for Judicial Notice [doc. 23], Exhibit C. The Malpractice Action involves the Lisitsa Parties' representation of Defendants in connection with the real property transactions outlined above.

On May 8, 2020, the RPT Parties filed a declaration of non-monetary status, asserting that they were sued solely in their capacity as trustee, and not because of wrongful acts or omissions on their part. *Id.* On May 22, 2020, the state court held a hearing and issued a ruling requiring the RPT Parties to participate in the lawsuit.

On May 15, 2020, Defendants filed a Notice of Related Case in the State Court Action, referencing the Malpractice Action. *Id.* On May 22, 2020, Debtor and Mr. Lioudkovski filed an answer to the cross-complaint. On June 12, 2020, the RPT Parties filed a motion to compel the depositions of Defendants and requested sanctions against these parties. *Id.* On June 19, 2020, the Lisitsa Parties filed a demurrer to the Cross-Complaint, set for hearing before the state court on August 13, 2020. RJN, Exhibit A.

D. Debtor's Bankruptcy Case and the Removal

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

On June 1, 2020, Debtor filed a voluntary chapter 11 petition. On June 26, 2020, Defendants removed the state court action to this Court.

On July 20, 2020, Ms. Lisitsa and Lisitsa Law filed a notice of appearance and request for jury trial [doc. 12]. On July 23, 2020, RPT and Mr. Kemel filed a statement under FRBP 9027(e)(3) indicating they do not consent to entry of a final order or judgment by this Court [doc. 15]. On the same day, RPT and Mr. Kemel filed a demand for a jury trial [doc. 16].

On July 24, 2020, RPT and Mr. Kemel filed a brief requesting remand of this action [doc. 18]. RPT and Mr. Kemel also provided the docket from the state court action, which reflects several upcoming hearings calendared before the state court. On the same day, Ms. Lisitsa and Lisitsa Law filed their brief requesting remand of this action [doc. 21]. On July 29, 2020, Defendants filed a brief opposing remand ("Defendants' Brief") [doc. 24]. On July 29, 2020, Debtor filed a joinder to Defendants' Brief [doc. 27].

II. ANALYSIS

A. Subject Matter Jurisdiction

Removal of state court actions to federal district court is governed by 28 U.S.C. §§ 1441 – 1455. Removal and remand of actions related to bankruptcy cases is governed by § 1452.

- (a) A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.
- (b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. . . .

28 U.S.C. § 1452.

The party seeking removal bears the burden of establishing federal jurisdiction. *Id.* As

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

set forth in § 1452, removal to a bankruptcy court requires that the court have jurisdiction of such claim or cause of action under 28 U.S.C. § 1334. 28 U.S.C. § 1334(b), with regard to bankruptcy cases and proceedings, provides that:

Except as provided by subsection (e)(2) and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

1. Arising Under Jurisdiction

"A matter arises under the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

2. Arising In Jurisdiction

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings" *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11, or 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pegasus Gold Corp., 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

"[C]ivil proceedings are not within 28 U.S.C. § 1334(b)'s grant of jurisdiction if they... 'are so tangential to the title 11 case or the result of which would have so little impact on the administration of the title 11 case... Put another way, litigation that would not have an impact upon the administration of the bankruptcy case, or on property of the estate, or on the distribution to creditors, cannot find a home in the district court based on the court's bankruptcy jurisdiction.'" *In re Wisdom*, 2015 WL 2128830, at *10 (Bankr. D. Idaho May 5, 2015) (quoting 1 Collier on Bankruptcy, ¶ 3.01[3][e][v] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014)).

Here, the Court does not have "arising under" jurisdiction because none of the claims asserted by any of the parties involve a provision of the Bankruptcy Code. In addition, the Court lacks "arising in" jurisdiction because the causes of action in the Complaint and Cross-Complaint are not unique to bankruptcy and do not depend on the existence of a bankruptcy case.

However, the Court has "related to" subject matter jurisdiction over the Complaint and the Cross-Complaint. Both pleadings involve claims by or against Debtor, which may impact Debtor's assets and liabilities. In addition, the pleadings involve assets of the estate, such as the Albers Property and Debtor's interest in the RV Property. Nevertheless, as discussed below, the Court will remand part of this matter to state court.

B. Remand

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

"Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground." *In re Enron Corp.*, 296 B.R. 505, 508 (C.D. Cal. 2003). 28 U.S.C. § 1452(b) provides, in pertinent part: "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." "[E]ven where federal jurisdiction attaches in actions 'related to' bankruptcy proceedings, Congress has explicitly provided for courts to find that those matters are more properly adjudicated in state court." *Parke v. Cardsystem Solutions, Inc.*, 2006 WL 2917604 (N.D. Cal. October 11, 2006) (quoting *Williams v. Shell Oil Co.*, 169 B.R. 684, 690 (S.D. Cal. 1994)).

Courts generally consider up to fourteen factors in deciding whether to remand a case to state court. *Enron*, 296 B.R. at 508. Factors courts should consider in deciding whether to remand are:

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than [section] 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden on the bankruptcy court's docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of nondebtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

Id., 508 n.2; *see also In re Cytodyn of New Mexico, Inc.*, 374 B.R. 733, 738 (Bankr.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC
C.D. Cal. 2007).

Chapter 11

Here, the Court will sever the claims and remand this matter in part. The Court will not remand the remaining claims in the Complaint, or the claims in the Cross-Complaint asserted against Debtor and relating to the Albers Property (the "Albers Claims"). The Court will remand all of the claims against the Lisitsa Parties (the "Lisitsa Claims"), and all of the claims involving the RV Property (including against Debtor) to state court (the "RV Claims").

As to the Albers Claims, Defendants and Debtor consent to entry of a final order by this Court. As such, the Court will be able to adjudicate these claims in a prompt fashion. In addition, the Albers Claims may impact the sale of the Albers Property and the amount to be distributed from any such sale. To prevent significant delays related to administration of the Albers Property, and because the Court may adjudicate related issues in the *FR LLC v. Lev Investments, LLC et al.* proceeding (the "FR Proceeding") [1:20-ap-01060-VK], the Court will not remand the Albers Claims to state court.

However, the Court will remand the Lisitsa Claims and the RV Claims to state court. [FN1]. Unlike Debtor and Defendants, the Lisitsa Parties and RPT Parties do not consent to entry of a final order or judgment by this Court. While some of these claims may be statutorily "core," Defendants have not shown that any of the claims are constitutionally core under *Stern v. Marshall*, 564 U.S. 462, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011). Thus, if the Court did not remand these claims, the Court would have to submit a Report and Recommendation to the District Court, delaying final resolution of these claims.

In addition, both the Lisitsa Parties and RPT Parties have demanded a jury trial. While the demands are not timely under Local Bankruptcy Rule 9027-1(e), denying the Lisitsa Parties' and RPT Parties' request for remand would prejudice these parties because they would not be deprived of a jury trial before the state court. Moreover, the Lisitsa Claims and the RV Claims involve exclusively California law, including claims not commonly litigated in bankruptcy court. Defendants also filed a Notice of Related Action before the state court, acknowledging that the Malpractice Action as a related proceeding. Further, there is no jurisdictional basis over the Lisitsa Claims and RV Claims other than 28 U.S.C. § 1334.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

The Lisitsa Claims and RV Claims may impact the amount of claims asserted by or against the estate; however, unlike the Albers Claims or the FR Proceeding, the Lisitsa Claims and RV Claims will not have as direct an impact on administration of assets of the estate. As such, a majority of the factors weigh in favor of remanding the Lisitsa Claims and RV Claims to state court. [FN2].

III. CONCLUSION

The Court will remand the Lisitsa Claims and RV Claims to state court. The Court will not remand the Albers Claims. The Court will prepare that order.

Defendants and Debtor must be prepared to discuss the following dates and deadlines:

Within seven (7) days after this status conference, Debtor must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, Debtor and Defendants must inform the Court of their choice of Mediator and Alternate Mediator.** Debtor and Defendants should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 11/30/20.

Deadline to complete one day of mediation: 12/18/20.

Deadline to file pretrial motions: 1/15/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 2/3/21.

Pretrial: 2/17/21 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after this hearing, Debtor must submit a Scheduling Order. Within seven (7) days after this hearing, Debtor also must submit an order conforming to the ruling above. If any of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

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).

FOOTNOTES

1. The RPT Parties briefly discuss mandatory abstention. However, 28 U.S.C. § 1334(c)(2) does not apply to removed proceedings. *See In re Lazar*, 237 F.3d 967, 981 (9th Cir. 2001). In any event, because the Court is exercising its discretion to remand the RV Claims, the Court need not rely on mandatory abstention as a basis for remanding the claims involving the RPT Parties.
2. Because the Court is remanding the Lisitsa Claims and RV Claims to state court, the Court will not preside over Defendants' request for default against the RPT Parties [docs. 7-10] or the Lisitsa Parties' and RPT Parties' motions to dismiss the Cross-Complaint [docs. 19, 20].

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

SENSIBLE CONSULTING AND

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

RUVIN FEYGENBERG

Represented By
John Burgee

Ming Zhu LLC

Pro Se

DOES 1 through 100, inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Plaintiff(s):

Lev Investments, LLC

Pro Se

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

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

#5.00 Motion for judgment on the pleadings

fr. 12/11/19; 1/22/20; 2/26/20; 3/18/20(stip); 4/29/20(stip);
6/10/20 (stip)

Stip to continue filed 8/3/20

Docket 31

***** VACATED *** REASON: Order approving stip entered 8/4/20.
Hearing continued to 2/10/20 at 2:30 PM.**

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

Represented By

Dane W Exnowski

Nationstar Mortgage LLC, A

Represented By

Dane W Exnowski

Bank of America, N.A, a National

Represented By

Laura G Brys

Payam Khodadadi

Aztec Foreclosure Corporation., a

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

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, August 12, 2020

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

- #6.00** 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; 12/4/19; 2/19/20; 3/18/20(stip);
4/29/20(stip); 6/10/20 (stip);

Stip to continue filed 8/3/20

Docket 1

***** VACATED *** REASON: Order approving stip entered 8/4/20.
Hearing continued to 2/10/20 at 2:30 PM.**

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 12, 2020

Hearing Room 301

2:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

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**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

**#1.00 Debtor's second amended disclosure statement hearing
describing second amended chapter 11 plan of reorganization**

Docket 258

Tentative Ruling:

Approve "Debtor's Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization."

Proposed dates and deadlines regarding "Debtor's Second Amended Chapter 11 Plan of Reorganization" (the "Plan")

Hearing on confirmation of the Plan: **October 8, 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: **August 21, 2020.**

The debtor must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in impaired classes) on all creditors and the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtor: **September 18, 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: **September 28, 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 Office of the U.S. Trustee and any party who objects to confirmation.

The debtor must submit an order incorporating the above dates, times and deadlines

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

CONT... Christopher Sabin Nassif
within seven (7) days.

Chapter 11

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M. Jonathan Hayes
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

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);
12/12/19; 1/23/20; 3/26/20(stip); 4/9/20; 6/25/20

Docket 1

Tentative Ruling:

The debtor's most recently filed monthly operating report ("MOR") for June 2020 [doc. 266] indicates that the debtor has not paid the United States Trustee quarterly fees for the first and second quarters of 2020. The last quarterly period listed on the MOR was for the last quarter of 2019. Has the debtor paid these fees?

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 8/29/19/ 1/23/20; 3/26/20

Docket 1

Tentative Ruling:

The Court will set a hearing on the adequacy of the debtor's disclosure statement [doc. 107] at **1:00 p.m. on October 8, 2020**. The debtor must file and serve notice of the hearing and the deadline to file objections to the proposed disclosure statement, along with notice of the ability to obtain a copy of the plan and disclosure statement from debtor's counsel, on all parties in interest.

The Court will continue this status conference to the same time and date.

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.

Appearances on August 13, 2020 are excused.

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

1:20-10621 Jasmin DeVillar

Chapter 11

#4.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

On March 5, 2017, Jasmin DeVillar ("Debtor") filed a voluntary chapter 13 petition, initiating case 1:17-bk-10553-VK. Debtor was represented by Dana M. Douglas. During the pendency of that chapter 13 case, Debtor did not confirm a chapter 13 plan.

On September 21, 2017, on Debtor's motion, the Court entered an order converting Debtor's prior case to one under chapter 11 (the "Conversion Order") [1:17-bk-10553-VK, doc. 30]. Pursuant to the Conversion Order, Debtor had 14 days to file a Chapter 11 Statement of Your Current Monthly Income and a list containing Debtor's 20 largest unsecured creditors. Debtor did not timely file either of these documents. Consequently, on October 17, 2017, the Court dismissed Debtor's prior case [1:17-bk-10553-VK, doc. 34].

On March 14, 2020, Debtor filed a voluntary chapter 11 petition, initiating the pending case. Debtor is again represented by Ms. Douglas. On July 30, 2020, Debtor filed an initial chapter 11 status conference report [doc. 27]. In that status report, Debtor states that she intends to file a motion under 11 U.S.C. § 522(f) to avoid a tax lien in favor of the California Department of Tax and Fee Administration (the "CDTFA"). On June 10, 2020, the CDTFA filed proof of claim 17-1, asserting a secured claim in the amount of \$150,162.89 based on liens recorded pursuant to Cal. Rev. & Tax. Code § 6757 (the "Tax Lien").

On July 25, 2020, Ms. Douglas filed an application to be employed as debtor in possession counsel, requesting *nunc pro tunc* employment as of March 13, 2020 [doc. 25]. In that application, Ms. Douglas does not provide an explanation as to why she waited four months after she began providing services to Debtor to file an employment application. On August 6, 2020, the United States Trustee filed an objection to that employment application [doc. 28].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

CONT... Jasmin DeVillar

Chapter 11

"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, Ms. Douglas has failed to provide a satisfactory explanation for her failure to file an employment application promptly after commencement of this case. Moreover, Ms. Douglas is not competent to represent Debtor as a debtor in possession. For example, after Ms. Douglas failed to file routinely required documents timely, as required by the Conversion Order, Debtor's prior chapter 11 case was dismissed

Additionally, as it is not a judicial lien, Debtor cannot avoid the Tax Lien under 11 U.S.C. § 522(f). Pursuant to 11 U.S.C. § 522(f)(1):

Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

CONT...

Jasmin DelVillar

Chapter 11

(A) *a judicial lien*, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)....

(emphasis added). Pursuant to 11 U.S.C. § 101(36), "[t]he term ‘judicial lien’ means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." Under 11 U.S.C. § 101(53), "[t]he term ‘statutory lien’ means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute."

Where a valid lien is created and perfected by statute, it is statutory. *See e.g., In re Scott*, 400 B.R. 257, 265-66 (Bankr. C.D. Cal. 2009); *In re Cox*, 349 B.R. 4, 12 (Bankr. E.D. Cal. 2006). In relevant part, Cal. Rev. & Tax. Code § 6757(a) states:

If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien.

The language of this statute is clear: the lien is created and perfected by statute alone. Consequently, a lien arising from Cal. Rev. & Tax. Code § 6757 is a statutory lien for purposes of 11 U.S.C. § 101(53), and therefore, not subject to avoidance under 11 U.S.C. § 522(f). As bankruptcy counsel to an individual debtor, Ms. Douglas should be aware that the Tax Lien is not avoidable under 11 U.S.C. § 522(f).

Moreover, in this district, in the last three years (not to mention prior years), Ms. Douglas has been debtor in possession counsel in numerous cases. These cases uniformly have ended in dismissal without court approval of a disclosure statement and/or confirmation of a chapter 11 plan. The following is a list of these cases.

- 1:17-bk-10212-MT
- 1:17-bk-0293-MB
- 1:17-bk-11847-VK

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

CONT...

Jasmin DeVillar

Chapter 11

- 1:17-bk-12472-MB
- 1:17-bk-12958-MT
- 1:18-bk-10459-VK - dismissed with 180-day bar
- 1:18-bk-11332-MT - dismissed with 180-day bar
- 1:19-bk-12216-VK
- 1:19-bk-13011-VK
- 1:20-bk-10111-DS
- 2:17-bk-12606-DS
- 2:17-bk-21803-SK
- 2:18-bk-12382-BR - dismissed with 180-day bar
- 2:18-bk-23587-BR - dismissed with 180-day bar
- 8:18-bk-10423-TA
- 9:17-bk-10077-DS
- 9:18-bk-11191-DS

In case 1:19-bk-12810-VK, which is currently pending before the Court, Ms. Douglas is debtor in possession counsel. The Court recently issued an order to show cause why the case should not be dismissed or converted because Ms. Douglas failed to meet the deadline to file a chapter 11 plan and related disclosure statement and otherwise did not comply with an order of the Court [1:19-bk-12810-VK, doc. 75].

Not only has Ms. Douglas failed to file her employment application promptly, but she has consistently shown that she is not capable of prosecuting a chapter 11 case to confirmation of a chapter 11 plan of reorganization. Consequently, the Court will not approve employment of Ms. Douglas as debtor in possession counsel.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

CONT...

Jasmin DelVillar

Chapter 11

The Court will continue this status conference to **September 17, 2020 at 1:00 p.m.**, for Debtor to obtain qualified chapter 11 bankruptcy counsel. **By September 3, 2020**, Debtor must file and serve on the United States trustee a status report discussing her efforts to secure such counsel.

Party Information

Debtor(s):

Jasmin DelVillar

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

1:20-11047 4433 Florin Road, LLC

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"): **September 30, 2020.**

Deadline to mail notice of Bar Date: **August 20, 2020.**

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 8, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on October 22, 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):

4433 Florin Road, LLC

Represented By
Douglas M Neistat

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

CONT... 4433 Florin Road, LLC

Jeremy H Rothstein

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

1:20-11048 7171 Bowling Drive, LLC

Chapter 11

#6.00 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, 2020.**

Deadline to mail notice of Bar Date: **August 20, 2020.**

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 8, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on October 22, 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

CONT... 7171 Bowling Drive, LLC

Chapter 11

Debtor(s):

7171 Bowling Drive, LLC

Represented By
Douglas M Neistat
Jeremy H Rothstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

1:00 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#7.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The Court may continue this status conference to **2:00 p.m. on September 10, 2020**, to be held with a continued hearing on the motion to convert. *See* calendar no. 8.

Party Information

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#8.00 Motion to convert case to chapter 7

Docket 16

Tentative Ruling:

The Court will set a hearing to determine if this case must be dismissed based on the debtor's failure to obtain consent by member David Schwartz to file the debtor's chapter 11 petition.

I. BACKGROUND

On June 29, 2020, 1465V Donhill Drive, LLC ("Debtor") filed a chapter 11 petition. With the petition, Debtor filed a List of Equity Security Holders, indicating that David Schwartz held a 25% interest in Debtor and Pacific Precision Laboratories, Inc. ("Pacific Precision") held a 75% interest in Debtor. Debtor also attached the *Unanimous Written Consent of the Managing Members* (the "Written Consent"), which provided that Chandu Vanjani, as the managing member, authorized the filing of a chapter 11 petition. The Written Consent is not signed by Mr. Schwartz.

On July 13, 2020, Debtor filed its schedules and statements [doc. 10]. In its schedule A/B, Debtor identified a fee simple interest in real property located at 1465 Donhill Drive, Beverly Hills, CA (the "Property"). Debtor valued the Property at \$12 million. Debtor also scheduled \$25,000 in furniture, \$13.28 in a checking account and lawsuits with unknown value. In its schedule D, Debtor identified a deed of trust in favor of 5AIF Nutmeg, LLC ("5AIF") in the amount of \$5,576,850 and a secured tax debt owed to the Los Angeles County Tax Collector in the amount of \$54,000.

On July 20, 2020, Mr. Schwartz filed a motion to convert Debtor's case to a chapter 7 case (the "Motion to Convert") [doc. 16]. In the Motion to Convert, Mr. Schwartz asserts conversion is appropriate because Debtor: (A) failed to obtain Mr. Schwartz's consent to file a chapter 11 petition; (B) scheduled only \$13.28 in available cash and has no reasonable likelihood of rehabilitation; (C) postpetition, listed the Property for sale with a broker whose employment has not been approved by the Court; (D) valued the Property at \$12 million despite the fact that the broker listed the Property for sale

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

CONT... 1465V Donhill Drive, LLC

Chapter 11

at \$8,999,999; and (E) scheduled a debt to Pacific Precision without disclosing that Mr. Vanjani is the owner of Pacific Precision.

Mr. Schwartz also provided Debtor's LLC Operating Agreement (the "Operating Agreement"). In addition, Mr. Schwartz provided a string of emails between himself and Mr. Vanjani, reflecting a disagreement regarding whether Debtor should be placed in a bankruptcy case and, if so, under which chapter.

On July 30, 2020, Debtor filed an opposition to the Motion to Convert [doc. 25]. Debtor does not address Mr. Schwartz's contention that it lacked authority to file a chapter 11 case. On the same day, 5AIF filed a joinder to the Motion to Convert (the "Joinder") [doc. 26]. In the Joinder, 5AIF contends that Debtor filed the petition in bad faith because it did not have Mr. Schwartz's authority. 5AIF requests dismissal of the case with a bar.

On August 5, 2020, Mr. Schwartz filed a reply [doc. 32], asserting he does not want dismissal of the case and requesting conversion to a chapter 7 case. On August 6, 2020, Debtor responded to the Joinder [doc. 33], asserting that the Joinder is improper because 5AIF requests different relief from Mr. Schwartz.

II. ANALYSIS

A. Authority to File the Petition

Debtor does not adequately address whether it had authority to file this chapter 11 petition. Both Mr. Schwartz and Debtor refer to a string of emails between Mr. Schwartz and Mr. Vanjani (the owner of 75% member Pacific Precision). Although the emails contain discussions about possibly placing Debtor in a bankruptcy case, none of the emails reflect a clear consensus between Mr. Schwartz and Mr. Vanjani regarding whether to file for bankruptcy protection and/or under which chapter to file. In addition, Mr. Schwartz did not sign the Written Consent or any other part of the petition.

Pursuant to the Operating Agreement, which identifies both Pacific Precision and Mr. Schwartz as members—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

CONT...

1465V Donhill Drive, LLC

Chapter 11

Management by Voting Members. The Voting Members shall manage the Company and vote upon all matters upon which the Members have the right to in proportion to their PVI. The nonvoting Members have no right to vote or participate in management. The Voting Members may only act *collectively and unanimously*.

Operating Agreement, p. 1 (emphasis added). Pursuant to this provision, Debtor is a member-managed limited liability company. Under California Corporate Code § 17704.07(b)(4), in a member-managed limited liability company, "an act outside the ordinary course of the activities of the limited liability company may be undertaken only with the consent of all members." *See also In re Avalon Hotel Partners, LLC*, 302 B.R. 377, 380 (Bankr. D. Or. 2003) ("A decision to file for bankruptcy protection is a decision outside of the ordinary course of business, even for an entity in dissolution.").

Here, Debtor does not dispute that Mr. Schwartz is a voting member under the Operating Agreement. In fact, in the same paragraph regarding classification of voting members, the Operating Agreement refers to "Exhibit 1," which identifies both Pacific Precision and Mr. Schwartz. If Mr. Schwartz is a voting member, the Operating Agreement explicitly requires that Pacific Precision and Mr. Schwartz act "collectively and unanimously" in the management of Debtor. Operating Agreement, p. 1.

To the extent the Operating Agreement may be read as silent regarding authority to place Debtor into bankruptcy, California Corporate Code § 17704.07(b)(4) supplements the Operating Agreement by requiring unanimous consent of members for acts outside the ordinary course of business. Bankruptcy appears to qualify as an act outside the ordinary course of Debtor's activities.

Given that Mr. Schwartz did not agree to the filing of a chapter 11 petition, the parties must address whether the Court is required to dismiss this case for failure to obtain Mr. Schwartz's consent. Unless Mr. Schwartz ratifies the filing by consenting to proceed with this chapter 11 case, or both Pacific Precision and Mr. Schwartz agree to conversion to a chapter 7 case, the Court will continue this hearing for the parties to provide supplemental briefing regarding whether dismissal is required under these circumstances. As discussed below, Mr. Schwartz has not otherwise presented cause

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

CONT... **1465V Donhill Drive, LLC**
to convert this case.

Chapter 11

B. Cause to Convert

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. . . .

(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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

CONT... 1465V Donhill Drive, LLC

Chapter 11

(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 . . .

...

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

...

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).

Here, Mr. Schwartz has not provided cause to convert this case. Debtor apparently intends to sell the Property to pay off creditors of the estate. Under any of the submitted valuations of the Property, there is sufficient equity for distribution to unsecured creditors after accounting for the liens held by 5AIF and the Los Angeles County Tax Collector. As such, the fact that Debtor scheduled \$13.28 in available cash, standing alone, is not cause to convert this case. In addition, although the Court has not yet approved employment of Debtor’s proposed broker, Debtor filed an application to employ the broker [doc. 31].

Finally, Mr. Schwartz contends that Mr. Vanjani concealed that he is the owner of Pacific Precision. However, the List of Equity Security Holders identifies Pacific Precision as a member and is signed by Mr. Vanjani. Mr. Vanjani also signed the Written Consent and several other forms in connection with Debtor’s petition and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

CONT... 1465V Donhill Drive, LLC

Chapter 11

schedules. As such, neither Pacific Precision nor Mr. Vanjani concealed that they are insiders, and the lack of explicit identification of Mr. Vanjani as the owner of Pacific Precision is not grounds for conversion.

III. CONCLUSION

Unless Mr. Schwartz consents to proceeding in this chapter 11 case, the Court will continue this hearing to **2:00 p.m. on September 10, 2020**. No later than **August 27, 2020**, Debtor and Mr. Schwartz must file and serve supplemental briefs discussing whether dismissal is required based on Debtor's failure to obtain Mr. Schwartz's consent under the Operating Agreement and California Corporate Code § 17704.07(b) (4), or any other applicable authority.

Alternatively, no later than **August 27, 2020**, the parties may file a joint stipulation agreeing to proceed in a chapter 11 case or convert to a chapter 7 case.

The Court will prepare the order.

Party Information

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

1:20-10910 Thomas A Perez

Chapter 7

#9.00 Debtor's motion to convert case from chapter 7 to 13

Docket 25

Tentative Ruling:

Deny.

I. BACKGROUND

On May 14, 2020, Thomas A. Perez ("Debtor") filed a voluntary chapter 7 petition. Nancy J. Zamora was appointed the chapter 7 trustee (the "Trustee"). In his schedule A/B, Debtor identified a joint tenancy interest in the real property located at 9251 Woodley Avenue, North Hills, CA 91343 (the "Property"). Debtor valued the Property at \$625,000. In his schedule C, Debtor claimed a \$27,497 exemption in the Property under California Code of Civil Procedure ("CCP") § 703.140(b)(5).

In his schedule D, Debtor identified the following encumbrances against the Property: (A) a first priority deed of trust in favor of PHH Mortgage Services ("PHH") in the amount of \$343,758; (B) a second priority deed of trust in favor of PHH in the amount of \$53,745; and (C) a third priority deed of trust in favor of Maria Rita Perez, Debtor's sister, in the amount of \$200,000 (the "Perez DOT").

In his schedules I and J, Debtor indicated his monthly net income amounts to \$2 per month. In his Statement of Financial Affairs ("SOFA"), Debtor stated that he received \$17,436 per year in state disability payments in 2018 and 2019, and \$4,359 from January 1, 2020 through the petition date in state disability payments. Debtor indicated that, during that time, neither he nor his spouse received any other income. Finally, in the SOFA, Debtor stated that: (A) within one year of the petition date, he did not transfer any property on account of a debt that benefited an insider; and (B) within two years of the petition date, he did not transfer any property to anyone outside the ordinary course of his financial affairs.

In the Declaration About an Individual Debtor's Schedules, filed with his petition, Debtor declared that he "read the summary and schedules filed with this declaration

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

CONT... Thomas A Perez

Chapter 7

and that they are true and correct," and signed this declaration under penalty of perjury. In addition, Debtor signed the SOFA under penalty of perjury, again declaring that "the answers are true and correct."

On June 19, 2020, Debtor attended a § 341(a) meeting of creditors. According to Debtor, after this meeting of creditors, Debtor recognized he was in "trouble" over the Perez DOT. Declaration of Thomas A. Perez ("Perez Declaration") [doc. 45], ¶ 16. Specifically, Debtor stated that Legal Experts, Debtor's former bankruptcy attorneys, advised Debtor to approach a "person of confidence" to create a third encumbrance against the Property; in other words, it appears Debtor asked his sister to fabricate the Perez DOT to prevent liquidation of the Property in a chapter 7 case. *Id.*, ¶¶ 9-12. After the § 341(a) meeting of creditors, Debtor hired new counsel, and Ms. Perez reconveyed the Perez DOT. *Id.*, ¶ 17.

On the same day as the § 341(a) meeting of creditors, the Trustee filed a Notice of Assets [doc. 11]. On June 26, 2020, the Trustee filed an application to employ a real estate broker (the "Application to Employ") [doc. 15]. On June 30, 2020, Debtor filed a Substitution of Attorney [doc. 17]. Debtor also filed an amended schedule C [doc. 18], claiming a homestead exemption in the amount of \$175,000 under CCP § 704.950. In a liquidation analysis included in an amended schedule A/B, Debtor stated that the Perez DOT may be avoided as a preference because it was recorded less than one year before the petition date; nevertheless, Debtor asserted there was no equity in the Property. On July 3, 2020, Debtor filed second amended schedules A/B and C [doc. 19], to amend the applicable homestead exemption statute to CCP § 704.730(a)(3)(A).

On July 6, 2020, the Trustee filed an adversary proceeding against Ms. Perez, requesting avoidance of the Perez DOT as a preferential transfer and a fraudulent transfer [1:20-ap-01067-VK]. On July 11, 2020, Debtor filed a motion to convert this case to a chapter 13 case (the "Motion") [doc. 25]. Debtor also opposed the Application to Employ [doc. 27].

On July 21, 2020, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 30]. In the Opposition, the Trustee asserts that: (A) Debtor lacks disposable income to fund a chapter 13 plan; (B) the request to convert is not in good faith because Debtor concealed the transfer to his sister and filed this Motion in response to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

CONT...

Thomas A Perez

Chapter 7

the Trustee's effort to sell the Property; (C) avoidance of Ms. Perez's deed of trust will preserve the deed of trust for the benefit of the estate, ahead of any claim of exemption by Debtor; and (D) Debtor did not provide any evidence in support of the Motion.

On August 6, 2020, Debtor filed a reply to the Opposition (the "Reply") [doc. 45]. In connection with the Reply, Debtor contends he is entitled to his claim of a homestead exemption because Ms. Perez voluntarily reconveyed the Perez DOT without legal action by the Trustee. In light of this claim of exemption, Debtor contends there is insufficient equity to sell the Property.

In addition, Debtor asserts that, after he reviewed his original schedules with his current attorney, he identified several mistakes which, if amended, provide Debtor a budget to fund a chapter 13 plan. These mistakes include: (A) many of the debts originally scheduled by Debtor are his wife's separate debts; (B) Debtor's rental income is \$2,100 per month, not \$1,500 per month as originally scheduled; (C) Debtor's and his spouse's actual monthly income is \$5,617 per month, not \$4,537 per month; and (D) Debtor's original schedule J may be reduced by approximately \$195 per month.

On August 6, 2020, Debtor also filed another set of amended schedules A/B, C, D, E/F, G, I and J [doc. 44]. To his schedules I and J, Debtor attached proof of his spouse's income, which reflects miscellaneous income of \$18,458.43 and additional funds from the Social Security Administration received by Debtor's spouse in 2019.

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.

...

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

CONT...

Thomas A Perez

Chapter 7

(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 § 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 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 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 §

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

CONT... Thomas A Perez

Chapter 7

1307(c) (which sets forth the standards for dismissal or conversion under chapter 13). *Id.* The 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.*

Here, Debtor engaged in the type of bad faith conduct that warrants denial of his request to convert this case. As in *Marrama*, Debtor engaged in a prepetition transfer to shield the Property from creditors. Specifically, Debtor fabricated a deed of trust in favor of his sister to prevent liquidation of the Property by a chapter 7 trustee.

In addition, Debtor made several misstatements in his schedules and statements. For instance, Debtor indicated in his SOFA that his spouse received no income in 2019; in his latest-amended schedule I, Debtor included income statements from 2019 reflecting that his spouse received at least \$18,458.43 that year. In addition, in his original schedules I and J, Debtor understated both his rental income and his spouse's income by approximately \$1,000 per month. Although Debtor blames Legal Experts for these mistakes, Debtor signed his schedules and statements under penalty of perjury, attesting that he reviewed the schedules and statements and that the schedules and statements were "true and correct."

Moreover, despite stating in his declaration that he realized "the trouble [he] was in" at the initial § 341(a) meeting of creditors, held on June 19, 2020, Debtor did not move to convert this case until July 11, 2020, approximately one week after the Trustee filed the Application to Employ. Debtor also did not amend his schedules I and J to reflect his allegedly accurate income and expenses until August 6, 2020. As such, it appears Debtor is moving to convert this case solely to prevent the sale of the Property by the Trustee. Consequently, the Court will deny Debtor's request for conversion.

Nevertheless, because Ms. Perez voluntarily reconveyed her deed of trust, obviating the need for legal action by the Trustee, the Court questions whether there are sufficient grounds to deny Debtor his homestead exemption. To facilitate a resolution to the dispute over Debtor's homestead exemption, the Court will order Debtor and the Trustee to attend mediation in an attempt to resolve this issue without expending significant estate resources.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

CONT... Thomas A Perez

Chapter 7

III. CONCLUSION

The Court will deny the Motion and order the parties to mediation. The parties should be prepared to discuss a deadline to attend one day of mediation. Within seven (7) days after this hearing, the Trustee must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. During the hearing, the parties must inform the Court of their choice of Mediator and Alternate Mediator. The parties should contact their mediator candidates before the hearing to determine if their candidates can accommodate the deadlines set forth below.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 13, 2020

Hearing Room 301

2:00 PM

1:20-10910 Thomas A Perez

Chapter 7

#10.00 Application by Nancy Hoffmeier Zamora, Chapter 7 Trustee, for approval to employ Rodeo Realty, Inc. as Real Estate Broker

fr. 08/06/20 (stip)

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 18, 2020

Hearing Room 301

8:30 AM

1:20-10828 Carmen Morataya

Chapter 7

#1.00 Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A.

You will not be permitted to be physically present in the courtroom. All appearances for the August 18, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

Join by Computer

Meeting URL: <https://cacb.zoomgov.com/j/1614265039>

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For higher quality, dial a number based on your current location.

Dial: US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 426 5039

Password: 930189

Docket 14

Tentative Ruling:

Petition date: 4/29/20

Was Reaffirmation Agreement filed w/in 60 days of the conclusion of the 1st 341(a) meeting as required by LR 4008-1? Yes

Discharge?: No

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 18, 2020

Hearing Room 301

8:30 AM

CONT... Carmen Morataya

Chapter 7

Property: 2020 Honda Civic

Debtor's valuation of property (Sch. B): \$20,000 (\$21,215 on Reaff Cover Sheet)

Amount to be reaffirmed: \$23,495.22

APR: 5.250% fixed

Contract terms: \$373.76 per month for 74 months

Monthly Income (Schedule I): \$4,116

Monthly expenses: (Schedule J): \$4,055.47 (includes \$373.47 per month on above vehicle)

Disposable income: \$60.53

Sec. 524(k) disclosures received in writing prior to Debtor's signing the agreement? Yes

If disposable income is insufficient to make payments, then there is a rebuttable presumption of undue hardship. Did Debtor explain how he/she will be able to afford the payments in Part D? N/A

Debtor has a right to rescind agreement any time prior to discharge, or until September 15, 2020, whichever is later.

Party Information

Debtor(s):

Carmen Morataya

Represented By
Raymond Perez

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, August 18, 2020

Hearing Room 301

8:30 AM

1:20-10897 Maral V Finney and Alonzo J Finney

Chapter 7

#2.00 Reaffirmation agreement between debtor and
Americredit Financial Services, Inc. Dba GM Financial

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All appearances for the August 18, 2020 calendar will be via Zoom and not via Court
Call. All parties participating in these hearings may connect from the zoom link
listed below. This service is free of charge. You may participate using a computer or
telephone.**

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Meeting ID: 161 426 5039

Password: 930189

Docket 15

Tentative Ruling:

Petition date: 5/12/20

Was Reaffirmation Agreement filed w/in 60 days of the conclusion of the 1st 341(a)
meeting as required by LR 4008-1? Yes

Discharge?: No

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 18, 2020

Hearing Room 301

8:30 AM

CONT... Maral V Finney and Alonzo J Finney

Chapter 7

Property: 2015 Cadillac ATS

Debtor's valuation of property (Sch. B): \$12,000 (\$14,725 on Reaff Cover Sheet)

Amount to be reaffirmed: \$15,412.42

APR: 17.99% fixed

Contract terms: \$398.51 per month for 56 months

Monthly Income (Schedule I): \$4,306.97

Monthly expenses: (Schedule J): \$4,283.64 (includes \$389.51 per month on above vehicle)

Disposable income: \$23.33

Sec. 524(k) disclosures received in writing prior to Debtor's signing the agreement? Yes

If disposable income is insufficient to make payments, then there is a rebuttable presumption of undue hardship. Did Debtor explain how he/she will be able to afford the payments in Part D? N/A

Debtor has a right to rescind agreement any time prior to discharge, or until September 7, 2020, whichever is later.

Party Information

Debtor(s):

Maral V Finney

Represented By
Dana M Douglas

Joint Debtor(s):

Alonzo J Finney

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 18, 2020

Hearing Room 301

8:30 AM

CONT... Maral V Finney and Alonzo J Finney

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**

Tuesday, August 18, 2020

Hearing Room 301

8:30 AM

1:20-11070 Martha Vilma Duran

Chapter 7

#3.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation

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All appearances for the August 18, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.**

Join by Computer

Meeting URL: <https://cacb.zoomgov.com/j/1614265039>

Meeting ID: 161 426 5039

Password: 7Hz#N.

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 426 5039

Password: 930189

Docket 9

Tentative Ruling:

Petition date: 6/16/20

Was Reaffirmation Agreement filed w/in 60 days of the conclusion of the 1st 341(a) meeting as required by LR 4008-1? Yes

Discharge?: No

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 18, 2020

Hearing Room 301

8:30 AM

CONT... Martha Vilma Duran

Chapter 7

Property: 2017 Toyota Rav4

Debtor's valuation of property (Sch. B): \$16,798 (\$17,025 on Reaff Cover Sheet)

Amount to be reaffirmed: \$16,522.58

APR: 0% fixed

Contract terms: \$490.60 per month for 34 months

Monthly Income (Schedule I): \$1,701

Monthly expenses: (Schedule J): \$1,750 (includes \$430 per month on above vehicle)

Disposable income: (\$49.00)

Sec. 524(k) disclosures received in writing prior to Debtor's signing the agreement? Yes

If disposable income is insufficient to make payments, then there is a rebuttable presumption of undue hardship. Did Debtor explain how he/she will be able to afford the payments in Part D? The debtor states that the payment on the vehicle is included in her schedule J.

Debtor has a right to rescind agreement any time prior to discharge, or until September 28, 2020, whichever is later.

Party Information

Debtor(s):

Martha Vilma Duran

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 18, 2020

Hearing Room 301

8:30 AM

1:20-11071 Gloria E. Espinel

Chapter 7

#4.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation

**You will not be permitted to be physically present in the courtroom.
All appearances for the August 18, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.**

Join by Computer

Meeting URL: <https://cacb.zoomgov.com/j/1614265039>

Meeting ID: 161 426 5039

Password: 7Hz#N.

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 426 5039

Password: 930189

Docket 9

Tentative Ruling:

Petition date: 6/16/20

Was Reaffirmation Agreement filed w/in 60 days of the conclusion of the 1st 341(a) meeting as required by LR 4008-1? Yes

Discharge?: No

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 18, 2020

Hearing Room 301

8:30 AM

CONT... Gloria E. Espinel

Chapter 7

Property: 2017 Toyota Rav4

Debtor's valuation of property (Sch. B): \$21,000 (\$18,600 on Reaff Cover Sheet)

Amount to be reaffirmed: \$27,460.76

APR: 12.80% fixed

Contract terms: \$529.53 per month for 70 months

Monthly Income (Schedule I): \$504

Monthly expenses: (Schedule J): \$793 (does not include payment on the above vehicle)

Disposable income: (\$289)

Sec. 524(k) disclosures received in writing prior to Debtor's signing the agreement? Yes

If disposable income is insufficient to make payments, then there is a rebuttable presumption of undue hardship. Did Debtor explain how he/she will be able to afford the payments in Part D? The debtor did not provide an explanation of how she will afford the payments.

Debtor has a right to rescind agreement any time prior to discharge, or until September 26, 2020, whichever is later.

Party Information

Debtor(s):

Gloria E. Espinel

Represented By
Michael H Colmenares

Trustee(s):

Nancy J Zamora (TR)

Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, August 19, 2020

Hearing Room 301

9:30 AM

1:16-12523 Brent Carpenter

Chapter 13

#1.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

fr. 7/15/20

Stip for adequate protection filed 7/29/20

Docket 68

*** VACATED *** REASON: Order approving stip entered 7/29/20 [Dkt
75]

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**

Wednesday, August 19, 2020

Hearing Room 301

9:30 AM

1:17-10673 Hermann Muennichow

Chapter 7

#2.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY, FSB
VS
DEBTOR

Docket 73

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

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 19, 2020

Hearing Room 301

9:30 AM

1:20-10094 Jonathan Hidalgo

Chapter 13

#3.00 Motion for relief from stay [RP]

U.S. BANK TRUST, N.A.
VS
DEBTOR

Docket 61

***** VACATED *** REASON: Case dismissed on 8/12/20 [doc. 67]. The motion is moot.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jonathan Hidalgo

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 19, 2020

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

#4.00 Status conference re: first amended complaint: (1) To avoid and recover fraudulent transfers for the benefit of the estate; (2) To Avoid and recover preferential transfers for the benefit of the estate; (3) For breach of contract; (4) Turnover of estate property; and (5) Unjust enrichment

fr. 11/20/19; 6/17/20

Docket 1

***** VACATED *** REASON: Continued by stipulation to 9/23/20 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 19, 2020

Hearing Room 301

1:30 PM

CONT...

Antoine R Chamoun

Jorge A Gaitan

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 19, 2020

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mor et al

- #5.00** Status conference re: amended complaint for:
1. Fraud and Intentional Deceit;
 2. Breach of the Covenant of Good Faith and Fair Dealing;
 3. Agency by Estoppel; and
 4. Financial Elder Abuse

fr. 10/2/19; 11/6/19(stip); 12/4/19; 03/18/20 (stip); 4/15/20(stip);
5/27/20 (stip); 6/24/20

Order appr. stip to cont. ent 08/04/20

Docket 25

***** VACATED *** REASON: Continued to 10/21 /20 per order entered on
8/4/20 doc #69**

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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 19, 2020

Hearing Room 301

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 19, 2020

Hearing Room 301

1:30 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#6.00 Status Conference re: first amended complaint to determine dischargeability and objection to discharge

fr. 5/13/20; 5/20/20; 6/24/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on August 26, 2020.**

Appearances on August 19, 2020 are excused.

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Pro Se

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

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 19, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01060 FR LLC v. Lev Investments, LLC et al

#7.00 Status conference of removed proceeding

fr. 7/15/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on August 26, 2020.**

Appearances on August 19, 2020 are excused.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

DMITRI LUDKOVSKI

Pro Se

RUVIN FEYGENBERG

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

SENSIBLE CONSULTING AND

Represented By
John Burgee

DOES 1 through 100, inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 19, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Plaintiff(s):

FR LLC

Represented By
Michael Shemtoub

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 19, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#8.00 Defendant Shobert Vartans motion to dismiss adversary complaint with prejudice pursuant to FRCP 12(B)(6)

fr. 7/8/20; 7/15/20

Docket 7

***** VACATED *** REASON: Cont to 09/23/20 at 2:30 p.m. per order (doc # 28)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Represented By
Michael Jay Berger

Plaintiff(s):

Philip Alvarez

Represented By
Fritz J Firman

Philip Alvarez as Successor Trustee

Represented By
Fritz J Firman

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 19, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#9.00 Status conference re: first amended complaint to determine dischargeability of debt 11 U.S.C. sec 523(a)(2); fraud; fraud or defecation while acting in a fiduciary capacity 11 U.S.C. sec 523(a)(4); and willful and malicious injury 11 U.S.C. sec 523(a)(6)

fr. 5/20/20; 7/8/20; 7/15/20;

Docket 4

*** VACATED *** REASON: Cont to 09/23/20 at 2:30 p.m. per order (doc # 28)

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Philip Alvarez

Represented By
Fritz J Firman

Philip Alvarez as Successor Trustee

Represented By
Fritz J Firman

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 20, 2020

Hearing Room 301

10:30 AM

1:17-13142 Amir Elosseini

Chapter 11

#1.00 Application for payment of interim fees and/or expenses
for Tang & Associates, debtor's attorney

fr. 07/23/20;

Docket 212

***** VACATED *** REASON: Continued by stipulation to 9/17/20 at 10:30
a.m. - jc**

Tentative Ruling:

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, August 20, 2020

Hearing Room 301

10:30 AM

1:19-11950 Farzan Bassala

Chapter 7

#2.00 Chapter 7 Trustee's First Interim Application for Compensation and Reimbursement of Expenses

Docket 76

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$32,469.93 and reimbursement of expenses of \$108.90. Such fees have been reduced from the requested fees of \$32,685.83, based on the reduced interim amounts disbursed to professionals in calendar no. 3. The trustee may collect 100% of the approved fees and 100% of the approved 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 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):

Farzan Bassala

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 20, 2020

Hearing Room 301

10:30 AM

1:19-11950 Farzan Bassala

Chapter 7

#3.00 Application for interim fees and/or expenses for Marshack Hayes LLP,
General Counsel for Chapter 7 Trustee

Docket 78

Tentative Ruling:

Marshack Hays LLP (“Marshack”), bankruptcy counsel to David K. Gottlieb, chapter 7 trustee – approve fees of \$19,002.00 and reimbursement of expenses of \$1,020.45, pursuant to 11 U.S.C. § 331, on an interim basis. Marshack may collect 80% of the approved fees and 100% of the approved expenses at this time.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Marshack is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Marshack will be so notified.

Party Information

Debtor(s):

Farzan Bassala

Represented By
David S Hagen

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**

Friday, August 21, 2020

Hearing Room 301

10:00 AM

1:14-15266 Nabiollah Morovati

Chapter 13

#1.00 Evidentiary Hearing on objection to closing of chapter 13 case
fr. 4/14/20; 5/5/20; 6/9/20; 7/14/20

**You will not be permitted to be physically present in the courtroom.
All appearances for the August 21, 2020 calendar will be via Zoom and not via
Court Call. All parties participating in these hearings may connect from the zoom
link listed below. This service is free of charge.**

Join by Computer

Meeting <https://cacb.zoomgov.com/j/1604569227>

URL:

Meeting ID: 160 456 9227

Password: 111979

Join by Telephone

For higher quality, dial a number based on your current location.

Dial:

US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 160 456 9227

Password: 111979

Docket 65

Party Information

Debtor(s):

Nabiollah Morovati

Represented By
Keith F Rouse

Trustee(s):

Elizabeth (SV) 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 26, 2020

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; 11/13/19; 12/4/19; 2/5/20 (stip); 4/29/20; 6/17/20; 7/15/20(stip)

Order appr stip to withdraw motion entered 8/25/20

Docket 58

***** VACATED *** REASON: Withdrawn per order (doc # 102)**

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

CONT... Gerald E Klein and Norma L Klein

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 26, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#2.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

fr. 7/29/20

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Hernandez

Represented By
Donald E Iwuchuku

Movant(s):

U.S. Bank Trust 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, August 26, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#3.00 Motion for relief from stay [RP]

BAYVIEW LOAN SERVICING, LLC
VS
DEBTOR

fr: 1/8/20; 2/5/20; 3/4/20; 4/29/20; 6/17/20; 7/15/20

Docket 45

*** VACATED *** REASON: Stip entered continuing hearing to 9/23/20 at
9:30 a.m. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Hernandez

Represented By
Donald E Iwuchuku

Movant(s):

Bayview Loan Servicing, LLC., as

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, August 26, 2020

Hearing Room 301

9:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#4.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 6/3/20; 7/15/20(stip)

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mercedes Benitez

Represented By
Matthew D. Resnik

Movant(s):

The Bank of New York Mellon 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 26, 2020

Hearing Room 301

9:30 AM

1:20-11054 Jose Esquivel Elizalde

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):

Jose Esquivel Elizalde

Represented By
Daniel King

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:20-11068 Oksana Gyadu and Emmanuel Gyadu

Chapter 7

#6.00 Motion for relief from stay [PP]
(2017 Toyota Camry Hybrid SE CVT)

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 12

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Oksana Gyadu

Represented By
Alla Tenina

Joint Debtor(s):

Emmanuel Gyadu

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

CONT... Oksana Gyadu and Emmanuel Gyadu

Chapter 7

Alla Tenina

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 26, 2020

Hearing Room 301

9:30 AM

1:20-11068 Oksana Gyadu and Emmanuel Gyadu

Chapter 7

#7.00 Motion for relief from stay [PP]
(2017 Toyota Camry SE Automatic)

TOYOTA MOTOR CREDIT CORPORATION
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):

Oksana Gyadu

Represented By
Alla Tenina

Joint Debtor(s):

Emmanuel Gyadu

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

CONT... Oksana Gyadu and Emmanuel Gyadu

Chapter 7

Alla Tenina

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 26, 2020

Hearing Room 301

9:30 AM

1:20-11220 Eduard Saakyan

Chapter 7

#8.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT 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):

Eduard Saakyan

Represented By
Roland H Kedikian

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 26, 2020

Hearing Room 301

9:30 AM

1:18-13032 William North Cleckler

Chapter 7

#9.00 Motion for relief from stay [RP]

TOYOTA MOTOR CREDIT CORPORATION
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 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

William North Cleckler

Represented By
Ali R Nader

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 26, 2020

Hearing Room 301

9:30 AM

1:19-11527 David Toledo and Shayna Toledo

Chapter 13

#10.00 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
VS
DEBTOR

Docket 38

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: The debtors filed a notice of nonopposition [doc. 40]. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition 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 Toledo

Represented By
Elena Steers

Joint Debtor(s):

Shayna Toledo

Represented By
Elena Steers

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

CONT... David Toledo and Shayna Toledo

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 26, 2020

Hearing Room 301

9:30 AM

1:19-12523 John Jairo Barrios

Chapter 13

#11.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
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):

John Jairo Barrios

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, August 26, 2020

Hearing Room 301

9:30 AM

1:20-11369 Mitchell S. Cohen

Chapter 13

#12.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

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):

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 26, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01156 Goldman v. Kumar et al

- #13.00** Pretrial conference re: complaint for:
1. Avoidance of voidable and fraudulent transfers; and
2. Recovery of avoided transfers for the benefit of the bankruptcy estate

fr. 3/4/20; 3/25/20

Stip to continue filed 8/18/20.

Docket 1

***** VACATED *** REASON: Order approving stip entered 8/19/20.
Hearing continued to 11/4/20 at 1:30 p.m. per order (doc # 32)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

Dr. Kain Kumar

Pro Se

Sharmini Kumar

Pro Se

BWC Associates, Inc.

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

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, August 26, 2020

Hearing Room 301

1:30 PM

CONT... Exotic Euro Cars, Inc.

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

1:18-11342 Victory Entertainment Inc

Chapter 7

Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

- #14.00** Status conference re: complaint for:
- 1) Avoidance and recovery of fraudulent transfers pursuant to Title 11 U.S.C. sec 544(a) and (b), 548 and 550; Title 26 U.S.C. sec 6502(a) and Cal. Civ. Code sec 3439.04 3439.07 and 3439.09;
 - 2) Avoidance and recovery of preferential transfer pursuant to Title 11 U.S.C. sec 547 and 550;
 - 3) Preservation of avoided transfers pursuant to Title 11 U.S.c sec 551;
 - 4) Declaratory relief re alter ego liability; and
 - 5) Turnover of property

fr. 7/29/20

Docket 1

***** VACATED *** REASON: Cont to 11/4/20 at 1:30 p.m. per order (doc # 14)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By
George J Paukert
Lewis R Landau

Defendant(s):

HALA Enterprises, LLC

Pro Se

Agassi Halajyan, an Individual

Pro Se

Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

CONT... Victory Entertainment Inc

Chapter 7

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Elissa Miller
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:19-01110 Banc of California, N.A. v. Sheik

#15.00 Status conference re: complaint for fraud and nondischargeability of debt [11 USC sec 523(a)(2)(A), (a)(6), (a)(4)]

fr. 12/4/19; 7/8/20; 7/15/20

Docket 1

Tentative Ruling:

On July 13, 2020, the debtor filed a motion to approve a compromise with the plaintiff (the "Compromise Motion") [Bankruptcy Docket, doc. 106]. In the settlement agreement attached to the Compromise Motion, the parties agreed that, upon approval of the Compromise Motion and "timely payments" under the agreement, the plaintiff would dismiss this adversary proceeding with prejudice. On August 4, 2020, the Court entered an order granting the Compromise Motion [Bankruptcy Docket, doc. 113]. The parties have not filed any updates in the docket related to this adversary proceeding.

Do the parties consent to dismissal of this adversary proceeding, subject to vacating the dismissal order if the debtor fails to make timely payments under the settlement agreement?

Party Information

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

CONT...

Maryam Sheik

Vanessa H Widener

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

1:20-10855 Patricia Esmeralda Rangel

Chapter 7

Adv#: 1:20-01055 Rangel v. Navient Solutions LLC., dba Navient, Navient Solut

#16.00 Status conference re complaint to determine dischargeability
of student loans under 11 U.S.C sec. 523(a)(8)(A)(i)(ii) and (B)

fr. 7/29/20

Docket 1

Tentative Ruling:

The plaintiff did not timely serve the summons on the defendants. 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 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 plaintiff must attach to the Another Summons a copy of the complaint and a copy of Judge Kaufman's Status Conference Instructions.

The plaintiff must serve the Department of Education in accordance with Fed. R. Bankr. P. 7004(b)(4) at the following addresses:

Civil Process Clerk
United States Attorney's Office
Federal Building, Room 7516
300 North Los Angeles Street
Los Angeles, CA 90012

Attorney General
United States Department of Justice
Ben Franklin Station
P.O. Box 683

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

CONT... **Patricia Esmeralda Rangel**
Washington, DC 20044

Chapter 7

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 that summons were **timely** served on the defendants. **AN ADULT OTHER THAN PLAINTIFF MUST SIGN THE PROOF OF SERVICE.** If the plaintiff can obtain an issued Another Summons from the Court by September 15, 2020, the status conference will be continued to **1:30 p.m. on November 18, 2020.**

No later than **November 4, 2020**, the parties must submit a joint status report in accordance with Local Bankruptcy Rule 7016-1(a).

Party Information

Debtor(s):

Patricia Esmeralda Rangel	Pro Se
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Defendant(s):

Navient Solutions LLC., dba	Pro Se
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U.S. Department of Education	Pro Se
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Plaintiff(s):

Patricia Esmeralda Rangel	Pro Se
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Trustee(s):

David Keith Gottlieb (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 26, 2020

Hearing Room 301

1:30 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#16.10 Status Conference re: first amended complaint to determine dischargeability and objection to discharge

fr. 5/13/20; 5/20/20; 6/24/20; 8/19/20

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 21, 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 **September 30, 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 August 27, 2020 is excused.

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

CONT... Husnutkin K Zairov

Chapter 7

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

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 26, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01060 FR LLC v. Lev Investments, LLC et al

#16.20 Status conference of removed proceeding

fr. 7/15/20; 8/19/20

Docket 1

Tentative Ruling:

Contrary to Local Bankruptcy Rule 7016-1(a), the plaintiff did not timely file a status report. In addition, according to the debtor/defendant, the plaintiff has yet to serve the complaint on the defendants.

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):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

DMITRI LUDKOVSKI

Pro Se

RUVIN FEYGENBERG

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

SENSIBLE CONSULTING AND

Represented By
John Burgee

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC
DOES 1 through 100, inclusive

Pro Se

Chapter 11

Plaintiff(s):

FR LLC

Represented By
Michael Shemtoub

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

1:18-11342 Victory Entertainment Inc

Chapter 7

Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

#17.00 Defendants' amended motion to dismiss complaint

Docket 8

***** VACATED *** REASON: Stipulation resolving motion [doc. 14].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By
George J Paukert
Lewis R Landau

Defendant(s):

HALA Enterprises, LLC

Represented By
David L Oberg

Agassi Halajyan, an Individual

Represented By
David L Oberg

Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Elissa Miller
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

1:19-11921 Breann Castillo

Chapter 7

Adv#: 1:20-01058 Campolong v. Castillo

#18.00 Defendant's motion for order dismissing complaint and to non-timely filing and for failure to state a cause of action

Docket 4

Tentative Ruling:

I. BACKGROUND

On July 30, 2019, Breann Castillo ("Debtor") filed a voluntary chapter 7 petition. The deadline to file a complaint requesting nondischargeability of a debt under 11 U.S.C. § 523 expired on November 5, 2019. In her schedules and statements, Debtor did not identify Andrew Campolong ("Plaintiff") as a creditor of the estate. Based on a review of Debtor's bankruptcy docket, it does not appear Mr. Campolong was served with the petition or any other documents filed in Debtor's bankruptcy case.

On May 29, 2020, over six months after expiration of the deadline to file a nondischargeability complaint, Plaintiff filed a complaint requesting nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(2), (a)(4) and (a)(6) and revocation of Defendant's discharge under 11 U.S.C. § 727(d)(1) (the "Complaint"). In the Complaint, Plaintiff alleged that Debtor did not schedule a debt owed to Plaintiff, and that Plaintiff was not on any mailing list filed in Debtor's bankruptcy case. Plaintiff otherwise alleges—

Prepetition, Plaintiff gave Debtor, his ex-wife, three credit cards for Plaintiff to use to pay basic living expenses. Instead, Plaintiff used the credit cards to pay off other debts and finance an extravagant lifestyle. After Plaintiff grew upset at the expenses, Debtor signed a repayment agreement, one month before the petition date, agreeing to pay Plaintiff \$35,000 for use of his credit cards. Debtor never intended to repay Plaintiff for use of his credit cards, and never intended to use the credit cards solely for basic living expenses.

In addition, despite signing the repayment agreement only one month

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT...

Breann Castillo

Chapter 7

before filing for bankruptcy, Debtor did not schedule Plaintiff as a creditor. During her bankruptcy case, Debtor placated Plaintiff by making minimal payments. Upon receiving her discharge, Debtor stopped paying Plaintiff.

On June 8, 2020, Debtor filed a motion to dismiss the Complaint (the "Motion") [doc. 4]. In the Motion, Debtor asserts that, prior to expiration of the deadline to file a nondischargeability complaint, Plaintiff had actual knowledge of Debtor's bankruptcy case. To this end, Debtor attaches emails and text messages between Debtor and Plaintiff, ranging from July 30, 2019 through August 26, 2019, in which the parties discuss Debtor's bankruptcy case. Declaration of Breann Castillo, ¶¶ 4-6, Exhibits 1-3. Specifically, the attachments reflect the following—

- (A) In an email dated July 30, 2019, the petition date, Plaintiff stated, "Let me know how the BK thing is going and if there is anything I should know or do to assist."
- (B) In an email dated August 26, 2019, months before expiration of the deadline to file a nondischargeability complaint, Plaintiff asked, "Hows [sic] the BK going?"
- (C) On the same day, and in response to Plaintiff's email, Debtor responded, "BK meeting is next Friday in court. Then every creditor has 2 months to challenge. So we'll see."

Id. In light of the above, Debtor argues that the Complaint is untimely. In addition, Debtor contends that Plaintiff failed to state a claim for relief.

On July 2, 2020, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 6]. In the Opposition, Plaintiff does not address the attached emails or Debtor's contention that Plaintiff possessed actual knowledge of the bankruptcy case. Instead, Plaintiff reiterates that he was not scheduled as a creditor, and states he did not receive "written notice" of the bankruptcy case.

II. ANALYSIS

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT...

Breann Castillo

Chapter 7

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).

"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). Under the "incorporation by reference" doctrine, a court may look beyond the four corners of the complaint to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT... Breann Castillo

Chapter 7

take into account documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012). The court "may treat the referenced 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.*, quoting *United States v. Richie*, 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. Plaintiff's Claims under 11 U.S.C. § 523

Pursuant to 11 U.S.C. § 523(a)(3)(B), a debt is nondischargeable if it is—

...neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit... if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice *or actual knowledge of the case* in time for such timely filing and request....

(emphasis added). "It is well established that a creditor who learns of a bankruptcy filing has a duty to inquire into the relevant deadlines." *In re Dewalt*, 961 F.2d 848, 851 n.3 (9th Cir. 1992) (citing *In re Price*, 871 F.2d 97, 99 (9th Cir. 1989)). As explained by the Ninth Circuit Court of Appeals—

Counsel for the appellant in the present appeal was given actual notice

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT...

Breann Castillo

Chapter 7

of the bankruptcy proceedings in time to file a complaint, or at least to file a timely motion for an extension of time.

...

The fact that [the debtor] failed to list [the creditor] as a creditor did not relieve [the creditor] 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.")....

Price, 871 F.2d at 99. "[T]he 30-day notice provision of Rule 4007(c) provides a guide to the minimum time within which it is reasonable to expect a creditor to act at penalty of default." *Dewalt*, 961 F.2d at 851.

Here, Debtor has provided evidence that, prior to expiration of the deadline to file a nondischargeability complaint, Plaintiff had actual knowledge about Debtor's bankruptcy case. Although the Court may not consider this type of extraneous evidence in connection with a motion to dismiss under Rule 12(b)(6), the Court may convert the Motion to a motion for summary judgment. Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.").

Debtor's evidence, if admitted and uncontroverted, would establish that Plaintiff had actual knowledge of Debtor's bankruptcy case. Because the emails are dated between the petition date and August 26, 2019, the emails also would demonstrate that Plaintiff had notice well before 30 days prior to expiration of the deadline. *See Dewalt*, 961 F.2d at 851. As a result, Plaintiff's claims under § 523 would be untimely, and the Court would dismiss the claims with prejudice.

C. Plaintiff's Claim under 11 U.S.C. § 727(d)(1)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT... Breann Castillo

Chapter 7

Pursuant to 11 U.S.C. § 727(d)—

"On request of a trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

- (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge...."

See also In re Guadarrama, 284 B.R. 463, 469 (C.D. Cal. 2002). "[R]evocation is an extraordinary remedy." *In re Bowman*, 173 B.R. 922, 924 (B.A.P. 9th Cir. 1994). Consequently, "[§] 727's [revocation] of discharge is construed liberally in favor of the debtor and strictly against those objecting to discharge." *Guadarrama*, 284 B.R. at 469 (quoting *In re Adeeb*, 787 F.2d 1339, 1342 (9th Cir. 1986)).

"To succeed on its claim under § 727(d)(1), [the plaintiff is] required to prove by a preponderance of the evidence: (1) that [the debtor] obtained a discharge through fraud, and (2) that the [plaintiff] was unaware of the alleged fraud prior to discharge. *Guadarrama*, 284 B.R. at 469. As to the first element, the plaintiff must prove that the debtor "committed fraud in fact, that the fraud occurred in or in connection with her procurement of a discharge, and that 'sufficient grounds... existed which would have prevented the discharge.'" *Id.* (quoting *Bowman*, 173 B.R. at 924).

"The grounds for a denial of discharge are enumerated in 11 U.S.C. § 727(a)...." *Id.* "Thus, to secure revocation of [the debtor's] discharge, the [plaintiff is] required to show that the fraud in which [the debtor] engaged would have caused the bankruptcy court to deny her a discharge" under § 727(a). *Id.*; *see also In re Bors*, 2012 WL 6575171, at *9 (B.A.P. 9th Cir. Dec. 17, 2012), *aff'd*, 672 F. App'x 696 (9th Cir. 2016) ("A finding of fraud in the procurement requires evidence of some conduct that under § 727(a) would have been sufficient grounds to deny debtor's discharge...."). As explained in *Bors*—

More importantly, [the plaintiff] failed to allege that but-for these intentional misrepresentations and/or omissions, Debtor would have been denied his discharge. As to [the plaintiff's] assertion that Debtor

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT...

Breann Castillo

Chapter 7

intentionally failed to notify the Orange County Court and all parties to the State Court Action about the bankruptcy case, all she alleged was that his failure to timely notify prevented her from bringing an action to except *her* debt from discharge under § 523, not that but-for Debtor's failure to notify he would have been denied a discharge of all of his debts under § 727(a).

...

Even if [the plaintiff] were seeking to revoke [the debtor's] entire discharge, the FAC, at best, asserts only a claim that Debtor fraudulently obtained a discharge of *her* debt. In general, it is not enough that a debtor's fraud rendered one particular debt nondischargeable. For an action under § 727(d)(1), a creditor must allege that the debtor's discharge would not have been granted but-for the debtor's fraud.

Bors, 2012 WL 6575171 at *10.

To the extent Plaintiff is alleging he lacked notice of Debtor's bankruptcy case, and Debtor's failure to list Plaintiff as a creditor would have resulted in denial of her discharge, evidence of Plaintiff's actual knowledge also will defeat Plaintiff's claim under § 727(d)(1). To the extent Plaintiff is alleging that he *did* have notice of Debtor's bankruptcy case, but Debtor fraudulently misrepresented that she would continue paying Plaintiff post-discharge, the Court will provide Plaintiff leave to amend the Complaint to adequately allege such a theory. As noted above, Plaintiff must allege how such conduct would have prevent Debtor from obtaining a discharge under 11 U.S.C. § 727(a), and not merely that the conduct would except *Plaintiff's* debt from discharge.

III. CONCLUSION

As to Plaintiff's claims under 11 U.S.C. § 523, the Court will convert the Motion to a motion for summary judgment and continue this hearing to **2:30 p.m. on October 14, 2020**. As to Plaintiff's claim under 11 U.S.C. § 727(d)(1), the Court will provide Plaintiff leave to amend the claim. The Court will set a deadline for Plaintiff to amend the claim under § 727(d)(1) at the continued hearing on October 14, 2020.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT... Breann Castillo

Chapter 7

No later than **September 2, 2020**, Debtor must file and serve a statement of uncontroverted facts and conclusions of law, any additional briefing Debtor may have and any additional evidence Debtor would like admitted into the record. No later than **September 23, 2020**, Plaintiff must file and serve his responsive brief, a statement of genuine issues and any evidence Plaintiff would like admitted into the record. No later than **September 30, 2020**, Debtor may file and serve a reply to these documents. Prior to the continued hearing, if the parties reach an agreement regarding resolution of this matter, the parties should file a joint stipulation and notify chambers about any such resolution.

Debtor must submit a scheduling order within seven (7) days.

Party Information

Debtor(s):

Breann Castillo

Represented By
David S Hagen

Defendant(s):

Breann Castillo

Represented By
David S Hagen

Plaintiff(s):

Andrew Campolong

Represented By
Michael F Chekian

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 26, 2020

Hearing Room 301

2:30 PM

1:19-11921 Breann Castillo

Chapter 7

Adv#: 1:20-01058 Campolong v. Castillo

#19.00 Status conference re: complaint to determine dischargeability of debt pursuant to code sections 523(a)(2), (a)(4), (a)(6) and also to revoke discharge per code section 727(d)(1)

fr. 7/29/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Breann Castillo

Represented By
David S Hagen

Defendant(s):

Breann Castillo

Pro Se

Plaintiff(s):

Andrew Campolong

Represented By
Michael F Chekian

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#1.00 Status conference re: chapter 11 case

fr. 5/23/19; 9/19/19; 11/14/19; 1/16/20; 1/23/20; 3/19/20; 4/2/20

Docket 1

Tentative Ruling:

In his declaration attached to the post-confirmation status report [doc. 150], the debtor states that he has "commenced" payments under the confirmed chapter 11 plan. However, the declaration is not sufficiently responsive to Local Bankruptcy Rule 3020-1(a), which requires that the debtor include:

- (1) A schedule listing for each debt and each class of claims: the total amount required to be paid under the plan; the amount required to be paid as of the date of the report; the amount actually paid as of the date of the report; and the deficiency, if any, in required payments;
- (2) A schedule of any and all postconfirmation tax liabilities that have accrued or come due and a detailed explanation of payments thereon;
- (3) Projections as to the reorganized debtor's, postconfirmation trustee's, or other responsible party's continuing ability to comply with the terms of the plan;
- (4) An estimate of the date for plan consummation and application for final decree; and
- (5) Any other pertinent information needed to explain the progress toward completion of the confirmed plan.

A statement that the debtor has "commenced" plan payments does not address these prompts. Consequently, the Court will continue this status conference to **1:00 p.m. on September 17, 2020**. No later than **September 3, 2020**, the debtor must file and serve an amended post-confirmation status report supported by a declaration

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:00 PM

CONT... **Attilio E Armeni**
discussing each of the issues above.

Chapter 11

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 27, 2020

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#2.00 Order to show cause why this case should not be dismissed
or converted to one under chapter 7

Docket 75

***** VACATED *** REASON: Continued to 09/17/20 at 1:00 p.m. per order
(doc # 83)**

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, August 27, 2020

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 12/19/20; 12/26/19; 6/18/20; 07/23/2020;

Docket 1

***** VACATED *** REASON: Continued to 09/17/20 at 1:00 p.m. per order
(doc # 83)**

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, August 27, 2020

Hearing Room 301

1:00 PM

1:20-11134 Helping Others International, LLC

Chapter 11

#3.10 Motion by Chapter 11 Trustee To Convert Case To Chapter 7

Docket 50

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:00 PM

1:20-11134 Helping Others International, LLC

Chapter 11

#4.00 Status conference re: chapter 11 case
fr. 8/6/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:00 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#5.00 U.S. Trustee's Motion to dismiss or convert case under 11 U.S.C. § 1112(b)

Docket 18

***** VACATED *** REASON: voluntary dismissal filed on 8/27/20 doc #45**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:00 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#6.00 U.S. Trustee's Motion to dismiss or convert case under
11 U.S.C. § 1112(b)

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#7.00 Application to Employ Levene, Neale, Bender,
Yoo & Brill L.L.P. as Bankruptcy Counsel

fr. 7/16/20

Docket 10

Tentative Ruling:

The Court will approve the employment of Levene, Neale, Bender, Yoo & Brill L.L.P. as the debtor and debtor in possession's bankruptcy counsel.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition.

A. The Application to Employ

On June 10, 2020, Debtor filed an application to employ Levene, Neale, Bender, Yoo & Brill L.L.P. ("LNBYB") as its general bankruptcy counsel (the "Application to Employ") [doc. 10]. On June 20, 2020, The Sands Law Group, APLC ("Sands Law") filed an opposition to the Application to Employ (the "Sands Law Opposition") [doc. 28]. In the Sands Law Opposition, Sands Law contends that: (A) LNBYB represented to FR, LLC ("FR"), an entity with a purported security interest in Debtor's real property, that there was an impending sale of the property, but in an application to employ a broker, did not disclose any such pending sale; and (B) Debtor attempted to hire a real estate broker that was not disinterested. Although Sands Law attached a declaration to the Sands Law Opposition, the declaration does not include many of the facts alleged in the Sands Law Opposition.

On the same day, the Mike Kemel and Mariya Ayzenberg (the "Kemel Parties") also filed an opposition to the Application to Employ (the "Kemel Opposition") [doc. 57]. As discussed more fully below, the Kemel Parties contend that David Golubchik, an attorney at LNBYB, has a conflict of interest preventing him from representing Debtor

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

in this case. The Kemel Parties also contend that LNBYB should have disclosed its purported connection to the Kemel Parties.

On July 9, 2020, Debtor filed an omnibus reply to the Sands Law Opposition and the Kemel Opposition (the "Reply") [doc. 90]. In the Reply, Debtor contends that: (A) neither Sands Law nor the Kemel Parties have standing to object to the Application to Employ; (B) Sands Law cannot authenticate an email sent to a third party and, in any event, the email does not reflect anything other than Mr. Golubchik's attempt to get information about a claim against the estate; (C) the failure to disclose connections between Debtor's proposed broker and certain affiliates of Debtor does not give rise to fraudulent conduct by LNBYB; and (D) the Kemel Parties' contentions regarding the alleged conflict of interest are false.

B. The Motion to Disqualify LNBYB as Debtor's Bankruptcy Counsel

On June 26, 2020, along with the Kemel Opposition, the Kemel Parties filed an emergency motion to "recuse" David Golubchik and LNBYB as counsel to Debtor (the "Motion to Disqualify") [doc. 56]. In the Motion to Disqualify, the Kemel Parties contend that Mr. Golubchik has a conflict of interest because he previously represented the Kemel Parties in connection with a bankruptcy case titled *In re Upadhyaya*, 2:19-bk-12043-VZ (the "Upadhyaya Case"). The Kemel Parties do not assert that the Upadhyaya Case has any relation to Debtor's case, nor does a review of the docket related to the Upadhyaya Case reveal any such connection.

As evidence in support of their motion, the Kemel Parties produced a (heavily redacted) retainer agreement between Aykem, LLC ("Aykem") and LNBYB (the "Aykem Retainer"). Declaration of Mike Kemel ("Kemel Declaration"), ¶ 9, Exhibit B. The Aykem Retainer is signed by Mr. Kemel in his capacity as manager of Aykem. *Id.* In relevant part, the Aykem Retainer provides—

CONFLICT OF INTEREST. LNBYB's employment shall be limited to the representation of the Client, separate and distinct from Client's companies, agents, employees, family members and others. LNBYB cannot represent or advise others in connection with the matters for which it is being retained. Therefore, such parties as partnerships, corporations, guarantors and affiliates, for example, should consider

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

retaining separate counsel to represent and provide such advice as may be necessary or appropriate from time to time.

Client has been advised that LNBYB, because of the specialized nature of its practice, may from time to time concurrently represent one client in a particular case and the adversary of that client in an unrelated case. For example, it is possible that LNBYB may have represented one or more of the parties with whom you ordinarily do business in the past or at present in connection with other matters. We have not undertaken an extensive review of your business or financial affairs and thus we are not aware if this pertains. Please be assured that, despite such potential conflicting representation, LNBYB strictly preserves all client confidences and zealously pursues the interest of each client, including in those circumstances in which LNBYB represents the adversary of an existing client. Client specifically waives any objections to any such present concurrent representation.

Id. The Kemel Parties also provided declarations by Ms. Ayzenberg and Mr. Kemel, in which the Kemel Parties state that they disclosed certain "private" and "confidential" information about their business affairs and litigation tactics and that Mr. Golubchik advised Ms. Ayzenberg about "investment strategy" related to Debtor's real property.

The Kemel Parties also provided some emails between Mr. Golubchik and third parties, none of whom are either Mr. Kemel or Ms. Ayzenberg. Kemel Declaration, ¶ 19, Exhibit D. The Kemel Parties also attach an article which does not, on its face, have any relation to Debtor or this bankruptcy case. The Kemel Parties also attach a registration application for Aykem and certain documents from lawsuits that have been removed to this Court. Kemel Declaration, ¶ 14, Exhibits C, H.

On June 28, 2020, the Kemel Parties filed a supplement to the Motion to Disqualify (the "Supplement") [doc. 59]. In the Supplement, the Kemel Parties reiterate that Mr. Golubchik knows personal information about the Kemel Parties, such as how much money they have to fund litigation. The Kemel Parties did not provide a declaration in support of the Supplement.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

On June 29, 2020, Mr. Golubchik filed a declaration in response to the Motion to Disqualify (the "Golubchik Declaration") [doc. 61]. In the Golubchik Declaration, Mr. Golubchik states that he reviewed LNBYB's internal records, his emails and his timesheets, and that LNBYB does not have any record of communications or contact with Ms. Ayzenberg. According to Mr. Golubchik, he is certain that neither LNBYB nor Mr. Golubchik ever assisted Ms. Ayzenberg in any way, including in connection with Debtor's real property.

As to Mr. Kemel, Mr. Golubchik contends LNBYB only represented Aykem in connection with the Upadhyaya Case. According to Mr. Golubchik, Gina Lisitsa contacted Mr. Golubchik to help Aykem object to confirmation of a chapter 13 plan and obtain relief from the automatic stay. Mr. Golubchik also states that he negotiated a payoff of the debt owed to Aykem and that, upon concluding this negotiation, terminated his representation of the company.

Mr. Golubchik contends he never received personal information about Ms. Ayzenberg or Mr. Kemel, did not receive financials for Aykem and never had any discussions with Ms. Ayzenberg or Mr. Kemel. According to Mr. Golubchik, all his discussions were with Ms. Lisitsa, and all of these discussions related to the Upadhyaya Case.

On June 29, 2020, the Kemel Parties responded to the Golubchik Declaration [doc. 65], reiterating many of their prior points. However, the Kemel Parties did not support their response with a declaration, and did not file evidentiary objections to the Golubchik Declaration. On June 30, 2020, Debtor filed an opposition to the Motion to Disqualify [doc. 71], requesting an opportunity to orally examine the Kemel Parties. On the same day, the Kemel Parties responded [doc. 73], asserting that an oral examination of the Kemel Parties would violate their attorney-client privilege.

On August 20, 2020, Debtor filed a supplemental opposition to the Motion to Disqualify [doc. 147]. To this supplement, Debtor attached an unredacted version of the Aykem Retainer. Declaration of David B. Golubchik, ¶ 5, Exhibit A. The first page of the unredacted Aykem Retainer explicitly defines *Aykem* as LNBYB's client. *Id.* In addition, the unredacted Aykem Retainer provides—

SCOPE AND DUTIES. LNBYB is to serve as counsel to advise
Client and to render such ordinary and necessary legal services as may

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

be required in connection with representing Client in the Chapter 13 bankruptcy case of Kamieshwar Upadhya, Case No. 2-19-bk-12049 (the "Case").

Because LNBYB's practice is limited exclusively to matters of bankruptcy, insolvency and business reorganization, LNBYB will not be required to render substantive legal advice beyond those areas. ...

Finally, LNBYB is being employed by the Client, and not any other parties such as any partnerships, corporations or their officers, directors, shareholders, employees and/or guarantors; such other parties should consult their own independent counsel.

...

ENTIRE AGREEMENT. This Agreement constitutes the complete agreement between LNBYB and Client concerning the terms of Client's employment of LNBYB, and supersedes all prior or contemporaneous statements, discussions and agreements between you and LNBYB.

Id. Debtor also provided evidence of the retainer payment made by Aykem; the check furnished to LNBYB bears Aykem's name. Declaration of David B. Golubchik, ¶ 5, Exhibit B.

II. ANALYSIS

A. Existence of an Express Attorney-Client Relationship

"An attorney-client relationship must have existed before disqualification is proper." *Strasbourger Pearson Tulcin Wolff Inc. v. Wiz Tech., Inc.*, 69 Cal.App.4th 1399, 1404 (Ct. App. 1999); *see also Koo v. Rubio's Restaurants, Inc.*, 109 Cal.App.4th 719, 729 (Ct. App. 2003) ("Before an attorney may be disqualified from representing a party in litigation because his representation of that party is adverse to the interest of a current or former client, it must first be established that the party seeking the attorney's disqualification was or is 'represented' by the attorney in a manner giving rise to an attorney-client relationship.") (internal citations omitted).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

"The burden is on the party seeking disqualification to establish the attorney-client relationship." *Shen v. Miller*, 212 Cal.App.4th 48, 56–57 (Ct. App. 2012). In fact, some courts consider the burden a "heavy burden." *Frank Gari Prods., Inc. v. Smith*, 2012 WL 12895903, at *1 (C.D. Cal. June 15, 2012) (citing *City & Cnty. of S.F. v. Cobra Solutions, Inc.*, 38 Cal. 4th 839, 851 (2006); and *SEC v. King Chuen Tang*, 831 F.Supp.2d 1130 (N.D. Cal. 2011)).

"Because disqualification motions can be misused for tactical purposes, they 'should be subjected to particularly strict judicial scrutiny.'" *Allergia, Inc. v. Bouboulis*, 2015 WL 11735651, at *2 (S.D. Cal. May 5, 2015) (quoting *Shurance v. Planning Control Int'l, Inc.*, 839 F.2d 1347, 1349 (9th Cir. 1988)).

Disqualification of counsel is strongly disfavored and is considered a "drastic measure." *Yumul v. Smart Balance, Inc.*, 2010 WL 4352723, at *3 (C.D. Cal. Oct. 8, 2010); *Concat LP v. Unilever, PLC*, 350 F. Supp. 2d 796, 814 (N.D. Cal. 2004). Such motions are often filed for purposes of sabotage or delay, and they present a risk of denying a party the counsel of his choosing. See *Optyl Eyewear Fashion Int'l Corp. v. Style Cos., Ltd.*, 760 F.2d 1045, 1050 (9th Cir. 1985) (noting concern for the "misuse of the rules for tactical purposes"); *Multimedia Patent Trust v. Apple, Inc.*, 2011 WL 1636928, at *1 (S.D. Cal. Apr. 29, 2011) ("Because a motion to disqualify is often tactically motivated and can be disruptive to the litigation process, disqualification is considered to be a drastic measure that is generally disfavored and imposed only when absolutely necessary."); *Gregori v. Bank of Am.*, 207 Cal.App.3d 291, 300–01 (1989) ("Motions to disqualify counsel often pose the very threat to the integrity of the judicial process that they purport to prevent.").

Frank Gari, 2012 WL 12895903 at *1.

When an attorney's client is a limited liability company or corporation, California law makes clear that the duties attendant to representation of a client are owed to the organization, not to individual members or shareholders—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

Generally, when "representing a corporation, an attorney's client is the corporate entity, not individual shareholders or directors, and the individual shareholders or directors cannot presume that corporate counsel is protecting their interests." (*La Jolla Cove Motel & Hotel Apartments, Inc. v. Superior Court* (2004) 121 Cal.App.4th 773, 784, 17 Cal.Rptr.3d 467.) "An attorney representing a corporation does not become the representative of its stockholders merely because the attorney's actions on behalf of the corporation also benefit the stockholders; as attorney for the corporation, counsel's first duty is to the corporation." (*Skarbrevik v. Cohen, England & Whitfield* (1991) 231 Cal.App.3d 692, 703, 282 Cal.Rptr. 627 (*Skarbrevik*); see also *Meehan, supra*, 144 Cal.App.2d at p. 290, 301 P.2d 10 ["The attorney for a corporation represents the corporation.... He in nowise represents the officers personally"]).)

Sprengel v. Zbylut, 40 Cal.App.5th 1028, 1042 (Ct. App. 2019) (applying standard to a limited liability company). In addition, pursuant to California Rule of Professional Conduct 1.13(a)—

A lawyer employed or retained by an organization shall conform his or her representation to the concept that *the client is the organization itself*, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.

(emphasis added); see also *Smith v. Laguna Sur Villas Cmty. Ass'n*, 79 Cal.App.4th 639, 643 (Ct. App. 2000) ("Corporations have a separate legal identity and enjoy the benefit of the attorney-client privilege.").

"An attorney-client relationship is not created by the unilateral declaration of one party to the relationship." *Koo*, 109 Cal.App.4th at 729. "Rather, the relationship can only be created by contract, express or implied." *Id.* (citing *Responsible Citizens v. Superior Court*, 16 Cal.App.4th 1717, 1732 (Ct. App. 1993)).

Here, the Kemel Parties cite law regarding conflicts of interest, but do not provide authority regarding when an attorney-client relationship is created. The only retainer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

agreement provided by the Kemel Parties is between LNBYB and *Aykem*, a limited liability company. The Kemel Parties have not presented evidence of any agreement, separate from the Aykem Retainer, that reflects that LNBYB represented any entity other than Aykem. As such, the Kemel Parties have not met their burden of proving that LNBYB expressly agreed to represent the Kemel Parties in their individual capacities. *See, e.g. In re C & M Russell, LLC*, 2018 WL 941643, at *5 (Bankr. C.D. Cal. Feb. 16, 2018) ("Plaintiff is not a party to the Retainer Agreement, and there is no attorney client relationship between Plaintiff and either of the Defendants. The uncontroverted evidence shows that the parties to the Retainer Agreement were [the limited liability company] and Defendant [attorneys]. Although Plaintiff had involvement in [the limited liability company], it is a separate legal entity from her.").

As discussed above, Aykem is a separate legal entity with its own attorney-client relationship with LNBYB. LNBYB's representation of Aykem did not create an attorney-client relationship between LNBYB and the Kemel Parties. LNBYB strongly disputes that Mr. Golubchik ever communicated with either Mr. Kemel and Ms. Ayzenberg. Nevertheless, even if the Court takes as true the Kemel Parties' declarations, wherein they state that they disclosed personal information to Mr. Golubchik unrelated to the Upadhyia Case, such information would not be privileged unless LNBYB and/or Mr. Golubchik had an attorney-client relationship with the Kemel Parties.

Aykem, the entity that was LNBYB's former client, is not a creditor of this estate, and the Kemel Parties do not contend that Aykem has any involvement with Debtor or this bankruptcy case. For Aykem to move to disqualify LNBYB and/or Mr. Golubchik, which it has not, it would have to demonstrate a substantial relationship between Mr. Golubchik's representation of Aykem in the Upadhyia Case and Mr. Golubchik's representation of Debtor in this case. *See, e.g. Jessen v. Hartford Cas. Ins. Co.*, 111 Cal.App.4th 698, 705 (Ct. App. 2003). No party alleges any such connection. As such, there is no express agreement between Mr. Golubchik and the Kemel Parties, and Mr. Golubchik's representation of Aykem would not prevent Mr. Golubchik from representing Debtor. [FN1].

B. Existence of an Implied Attorney-Client Relationship

Under the authorities above, if a party moving for disqualification is unable to show

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

an express attorney-client relationship, such as by operation of a written retainer agreement, they may be able to prove an implied attorney-client relationship. In *Sprengel*, for instance, attorneys represented a limited liability company with two 50% members. *Sprengel*, 40 Cal.App.5th at 1031. After the initial litigation, one of the members filed a malpractice action against the attorneys, asserting that the attorneys violated their professional duties by undertaking representation of the limited liability company without her consent, and providing advice that was adverse to her interests. *Id.*

The member acknowledged that she never entered into an express retainer agreement with the attorneys. *Id.*, at 1041-42. On appeal, the issue was whether the member had proven that an implied attorney-client relationship existed between the parties. *Id.*, at 1042. In assessing whether an implied attorney-client relationship had formed, the *Sprengel* court referenced *Responsible Citizens*, *supra*, and applied that case's multi-factor test to assess whether an implied attorney-client relationship existed. *Id.*, at 1044 (quoting *Responsible Citizens*, 16 Cal.App.4th at 1733). The *Responsible Citizens* factors are—

Without any attempt at being exhaustive, we can identify some factors which might support, or undercut, implication of an attorney-client relationship with an individual partner in any particular case. The type and size of the partnership obviously have a bearing, as already noted. So do the nature and scope of the attorney's engagement by the partnership. The kind and extent of contacts, if any, between the attorney and the individual partner might be important factors. The same is true as to the attorney's access to information (e.g., partnership financial information) relating to the individual partner's interests.

...

For that reason, we believe that in determining whether an attorney-client relationship exists in cases like this, primary attention should be given to whether the totality of the circumstances, including the parties' conduct, implies an agreement by the partnership attorney not to accept other representations adverse to the individual partner's personal interests. (See Friedman, *The Creation of the Attorney-Client Relationship: An Emerging View*, *op. cit. supra*, 22 Cal. Western

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

L.Rev. at p. 231, suggesting that one of the most important facts involved in finding an attorney-client relationship is "the expectation of the client based on how the situation appears to a reasonable person in the client's position.")

Responsible Citizens, 16 Cal.App.4th at 1733. Although *Responsible Citizens* involved partnerships, *Sprengel* applied the test therein to limited liability companies. *Sprengel*, at 1044.

Here, the Kemel Parties either have not presented evidence regarding these factors, or the evidence presented indicates that an attorney-client relationship did not exist between LNBYB and the Kemel Parties. For instance, the "nature and scope" of the Aykem Retainer actually demonstrates that LNBYB intended to represent Aykem, and only Aykem, in a limited capacity. In relevant part, the Aykem Retainer provides that LNBYB's "shall be limited to the representation of the Client, *separate and distinct from Client's... agents, employees, family members and others*" and that "LNBYB is being employed by the Client, *and not any other parties such as any partnerships, corporations or their officers, directors, shareholders, employees and/or guarantors.*" Aykem Retainer, pp. 2, 3 (emphases added).

The Aykem Retainer also instructed such parties to retain their own counsel. *Id.* Thus, LNBYB made clear that its only client was Aykem. In light of this explicit language alone, a "reasonable person in the [Kemel Parties'] position" would not expect that they individually maintained an attorney-client relationship with LNBYB. *Responsible Citizens*, 16 Cal.App.4th at 1733.

In addition, the Aykem Retainer explicitly stated that LNBYB's representation would be limited to the Upadhya Case. Aykem Retainer, p. 1. While the declarations of Mr. Kemel and Ms. Ayzenberg provide that they individually discussed other matters with Mr. Golubchik, they do not contend that Mr. Golubchik actually *represented* Aykem or the Kemel Parties in connection with any of these unrelated matters. As such, the nature and scope of LNBYB's representation was limited to the Upadhya Case.

Moreover, as to LNBYB's "access to information relating to the individual's partner's interests," the Kemel Parties have not provided any evidence of *access*. While the Kemel Parties state in their declarations that they volunteered certain information to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

LNBYB, they do not contend that LNBYB had access to personal information about the Kemel Parties (such as, for example, certain attorneys for corporations who have access to information about the corporation's subsidiaries, parents, etc.).

The Kemel Parties do state that they had extensive contact with Mr. Golubchik. Mr. Golubchik, for his part, vehemently denies these statements. However, even ignoring Mr. Golubchik's testimony denying the contact, the Kemel Parties do not state in their declarations that they hired Mr. Golubchik in an individual capacity, that they entered into oral retainer agreements or that they took any action to signal to Mr. Golubchik that they were intending to hire him as their individual attorney on separate matters. Instead, the Kemel Parties merely state that they discussed several issues with Mr. Golubchik. Such voluntary disclosure of information does not create an attorney-client relationship. *See Zenith Ins. Co. v. O'Connor*, 148 Cal.App.4th 998, 1010 (Ct. App. 2007) ("California law is settled that a client's subjective belief that an attorney-client relationship exists, standing alone, cannot create such a relationship, or a duty of care owed by the attorney to that plaintiff."). [FN2].

With the exception of Mr. Kemel's signature on the Aykem Retainer, the Kemel Parties' declarations also are undermined by the lack of evidence of any contact between Mr. Golubchik and the Kemel Parties. The *Sprengel* and *Reasonable Citizens* courts emphasized that "primary attention should be given to whether the totality of the circumstances, including the parties' conduct, implies an agreement by the partnership attorney not to accept other representations adverse to the individual partner's personal interests." *Sprengel*, at 1044 (citing *Responsible Citizens*, 16 Cal.App.4th at 1733).

Here, the Kemel Parties have not produced any evidence to support their statements that they consulted with Mr. Golubchik. The Motion to Disqualify is devoid of any indicators of an attorney-client relationship; there are no letters, no emails, no text messages, no invoices, no telephone records, no legal documents filed on behalf of the Kemel Parties by Mr. Golubchik and no other writing that would hint at an attorney-client relationship between LNBYB/Mr. Golubchik and the Kemel Parties. Further, after Mr. Golubchik filed the Golubchik Declaration, in which he disputed most of the contentions in the declarations filed by the Kemel Parties, the Kemel Parties did not object to the Golubchik Declaration and did not attempt to provide any evidence that would contradict the Golubchik Declaration. As aptly stated by one California

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC
appellate court—

Chapter 11

The [trial] court cited as support the formal engagement letter between [the corporation] and [its attorneys]. Far from providing evidentiary support of an attorney-client relationship between [the individual shareholder moving for disqualification of the attorneys] and [the attorneys], this letter raises the question why [the shareholder] did not produce a retainer agreement between herself and the firm (as it was apparently the firm's policy to require one), and did not even declare that such an agreement existed.

...

Critically, she fails to declare that a contract for legal services existed between her and [the attorneys]. She does not declare she entered into a written retainer agreement or that an oral contract was somehow created. She does not declare she was ever billed by or made payments to [the attorneys]. She does not declare she received any correspondence from [the attorneys], for example, on the firm's letterhead or signed by an attorney in his or her capacity as a lawyer at the firm. ... In sum, Fang's declaration falls short on evidentiary facts and essentially amounts to a unilateral declaration of an attorney-client relationship with the law firm.

Perlan Therapeutics, Inc. v. NexBio, Inc., 2013 WL 4508990, at *6-7 (Cal. Ct. App. Aug. 22, 2013). The lack of evidence in *Perlan* is strikingly similar to the lack of evidence here. Notably, as in *Perlan*, it is unclear why LNBYB would draft a detailed retainer agreement outlining the scope of its representation of Aykem, but neglect to draft *any* retainer in connection with its purported representation of the Kemel Parties.

The documents the Kemel Parties did provide do not constitute evidence of an attorney-client relationship. The emails attached to the Motion to Disqualify are between Mr. Golubchik and third parties. Neither Mr. Kemel nor Ms. Ayzenberg are included as recipients or senders. In addition, the substance of the emails either does not involve the Kemel Parties, or involves them only to the extent they signed on behalf of Aykem in connection with the Upadhyya Case. The article attached to the Motion to Disqualify does not appear, on its face, to have any relationship to Debtor,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Ms. Ayzenberg, Mr. Kemel or this bankruptcy case.

As to the documents related to lawsuits involving Debtor, the Kemel Parties suggest that, because Mr. Golubchik removed other proceedings, but did not remove *these* proceedings, there must be a conflict Mr. Golubchik is attempting to hide. This is not evidence of a conflict of interest. Finally, Aykem's registration with the California Secretary of State has no bearing on whether there was an attorney-client relationship.

While the Kemel Parties may claim they cannot produce privileged documents, the Kemel Parties had ample opportunity to provide the Court with redacted documents omitting substantive attorney-client communication. In fact, that is exactly what the Kemel Parties did with the Aykem Retainer. Alternatively, the Kemel Parties could have moved for a protective order, provided a privilege log and/or filed documents under seal. Instead, the Kemel Parties have moved to quash Debtor's requests for discovery. *See* Motion to Quash Notices of Deposition and Request for Production of Documents [doc. 138]. Despite filing numerous papers in connection with the Motion to Disqualify, and in opposition to the Application to Employ, the Kemel Parties never provided evidence to support their claim that they individually maintained an attorney-client relationship with LNBYB and/or Mr. Golubchik.

Given that the Aykem Retainer explicitly excluded any entity other than Aykem as a client, to meet their "heavy burden" of proving a separate attorney-client relationship with LNBYB and/or Mr. Golubchik and to survive the "strict judicial scrutiny" applied to motions to disqualify, the Kemel Parties should have provided evidence substantiating their claim of an attorney-client relationship. They did not. Consequently, the Kemel Parties have failed to demonstrate that there was an attorney-client relationship between LNBYB/Mr. Golubchik and the Kemel Parties, whether express or implied.

C. Other Issues Raised by the Parties

The other issues raised by Sands Law and the Kemel Parties also do not warrant disqualification of LNBYB or a denial of the Application to Employ. As a preliminary matter, LNBYB's contention that Sands Law and the Kemel Parties lack standing because they are not creditors to the estate is moot; Sands Law and the Kemel Parties have now filed proofs of claim against the estate, and the Court has not

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

yet adjudicated the validity of the claims.

With respect to the Kemel Parties' assertion that LNBYB should have disclosed its relationship to the Kemel Parties in the Application to Employ, as discussed above, the Kemel Parties did not prove that they *had* a relationship with LNBYB. Moreover, Aykem, LNBYB's former client, does not appear to have any involvement in this case.

Next, Sands Law's argument that Mr. Golubchik emailed FR's counsel to inform FR of a proposed sale is not grounds to deny the Application to Employ. [FN3]. Counsel for debtors in possession routinely inform secured creditors about their intent to sell estate property in an attempt to negotiate with the secured creditors. Because settlement is generally cheaper than litigation, such conduct preserves estate resources. Moreover, in connection with the Reply, Mr. Golubchik testified that, at the time he sent the subject email to FR's counsel, Debtor *did* have a sale lined up. Declaration of David B. Golubchik [doc. 90], ¶ 90. This is not cause to deny the Application to Employ.

As to Sands Law's argument that Debtor attempted to hire a real estate broker that was not disinterested, as previously noted in the Court's ruling on Sands Law's motion to appoint a chapter 11 trustee (the "Prior Ruling") [doc. 93]—

[T]he nature of this "relationship" is that [Dmitri Lioudkouski, Debtor's principal] and another entity in which Mr. Lioudkouski has an interest are defendants, along with [Prime Capital, the proposed broker], in a pending lawsuit before another bankruptcy judge. There is no other evidence of a relationship between Prime Capital and Debtor. In addition, Debtor already agreed to withdraw the application to employ Prime Capital.

Prior Ruling, p. 5. Moreover, it is unclear why Prime Capital's potential disinterestedness would impact LNBYB's Application to Employ. As such, neither Sands Law nor the Kemel Parties have provided cause to deny the Application to Employ.

III. CONCLUSION

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

The Court will approve the Application to Employ and deny the Motion to Disqualify.

Debtor must submit an order within seven (7) days.

FOOTNOTES

1. In a filing unrelated to the Motion to Disqualify [doc. 144], which the Court need not consider, the Kemel Parties argue, for the first time, that Aykem is an alter ego of the Kemel Parties. In the case referenced by the Kemel Parties, a firm that represented a subsidiary corporation undertook representation adverse to the parent corporation. *Brooklyn Navy Yard Cogeneration Partners, L.P. v. Superior Court (Parsons Corp.)*, 60 Cal.App.4th 248, 251-52 (Ct. App. 1997). After the trial court entered an order disqualifying the attorney, the appellate court vacated the trial court's order, holding that such disqualification is only appropriate when the parent and subsidiary corporations are alter egos of one another, and not simply when there is a general "unity of interests" between the entities. *Id.*, at 257-58. To determine if two entities are alter egos of one another, courts consider: "inadequate capitalization, commingling of funds and other assets, disregard of corporate formalities (e.g., stock issuance, keeping of minutes, election of officers and directors, segregation of corporate records), identical equitable ownership in the two entities and identical directors and officers." *Id.*, at 258. The Kemel Parties have presented no evidence that they inadequately capitalized Aykem, commingled funds and/or disregarded corporate formalities.
2. Likewise, if true, Mr. Golubchik's discussion of "investment strategy" (or any other strategy) would not, on its own, create an attorney-client relationship if Mr. Golubchik was unaware the Kemel Parties intended to hire Mr. Golubchik to represent them in connection with these issues.
3. Sands Law is not counsel to FR and was not a sender or recipient of the emails between FR's counsel and Mr. Golubchik. As such, Sands Law cannot properly authenticate these emails. In any event, the emails are not grounds for denial of the Application to Employ.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#8.00 Emergency motion to recuse David Golubchik and the Law Firm of Levene, Neale, Bender, Yoo and Brill LLP, from all further participation in this case, all related cases, and for an order disgorging all funds received by the firm due to undisclosed conflicted representation of the debtor in re Weibel, Inc (9th circuit BAP1994) 176 B.R. 209

Docket 56

Tentative Ruling:

See calendar no. 7.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

1:14-11779 Marina Khomutova

Chapter 7

#9.00 Motion to reopen chapter 7 case pursuant to LBR 5010-C;
11 U.S.C. 350(B) to avoid a lien

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):

Marina Khomutova

Represented By
Asbet A Issakhanian

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#10.00 Motion for an order authorizing chapter 7 trustee to deposit funds into the bankruptcy court's registry

Docket 323

Tentative Ruling:

I. BACKGROUND

On January 7, 2020, Duane Daniel Martin ("Duane") and Tisha Michelle Martin ("Tisha") (together, "Debtors") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

On August 12, 2019, the Trustee filed a motion to approve a compromise between the Trustee, Duane, Michael Martin ("Michael") and Roxe, LLC (the "Compromise Motion") [doc. 219]. In relevant part, the agreement attached to the Compromise Motion provided that 26% of the net proceeds from the sale, defined in the agreement as "Michael's Distribution," would be deposited into the Epps & Coulson, LLP Client Trust Account.

The Trustee also filed a motion for approval to sell real property of the estate (the "Sale Motion") [doc. 223]. Tisha opposed the Compromise Motion, asserting a claim in Michael's Distribution and requesting that Michael's Distribution be escrowed pending resolution of the claims to Michael's Distribution ("Compromise Opposition") [doc. 246]. In relevant part, Tisha argued that a lis pendens she recorded in connection with litigation before state family court preserved her right in the Michael Distribution. Compromise Opposition, p. 12. Epps & Coulson, LLP ("Epps"), Michael's prior attorneys, also have asserted a claim to Michael's Distribution [doc. 238].

On September 18, 2019, the Court entered orders approving the Sale Motion (the "Sale Order") [doc. 264] and the Compromise Motion, as modified (the "Compromise Order") [doc. 265]. In relevant part, the Sale Order provides—

Epps & Coulson, LLP and Tisha... are instructed to remove their respective liens, claims and interests on the Family Home. The Deed

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT...

Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

of Trust in favor of Epps & Coulson, LLP will be treated as a lien to the extent of Michael's Distribution, will not be paid through Escrow, and shall attach only to Michael's Distribution from the Net Proceeds under the Settlement, subject to resolution of the disputed claim of Tisha.

Michael's Distribution (defined below) shall be delivered by Escrow at closing to the Trustee to be held by the Trustee in a segregated account pending the (a) resolution of both (i) the fee dispute between Roxe, LLC, Michael and Epps & Coulson, and (ii) Tisha's asserted interest in such funds (collectively, the "Dispute Parties") pursuant to a stipulation of all of the Dispute Parties (the "Stipulation for Resolution"); or (b) entry of an Order from a Court of competent jurisdiction, which may or may not be the Bankruptcy Court, that directs where Michael's Distribution should be delivered (the "Order Directing Payment of Michael's Distribution"). Once there is either a Stipulation for Resolution or Order Directing Payment of Michael's Distribution, then the Dispute Parties shall jointly submit the Stipulation for Resolution or file a Motion for Order Directing Payment of Michael's Distribution in the Bankruptcy Court in the Debtors' Bankruptcy Case for the Bankruptcy Court's entry of an Order which directs the Trustee where to deliver Michael's Distribution (the "Distribution Order"). Until entry of a Distribution Order, or as otherwise directed by the Bankruptcy Court in the Debtors' Bankruptcy Case, the Trustee shall continue to hold Michael's Distribution in a segregated account.

Sale Order, pp. 4-5. The Sale Order defined Michael's Distribution as 26% of the net proceeds after payment of liens, costs and fees; Michael's Distribution is separate from the 74% distribution of net proceeds to the Trustee. The Compromise Order reiterated the instructions regarding holding Michael's Distribution. Compromise Order, pp. 3-4.

On July 27, 2020, the Trustee filed a motion for authority to deposit Michael's Distribution into the Court's Registry (the "Motion") [doc. 323]. In the Motion, the Trustee states that he is prepared to file a Final Report and close this case, and that the remaining disputes over Michael's Distribution will be handled by a court other than

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT... Duane Daniel Martin and Tisha Michelle Martin
this Court.

Chapter 7

On August 13, 2020, Epps & Coulson, LLP ("Epps") filed a "limited opposition" to the Motion (the "Opposition") [doc. 325]. In the Opposition, Epps requests that Michael's Distribution be deposited into the Epps & Coulson, LLP Client Trust Account. Epps then provides legal argument regarding why it believes Tisha does not have a proper claim to Michael's Distribution.

On August 19, 2020, the Trustee filed a reply to the Opposition (the "Reply") [doc. 326], asserting that the arguments in the Opposition exceed the scope of the Motion. Given that the Trustee seeks only to relocate the subject funds to the Court's Registry, and not to adjudicate entitlement to the subject funds, the Trustee asserts that Epps' arguments are improper in the context of the Motion. On August 20, 2020, Tisha filed a response to the Opposition [doc. 327], agreeing with the Trustee's arguments in the Reply.

II. ANALYSIS

Here, because the Trustee is prepared to file a Final Report and close this case, the Trustee requests transfer of Michael's Distribution from the Trustee's segregated account to the Court's Registry. In its Opposition, Epps first contends that, because the settlement agreement attached to the Compromise Motion provided for storage of the funds in Epps's client trust account, the Court should redirect the funds to that account. However, Tisha was not a party to the settlement agreement. In addition, Tisha explicitly objected to Epps holding the funds in its client trust account, and the Court resolved that objection by instructing that the Trustee hold the subject funds. As such, the Compromise Order and the Sale Order supersede any contradictory language in the settlement agreement.

Epps' remaining arguments, regarding whether Tisha is legally entitled to the Michael Distribution, exceed the scope of the Motion. The Trustee's request is to hold the funds in the Court's Registry instead of the Trustee's segregated account; the Motion does not request any relief related to Tisha's, Epps', Michael's or any other party's rights to the Michael Distribution. A transfer of the funds to the Court's Registry will not impact these parties' claims to the funds. Epps having provided no other basis to preclude the funds from being deposited into the Court's Registry, the Court will grant

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT... Duane Daniel Martin and Tisha Michelle Martin
the Motion.

Chapter 7

III. CONCLUSION

The Court will grant the Motion.

The Trustee must submit Order F7067-1.1.ORDER.REGISTRY.FUND, located on the Court's website, 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, August 27, 2020

Hearing Room 301

2:00 PM

1:17-13142 Amir Elosseini

Chapter 7

- #11.00** Trustees motion for an order
(1) Approving sale of real property free and clear of certain interests under 11 U.S.C. §§ 363(B) and (F);
(2) Approving the proposed overbid procedure;
(3) Authorizing payments from sale proceeds; and
(4) Determining that buyers are entitled to 11 U.S.C. § 363(M) protection;

Docket 275

Tentative Ruling:

Grant, provided that the order include the provision in ¶ 4 of Wells Fargo Bank, N.A.'s limited opposition [doc. 287].

The chapter 7 trustee must submit the order within seven (7) days.

Party Information

Debtor(s):

Amir Elosseini

Represented By
Kevin Tang
David Miller

Trustee(s):

Amy L Goldman (TR)

Represented By
Katherine Bunker
Maria L Garcia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

1:17-13142 Amir Elosseini

Chapter 7

#11.10 Hearing re: Stipulation Between the Chapter 7 Trustee and the United States of America Re: The Allowance of Claim of the Internal Revenue Service

Docket 296

Tentative Ruling:

Grant.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the stipulating 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 stipulating parties will be so notified.

Party Information

Debtor(s):

Amir Elosseini

Represented By
Kevin Tang
David Miller

Trustee(s):

Amy L Goldman (TR)

Represented By
Katherine Bunker
Maria L Garcia
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

#12.00 Motion to compel production of documents, and media,
and compliance with docket nos. 37 and 50

Docket 119

Tentative Ruling:

Deny.

I. BACKGROUND

On April 10, 2018, Exotic Euro Cars, Inc. ("Debtor") filed a voluntary chapter 7 petition. Amy L. Goldman was appointed chapter 7 trustee (the "Trustee"). In its statement of financial affairs [doc. 1], Debtor indicated that Sharmini Kumar is Debtor's president.

On December 26, 2018, Renzer Bell II ("Movant") filed proof of claim 3-1, asserting an unsecured claim in the amount of \$773,435 based on "breach of contract, anticipatory repudiation of contract, and fraud."

On October 24, 2018, Movant filed a *Motion for an Order Directing Trustee Amy Goldman, and her Attorney Todd Frealy to Release Documents Germane to the Chapter 7 Petition of Debtor Exotic Euro Cars* (the "First Motion to Compel") [doc. 31]. On November 2, 2018, the Trustee filed a stipulation between the Trustee and Movant resolving the First Motion to Compel (the "Stipulation") [doc. 37]. On November 21, 2018, the Court entered an order approving the Stipulation [doc. 50].

Pursuant to the Stipulation, the Trustee was to provide Movant with certain documents enumerated in the Stipulation, the recordings of the § 341(a) meetings of creditors and a list of any future discovery and additional records obtained which belong to Debtor by January 15, 2019. The Trustee further agreed to provide Movant a list of any future discovery obtained after December 31, 2018 every 60 days, and agreed to produce additional records which belong to Debtor every 75 days. The Stipulation excluded from production records the Trustee obtains that raise privacy concerns or are not documents which belong to Debtor. However, the Trustee agreed

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT... Exotic Euro Cars, Inc.

Chapter 7

to provide a list to Movant of such records so that he can determine whether it is necessary to seek a Court order instructing their production. Additionally, the Stipulation excluded from production Dr. Kain Kumar's personal bank statements.

In relevant part, the Stipulation provides:

F. The Trustee is in the process of conducting additional discovery against third parties in an attempt to recover information and documents that will lead to recovery of assets for the benefit of the bankruptcy estate. The Trustee anticipates obtaining additional information and documents within the next 90 days (the "Future Discovery").

...

3. By December 31, 2018, the Trustee will provide to [Movant] a list of any Future Discovery obtained, and will agree to produce additional records which belong to the Debtor to [Movant] by January 15, 2019. In addition, the Trustee will provide to [Movant] a list of any Future Discovery obtained after December 31, 2018 every 60 days, and will agree to produce additional records which belong to the Debtor every 75 days. To the extent that the Trustee obtain records which raise privacy concerns or are not documents which belong to the Debtor, the Trustee will not produce such records or documents, but will provide [Movant] with a list of such records so that he can determine whether it is necessary to seek a Court order that instructs their production.

Stipulation, pp. 3-4.

On December 17, 2018, Movant filed an *Amended Motion for an Order Granting Creditor Renzer Bell Leave to Serve Requests for Admissions, and Requests for Production Upon Debtor Exotic Euro Car, Inc., Kain Kumar MD, Inc., Antelope Valley Medical Group Leasing, Inc., and Antelope Valley Medical Group, Inc., and for an Order Granting Creditor Renzer Bell Leave to Conduct an Examination of Exotic Euro Cars, Inc., Kain Kumar MD, Inc., Antelope Valley Medical Group Leasing, Inc., and Antelope Valley Medical Group, Inc.* (the "2004 Exam Motion") [doc. 65].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT... Exotic Euro Cars, Inc.

Chapter 7

In the 2004 Exam Motion, Movant requested that the Court grant him leave to serve requests for admission on several entities under Federal Rule of Bankruptcy Procedure ("FRBP") 7036. Movant also requested that the Court grant him leave to serve requests for production of documents and to conduct a FRBP 2004 exam of several entities.

On December 20, 2018, the Court entered an order denying the 2004 Exam Motion because there was no relevant pending adversary proceeding or contested matter which would allow for requests for admission under FRBP 7036, and Movant had not complied with the requirements of FRBP 2004 and Local Bankruptcy Rule 2004-1 [doc. 68].

On December 30, 2019, the Trustee filed three adversary proceeding complaints, initiating adversary proceedings 1:19-ap-01154-VK, 1:19-ap-01155-VK and 1:19-ap-01156-VK. One of these adversary proceeding complaints was filed against Dr. Kain Kuman and Sharmini Kumar (together, the "Kumars") for avoidance of voidable and fraudulent transfers and recovery of avoided transfers for the benefit of Debtor's estate.

On January 21, 2020, Movant filed a motion for relief from stay to proceed with an action in the United States District Court, Southern District of New York against Debtor and the Kumars, among others (the "RFS Motion") [doc. 99]. On February 18, 2020, the Court entered an order granting the RFS Motion [doc. 104].

On August 7, 2020, Movant filed a *Motion to Compel Production of Documents, and Media, and Compliance with Docket Nos. 37 and 50* (the "Motion") [doc. 119]. In the Motion, Movant alleges that the Trustee has failed to or refused to comply with the terms of the Stipulation because he has not received a list of documents or records for over nine months. Movant contends that he is entitled to receive discovery obtained in connection with the adversary proceedings because the Stipulation is silent regarding production of these documents.

Movant requests that the Court order the Trustee "to provide copies of any, and all documents, and media to [Movant] including but not limited to documents evincing transfers, wire transfer, withdrawals, and payments made by [Debtor] for the benefits of its directors, officers, or shareholders, the oral deposition transcript taken for

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT... Exotic Euro Cars, Inc.

Chapter 7

defendant Sharmini Kumar, and any other discovery documents/materials/media in the possession of [the Trustee] ... which are related to the Chapter 7 Petition of [Debtor], and not explicitly excluded by dockets nos. 37, and 50. . . ."

On August 13, 2020, the Trustee filed an opposition to the Motion (the "Trustee Opposition") [doc. 123]. In the Trustee Opposition, the Trustee argues that the Court should deny the Motion because the Trustee has fulfilled her duties under 11 U.S.C. § 704(a)(7) and the Trustee has already produced to Movant all records and media as required by the Stipulation. The Trustee contends that Movant's request for documents seeks documents which are protected by the attorney-client privilege and the work product doctrine.

On August 15, 2020, the Kumars filed an opposition to the Motion (the "Kumar Opposition") [doc. 124]. In the Kumar Opposition, the Kumars object to the Motion because, among other things, it is overly broad and it seeks to compel the Trustee to turnover the Kumars' private and sensitive documents, which the Kumars provided to the Trustee with the understanding that they would be kept private.

II. DISCUSSION

In the Motion, Movant does not articulate the legal basis for compelling the Trustee to produce the requested documents and media, aside from the Stipulation and the related Order. At this time, Movant is not a party to a pending adversary proceeding, and there is no pending relevant contested matter. Accordingly, aside from enforcement of the Stipulation, the only legal basis for the Motion could be the Trustee's statutory duty under 11 U.S.C. § 704(a)(7).

A. Enforcement of the Stipulation

As detailed in the Trustee Opposition, the Trustee has complied with the terms of the Stipulation. The Trustee states that since December 30, 2019, she and her counsel have not received any documents that belong to Debtor. In the declaration attached to the Trustee Opposition, the Trustee's counsel testifies that he has produced to Movant all *Debtor's* documents that are in possession of the Trustee and her counsel [Declaration of Todd Frealy ("Frealy Decl."), ¶¶ 9, 14–46]. This includes, among others, all of Debtor's bank statements, wire transfer records, withdrawal slips and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT... **Exotic Euro Cars, Inc.**

Chapter 7

canceled checks from Debtor's bank accounts at three different banks. *Id.*

The Stipulation excluded from production documents that raise privacy concerns or are not documents which belong to the *Debtor*. However, the Stipulation requires the Trustee to provide a list of such documents to Movant. It appears that the Trustee has complied with this provision as well. Frealy Decl., ¶¶ 18, 25, 28 and 46. To the extent that Movant seeks documents which the Trustee or her counsel received in connection with prosecuting the adversary proceedings - except for *Debtor's* documents (which the Trustee *has* provided to Movant) - those documents are beyond the scope of the Stipulation.

B. The Chapter 7 Trustee's Statutory Duty Under 11 U.S.C. § 704(a)(7)

Pursuant to 11 U.S.C. § 704(a)(7), the trustee shall, "unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest." The bankruptcy court in *In re Refco Inc.*, 336 B.R. 187 (Bankr. S.D.N.Y. 2006) discussed the scope of a chapter 7 trustee's obligation under § 704(a)(7). In relevant part, the court noted:

First, a trustee's duty under section 704[a](7) is fairly extensive, as § 704[a](7) places the burden of providing requested information on the trustee, and reflects the overriding duty to keep parties in interest informed. Courts have interpreted the trustee's responsibilities broadly, making a request for information difficult for the trustee to avoid, in the absence of a court order to the contrary. *Pineiro v. Pension Benefit Guaranty Corporation*, 318 F.Supp.2d 67, 102 (S.D.N.Y.2003) (internal citations and quotations omitted). *See also In re Robert Landau Assocs., Inc.*, 50 B.R. 670, 677 (Bankr.S.D.N.Y.1985) ("The policy of open inspection, established in the Code itself through section 704(7) and F.R.B.P. 5005 and 5007, is fundamental to the operation of the bankruptcy system and is the best means of avoiding any suggestion of impropriety that might or could be raised.") (internal citation and quotation omitted); *In re Sports Accessories, Inc.*, 34 B.R. 80, 82 (Bankr.D.Md.1983) (discussing importance of trustee's duty to disclose).

Second, the duty to provide information under section 704[a](7) is not

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT...

Exotic Euro Cars, Inc.

Chapter 7

unlimited, however, as is made clear by the section's introductory clause. *Robert Landau*, 50 B.R. at 675; *Speleos v. McCarthy*, 201 B.R. 325, 328 (D.D.C.1996). In particular, a trustee may obtain a protective order against disclosure of information under section 704[a](7) if disclosure would result in waiver of the attorney-client privilege, *In re Lee Way Holding Co.*, 120 B.R. 881, 908 (Bankr.S.D.Ohio 1990), or of information that is proprietary and confidential. *In re Grabill Corp.*, 109 B.R. 329, 333 (N.D.Ill.1989); *see also 6 Collier on Bankruptcy* ¶ 704.11 (15th ed.2005), at 704–23 (noting that section 107 of the Bankruptcy Code must also be kept in mind when considering a trustee's duty to furnish information).

Third, a trustee's right to a protective order under section 704[a](7) is informed by the trustee's fiduciary duties, because the requirement to disclose information under section 704[a](7) derives from a trustee's fiduciary duties to creditors and the estate. *In re Scott*, 172 F.3d 959, 967 (7th Cir.1999); *In re Modern Office Supply, Inc.*, 28 B.R. 943, 944 (Bankr.W.D.Okla.1983).

Refco, 336 B.R. at 193–94.

Here, the Trustee has fulfilled her statutory duty under § 704(a)(7) to furnish information concerning the estate and the estate's administration to Movant. Movant has sent numerous requests for information and updates concerning the estate's administration, and the Trustee's counsel has answered those requests. Frealy Decl., ¶¶ 17–46.

To the extent that Movant seeks production of information developed by the Trustee's professionals for the prosecution of the adversary proceedings, that is not "information concerning the estate and the estate's administration" as contemplated under § 704(a)(7). *In re Walters*, 136 B.R. 256, 257–59 (Bankr. C.D. Cal. 1992). In *In re Walters*, the debtor filed a chapter 7 petition, and two creditors each filed an adversary proceeding against the debtor objecting to his discharge under 11 U.S.C. § 727. The chapter 7 trustee filed an adversary complaint against the debtor's wife, among others, alleging that certain prepetition transfers made by the debtor were fraudulent transfers and seeking to recover the value of those transfers for the estate.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT... Exotic Euro Cars, Inc.

Chapter 7

The chapter 7 trustee employed attorneys and accountants to prosecute the adversary proceeding against the debtor's wife. Eventually, the chapter 7 trustee and the debtor's wife entered into a settlement agreement and the adversary proceeding was dismissed. Subsequently, the two creditors moved the bankruptcy court for an order granting them access to the information developed by the chapter 7 trustee's accountants while investigating and prosecuting the action against the debtor's wife (the "Audit Materials"). The chapter 7 trustee objected to producing the Audit Materials because they did not fall within the ambit of § 704(a)(7), and even if they did, the Audit Materials were privileged and/or protected from discovery under the work product doctrine.

The bankruptcy court held that the Audit Materials were not "information concerning the estate and the estate's administration" under § 704(a)(7). In reaching this decision, the bankruptcy court discussed two cases, *i.e.*, *In re Modern Office Supply, Inc.*, 28 B.R. 943 (Bankr. W.D. Okla. 1983) and *In re Sports Accessories, Inc.*, 34 B.R. 80 (Bankr. D. Md. 1983).

In *In re Modern Office Supply, Inc.*, 28 B.R. 943 (Bankr. W.D. Okla. 1983), a creditor moved to convert the debtor's chapter 11 case to one under chapter 7. The creditor alleged that the debtor in possession had failed its statutory duties under § 704(a)(7) because the debtor had failed, contrary to the local rules and court orders, to report on the debtor's financial condition.

The *Walters* court noted:

The information required to be provided by the trustee-debtor in possession in *Modern Office Supply* was information concerning "estate administration:" that is, information regarding the financial condition and continued operation of the debtor's business, which is the foundation of a Chapter 11 estate. Such information permits the creditors to determine whether the trustee (or debtor in possession, as in *Modern Office Supply*) is protecting their interests in the property of the estate. Such information cannot be analogized to the Audit Materials in question in this case. If Plaintiffs sought to determine the status of the adversary proceeding against Mrs. Walters, while the adversary proceeding was still pending, and requested information concerning what steps Trustee was taking to prosecute that action diligently, then that information would be

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT...

Exotic Euro Cars, Inc.

Chapter 7

analogous to the information required to be produced in *Modern Office Supply*. The Audit Materials, however, essentially were prepared to assist Trustee in determining the extent of the facts underlying his causes of action against Mrs. Walters and the Trusts. Creditors do not need such information to decide whether their interests are being protected.

Walters, 136 B.R. at 258. The *Walters* court then discussed *In re Sports Accessories, Inc.*, 34 B.R. 80 (Bankr. D. Md. 1983). In *Sports Accessories*, a creditor requested information regarding the chapter 7 trustee's efforts to collect over \$350,000 in accounts receivable. The court in *Sports Accessories* ordered the chapter 7 trustee to turn over information concerning the following items: (1) what accounts receivable were outstanding as of March 24, 1981; (2) what accounts receivable have been collected by the trustee since that date; (3) what litigation has been filed by the trustee to collect any accounts receivable; (4) what cases have been turned over for collection; and (5) what accounts has the trustee elected not to pursue further. The *Walters* court noted, in a footnote:

Note that the court directed the Trustee only to state what litigation had been filed to collect the receivables, and what accounts the trustee had elected not to pursue: the court did not direct the trustee to turn over all the discovery and work product generated in reaching those determinations.

Walters, 136 B.R. at 259, n.3.

Here, as in *Walters*, Movant is not entitled under § 704(a)(7) to information developed by the Trustee's professionals for the prosecution of the adversary proceedings. That information is not encompassed by § 704(a)(7). Because the information does not fall under § 704(a)(7), the Court need not address the Trustee's claims of privilege or work product.

The Court notes that Movant may conduct discovery in the pending action before the United States District Court, for which Movant has obtained relief from the automatic stay.

III. CONCLUSION

For the reasons discussed above, the Court will deny the Motion.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT... Exotic Euro Cars, Inc.

Chapter 7

The Trustee must submit the order within seven (7) days.

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

1:20-10543 Amerigrade Corp.

Chapter 11

#13.00 Motion by Resnik Hayes Moradi LLP to withdraw as general bankruptcy counsel to the debtor

Docket 73

Tentative Ruling:

In order for movant to file a supplement to the motion, and for any authorized withdrawal to take place after the hearing on the pending motion for relief from the automatic stay, the Court intends to continue this hearing to **September 17, 2020 at 2:30 p.m.**

I. BACKGROUND

On March 5, 2020, Amerigrade Corp. (the "Debtor") filed a voluntary chapter 11 petition. On June 19, 2020, the Court entered an order setting November 2, 2020 as the deadline for the Debtor to file a plan and disclosure statement [doc. 60]. The next case status conference is set for November 19, 2020.

When the Debtor filed its chapter 11 petition, Resnik Hayes Moradi LLP ("Resnik Hayes") represented the Debtor, as its general bankruptcy counsel. On April 24, 2020, the Debtor filed a substitution of attorney, substituting the Law Offices of Michael Jay Berger as its bankruptcy counsel [doc. 22]. On May 21, 2020, the Debtor filed another substitution of attorney, reinstating Resnik Hayes as its bankruptcy counsel [doc. 36].

On May 22, 2020, TBB Valley Investments, LLC filed an amended motion for relief from stay as to an unlawful detainer action concerning the Debtor's real property at 13217 Filmore Street, Pacoima (the "First RFS Motion") [doc. 37]. On June 30, 2020, the Court entered an order granting the First RFS Motion in part [doc. 71].

On July 15, 2020, Resnik Hayes filed a motion to withdraw as the Debtor's bankruptcy counsel (the "Motion to Withdraw") [doc. 73]. On August 7, 2020, creditor Evette Adawalla filed an opposition to the Motion to Withdraw (the "Opposition") [docs. 81 and 82].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT... Amerigrade Corp.

Chapter 11

On August 19, 2020, U.S. Bank, National Association filed a motion for relief from the automatic stay concerning the Debtor's real property at 13219 Filmore Street, Pacoima (the "Second RFS Motion") [doc. 89]. The hearing on the Second RFS Motion is set for September 9, 2020.

II. DISCUSSION

Pursuant to California Rule of Professional Conduct ("CRPC") 3-700(C)(1), an attorney may request permission to withdraw as counsel if the client:

- (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively;

Pursuant to CRPC 3-700(A)(2):

A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

"[T]he court has discretion to deny an attorney's request to withdraw where such withdrawal would work an injustice or cause undue delay in the proceeding." *Mandell v. Superior Court*, 67 Cal. App. 3d 1, 4 (Ct. App. 1977); *see also Estate of Falco*, 188 Cal. App. 3d 1004, 1014 (Ct. App. 1987) ("To protect the best interests of the client, a trial court should have broad discretion in allowing attorneys to withdraw.").

Courts have considered the following factors when evaluating a motion to withdraw: "(1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case." *CE Res., Inc. v. Magellan Grp., LLC*, 2009 WL 3367489, at *2 (E.D. Cal. Oct. 21, 2015); *see also Deal v. Countrywide Home Loans*, 2010 WL 3702459, at *2 (N.D. Cal. Sept. 15, 2010); *and Beard v. Shuttermart of Cal., Inc.*, 2008 WL 410694, at *2 (S.D. Cal. Feb. 13, 2008).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT... Amerigrade Corp.

Chapter 11

Pursuant to Local Bankruptcy Rule ("LBR") 2091-1(e)(2), "[u]nless good cause is shown and the ends of justice require, no substitution or withdrawal will be allowed that will cause unreasonable delay in prosecution of the case or proceeding to completion."

Pursuant to LBR 2091-1(d), "[a]n attorney moving for leave to withdraw from representation of a corporation, a partnership including a limited liability partnership, a limited liability company, or any other unincorporated association, or a trust, concurrently or prior to filing any such motion, must give notice to the client of the consequences of its inability to appear without counsel, including the possibility that a default judgment may be entered against it in pending proceedings; or, if the client is a chapter 11 debtor, that the case may be converted to chapter 7, a trustee may be appointed, or the case may be dismissed."

Here, there may be cause to allow withdrawal of counsel. In the Motion to Withdraw, Resnik Hayes states that the Debtor is attempting to pursue a course of action against Resnik Hayes' advice, not responding to certain communications, not providing consistent instructions and not clarifying the current status of the engagement. If true, these events fall within the purview of CRPC 3-700(C)(1)(d). However, the declaration attached to the Motion to Withdraw does not attest to these allegations, and the declaration of Olivia Adawalla, the Debtor's President, attached to the Opposition, contradicts these assertions.

In the Opposition, Ms. Adawalla argues that Resnik Hayes did not provide notice to the Debtor of the consequences of its inability to appear without counsel as required by LBR 2091-1(d). In the Motion to Withdraw, Resnik Hayes states that the Debtor "has been previously advised to immediately seek representation to insure that its rights are not adversely affected by the withdrawal." The declaration attached to the Motion to Withdraw does not state when Resnik Hayes so advised the Debtor. Additionally, the declaration of Olivia Adawalla, attached to the Opposition, contradicts this assertion. Moreover, contrary to LBR 2091-1(d), the statement in the Motion to Withdraw does not provide the Debtor, which must have counsel to appear in court, with sufficient notice of the consequences of its inability to appear without counsel.

In addition, the Second RFS Motion is set for hearing on September 9, 2020. In light of this timing, it is questionable whether the Debtor will have sufficient time to obtain

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

CONT... Amerigrade Corp.

Chapter 11

new counsel for it to respond to the Second RFS Motion. Thus, counsel's withdrawal at this time could significantly prejudice the Debtor and its bankruptcy estate.

III. CONCLUSION

The Court intends to continue this hearing to **September 17, 2020 at 2:30 p.m.** No later than **September 3, 2020**, Resnik Hayes must file and serve on the Debtor and the respondent a supplemental declaration attesting to the facts asserted in the Motion to Withdraw. Any response must be filed and served on Resnik Hayes no later than **September 10, 2020**.

The Court will prepare the order.

Party Information

Debtor(s):

Amerigrade Corp.

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, August 27, 2020

Hearing Room 301

2:00 PM

1:20-11047 4433 Florin Road, LLC

Chapter 11

#14.00 Motion for authority for interim use of cash collateral

fr. 6/25/20; 8/6/20

Docket 16

Tentative Ruling:

See calendar no. 15.

Party Information

Debtor(s):

4433 Florin Road, LLC

Represented By
Douglas M Neistat

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

1:20-11047 4433 Florin Road, LLC

Chapter 11

#15.00 Motion by creditor Community Commerce Bank under
11 U.S.C. 1112 (b) for dismissal or conversion of chapter 11 case

Stip to dismiss filed 8/25/20

Docket 61

Tentative Ruling:

The debtor having signed a stipulation to dismiss this case with a 180-day bar, and there being no other opposition to creditor Community Commerce Bank's motion to dismiss, the Court intends to enter an order dismissing this case with a 180-day bar.

Appearances on August 27, 2020 are excused.

Party Information

Debtor(s):

4433 Florin Road, LLC

Represented By
Douglas M Neistat
Jeremy H Rothstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

1:20-11048 7171 Bowling Drive, LLC

Chapter 11

#16.00 Motion for authority for interim use of cash collateral
fr. 6/25/20; 8/6/20

Docket 9

Tentative Ruling:

See calendar no. 17.

Party Information

Debtor(s):

7171 Bowling Drive, LLC

Represented By
Douglas M Neistat

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 27, 2020

Hearing Room 301

2:00 PM

1:20-11048 7171 Bowling Drive, LLC

Chapter 11

#17.00 Motion by Community Commerce Bank under 11 U.S.C. 112(b)
for dismissal or conversion of chapter 11 case

Stip to dismiss filed 8/25/20

Docket 50

Tentative Ruling:

The debtor having signed a stipulation to dismiss this case with a 180-day bar, and there being no other opposition to creditor Community Commerce Bank's motion to dismiss, the Court intends to enter an order dismissing this case with a 180-day bar.

Appearances on August 27, 2020 are excused.

Party Information

Debtor(s):

7171 Bowling Drive, LLC

Represented By
Douglas M Neistat
Jeremy H Rothstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 8, 2020

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 8, 2020

Hearing Room 301

10:30 AM

1:15-12329 Rene Dashiell

Chapter 13

#15.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 3/10/20; 6/9/20

Docket 43

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rene Dashiell

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 8, 2020

Hearing Room 301

10:30 AM

1:15-14074 Jennifer D. Mead

Chapter 13

#16.00 Trustee's motion for order modifying the plan to increase the plan payment pursuant to 11 U.S.C. sec 1329(a) and the percentage to be paid to unsecured creditors or, in the alternative, dismissing the ch 13 petition due to debtor's failure to make debtor's best efforts to repay creditors pursuant to 11 U.S.C. sec 1307(c)(6)

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jennifer D. Mead

Represented By
Lenelle C Castille

Trustee(s):

Elizabeth (SV) 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 8, 2020

Hearing Room 301

10:30 AM

1:17-12163 Cynthia Ann Donahue

Chapter 13

#17.00 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 refunds

fr. 2/11/20; 4/14/20; 6/9/20; 8/11/20

Docket 49

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, September 8, 2020

Hearing Room 301

10:30 AM

1:17-12522 Taghreed Yaghnam

Chapter 13

#18.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 99

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Taghreed Yaghnam

Represented By
James G. 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 8, 2020

Hearing Room 301

10:30 AM

1:17-13192 Stephanie Marie Wilson

Chapter 13

#19.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 69

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 8, 2020

Hearing Room 301

10:30 AM

1:18-10831 Jose Reynaldo Juarez

Chapter 13

#20.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 73

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Reynaldo Juarez

Represented By
Richard Mark Garber

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 8, 2020

Hearing Room 301

10:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

#21.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 12/10/19; 2/11/20; 3/10/20; 4/14/20; 6/9/20; 8/11/20

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 8, 2020

Hearing Room 301

10:30 AM

1:19-10022 Gus Albert Bolona and Deirdre Marie Bolona

Chapter 13

#22.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 66

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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 8, 2020

Hearing Room 301

10:30 AM

1:19-10325 Joann B Atkins

Chapter 13

#23.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 57

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, September 8, 2020

Hearing Room 301

10:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#24.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 1/14/20; 3/10/20; 6/9/20; 7/14/20; 8/11/20

Docket 56

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 8, 2020

Hearing Room 301

10:30 AM

1:19-11241 Ernestina Tejada Flores

Chapter 13

#25.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 38

Tentative Ruling:

- NONE LISTED -

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
Courtroom 301 Calendar**

Tuesday, September 8, 2020

Hearing Room 301

10:30 AM

1:19-11471 Melissa Roberta Ramirez

Chapter 13

#26.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melissa Roberta Ramirez

Represented By
Hasmik Jasmine Papian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 8, 2020

Hearing Room 301

10:30 AM

1:19-12509 Elia Blanco

Chapter 13

#27.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elia Blanco

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 8, 2020

Hearing Room 301

10:30 AM

1:19-10039 Keith Tatsukawa

Chapter 13

#27.10 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 70

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, September 8, 2020

Hearing Room 301

11:00 AM

1:13-13908 Kathleen Marie Latham

Chapter 13

#28.00 Motion for relief from amended VK sanctions order:
"Order granting motion for Fed. R. Bankr. P. 9011
sanctions against Philip E. Koebel" as amended

Docket 108

Tentative Ruling:

Deny. Movant, who bears the burden to do so, has not demonstrated cause for relief from the subject order, pursuant to Fed. R. Civ. P. 60(b)(5) or (b)(6).

Respondent must submit the order within seven (7) days.

Party Information

Debtor(s):

Kathleen Marie Latham

Represented By
Philip E Koebel

Trustee(s):

Elizabeth (SV) 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 8, 2020

Hearing Room 301

11:00 AM

1:19-10022 Gus Albert Bolona and Deirdre Marie Bolona

Chapter 13

#29.00 Motion for objection to the notice of mortgage payment change filed by U.S. Bank Trust National Trust Association as Trustee for GIFM Holdings Trust on June 23, 2020

Docket 64

Tentative Ruling:

The parties dispute whether the debtors or the lender paid the subject insurance premiums that led to the increase in the debtors' mortgage payments. However, neither party has provided sufficient documentary evidence of such payment, such as a check or account demonstrating that either the debtors or the lender *funded* the required premiums, in full.

Although the debtors provided a confirmation email, dated July 22, 2020, as to one \$745.65 payment, that email does not include any information regarding the **source of the payment**, or whether the payment completely and timely satisfied the premium due at that time.

If the debtors have been timely paying all of the insurance premiums to maintain the required insurance coverage on the subject property, without any gap in required coverage, the lender has not demonstrated that it may charge the debtors for insurance coverage, on top of the debtors' own coverage, under the terms of the applicable promissory note or deed of trust.

The Court will continue this hearing to **11:00 a.m. on October 6, 2020**. No later than September 22, 2020, the parties must file and serve documentary evidence regarding the source of funding for the subject insurance payments and whether that source **paid the required insurance premiums, in full, without a lapse in coverage**.

If the debtors demonstrate that they funded the required insurance premiums in full, and without a gap in coverage, the lender must file and serve evidence that it is entitled to charge the debtors for insurance, pursuant to the terms of the applicable promissory note and deed of trust, when the debtors have maintained and paid in full for the required insurance coverage.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 8, 2020

Hearing Room 301

11:00 AM

CONT... Gus Albert Bolona and Deirdre Marie Bolona

Chapter 13

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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 303 Calendar**

Tuesday, September 8, 2020

Hearing Room 303

11:00 AM

1:20-11369 Mitchell S. Cohen

Chapter 13

#30.00 U.S. Trustee's motion to dismiss case pursuant to 11 U.S.C. § 1307(c) with a two-year bar from refileing pursuant to 11 U.S.C. §§ 349(a) and 105(a);

Docket 20

***** VACATED *** REASON: Notice of withdrawal of motion filed 9/2/20 [doc. 28].**

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, September 8, 2020

Hearing Room 301

11:00 AM

1:15-12061 Carmen Jacqueline Der Krikorian

Chapter 13

#31.00 Amended motion under to modify chapter 13 plan to extend it by two years pursuant to cares act

Docket 75

Tentative Ruling:

Grant, subject to the conditions in the chapter 13 trustee's comments [doc. 79].

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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, September 8, 2020

Hearing Room 301

11:00 AM

1:19-10039 Keith Tatsukawa

Chapter 13

#32.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 65

Tentative Ruling:

Grant.

On July 30, 2020, in response to the debtor's motion to modify his chapter 13 plan [doc. 66], secured creditor Rama NPL 1, LLC ("Creditor") filed a notice of opposition and request for a hearing (the "Opposition") [doc. 69]. In the Opposition, Creditor contends that the debtor, Keith Tatsukawa ("Debtor"), may not extend the term of his chapter 13 plan to seven years.

However, pursuant to the recently added section (d) under 11 U.S.C. § 1329, a debtor may do so:

(d)(1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—

(A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and

(B) the modification is approved after notice and a hearing.

(2) A plan modified under paragraph (1) may not provided for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.

11 U.S.C. § 1329(d)(1)–(2).

Debtor has submitted a declaration testifying that he has experienced reduced rental income, and increased expenses, as a result of the COVID-19 pandemic. The chapter

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 8, 2020

Hearing Room 301

11:00 AM

CONT... Keith Tatsukawa

Chapter 13

13 trustee has recommended approval of Debtor's motion, subject to Debtor paying 100% of allowed claims.

Given the chapter 13 trustee's recommendation, Debtor's adverse changes in income and expenses, due to the pandemic, and Debtor's ability to increase the plan term to 7 years, pursuant to 11 U.S.C. § 1329(d)(1)–(2), the Court will grant the motion.

Movant must submit the order within seven (7) days.

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**

Tuesday, September 8, 2020

Hearing Room 301

11:00 AM

1:19-11540 Justin Taeseung Lee and Anh Quynh Lee

Chapter 13

#33.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w)
to modify plan or suspend plan payments

fr. 8/11/20

Docket 33

Tentative Ruling:

In light of the debtors' agreement to increase the term of their chapter 13 plan to 5 years, and the debtors' evidence regarding their reduction in income, does the chapter 13 trustee have any issues with the reduced plan payments which the debtors propose to make?

8/11/2020 Tentative:

On October 3, 2019, the Court entered an order confirming the debtors' chapter 13 plan (the "Order") [doc. 26]. Pursuant to the Order, the debtors are to pay \$4,648 per month for 55 months. The plan is a 100% plan. The Order also provides that the applicable commitment period is five years if the plan pays less than 100%.

On July 6, 2020, the debtors filed a motion to modify their chapter 13 plan (the "Motion") [doc. 33]. In the Motion, the debtors propose to reduce the plan payment to \$1,876 per month from July 2020 to July 2024. If the Motion is granted, the last plan payment due would be payable 54 months after the first plan payment was due. The proposed modification will reduce the percentage paid to general unsecured creditors from 100% to 41%. The debtors state that they are requesting a modification of their plan because their income has decreased. The debtors do not explain why their income has decreased or whether this is a temporary decrease.

On July 21, 2020, the chapter 13 trustee filed an objection to the Motion (the "Objection") [doc. 34]. In the Objection, the chapter 13 trustee states that she disapproves of the proposed modification because: (1) the modification would reduce the percentage paid to unsecured creditors without providing for a five year commitment period as required by the Order; and (2) the debtors have not explained

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 8, 2020

Hearing Room 301

11:00 AM

CONT... Justin Taeseung Lee and Anh Quynh Lee Chapter 13

why their income was reduced and the expected duration of their reduced income.

The Court will continue this hearing to **September 8, 2020 at 11:00 a.m. By August 25, 2020**, the debtors must file a response to the Objection addressing the issues raised by the chapter 13 trustee.

Appearances on August 11, 2020 are excused.

Party Information

Debtor(s):

Justin Taeseung Lee

Represented By
Barry E Borowitz

Joint Debtor(s):

Anh Quynh Lee

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 8, 2020

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#34.00 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, 12/18/19; 2/5/20; 2/26/20; 3/4/20;
3/18/20; 4/1/20; 4/8/20; 5/6/20; 6/3/20; 7/29/20

Docket 64

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**

Tuesday, September 8, 2020

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#35.00 Debtor's motion for summary judgment and/or summary adjudication of facts

fr. 2/5/20; 2/26/20; 3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20;
6/3/20; 7/29/20

Docket 174

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**

Tuesday, September 8, 2020

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#36.00 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; 12/10/19;
2/5/20; 2/26/20; 3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20;
6/3/20; 7/29/20

Docket 70

Tentative Ruling:

In light of the ongoing pursuit of discovery, the Court will continue the discovery cutoff date with respect to the creditor's motion to dismiss the case and the debtor's related motion for summary judgment to **November 1, 2020**.

No later than **November 17, 2020**, the creditor must file and serve any supplemental opposition to the motion for summary judgment. No later than **November 24, 2020**, the debtor must file and serve any reply to the supplemental opposition. The Court will set a continued hearing on the motion for summary judgment for **11:00 a.m. on December 8, 2020**.

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 9, 2020

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; 11/6/19; 12/4/19; 1/8/20; 2/26/20; 4/15/20; 5/20/20;
6/24/20; 7/29/20

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

Movant(s):

Citibank, N.A.

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

9:30 AM

CONT... Mary Ann Irvine

Chapter 13

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, September 9, 2020

Hearing Room 301

9:30 AM

1:20-11150 Melissa Linda Nakamura

Chapter 7

#2.00 Motion for relief from stay [PP]

JPMORGAN CHASE BANK, N.A.
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):

Melissa Linda Nakamura

Represented By
Gregory M Shanfeld

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

9:30 AM

1:20-11167 Susana Camacho

Chapter 7

#3.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC
VS
DEBTOR

Docket 13

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):

Susana Camacho

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, September 9, 2020

Hearing Room 301

9:30 AM

1:20-11191 Alejandro Serrano

Chapter 7

#4.00 Motion for relief from stay [PP]

AMERICAN HONDA FINANCE CORPORATION
VS
DEBTOR

Docket 17

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Alejandro Serrano

Represented By
R Grace Rodriguez

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 9, 2020

Hearing Room 301

9:30 AM

1:20-11246 Edith Calix

Chapter 7

#5.00 Motion for relief from stay [PP]

CAB WEST, LLC
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):

Edith Calix

Represented By
Terrence Fantauzzi

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 9, 2020

Hearing Room 301

9:30 AM

1:17-10673 Hermann Muennichow

Chapter 7

#6.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY, FSB
VS
DEBTOR

fr. 8/19/20

Docket 73

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

9:30 AM

1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

#7.00 Motion for relief from stay [RP]

SELECT PORTFOLIO SERVICING, INC.
VS
DEBTOR

Docket 132

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

Debtor(s):

Aurora Frias Lee-Nelson

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

9:30 AM

CONT... Aurora Frias Lee-Nelson

Ronald D Tym

Chapter 7

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, September 9, 2020

Hearing Room 301

9:30 AM

1:17-10747 Alvin Isidro

Chapter 13

#8.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA
VS
DEBTOR

Docket 64

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to 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):

Alvin Isidro

Represented By
Robert M Aronson

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

9:30 AM

1:16-12176 Luis Trigueros

Chapter 13

#9.00 Motion for relief from stay [RP]

TOWD POINT MORTGAGE TRUST ASSET-BACKED SECURITIES
VS
DEBTOR

Docket 60

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.

This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.

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):

Luis Trigueros

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

9:30 AM

CONT...

Luis Trigueros

Todd L Turoci
Jaime A Cuevas Jr.

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

9:30 AM

1:18-11456 David Andrew Fremont and Carol Ann Majewski

Chapter 13

#10.00 Motion for relief from stay [RP]

KINECTA FEDERAL CREDIT UNION
VS
DEBTOR

Stip for adequate protection filed 8/20/20

Docket 33

***** VACATED *** REASON: Order approving stip entered 8/21/20
[Dkt.37]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Andrew Fremont

Represented By
Allan S Williams

Joint Debtor(s):

Carol Ann Majewski

Represented By
Allan S Williams

Movant(s):

Kinecta Federal Credit Union

Represented By
Erin M McCartney

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

9:30 AM

1:20-11420 Yelena Chistyakova

Chapter 13

#11.00 Motion for relief from stay [RP]

ARKADY VAPNIK
VS
DEBTOR

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yelena Chistyakova

Represented By
Alla Tenina

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

9:30 AM

1:20-11433 Paul Anthony Matulewicz

Chapter 13

#12.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 11

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition 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**

Wednesday, September 9, 2020

Hearing Room 301

9:30 AM

1:20-11286 Transpine, Inc.

Chapter 11

#13.00 Motion for relief from stay [AN]

OVERLAND DIRECT, INC.
VS
DEBTOR

Docket 20

***** VACATED *** REASON: Voluntary dismissal of motion filed 08/27/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

9:30 AM

1:20-10543 Amerigrade Corp.

Chapter 11

#14.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 89

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amerigrade Corp.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

1:20-10422 Rita J. Patel

Chapter 7

Adv#: 1:20-01059 LOGIX FEDERAL CREDIT UNION, its successors and/or v. Patel

#15.00 Status conference re: complaint to determine
dischargeability of debt
[11 U.S.C.sec 523(a)(2)(A) and sec 523 (a)(2)(C)]

fr. 8/5/20

Docket 1

***** VACATED *** REASON: Stipulated judgment entered 8/12/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rita J. Patel

Represented By
Steven A Alpert

Defendant(s):

Rita J. Patel

Pro Se

Plaintiff(s):

LOGIX FEDERAL CREDIT

Represented By
Reilly D Wilkinson

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 9, 2020

Hearing Room 301

1:30 PM

1:20-11134 Helping Others International, LLC

Chapter 11

Adv#: 1:20-01070 Nguyen, Trustee of Mother Nature Trust v. United Lender, LLC et al

#16.00 Status conference re removed proceeding

Docket 1

Tentative Ruling:

The Court will not remand this matter.

I. BACKGROUND

A. The State Court Action

On January 15, 2020, Any Thy Song Nguyen, Trustee of Mother Nature Trust ("Plaintiff"), filed a complaint in state court against United Lender, LLC ("United"), Shawn Ahdoot, Albert A. Ahdoot, Megan E. Zucaro, Helping Others International, LLC ("Debtor"), Western Fidelity Associates, LLC ("Western Fidelity"), American Financial Center, Inc. ("American") and John B. Spear (collectively, "Defendants"). Notice of Removal, Exhibit 2.

On January 21, 2020, Plaintiff filed the operative first amended complaint (the "FAC"), asserting causes of action for: (A) wrongful foreclosure – fraud; (B) fraud and deceit – intentional misrepresentation; (C) negligence; (D) breach of contract; (E) relief based on rescission of contract; (F) quieting title; (G) cancellation of written instruments; (H) declaratory relief; and (I) unfair business practices. Notice of Removal, Exhibit 14. Plaintiff demanded a jury trial. *Id.* In the FAC, Plaintiff alleges—

Plaintiff was the seller of residential real property located at 6475 Marigayle Circle, Huntington Beach, CA 92648 (the "Huntington Property"). United is the purported holder of a first deed of trust against the Huntington Property; Shawn and Albert Ahdoot are principals and alter egos of United. Debtor was the buyer of the Huntington Property and the trustor or debtor under the first deed of trust encumbering the Huntington Property; Ms. Zucaro is a principal and alter ego of Debtor, as well as a licensed real estate broker.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

CONT...

Helping Others International, LLC

Chapter 11

Western Fidelity is the trustee under the first deed of trust, and recorded a Notice of Trustee's Sale with a sale set for January 27, 2020. Mr. Spear is a licensed real estate broker and the "responsible broker" for Ms. Zucaro. Finally, American Financial is the purported holder of a third deed of trust against the Huntington Property. Defendants were agents of one another and co-conspirators.

In March 2019, Plaintiff received a call from Ms. Zucaro, who stated she was a real estate broker interested in buying the Huntington Property. Plaintiff told Ms. Zucaro she would sell the Huntington Property for \$2.5 million. However, Ms. Zucaro stated she did not have sufficient funds for the purchase, but would pay \$3 million if Plaintiff would carry a promissory note secured by a second deed of trust for one year, while Ms. Zucaro sold other properties. Ms. Zucaro also requested an additional \$150,000 commission. Plaintiff sold the Huntington Property to Debtor on these terms and obtained a promissory note from Debtor, secured by a second priority deed of trust, in the amount of \$1.2 million.

Subsequently, Debtor did not make any payments to Plaintiff. On July 1, 2019, Debtor obtained a loan from American secured by a third priority deed of trust in the amount of \$75,000. On September 18, 2019, United caused Western Fidelity to record a Notice of Default and Election to Sell Under Deed of Trust. On December 20, 2019, United caused Western Fidelity to record a Notice of Trustee's Sale, setting a foreclosure sale for January 27, 2020.

Since then, Plaintiff discovered that United sent a letter to Debtor noting that Debtor and Ms. Zucaro were current on United's loan. Plaintiff also discovered that Defendants have engaged in similar fraudulent conduct related to other real property. As such, Plaintiff believes Defendants acted in concert to steal Plaintiff's equity in the Huntington Property.

Id. On these allegations, Plaintiff seeks, among other relief, rescission of the sale agreement, a judgment that Defendants have no interest in the Huntington Property and monetary damages against Defendants. *Id.*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC

Chapter 11

On March 4, 2020, United filed a cross-complaint against Debtor, Plaintiff, Ms. Zucaro, Mr. Spear and Tri Star Equity Group Corp. (the "Cross-Complaint"), asserting causes of action for: (A) judicial foreclosure of deed of trust; (B) specific performance of assignment of rents; (C) appointment of receiver pursuant to provision in deed of trust; (D) injunctive relief; (E) breach of contract; (F) negligent misrepresentation; (G) fraudulent concealment; (H) negligence; (I) negligent hiring/supervision; (J) conspiracy; and (K) unjust enrichment. Notice of Removal, Exhibit 75. United also demanded a jury trial. *Id.* In the Cross-Complaint, United alleges—

On April 3, 2019, Debtor submitted to United a request for a loan secured by the Huntington Property. On May 1, 2019, Debtor and United entered into a loan transaction through which United provided \$1,957,000 in financing for the purchase and sale of the Huntington Property. Pursuant to the promissory note executed in connection with this transaction, Debtor was to make monthly payments on the first of each month, beginning on June 1, 2019.

Debtor defaulted on the promissory note, which is due and payable in full, in the total sum of \$2,234,390.66. Debtor has refused to cure its defaults. In addition, United believes that Debtor is using the Huntington Property as an unlicensed halfway house or sober living facility. United believes the other cross-defendants have conspired with Debtor to defraud United by inflating the sale price and using United's loan to enrich themselves.

Id. On these allegations, United seeks, among other things, sale of the Huntington Property, enforcement of its deed of trust as a first priority deed of trust, specific performance of the deed of trust and a monetary judgment in the amount of \$2,234,390.66, plus interest, late charges, fees and costs. *Id.*

On August 20, 2020, United filed a motion to amend the Cross-Complaint [doc. 18], requesting leave to assert claims for: (A) quiet title; (B) declaratory relief; (C) equitable lien by subrogation; and (D) tort of another. If the Court grants the request to amend the Cross-Complaint, the Cross-Complaint will seek, among other things, a judgment that United's lien is valid, a sale of the Huntington Property and monetary

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC
damages.

Chapter 11

On June 5, 2020, Plaintiff filed a notice that the state court set trial for August 27, 2021, with a settlement conference set for July 23, 2021. Notice of Removal, Exhibit 122. Although the parties have filed several pleadings in state court, prior to removal, the state court entered only two substantive orders: (A) an order on a request to enter a temporary restraining order enjoining the scheduled foreclosure sale of the Huntington Property; and (B) an order on a motion requesting a preliminary injunction enjoining the foreclosure sale. Notice of Removal, Exhibits 24, 25, 51, 52. The remaining motions and applications were pending at the time United removed this action to this Court.

B. Debtor's Bankruptcy Case and the Removal

On June 29, 2020, Debtor filed its chapter 11 petition. On July 17, 2020, United removed this action to this Court. On July 24, 2020, the Court issued the OSC [doc. 5]. On August 6, 2020, the Court entered an order appointing a chapter 11 trustee (the "Trustee") [Bankruptcy Docket, doc. 47]. [FN1].

On August 14, 2020, Plaintiff filed a brief requesting remand of this action and a statement of non-consent to entry of a final order or judgment by this Court ("Plaintiff's Brief") [doc. 16]. Plaintiff argues that the factors applicable to equitable remand weigh in favor of remanding this matter; Plaintiff especially emphasizes her demand for a jury trial. In addition, Plaintiff asserts that United waived its right to removal of this action based on a provision in the promissory note executed by United and Debtor. Finally, Plaintiff argues that United waived its right to removal by filing pleadings before the state court.

On August 26, 2020, the Trustee filed a brief opposing remand (the "Trustee's Brief") [doc. 24]. In the Trustee's Brief, the Trustee states that he is attempting to work with the other parties to reach a compromise and settlement. The Trustee also argues that the Court should not remand this matter because the Huntington Property is the primary asset of the estate, and the outcome of this adversary proceeding is critical to administration of the estate. On August 26, 2002, United also filed a brief opposing remand (the "United Brief") [doc. 25]. In the United Brief, United asserts that the contractual provision referenced by Plaintiff does not mandate remand, and that United has not otherwise waived its right to removal. United also asserts that the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC

Chapter 11

factors applicable to equitable remand weigh against remanding this action.

On August 26, 2020, American filed a brief [doc. 26] stating that it does not object to the removal of this action, but requests that the Court keep this case "until final resolution on the merits" to avoid further delay. Previously, American had filed a demand for jury trial and a statement of non-consent to a jury trial by this Court [doc. 14]. On August 26, 2020, Plaintiff, United and American filed a status report [doc. 27], in which the parties note that Plaintiff is evaluating a settlement proposal made by the Trustee.

II. ANALYSIS

A. Subject Matter Jurisdiction

Removal of state court actions to federal district court is governed by 28 U.S.C. §§ 1441 – 1455. Removal and remand of actions related to bankruptcy cases is governed by § 1452.

- (a) A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.
- (b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. . . .

28 U.S.C. § 1452. As set forth in § 1452, removal to a bankruptcy court requires that the court have jurisdiction of such claim or cause of action under 28 U.S.C. § 1334. 28 U.S.C. § 1334(b), with regard to bankruptcy cases and proceedings, provides that:

Except as provided by subsection (e)(2) and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

1. Arising Under Jurisdiction

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC

Chapter 11

"A matter arises under the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

2. Arising In Jurisdiction

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings . . ." *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11 . . ." 28 U.S.C. [§ 157\(b\)\(1\)](#); *Stern v. Marshall*, 564 U.S. 462, 475-76, 131 S.Ct. 2594, 2604, 180 L.Ed.2d 475 (2011).

3. Related to Jurisdiction

Bankruptcy courts also have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pegasus Gold Corp., 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

CONT... **Helping Others International, LLC**

Chapter 11

Here, none of the parties contend that this Court lacks subject matter jurisdiction over this proceeding. Under the authorities above, and in reviewing the FAC and the Cross-Complaint, the Court has "related to" jurisdiction over this matter. Both the FAC and the Cross-Complaint assert several causes of action against Debtor. In addition, because Plaintiff requests rescission of the sale agreement through which Plaintiff sold the Huntington Property to Debtor, resolution of this proceeding impacts whether the Huntington Property will remain property of the estate. Consequently, this Court has subject matter jurisdiction over this action.

B. Waiver of Right to Remove

In Plaintiff's Brief, Plaintiff contends that United waived its right to remove this proceeding by filing pleadings in state court. Plaintiff cites *Yusefzadeh v. Nelson, Mullins, Riley & Scarborough, LLP*, 365 F.3d 1244 (11th Cir. 2004), as support for her proposition. However, *Yusefzadeh* applied to removals under 28 U.S.C. § 1446(a), not 28 U.S.C. § 1452(a). *Yusefzadeh*, 365 F.3d at 1246. The *Yusefzadeh* court referenced 28 U.S.C. § 1447(c) to note that parties may argue that the removing party waived its right to remove an action in connection with a request to remand. *Id.*

Section 1447(c) explicitly applies to removals under 28 U.S.C. § 1446(a). 28 U.S.C. § 1447(c) ("A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal *under section 1446(a)*." (emphasis added)). Plaintiff has not set forth any authority applying a waiver bar to a removal under § 1452(a). *See Shared Network Users Grp., Inc. v. WorldCom Techs., Inc.*, 309 B.R. 446, 449 (E.D. Pa. 2004) ("Section 1452(b)...has its own provision for preventing dilatory or otherwise unfair conduct on the part of the removing party. While § 1446 has the 30 day rule, § 1452 permits the court to remand on 'any equitable ground.' Thus, § 1452 takes care of the problem of abusive tactics by a removing party in a way different from § 1446.").

In addition, as noted by United, a party "may have the right to remove to federal court where, *after it is apparent that the case is removable*, the defendant takes actions in state court that manifest his or her intent to have the matter adjudicated there, and to abandon his or her right to a federal forum." *Resolution Tr. Corp. v. Bayside Developers*, 43 F.3d 1230, 1240 (9th Cir. 1994) (emphasis added).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

CONT...

Helping Others International, LLC

Chapter 11

We have made clear that we will not "charge defendants with notice of removability until [they have] received a paper that gives them enough information to remove." *Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1141 (9th Cir. 2013) (quoting *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006)). "[A]s long as the complaint or 'an amended pleading, motion, order or other paper' does not reveal that the case is removable," a defendant, in effect, "may remove at any time." *Rea v. Michaels Stores Inc.*, 742 F.3d 1234, 1238 (9th Cir. 2014) (per curiam) (quoting 28 U.S.C. § 1446(b)(3)).

Kenny v. Wal-Mart Stores, Inc., 881 F.3d 786, 791 (9th Cir. 2018). In *Kenny*, for instance, the Ninth Circuit Court of Appeals held that the operative complaint was "indeterminate as to the amount in controversy" and, as a result, the right to remove was not apparent. *Id.*, at 790.

Here, the right to removal under 28 U.S.C. § 1452(a) does not arise until a bankruptcy case is commenced. As such, United could not have waived its rights prior to Debtor's filing of a bankruptcy petition, on June 29, 2020. United removed this proceeding approximately two weeks after the petition date. In those two weeks, the state court docket reflects that United filed only two responsive pleadings; United did not take any other action during that time. As such, to the extent waiver may be used as a bar to removal under 28 U.S.C. § 1452(a), United did not waive its right to remove under the circumstances present in this case.

C. Forum Selection Clause

Plaintiff also asserts that United contractually waived its right to removal because the promissory note executed by Debtor and United includes the following provision—

Choice of Venue. If there is a lawsuit, Borrower agrees, upon Lender's request, to submit to the jurisdiction of the courts of Clark County, State of Nevada.

Notice of Removal, Exhibit 74. However, Plaintiff is neither the borrower nor the lender; as such, Plaintiff does not have standing to enforce any provision in a contract to which she is not a party. Plaintiff has not otherwise stated a legal basis that would

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

CONT... **Helping Others International, LLC**

Chapter 11

allow Plaintiff to enforce a provision in the promissory note. Moreover, the referenced provision explicitly hinges on a request by United; here, United (as well as the Trustee) has requested that this Court adjudicate this proceeding. Thus, United did not contractually waive a right to removal.

D. Equitable 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:

- (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;

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC

Chapter 11

- (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, the factors weigh against remand. First, the impact of this proceeding on administration of the estate is significant. The proceeding will impact whether one of Debtor's critical scheduled assets remains property of the estate, as well as the amount of secured claims encumbering the Huntington Property (and asserted as claims against the estate in general). The Complaint, the Cross-Complaint and United's proposed first amended cross-complaint indicate a high degree of relatedness to the main bankruptcy case. In addition, the causes of action in these pleadings do not appear to be difficult or unsettled.

Moreover, the FAC, the Cross-Complaint and the proposed first amended cross-complaint appear to include both core and noncore claims. Given the intertwining allegations related to all the claims, severing core and noncore claims would not be feasible. Further, while there are nondebtor parties involved, most parties either have not responded to the OSC, or have explicitly consented to entry of a final order and/or a jury trial by this Court. American, the only party other than Plaintiff to file a statement not consenting to a jury trial, subsequently requested the Court keep this case "until final resolution on the merits."

In addition, the state court set trial for August 27, 2021, i.e., approximately one year from this hearing. Rather than prejudice all parties by delaying administration of Debtor's bankruptcy case by (at least) one year, and in comparing this Court's calendar to the state court's trial date, this Court will be able to more quickly adjudicate this matter; in turn, this will allow the Trustee to proceed promptly to administration and distribution of the estate. In light of the parties' comments regarding settlement discussions, a discharge of the OSC also will allow the parties to take advantage of this Court's mediation panel by arranging a global mediation of the issues related to both this adversary proceeding and Debtor's bankruptcy case. Finally, the record does not reflect that United is forum shopping.

Although Plaintiff has not consented to entry of a final order or judgment by this

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

CONT... **Helping Others International, LLC**

Chapter 11

Court, or to a jury trial held by this Court, these concerns are only two factors in assessing whether to remand an action. If the parties eventually require trial, and continue to object to trial being conducted by this Court, the parties may move to withdraw the reference and set trial before the United States District Court (the "District Court"). If Plaintiff does not consent to entry of a final order or judgment by this Court, and the District Court does not withdraw the reference, this Court will issue a report and recommendation to the District Court. Based on the above, the Court will not remand this action to state court.

III. CONCLUSION

The Court will not remand this matter to state court.

The Trustee did not participate in the joint status report submitted by Plaintiff, United and American. The Court will continue this status conference to **1:30 p.m. on October 7, 2020**. No later than **September 23, 2020**, all non-defaulted parties must file and serve a joint status report.

The Trustee must submit an order within seven (7) days.

FOOTNOTES

1. On August 27, 2020, the Court held a hearing on a motion, filed by the Trustee, to convert this case to a chapter 7 case. At that time, the Court issued a ruling granting the motion, and this case has been converted to a chapter 7 case.

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

Defendant(s):

United Lender, LLC

Represented By
Anita Jain

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 9, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC Chapter 11

Shawn Ahdoot Pro Se

Albert A. Ahdoot Pro Se

Megan E. Zucaro Pro Se

Helping Others International, LLC, a Pro Se

Western Fidelity Associates, LLC, a Pro Se

John B. Spear Pro Se

American Financial Center, Inc., a Pro Se

DOES 1 through 100, inclusive Pro Se

Plaintiff(s):

Anh Thy Song Nguyen, Trustee of Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#1.00 Debtors' proposed disclosure statement describing chapter 11 plan of reorganization

Docket 117

Tentative Ruling:

Deny.

The debtors did not include treatment of the Franchise Tax Board's priority claim in their chapter 11 plan of reorganization. In addition, the debtors did not provide a Declaration of Current/Postpetition Income and Expenses. Finally, although the debtors provided a declaration by Kimberly Guevara, regarding Ms. Guevara's intent to contribute to the debtors' chapter 11 plan, Ms. Guevara has not provided evidence of an ability to pay, such as pay stubs.

The Court will continue this hearing to **1:00 p.m. on October 15, 2020**. No later than **October 1, 2020**, the debtors must file and serve an amended chapter 11 plan and related disclosure statement, curing the deficiencies noted above.

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**

Thursday, September 10, 2020

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#2.00 Status conference re: chapter 11 case

fr. 11/21/19; 4/9/20; 7/9/20, 7/16/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on October 15, 2020**, to be held with the continued hearing on the adequacy of the debtors' proposed disclosure statement.

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**

Thursday, September 10, 2020

Hearing Room 301

1:00 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 3/19/20; 4/2/20

Docket 1

Tentative Ruling:

Contrary to the Court's ruling at the chapter 11 case status conference held in April 2020, the debtor did not lodge an order setting a bar date or provide notice of the bar date.

The debtor's only asset is an overencumbered single family residence. Based on a recorded Grant Deed attached to the proof of claim filed by secured creditor Bank of New York Mellon (the beneficiary of a first trust deed encumbering the residence), in April 2006, the debtor received its interest in that real property for consideration of less than \$100.00.

The debtor's schedules indicate that the residence has a value of \$700,000.00, and the first deed of trust encumbering the residence secures a \$1,000,000.00 claim. However, the proof of claim filed by Bank of New York Mellon [Claim 2-1] represents that the amount of the debt secured by the first deed of trust is \$1,859,629.60, and that payments have not been made on that claim since March 1, 2009.

Although the debtor allegedly leases its real property, the debtor's monthly operating reports indicate that it has not received any rental income for April 2020 through July 2020 [docs. 50, 55, 56, 57, 58].

Who are the current tenants in the debtor's real property?

4/2/2020 Ruling

Deadline to file proof of claim ("Bar Date"): **June 15, 2020.**

Deadline to mail notice of Bar Date: **April 13, 2020.**

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:00 PM

CONT... 5019 Partners, LLC

Chapter 11

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: **August 31, 2020.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on September 10, 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):

5019 Partners, LLC

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:00 PM

1:20-11237 BGS WORKS, INC.

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 30, 2020**

Deadline to mail notice of Bar Date: **September 30, 2020.**

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: **April 1, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on April 22, 2021.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's(s') 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor(s) in possession to file a proposed plan and related disclosure statement.

The debtor(s) must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:00 PM

CONT... BGS WORKS, INC.

Chapter 11

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:00 PM

1:20-11286 Transpine, Inc.

Chapter 11

#5.00 U.S. Trustee's motion to dismiss or convert case under 11 U.S.C. § 1112(b)

Docket 14

***** VACATED *** REASON: Voluntary dismissal of motion filed 08/28/20
(doc #36)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#6.00 Order to show cause re: dismissal with a 180-day bar, annulment of the automatic stay, and disgorgement

Docket 3

Tentative Ruling:

The petitioning creditors did not file proof of timely service of the summons and involuntary petition on the alleged debtor. Pursuant to Local Bankruptcy Rule 1010-1—

The court may dismiss an involuntary petition without further notice and hearing if the petitioner fails to (a) prepare a Summons and Notice of Status Conference in an Involuntary Bankruptcy Case on the court-mandated form; (b) at the same time the involuntary petition is filed, submit the Summons and Notice of Status Conference to the clerk for issuance; (c) serve the summons and petition within the time allowed by FRBP 7004; (d) file a proof of service of the summons and petition with the court; or (e) appear at the status conference set by the court.

If the petitioning creditors did not timely serve the summons and the involuntary petition on the alleged debtor, they must request an Alias Summons from the Court. Upon receiving the filing of the request, the Clerk will issue an Alias Summons.

The Alias Summons must be served upon the alleged debtor within 7 days of its issuance by the Court, pursuant to Fed. R. Bankr. P. 7004 and Local Bankr. R. 7004-1(b). The petitioning creditors must attach to the Alias Summons a copy of the involuntary petition.

To demonstrate proper service of the Alias Summons and the involuntary petition, the petitioning creditors must file a signed proof of service indicating that the Alias Summons and the involuntary petition were timely served on the alleged debtor. If the petitioning creditors can obtain an issued Alias Summons from the Court by September 25, 2020, the status conference will be continued to **1:00 p.m. on October 22, 2020**.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:00 PM

CONT... Mayallpostan LLC

Chapter 7

Party Information

Debtor(s):

Mayallpostan LLC

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#7.00 Debtor's application to employ Central Realty Advisors and Fair Realty Inc. as Real Estate Broker

Docket 127

Tentative Ruling:

Approve.

On August 7, 2020, Lev Investments, LLC ("Debtor") filed an application to employ Central Realty Advisors and Fair Realty Inc. as real estate brokers to the estate (the "Application") [doc. 127]. On August 20, 2020, The Sands Law Group, APLC ("Sands Law") filed an opposition to the Application (the "Opposition") [doc. 146]. Sands Law contends that the brokers have not stated that they have experience with bankruptcy. In addition, Sands Law asserts that the brokers should not receive their commission unless they are the "procuring cause" of a sale, and that the brokers have not justified an exclusive listing arrangement or their commission solely for posting the listing on MLS. Finally, Sands Law notes that this case will be converted or dismissed if Debtor does not timely file a plan of reorganization.

Regarding Sands Law's argument that the brokers lack experience with bankruptcy, Sands Law has set forth no authority that requires an estate's real estate professionals to have such experience. In addition, in the Declaration of Ilya Tsipis (the "Tsipis Declaration") [doc. 164], attached to the reply, Mr. Tsipis states that he does have experience with bankruptcy sales. As to Sands Law's argument that Debtor's case will be converted or dismissed if Debtor fails to timely file a chapter 11 plan of reorganization, Debtor timely filed a plan on August 28, 2020 [doc. 156].

The Tsipis Declaration addresses the remaining concerns expressed in the Opposition. These arguments are based on Sands Law's contention that merely listing the subject property on MLS does not constitute enough work to warrant an exclusive listing and the brokers' commission. However, the Tsipis Declaration includes detailed information about the work already done by the brokers to market and sell the subject property, which significantly exceeds simply listing the subject property for sale. As such, the Court will approve the Application.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#8.00 Debtor's motion for order disallowing claim no. 2 filed by The Sands Law Group

Docket 130

Tentative Ruling:

Sustain in part and overrule in part.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition. On June 12, 2020, The Sands Law Group, APLC ("Sands Law") filed proof of claim no. 2, asserting a claim in the amount of \$10,500.01 based on "services performed." To the proof of claim, Sands Law attached redacted billing entries.

On August 10, 2020, Debtor filed an objection to Sands Law's claim (the "Objection") [doc. 130], asserting that Sands Law was hired by another attorney, Gina Lisitsa, to assist in certain litigation matters on behalf of Debtor. Debtor contends it paid all obligations owed to Sands Law, and attached evidence of two checks, totaling \$750, issued to Sands Law by Debtor. Debtor also contends that it requested that Sands Law provide support for its claim, but did not receive a response.

On August 26, 2020, Sands Law filed an opposition to the Objection (the "Opposition") [doc. 153]. In connection with the Opposition, Sands Law provided a retainer agreement between Sands Law and Debtor (the "Retainer Agreement"). Declaration of Thomas D. Sands ("Sands Declaration"), ¶ 4, Exhibit A. Through the Retainer Agreement, Debtor hired Sands Law to represent Debtor in a state court action. *Id.* Debtor agreed to pay a flat fee of \$250 "per motion/opposition for a court appearance," and \$250 per hour for all other work, including "waiting time in court and elsewhere and for travel time, both local and out of town." *Id.* The Retainer Agreement is signed by Dmitri Lioudkovski on behalf of Debtor. *Id.* Sands Law also provided unredacted billing entries. Sands Declaration, ¶ 6, Exhibit B.

On September 3, 2020, Debtor filed a reply to the Opposition (the "Reply") [doc.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

164]. In the Reply, as amended by a subsequent Notice of Errata [doc. 172], Debtor contends it does not oppose Sands Law holding an unsecured claim in the amount of \$7,958.34. According to Debtor, Sands Law's claim should be reduced by \$750 based on the payments already made by Debtor to Sands Law. In addition, Debtor believes the claim should be reduced by another \$1,791.67 because the Retainer Agreement provides for a flat fee of \$250 per court appearance, and not for hourly compensation as reflected in the billing entries.

II. ANALYSIS

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in interest objects. Fed. R. Bankr. P. 3001(f) provides that a proof of claim executed and filed in accordance with the rules constitutes *prima facie* evidence of the validity and amount of the claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted); *In re Laptops Etc. Corp.*, 164 B.R. 506, 522 (Bankr. D. Md. 1993) (burden shifts to claimant, who has ultimate burden of persuasion as to validity of its claim, only "upon objection to the claim coupled with the admission of probative evidence which tends to sufficiently rebut the *prima facie* validity of the claim"); *see also In re Campbell*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005) ("[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).").

Here, through the Reply and Notice of Errata, Debtor agrees to the allowance of a general unsecured claim in favor of Sands Law in the amount of \$7,958.34. Rather than object to the claim in full, Debtor now requests a reduction of the claim for two reasons: (A) Debtor already paid \$750 to Sands Law; and (B) the Retainer Agreement

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

provides for a flat rate of \$250 per court appearance, but Sands Law billed hourly for hearings on September 10, 2019 and October 22, 2019.

Debtor provided evidence of the \$750 payment to Sands Law in the Objection. Sands Law did not respond to this evidence. As such, the Court will reduce Sands Law's claim by \$750 based on the evidence of payment provided by Debtor, and Sands Law's failure to provide evidence or argument to the contrary.

However, Debtor raised the issues regarding hourly billing for court appearances for the first time in the Reply. The billing entry dated September 10, 2019 states that Sands Law reviewed a "tentative ruling and research and appear[ed] at" a demurrer hearing, and also included a notation stating "Memo file." Sands Declaration, ¶ 6, Exhibit B, p. 4. The billing entry dated October 22, 2019 reads "Case Management Conf to and from." *Id.*, p. 6. The Retainer Agreement provides for hourly billing for "all other work" and "waiting time in court and elsewhere and for travel time." As such, even if the Retainer Agreement limited billing for court appearances to \$250 per appearance, it appears Sands Law also billed for "other work" and travel to and from the courthouse on the dates referenced by Debtor. As such, in addition to raising the argument for the first time in the Reply, Debtor has not shown that these amounts should be reduced.

III. CONCLUSION

The Court will sustain the Objection in part and overrule the Objection in part, and allow Sands Law's claim in the amount of \$9,750.01.

Debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#9.00 Debtor's motion for order disallowing claim no.8 filed by Mike Kemel

Docket 131

Tentative Ruling:

Sustain.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition.

On August 4, 2020, Mike Kemel filed proof of claim no. 8 against the estate based on "money loaned." On August 10, 2020, Debtor filed the an objection to the claim (the "Objection") [doc. 131], asserting that Debtor has not engaged in any business dealings with Mr. Kemel, and has no record of any amounts owed to Mr. Kemel.

On August 27, 2020, Mr. Kemel filed an opposition to the Objection (the "Opposition") [doc. 154]. To the Opposition, Mr. Kemel attached a declaration in which he states that [Debtor's principal, Dmitri Lioudkovski] "asked [Mr. Kemel] to loan *him*... \$24,500" and "promised that *he* would pay me back [immediately] as he was expecting from Russia...." Declaration of Mike Kemel ("Kemel Declaration"), ¶¶ 14-15 (emphases added). Mr. Kemel also stated that he would "never have lent the money to *Mr. Lioudkovski* if he had known that [Mr. Lioudkovski's] true intention was not to [repay Mr. Kemel]...." Kemel Declaration, ¶ 19 (emphasis added).

Notwithstanding these statements in the declaration, in the Opposition, Mr. Kemel asserts that he lent the money to Debtor. Mr. Kemel did not provide any evidence of a debt owed by Debtor to Mr. Kemel; instead, Mr. Kemel argues that failure to provide documentation in connection with the filing of a proof of claim is not a basis to disallow a claim.

On September 3, 2020, Debtor filed a reply to the Opposition [doc. 170], again reiterating that Debtor does not owe any debt to Mr. Kemel, and attaching a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

declaration by Debtor's principal attesting to the same. Debtor also filed evidentiary objections to the Kemel Declaration [doc. 169].

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).").

In the Opposition, Mr. Kemel references *In re Heath*, 331 B.R. 424 (B.A.P. 9th Cir. 2005), and asserts that *Heath* and out-of-circuit cases like *Heath* stand for the proposition that a claim may not be disallowed based on a lack of documentation. Mr. Kemel misconstrues the holding of *Heath*. As explained by the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") in *Campbell*:

We emphasize, as we did in *Heath*, that a creditor who files a proof of claim that lacks sufficient support under Rule 3001(c) and (f) does so at its own risk. That proof of claim will lack *prima facie* validity, so

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

any objection that raises a legal or factual ground to disallow the claim will likely prevail absent an adequate response by the creditor. Moreover, a creditor's lack of adequate response to a debtor's formal or informal inquiries "in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within Section 502(b)'s grounds to disallow the claim." *Heath*, 331 B.R. at 437 (citations omitted).

Campbell, 336 B.R. at 436 (citing *In re Heath*, 331 B.R. 424 (B.A.P. 9th Cir. 2005)). In other words, although a lack of documentation alone is insufficient to disallow a claim, if the objecting party raises a substantive issue under 11 U.S.C. § 502(b), the claimant's failure to respond or provide sufficient evidence may lead to disallowance of the claim. Pursuant to 11 U.S.C. § 502(b)(1), the Court may disallow claim if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Here, Debtor has substantively challenged the claim by providing a declaration stating that Debtor does not owe any money to Mr. Kemel, has never engaged in business dealings with Mr. Kemel and that a review of Debtor's books and records indicates that no money is owed to Mr. Kemel. As noted in *Campbell*, Mr. Kemel did not attach any evidence to his proof of claim "at [his] own risk," because the proof of claim lacked prima facie validity. As such, upon Debtor's challenge of the claim, the burden shifted to Mr. Kemel to prove the validity of his claim by a preponderance of the evidence.

Rather than prove his claim, Mr. Kemel provided a declaration in which he states that he loaned Mr. Lioudkosvki money, not Debtor. As such, the only evidence offered by Mr. Kemel, i.e., his declaration, shows that Mr. Kemel may have a claim against another entity. However, even if Mr. Kemel had testified that he entered into a loan transaction with Debtor, Mr. Kemel did not provide any evidence to meet his burden of proof and burden of persuasion. In fact, the Kemel Declaration itself does not include any specific terms indicative of a loan agreement; Mr. Kemel did not provide an interest rate, a maturity date (other than stating the money was due "immediately") or any other provisions of the purported loan agreement. Consequently, the Court will disallow Mr. Kemel's claim.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

III. CONCLUSION

The Court will sustain the Objection.

Debtor must submit an order within seven (7) days.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declaration of Mike Kemel set forth below:

paras. 2-9, 11-12: sustain
paras. 14-15, 17: overrule

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#10.00 Debtor's motion for order disallowing claim no. 9 filed by Mariya Ayzenberg

Docket 132

Tentative Ruling:

Sustain.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition. On June 12, 2020, Debtor removed to this Court a state court action styled *Ayzenberg v. Lev Investments, LLC, et al.* (the "State Court Action") [1:20-ap-01062-VK, doc. 1]. Through the State Court Action, Mariya Ayzenberg sued Debtor and other defendants for financial abuse of an elder, conversion and declaratory relief.

Prepetition, on December 4, 2019, Ms. Ayzenberg, Debtor and Debtor's principal executed a settlement agreement resolving the State Court Action (the "Agreement"). Declaration of Michael Shemtoub [doc. 152], ¶ 9, Exhibit A. In relevant part, the Agreement provides—

12. Attorneys' Fees, Expenses, and Costs. Each of the Parties shall bear their own attorneys' fees and costs incurred in connection with the Action and in connection with the subject matter of this Agreement.

...

18. Governing Law and Forum. The laws of the State of California) without giving effect to choice of law or conflict of law principles) shall govern the validity) construction, performance and effect of this Agreement. Any motion, lawsuit or action to interpret or enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in Los Angeles County, California) and the prevailing Party on such motion, lawsuit or action shall be entitled to recover their reasonable attorney's fees and costs, including any expert witness fees

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

**CONT... Lev Investments, LLC
and costs.**

Chapter 11

Agreement, ¶¶ 12, 18.

During the course of this bankruptcy case and the removed adversary proceeding, Debtor indicated that the purpose of removal was to expunge the *lis pendens* recorded in connection with the State Court Action. *See, e.g.* 1:20-ap-01062-VK, doc. 8. On July 10, 2020, Ms. Ayzenberg filed a request to remand the State Court Action [1:20-ap-01062-VK, doc. 7]. After some communication with Ms. Ayzenberg's state court counsel regarding withdrawal of the *lis pendens*, Debtor eventually verified that Ms. Ayzenberg had withdrawn the *lis pendens* [1:20-ap-01062-VK, docs. 8, 10]. As such, on July 15, 2020, Debtor filed a notice of non-opposition to remand of the State Court Action [1:20-ap-01062-VK, doc. 10]. In response, the Court entered an order remanding the State Court Action [1:20-ap-01062-VK, doc. 14].

On August 6, 2020, Ms. Ayzenberg filed proof of claim no. 9 against the estate, requesting \$35,000 based on a "breach of [the Agreement]." On August 10, 2020, Debtor filed an objection to the claim (the "Objection") [doc. 132], arguing that Ms. Ayzenberg did not set forth a basis for asserting a claim against the estate.

On August 26, 2020, Ms. Ayzenberg filed an opposition to the Objection (the "Opposition") [doc. 152]. In the Opposition, Ms. Ayzenberg contends that her claim is based on attorneys' fees and costs she incurred responding to removal of the State Court Action. Ms. Ayzenberg references paragraph 18 of the Agreement as support. On September 3, 2020, Debtor filed a reply to the Opposition [doc. 168], noting that Ms. Ayzenberg was not a prevailing party, and the Agreement does not otherwise provide a basis for recovery of attorneys' fees. Debtor also argues that Ms. Ayzenberg cannot recover from the estate because her claim arose postpetition.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted); *In re Laptops Etc. Corp.*, 164 B.R. 506, 522 (Bankr. D. Md. 1993) (burden shifts to claimant, who has ultimate burden of persuasion as to validity of its claim, only "upon objection to the claim coupled with the admission of probative evidence which tends to sufficiently rebut the prima facie validity of the claim"); *see also In re Campbell*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005) ("[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).").

Here, Ms. Ayzenberg asserts she is entitled to attorneys' fees incurred in connection with the removal of the State Court Action. However, paragraph 12 of the Agreement provides that each party "shall bear their own attorneys' fees and costs *incurred in connection with the Action and in connection with the subject matter of this Agreement.*" Agreement, ¶ 12. Paragraph 18, on which Ms. Ayzenberg relies, provides for recovery of attorneys' fees only in connection with a "motion, lawsuit or action to interpret or enforce the terms of this Agreement...." Agreement, ¶ 18. Ms. Ayzenberg's request for attorneys' fees incurred disputing the removal of the State Court Action does not involve interpretation or enforcement of the terms of the Agreement; in fact, the Agreement is silent as to the *lis pendens*. As to other fees or costs incurred in connection with the Action, the parties explicitly agreed to bear their own fees and costs.

Nevertheless, even if paragraph 18 applied to Ms. Ayzenberg's fees and costs incurred seeking remand of the State Court Action, Ms. Ayzenberg was not a prevailing party under California Code of Civil Procedure ("CCP") § 1032(a)(4), which provides—

"Prevailing party" includes the party with a net monetary recovery, a *defendant* in whose favor a dismissal is entered, a *defendant* where

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT...

Lev Investments, LLC

Chapter 11

neither plaintiff nor defendant obtains any relief, and a *defendant* as against those plaintiffs who do not recover any relief against that defendant. If any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed, may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

(emphases added). Here, Ms. Ayzenberg does not fall under one of the explicit categories of a "prevailing party." Ms. Ayzenberg did not obtain a net monetary recovery after removal and remand of the State Court Action. In addition, Ms. Ayzenberg is not the defendant, and, as a result, is not entitled to attorneys' fees or costs under the remaining three categories.

Where any other relief is obtained by a party, the Court has discretion to "allow costs *or not*" or "apportion costs between the parties." CCP § 1032(a)(4) (emphasis added). Here, both Debtor and Ms. Ayzenberg received some form of relief: Debtor obtained a recorded withdrawal of the *lis pendens*, and Ms. Ayzenberg obtained remand of the State Court Action. As such, to the extent paragraph 18 covers the subject fees and costs, the Court will, in its discretion, order that the parties bear their own fees and costs under CCP § 1032(a)(4). [FN1].

III. CONCLUSION

The Court will sustain the Objection.

Debtor must submit an order within seven (7) days.

FOOTNOTES

1. Debtor also argues that, because Ms. Ayzenberg's claim arose postpetition, Ms. Ayzenberg is not entitled to assert a claim against the estate. However, 11 U.S.C. § 1141(d)(1)(A) provides for the discharge of "any debt that arose *before the date of... confirmation*." (emphasis added). Because the asserted claim arose pre-*confirmation*, Ms. Ayzenberg's claim may not be

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT... **Lev Investments, LLC**
automatically disallowed.

Chapter 11

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#11.00 Debtor's motion for order disallowing claim no. 11 filed by Kevin Moda

Docket 133

Tentative Ruling:

Sustain.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition.

On August 7, 2020, Kevin Moda filed proof of claim no. 11 against the estate based on "arranging funds for purchase of Albers Property." On August 10, 2020, Debtor filed an objection to the claim (the "Objection") [doc. 133], asserting that Debtor has not engaged in any business dealings with Mr. Moda, and has no record of any amounts owed to Mr. Moda.

On September 2, 2020, Mr. Moda filed an untimely declaration in opposition to the Objection (the "Declaration") [doc. 163]. In the Declaration, Mr. Moda states—

[Debtor] didn't ask for the money. [Debtor's principal, Dmitri Lioudkouski] did.

Lioudkouski owes the money. It is the deal that was struck.

Declaration, ¶¶ 6-7. On September 3, 2020, Debtor filed a reply and motion to strike the untimely Declaration [doc. 166].

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT... **Lev Investments, LLC**

Chapter 11

and amount of the claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted); *In re Laptops Etc. Corp.*, 164 B.R. 506, 522 (Bankr. D. Md. 1993) (burden shifts to claimant, who has ultimate burden of persuasion as to validity of its claim, only "upon objection to the claim coupled with the admission of probative evidence which tends to sufficiently rebut the prima facie validity of the claim"); *see also In re Campbell*, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005) ("[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c).").

Here, even if the Court considers the untimely Declaration, Mr. Moda admits that Debtor is not the obligor on the debt. As such, Mr. Moda has shown that he does not have a claim against this estate, and the Court will disallow the claim in full. Because the Court assessed the Declaration in reaching the decision to sustain the Objection, the Court will deny Debtor's request to strike the Declaration.

III. CONCLUSION

The Court will sustain the Objection and deny the request to strike the Declaration.

Debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#12.00 Motion to quash:

1. Debtor's notice of deposition of Mariya Ayzenberg and request for production of documents
2. Debtor's notice of deposition of Mike Kemel and request for production of documents
3. Request for sanctions in the amount of \$5,500.00 jointly and severally against debtor Lev Investments, LLC, Dimitri Lioudkouski and David B. Golubchik

Docket 138

Tentative Ruling:

In light of the Court's resolution of the contested matter which this discovery dispute concerns, the Court will deny this motion as moot.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#13.00 Debtor's motion seeking to compel Mariya Ayzenberg and Mike Kemel to produce requested documents and appear for noticed depositions or, alternatively, seeking sanctions

Docket 140

*** VACATED *** REASON: Voluntary dismissal of motion filed 9/8/20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#14.00 Motion approving stipulation for entry of order authorizing debtor's use of rents and granting adequate protection to secured creditor

Docket 35

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Monte Verde Ranch, LLC

Represented By
Ian Landsberg

Trustee(s):

Andrew W. Levin (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#15.00 Status conference re: chapter 11 subchapter V case

Docket 1

Tentative Ruling:

The parties should address the following:

Although the debtor attached its 2018 tax return to its petition, the debtor has not discussed its 2019 tax returns in its status report. Has the debtor filed its 2019 tax returns? Does the debtor intend to hire a professional to assist with the preparation of those and future tax returns?

Pursuant to 11 U.S.C. § 1189(b), the debtor's deadline to file a proposed plan is **October 19, 2020**.

Continued chapter 11 case status conference to be held at **2:30 p.m. on November 5, 2020**.

The debtor must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the Subchapter V Trustee, not 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 status report must address the following:

What efforts has the debtor made so far to obtain the consent of creditors for a consensual plan?

If the debtor expects that the plan will be a nonconsensual plan, i.e., a plan confirmed under 11 U.S.C. § 1191(b), why does it expect that?

Any additional information the debtor would like to disclose to the Court concerning this chapter 11 case or the plan (e.g. executory contracts or unexpired leases or sale or surrender of real and/or personal property).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

1:30 PM

CONT... Monte Verde Ranch, LLC

Chapter 11

The Court will prepare an order continuing the status conference and setting the deadline to file and serve the related status report.

Party Information

Debtor(s):

Monte Verde Ranch, LLC

Represented By
Ian Landsberg

Trustee(s):

Andrew W. Levin (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:00 PM

1:15-12097 Sina Misaghi

Chapter 7

#16.00 Debtor's Motion to Avoid Lien Under 11 U.S.C. sec 522(f) (Real Property) with Citi Bank & its Attorney

Docket 20

***** VACATED *** REASON: Rescheduled for 2:30 PM [Dkt.38]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sina Misaghi

Represented By
Navid Kohan

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 10, 2020

Hearing Room 301

2:00 PM

1:15-12097 Sina Misaghi

Chapter 7

#17.00 Motion to Avoid Lien Under 11 U.S.C. sec 522(f) (Real Property) with Discover Bank & its Attorney, Gordon & Wong Law Group

Docket 21

***** VACATED *** REASON: Rescheduled for 2:30 PM [Dkt.38]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sina Misaghi

Represented By
Navid Kohan

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 10, 2020

Hearing Room 301

2:00 PM

1:15-12097 Sina Misaghi

Chapter 7

#18.00 Debtor's Motion to Avoid Lien Under 11 U.S.C. sec 522(f) (Real Property) with Portfolio Recovery Associates, LLC

Docket 22

***** VACATED *** REASON: Rescheduled for 2:30 PM [Dkt.38]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sina Misaghi

Represented By
Navid Kohan

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 10, 2020

Hearing Room 301

2:00 PM

1:18-11125 Marcelo Martinez

Chapter 11

#19.00 Motion to Reopen Chapter 11 Case for the Limited Purpose of Filing an Adversary Complaint

Docket 119

***** VACATED *** REASON: Rescheduled for 2:30 PM [Dkt.123]**

Tentative Ruling:

- NONE LISTED -

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 10, 2020

Hearing Room 301

2:00 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#20.00 Status conference re: chapter 11 case
fr. 8/13/20

Docket 1

***** VACATED *** REASON: Rescheduled for 2:30 PM. [Dkt.42]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:00 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#20.10 Stipulation by Debtor's Members, Pacific Precision Laboratories, Inc. and David Schwartz, to Permit Case to Proceed as Chapter 11 and to Appoint Jeffrey Golden as Provisional Manager

Docket 47

***** VACATED *** REASON: Rescheduled for 2:30 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:30 PM

1:15-12097 Sina Misaghi

Chapter 7

#21.00 Debtor's motion to avoid lien under 11 U.S.C. sec 522(f) (Real Property) with Discover Bank & its Attorney, Gordon & Wong Law Group

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):

Sina Misaghi

Represented By
Navid Kohan

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 10, 2020

Hearing Room 301

2:30 PM

1:15-12097 Sina Misaghi

Chapter 7

#22.00 Debtor's motion to avoid lien under 11 U.S.C. sec 522(f) (Real Property) with Portfolio Recovery Associates, LLC

Docket 22

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):

Sina Misaghi

Represented By
Navid Kohan

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 10, 2020

Hearing Room 301

2:30 PM

1:15-12097 Sina Misaghi

Chapter 7

#23.00 Debtor's motion to avoid lien under 11 U.S.C. sec 522(f) (Real Property) with Citi Bank & its Attorney, Michale Hunt, Esq

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):

Sina Misaghi

Represented By
Navid Kohan

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 10, 2020

Hearing Room 301

2:30 PM

1:18-11125 Marcelo Martinez

Chapter 11

#24.00 Motion to reopen chapter 11 case for the limited purpose of filing an adversary complaint

Docket 119

Tentative Ruling:

In light of debtor's representation that he seeks this Court's adjudication of whether certain parties violated the automatic stay, regarding property of the estate, prior to confirmation of the debtor's chapter 11 plan, the Court will grant the motion.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant 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 10, 2020

Hearing Room 301

2:30 PM

1:18-12660 Mohsen Loghmani

Chapter 7

#25.00 Trustee's motion for order authorizing use of estate property under 11 USC § 363 to participate in LLC appraisal process

Docket 103

Tentative Ruling:

Grant.

I. BACKGROUND

On August 1, 2016, Mohsen Loghmani ("Debtor") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

On November 5, 2018, Debtor filed amended schedules and statements [doc. 87]. In his schedule A/B, Debtor indicated that he did not have any interest in corporations, limited liability companies, partnerships or joint ventures. On March 5, 2020, the Trustee filed a report of no distribution. On March 18, 2020, Debtor's bankruptcy case was closed.

On June 18, 2020, the Trustee received a letter from Barry L. Cohen regarding Debtor's undisclosed membership interest in Huntley Broadlawn, LLC (the "LLC"), which owns and operates a preschool. Declaration of David K. Gottlieb ("Gottlieb Declaration") [doc. 103], ¶ 18. According to Mr. Cohen, the LLC's members are: (i) Sandra Juanita Ellis, with a 25% membership interest; (ii) Angela Ellis, with a 25% membership interest (together with Sandra Juanita Ellis, the "Ellis Members"); and (iii) Debtor, with the remaining 50% interest. Gottlieb Declaration, ¶ 19, Exhibit 5. The Ellis Members wish to purchase the estate's interest in the LLC in accordance with the LLC's Operating Agreement. Gottlieb Declaration, ¶ 20. In relevant part, the Operating Agreement provides—

6.1. *Transfers.* Except as provided herein, no Member may Transfer all, or any portion of, or any interest or rights in, the Membership Interest owned by the Member. Each Member hereby acknowledges the reasonableness of this prohibition in view of the purposes of the Company and the relationship of the Members. The attempted Transfer of any

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:30 PM

CONT...

Mohsen Loghmani

Chapter 7

portion or all of a Membership Interest in violation of the prohibition contained in this *Section 6.1* shall be deemed invalid, null and void, and of no force or effect, except any Transfer mandated by operation of law and then only to the extent necessary to give effect to such Transfer by operation of law.

- (a) A Member may Transfer all or any portion of any interest or rights in the Member's Economic Interest if each of the following conditions ("Conditions of Transfer") is satisfied:
- (1) the Transfer may be accomplished without registration, or similar process, under federal and securities laws;
 - (2) the transferee delivers to the Company a written agreement to be bound by Article VI;
 - (3) the Transfer will not result in the termination of the Company pursuant to IRC Section 708;
 - (4) the Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended; and
 - (5) the transferor or the transferee delivers the following information to the Company; (i) the transferee's taxpayer identification number; and (ii) the transferee's initial tax basis in the transferred Membership Interest.
- (b) If the Conditions of Transfer are satisfied, the Member may Transfer all or any portion of the Member's Economic Interest. The Transfer of an Economic Interest pursuant to this Section 6.1 shall not result in the Transfer of any of the transferor's other Membership rights. The transferee of the Economic Interest shall have no right to: (1) become a Member; (2)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:30 PM

CONT...

Mohsen Loghmani

Chapter 7

exercise any Membership rights other than those specifically pertaining to the ownership of an Economic Interest; or (3) act as an agent of the Company.

...

10.4. *Integration.* ... Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of all of the Members.

Operating Agreement, pp. 10-11, 16. The Operating Agreement defines "Economic Interest" as

... a person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive Distributions from, the Company, but does not include any other rights of a Member including, without limitation, the right to vote or to participate in management, or any right to information concerning the business and affairs of the Company.

Operating Agreement, p. 3. On August 3, 2020, the U.S. Trustee filed a motion to reopen Debtor's bankruptcy case and direct the appointment of a chapter 7 trustee to investigate Debtor's interest in the LLC (the "Motion to Reopen") [doc. 98]. On August 11, 2020, the Court entered an order granting the Motion to Reopen [doc. 100].

On August 20, 2020, the Trustee filed a motion for an order authorizing use of the estate's interest in the LLC (the "Motion") [doc. 103]. On September 2, 2020, Debtor filed an objection to the Motion (the "Objection") [docs. 111, 117]. In the Objection, Debtor argues that the estate does not have an interest in the LLC. According to Debtor, on January 3, 2011, Debtor verbally transferred his interest to his son, Matthew Loghmani ("Matthew").

As evidence, Debtor provided certain tax returns filed on behalf of the LLC, which are signed by Matthew, as well as a loan application signed by Matthew. Declaration of Mohsen Loghmani ("Loghmani Declaration") [doc. 117], ¶¶ 10-11, Exhibits A-B. Debtor also provided an unsigned amended operating agreement, which identified

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:30 PM

CONT... Mohsen Loghmani

Chapter 7

Mathew as a 50% member of the LLC. Loghmani Declaration, ¶ 12, Exhibit C. Finally, Debtor provided an unsigned declaration by Matthew, purporting to authenticate a Statement of Decision that is not attached to any of Debtor's filed pleadings.

On September 3, 2020, the Trustee filed a reply to the Objection [doc. 112], asserting that Debtor failed to provide any legal or evidentiary support for his argument that Matthew owns the 50% membership interest in the LLC. In addition, the Trustee contends that any verbal transfer to Matthew would be ineffective under the Operating Agreement. The Trustee also provided a declaration by Angela Ellis, who provided evidence that Debtor participated in management of the LLC years after the purported transfer to Matthew, such as signing loan modification documents and writing checks on behalf of the LLC. Declaration of Angela Ellis, ¶¶ 13-15, 19, 21-25, Exhibits 3-4, 7, 8-12.

II. ANALYSIS

As a preliminary matter, Debtor essentially filed an opposition on behalf of a third party. Debtor is not an attorney; therefore, Debtor does not have standing to represent Matthew's purported interest in the LLC. The sole declaration by Matthew is unsigned and does not attest to any of the pertinent facts from the Objection. As such, the Court may strike the Objection on these bases alone.

However, even if the Court considers the Objection, Debtor has not shown that the estate does not have an interest in 50% of the LLC. Pursuant to Cal. Corp. Code § 17701.10(a)—

Except as otherwise provided in this section, the operating agreement governs all of the following:

- (1) Relations among the members as members and between the members and the limited liability company.

- (2) The rights and duties under this title of a person in the capacity of manager.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:30 PM

CONT...

Mohsen Loghmani

Chapter 7

(3) The activities of the limited liability company and the conduct of those activities.

(4) The means and conditions for amending the operating agreement.

In addition, under Cal. Corp. Code § 17705.02(f), "[a] transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer."

Here, the Operating Agreement limits members' ability to transfer their membership interest; pursuant to Section 6.1 of the Operating Agreement, members may transfer only their economic interest. As a result, any attempt by Debtor to transfer any other interest, such as the right to vote or participate in management, would be null and void under the Operating Agreement. As such, the estate would own these non-economic interests - even if Debtor otherwise legitimately transferred his economic interest to Matthew.

As to the economic interest, the Operating Agreement sets forth five requirements to effectuate a transfer, including that the transferee deliver a written agreement to be bound by Article VI of the Operating Agreement, and that the transferor or transferee deliver tax information to the LLC. Debtor did not provide any evidence that Debtor and/or Matthew complied with these requirements.

The purported amended Operating Agreement provided by Debtor is not signed by any of the members of the LLC. In addition, to amend the Operating Agreement, all members of the LLC must provide their *written* consent. Operating Agreement, p. 16. There is no evidence that any member consented, in writing, to amending the Operating Agreement.

The additional evidence provided by Debtor does not establish that Matthew, as opposed to Debtor, is the owner of the 50% membership interest at issue. The declaration by Matthew is neither signed nor relevant to the question of ownership of the 50% interest. In addition, signing tax returns on behalf of the LLC does not result in transfer of a member's interest in the LLC where the Operating Agreement includes explicit instructions and/or prohibitions regarding transfers of membership interests. Finally, the Trustee provided evidence that Debtor participated in management of the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:30 PM

CONT... **Mohsen Loghmani**

Chapter 7

LLC after the purported transfer to Matthew; to the extent Debtor argues that taking action on behalf of the LLC translates to a membership interest in the LLC, Debtor himself repeatedly took such action after the alleged transfer to Matthew. Consequently, even if Debtor had standing to object on behalf of Matthew, Debtor has not shown that Matthew has any interest in the LLC.

III. CONCLUSION

The Court will grant the Motion.

The Trustee must submit an order within seven (7) days.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

Trustee's Evidentiary Objections to the Declaration of Mohsen Loghmani

paras. 8: overrule

paras. 5-7, 9, 10-11: sustain

Trustee's Evidentiary Objections to the Declaration of Matthew Loghmani

The Court will sustain the objection to the entire declaration on the basis that the declaration is not signed by Matthew Loghmani. 28 U.S.C. § 1746.

Party Information

Debtor(s):

Mohsen Loghmani

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
D Edward Hays

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:30 PM

1:19-11902 John Christian Lukes

Chapter 11

#26.00 Debtor's objection to Salisbury, Lee & Tsuda, LLP's second amended proof of claim no. 13

Docket 136

Tentative Ruling:

The Court will continue the hearing to **2:30 p.m. on September 17, 2020.**

Appearances on September 10, 2020 are excused.

Party Information

Debtor(s):

John Christian Lukes

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 10, 2020

Hearing Room 301

2:30 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#27.00 Motion to convert case to chapter 7

fr. 8/13/20

Docket 16

***** VACATED *** REASON: Withdrawal of motion filed 8/28/20 [Dkt. 49]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:30 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#27.10 Stipulation between Debtor's Members, Pacific Precision Laboratories, Inc. and David Schwartz, to permit case to proceed as chapter 11 and to appoint Jeffrey Golden as provisional manager

Docket 47

Tentative Ruling:

Does the U.S. Trustee object to the Court's approval of the stipulation, as modified by the debtor's reply?

Party Information

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:30 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#28.00 Status conference re: chapter 11 case
fr. 8/13/20

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **November 16, 2020.**

Deadline to mail notice of Bar Date: **September 17, 2020.**

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 15, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on February 4, 2021.**

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):

1465V Donhill Drive, LLC

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 10, 2020

Hearing Room 301

2:30 PM

CONT... 1465V Donhill Drive, LLC

M. Jonathan Hayes

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

1:20-11070 Martha Vilma Duran

Chapter 7

#1.00 Reaffirmation agreement between debtor and Toyota Motor Credit Corporation

**You will not be permitted to be physically present in the courtroom.
All appearances for the September 15, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.**

Join by Computer

Meeting URL: <https://cacb.zoomgov.com/j/1615737120>

Meeting ID: 161 573 7120

Password: 589256

Join by Telephone

For higher quality, dial a number based on your current location.

Dial:

US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 573 7120

Password: 589256

Docket 11

Tentative Ruling:

Petition date: 6/16/18

Was Reaffirmation Agreement filed w/in 60 days of the conclusion of the 1st 341(a) meeting as required by LR 4008-1? Yes

Discharge?: No

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

CONT... Martha Vilma Duran

Chapter 7

Property: 2018 Toyota Rav4

Debtor's valuation of property (Sch. B): \$18,300.00 (\$18,075.00 on Reaff Cover Sheet)

Amount to be reaffirmed: \$25,800.38

APR: 1.90% fixed

Contract terms: \$568.85 per month for 47 months

Monthly Income (Schedule I): \$1,701.00

Monthly expenses: (Schedule J): \$1,750.00 (includes only \$430.00/mo on above vehicle)

Disposable income: (\$49.00)

Sec. 524(k) disclosures received in writing prior to Debtor's signing the agreement? Yes

If disposable income is insufficient to make payments, then there is a rebuttable presumption of undue hardship. Did Debtor explain how he/she will be able to afford the payments in Part D? N/A

Debtor has a right to rescind agreement any time prior to discharge, or until September 29, 2020, whichever is later.

Disposition: Reaffirmation agreement is _____.

RULING MAY BE MODIFIED AT HEARING.

Party Information

Debtor(s):

Martha Vilma Duran

Pro Se

Trustee(s):

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

CONT... Martha Vilma Duran
Nancy J Zamora (TR)

Pro Se

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

1:20-11071 Gloria E. Espinel

Chapter 7

#2.00 Reaffirmation agreement between debtor and Toyota Motor Credit Corporation
fr. 8/18/20

**You will not be permitted to be physically present in the courtroom.
All appearances for the September 15, 2020 calendar will be via Zoom and not via
Court Call. All parties participating in these hearings may connect from the zoom
link listed below. This service is free of charge. You may participate using a
computer or telephone.**

Join by Computer

Meeting URL: <https://cacb.zoomgov.com/j/1615737120>

Meeting ID: 161 573 7120

Password: 589256

Join by Telephone

For higher quality, dial a number based on your current location.

Dial:

US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 573 7120

Password: 589256

Docket 9

Tentative Ruling:

Petition date: 6/16/20

**Was Reaffirmation Agreement filed w/in 60 days of the conclusion of the 1st
341(a) meeting as required by LR 4008-1? Yes**

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

CONT... Gloria E. Espinel

Chapter 7

Discharge?: No

Property: 2017 Toyota Rav4

Debtor's valuation of property (Sch. B): \$21,000.00 (\$18,600.00 on Reaff Cover Sheet)

Amount to be reaffirmed: \$27,460.76

APR: 12.80% fixed

Contract terms: \$529.53 per month for 70 months

Monthly Income (Schedule I): \$540.00 (receives food stamps and family contribution)

Monthly expenses: (Schedule J): \$793.00 (does not include \$529.53 per month on above vehicle)

Disposable income: (\$289.00)

Sec. 524(k) disclosures received in writing prior to Debtor's signing the agreement? Yes

If disposable income is insufficient to make payments, then there is a rebuttable presumption of undue hardship. Did Debtor explain how he/she will be able to afford the payments in Part D? N/A

Debtor has a right to rescind agreement any time prior to discharge, or until September 26, 2020, whichever is later.

Disposition: Reaffirmation agreement is _____.

RULING MAY BE MODIFIED AT HEARING.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

CONT... Gloria E. Espinel

Chapter 7

Debtor(s):

Gloria E. Espinel

Represented By
Michael H Colmenares

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

1:20-11191 Alejandro Serrano

Chapter 7

#3.00 Reaffirmation agreement between debtor and Toyota Motor Credit Corporation

**You will not be permitted to be physically present in the courtroom.
All appearances for the September 15, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.**

Join by Computer

Meeting URL: <https://cacb.zoomgov.com/j/1615737120>

Meeting ID: 161 573 7120

Password: 589256

Join by Telephone

For higher quality, dial a number based on your current location.

Dial:

US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 573 7120

Password: 589256

Docket 10

Tentative Ruling:

Petition date: 7/7/20

Was Reaffirmation Agreement filed w/in 60 days of the conclusion of the 1st 341(a) meeting as required by LR 4008-1? Yes

Discharge?: No

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

CONT... Alejandro Serrano

Chapter 7

Property: 2019 Toyota Camry

Debtor's valuation of property (Sch. B): \$30,000.00 (\$21,550.00 on Reaff Cover Sheet)

Amount to be reaffirmed: \$38,275.18

APR: 5.90% fixed

Contract terms: \$653.67 per month for 67 months

Monthly Income (Schedule I): \$6,585.14 (includes family member contribution)

Monthly expenses: (Schedule J): \$6,571.00 (includes \$653.00 per month on above vehicle)

Disposable income: \$14.14

Sec. 524(k) disclosures received in writing prior to Debtor's signing the agreement? Yes

If disposable income is insufficient to make payments, then there is a rebuttable presumption of undue hardship. Did Debtor explain how he/she will be able to afford the payments in Part D? N/A

Debtor has a right to rescind agreement any time prior to discharge, or until September 29, 2020, whichever is later.

Disposition: Reaffirmation agreement is _____.

RULING MAY BE MODIFIED AT HEARING.

Party Information

Debtor(s):

Alejandro Serrano

Represented By
R Grace Rodriguez

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

CONT... Alejandro Serrano

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**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

1:20-11191 Alejandro Serrano

Chapter 7

#4.00 Reaffirmation agreement between debtor and 21st Mortgage Corporation

**You will not be permitted to be physically present in the courtroom.
All appearances for the September 15, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.**

Join by Computer

Meeting URL: <https://cacb.zoomgov.com/j/1615737120>

Meeting ID: 161 573 7120

Password: 589256

Join by Telephone

For higher quality, dial a number based on your current location.

Dial:

US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 573 7120

Password: 589256

Docket 11

Tentative Ruling:

Petition date: 7/7/20

Was Reaffirmation Agreement filed w/in 60 days of the conclusion of the 1st 341(a) meeting as required by LR 4008-1? Yes

Discharge?: No

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

CONT... Alejandro Serrano

Chapter 7

Property: 2017 Golden West Manufactured Home

Debtor's valuation of property (Sch. B): \$189,000.00 (\$168,898.65 on Reaff Cover Sheet)

Amount to be reaffirmed: \$168,898.65

APR: 8.901% fixed

Contract terms: \$1,717.80 per month for 252 months

Monthly Income (Schedule I): \$6,585.14 (includes family member contribution)

Monthly expenses: (Schedule J): \$6,571.00 (includes \$2,875.00 per month on above property)

Disposable income: \$14.14

Sec. 524(k) disclosures received in writing prior to Debtor's signing the agreement? Yes

If disposable income is insufficient to make payments, then there is a rebuttable presumption of undue hardship. Did Debtor explain how he/she will be able to afford the payments in Part D? N/A

Debtor has a right to rescind agreement any time prior to discharge, or until September 29, 2020, whichever is later.

Disposition: Reaffirmation agreement is _____.

RULING MAY BE MODIFIED AT HEARING.

Party Information

Debtor(s):

Alejandro Serrano

Represented By
R Grace Rodriguez

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

CONT... Alejandro Serrano

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**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

1:20-11199 Brittney M. Huggins

Chapter 7

#5.00 Reaffirmation agreement between debtor and Wells Fargo Bank N.A.

**You will not be permitted to be physically present in the courtroom.
All appearances for the September 15, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.**

Join by Computer

Meeting URL: <https://cacb.zoomgov.com/j/1615737120>

Meeting ID: 161 573 7120

Password: 589256

Join by Telephone

For higher quality, dial a number based on your current location.

Dial:

US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 573 7120

Password: 589256

Docket 8

Tentative Ruling:

Petition date: 7/8/20

Was Reaffirmation Agreement filed w/in 60 days of the conclusion of the 1st 341(a) meeting as required by LR 4008-1? Yes

Discharge?: No

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

CONT... **Brittney M. Huggins**

Chapter 7

Property: 2014 Toyota Corolla

Debtor's valuation of property (Sch. B): \$6,550.00 (\$9,000.00 on Reaff Cover Sheet)

Amount to be reaffirmed: \$7,882.63

APR: 8.90% fixed

Contract terms: \$318.23 per month for 26 months

Monthly Income (Schedule I): \$1,144.00

Monthly expenses: (Schedule J): \$1,143.00 (includes \$319.00 per month on above vehicle)

Disposable income: \$1.00

Sec. 524(k) disclosures received in writing prior to Debtor's signing the agreement? Yes

If disposable income is insufficient to make payments, then there is a rebuttable presumption of undue hardship. Did Debtor explain how he/she will be able to afford the payments in Part D? N/A

Debtor has a right to rescind agreement any time prior to discharge, or until October 10, 2020, whichever is later.

Disposition: Reaffirmation agreement is _____.

RULING MAY BE MODIFIED AT HEARING.

Party Information

Debtor(s):

Brittney M. Huggins

Represented By
R Grace Rodriguez

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 15, 2020

Hearing Room 301

8:30 AM

CONT... Brittney M. Huggins

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 16, 2020

Hearing Room 301

9:30 AM

1:17-11962 Ruth Ann Brown

Chapter 13

#1.00 Motion for relief from stay [RP]

PINGORA LOAN SERVICING LLC
VS
DEBTOR

fr. 6/24/20; 8/5/20

Docket 42

Tentative Ruling:

On June 9, 2020, the debtor filed a response to the motion for relief from the automatic stay [doc. 44]. The debtor did not include a declaration signed under penalty of perjury to provide evidentiary support for the response.

Party Information

Debtor(s):

Ruth Ann Brown

Represented By
Michael E Clark
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**

Wednesday, September 16, 2020

Hearing Room 301

9:30 AM

1:17-13028 Hector Garcia and Edelmira Avila Garcia

Chapter 13

#2.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

fr. 8/5/20

Order appr stip to cont ent 9/14/20

Docket 62

*** VACATED *** REASON: Hearing cont to 10/14/20 at 9:30 per order
(doc # 68)

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**

Wednesday, September 16, 2020

Hearing Room 301

9:30 AM

1:20-10406 Anne Barker

Chapter 13

#3.00 Motion for relief from stay [RP]

PHH MORTGAGE CORPORATION
VS
DEBTOR

fr. 8/5/20

Order for adequate protection ent 09/10/20

Docket 26

***** VACATED *** REASON: Order entered 9/10/20 (doc # 42)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Barker

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, September 16, 2020

Hearing Room 301

9:30 AM

1:18-10288 Adaure Chinyere Egu

Chapter 13

#4.00 Motion for relief from stay [AN]

EDWIN I. AIMUFUA
VS
DEBTOR

Docket 91

*** VACATED *** REASON: Withdrawal of motion filed 9/9/20.

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
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

9:30 AM

1:19-11527 David Toledo and Shayna Toledo

Chapter 13

#5.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA
VS
DEBTOR

Docket 43

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 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 Toledo

Represented By
Elena Steers

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

9:30 AM

CONT... David Toledo and Shayna Toledo

Chapter 13

Joint Debtor(s):

Shayna Toledo

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 16, 2020

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

#6.00 Pretrial conference re: complaint to determine the non-dischargeability of a debt

fr. 6/12/19; 8/7/19(stip); 8/21/19; 10/2/19

Stipulation for judgment filed 11/6/19

Docket 1

***** VACATED *** REASON: Order on stipulated judgment entered 11/14/19.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrew Marc Pitsicalis Pro Se

Defendant(s):

Andrew Marc Pitsicalis Pro Se

Plaintiff(s):

Experience Hendrix, LLC Represented By
Jason D Strabo

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, September 16, 2020

Hearing Room 301

1:30 PM

1:20-10069 Shawn Sharon Melamed

Chapter 7

Adv#: 1:20-01068 GOLDMAN v. Dardashti et al

#7.00 Status conference re: complaint for avoidance and recovery
of fraudulent transfers

Docket 1

***** VACATED *** REASON: transferred to Judge Tighe 7/14/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shawn Sharon Melamed

Represented By
Giovanni Orantes

Defendant(s):

DOES 1 - 20, Inclusive

Pro Se

Shawn Dardashti

Pro Se

Joint Debtor(s):

Jenous Tootian

Represented By
Giovanni Orantes

Plaintiff(s):

AMY L GOLDMAN

Represented By
Scott E Gizer

Trustee(s):

Amy L Goldman (TR)

Represented By
Scott E Gizer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

Adv#: 1:20-01067 ZAMORA v. Perez

- #8.00** Status conference re: complaint for:
- 1) Avoidance of fraudulent transfer;
 - 2) Avoidance of insider reference [11 U.S.C. sec 547];
 - 3) Turnover of estates property [11 U.S.C. sec 542];
 - 4) Recovery of avoided transfer [11 U.S.C. sec 550(a)]; and
 - 5) Automatic Preservation of avoided transfer [1 U.S.C. sec 551]

Docket 1

***** VACATED *** REASON: Continued to 11/4/ 20 at 1:30 per order (doc #56)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Defendant(s):

Maria Rita Perez

Pro Se

Plaintiff(s):

NANCY J ZAMORA

Represented By
Toan B Chung

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 16, 2020

Hearing Room 301

1:30 PM

1:19-11569 Guadalupe Villegas

Chapter 7

Adv#: 1:20-01072 Zamora, Chapter 7 Trustee v. Villegas et al

- #9.00** Status conference re: complaint for:
- 1) Avoidance of actual fraudulent transfer [11 U.S.C. sec 544(b)(1); Cal Civ Code sec 3439.04, 3439.07, 3439.09]
 - 2) Avoidance of constructive fraudulent transfer [11 U.S.C. sec 544(b)(1) Cal. Civ. Code sec 3439.05, 3439.07, 3439.09]; and
 - 3) Recovery of avoided transfer [11 U.S.C. sec 550]

Docket 1

***** VACATED *** REASON: Another summons issued 9/3/20. Status conference rescheduled for 11/4/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Guadalupe Villegas	Pro Se
--------------------	--------

Defendant(s):

Antonio Villegas	Pro Se
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Gabriella Zapata	Pro Se
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Fabian Villegas	Pro Se
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Plaintiff(s):

Nancy J. Zamora, Chapter 7 Trustee	Represented By Jeremy Faith
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Trustee(s):

Nancy J Zamora (TR)	Represented By Noreen A Madoyan
---------------------	------------------------------------

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

1:18-11620 Antoine R Chamoun

Chapter 7

Adv#: 1:19-01105 Seror, Chapter 7 Trustee v. Chamoun et al

#10.00 Motion for turnover of debtor's real property

Docket 38

Tentative Ruling:

Deny.

I. BACKGROUND

On June 26, 2018, Antoine R. Chamoun ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee").

On November 29, 2018, Debtor filed his latest amended schedules and statements [doc. 23]. In his schedule A/B, Debtor identified a fee simple interest in the real property located at 1706 Empty Saddle Road, Simi Valley, CA 93063 (the "Empty Saddle Property"). In his schedule G, Debtor identified a five year lease between Debtor and Patricia Chamoun, through which Ms. Chamoun rents the Empty Saddle Property (the "Lease").

On September 16, 2019, the Trustee filed a complaint against Walid R. Chamoun and Patricia Chamoun (together, "Defendants"), initiating this adversary proceeding. On August 5, 2020, the Trustee filed a first amended complaint (the "FAC") [doc. 27]. As to Ms. Chamoun, the Trustee alleges that Ms. Chamoun made only four rent payments in accordance with the Lease, and has been residing rent-free in the Empty Saddle Property. As such, the Trustee asserts causes of action for breach of contract, turnover and unjust enrichment. The Trustee also requests that the Lease be avoided as a fraudulent transfer.

On August 26, 2020, Defendants filed an answer to the FAC (the "Answer") [doc. 40]. Aside from denying certain allegations in the FAC, Defendants asserted five affirmative defenses and requested a jury trial. Regarding the Lease, among other things, Ms. Chamoun contends that she has made all of the rent payments to Debtor, in accordance with the Landlord's directions under the Lease, and that the Trustee did

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... **Antoine R Chamoun**
not direct her to do otherwise.

Chapter 7

On August 25, 2020, the Trustee filed the Motion [doc. 38]. In the Motion, the Trustee asserts that, contrary to the Lease, Ms. Chamoun has not allowed the Trustee or his agents access to the Empty Saddle Property, and refuses to sign the Coronavirus Property Entry Advisory and Declaration (the "Coronavirus Declaration"). Declaration of Robyn Sokol ("Sokol Declaration") [doc. 38], ¶ 4, Exhibit 2. Attached to the Coronavirus Declaration are property access guidelines, which provide that, prior to entering a property, individuals should adhere to the following—

- No person may visit the property if they are exhibiting any COVID-19 symptoms.
- Wash hands with soap and water or use hand sanitizer before entering and after exiting the property.
- Wear rubber gloves, protective face mask, and protective shoe covering; discard after viewing.
- Do not touch your eyes, nose, or mouth. Do not touch surfaces or items in the property; if you believe it necessary to touch surfaces or items, consider the risk of doing so. Surfaces may not have been cleaned or disinfected prior to entry.
- No more than two visitors from the same household and one agent inside a structure at a time; practice social distancing at least 6 feet apart from others.

In addition, attached to the Coronavirus Declaration also is a more detailed "Best Practices Guidelines and Prevention Plan for Showings." *Id.* The Trustee also references the Lease, which provides—

Tenant shall make Premises available to Landlord or Landlord's representative for the purpose of entering to make necessary or agreed repairs, decorations, alterations, or improvements, or to supply necessary or agreed services, or to show Premises to prospective or

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT...

Antoine R Chamoun

Chapter 7

actual purchasers, tenants, mortgagees, lenders, appraisers, or contractors.

Sokol Declaration, ¶ 4, Exhibit 1. In light of Ms. Chamoun's failure to sign the Coronavirus Declaration and allow access to the Empty Saddle Property, the Trustee requests an order that Ms. Chamoun vacate the Empty Saddle Property.

On September 2, 2020, Ms. Chamoun filed an opposition to the Motion (the "Opposition") [doc. 30]. In the Opposition, Ms. Chamoun asserts that the Trustee is utilizing a motion for turnover as a loophole to prosecuting the adversary proceeding. Ms. Chamoun also states that she provided alternative suggestions to entry of the empty Saddle Property; as such, it appears Ms. Chamoun does not dispute that the Trustee and/or his agents may enter the Empty Saddle Property for the purpose of marketing, but instead requests additional protections.

II. ANALYSIS

A. Turnover of Empty Saddle Property

Pursuant to 11 U.S.C. § 542—

- (a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under 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.

Under Federal Rule of Bankruptcy Procedure 7001(1), an adversary proceeding is required "to recover money or property, other than a proceeding to compel *the debtor* to delivery property to the trustee...." (emphasis added). "A turnover proceeding is not intended as a remedy to determine the disputed rights of parties to property...." *In re Century City Doctors Hosp., LLC*, 466 B.R. 1, 19 (Bankr. C.D. Cal. 2012) (internal quotation omitted); *see also In re Gurga*, 176 B.R. 196, 199 (B.A.P. 9th Cir. 1994) ("[T]urnover proceedings involve return of *undisputed* funds.") (emphasis in *Gurga*).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Antoine R Chamoun

Chapter 7

"In order to maintain a motion for turnover, the burden of proof is upon the party seeking the turnover." *In re Bloom*, 91 B.R. 445, 446 (Bankr. N.D. Ohio 1988); *see also Maggio v. Zeitz*, 333 U.S. 56, 64 (1948) (stating that turnover orders must be supported by clear and convincing evidence).

Here, the Trustee must prosecute an adversary proceeding to obtain turnover from nondebtor parties, such as Ms. Chamoun. Although the Trustee has commenced an adversary proceeding, filing a motion for turnover within that adversary proceeding is not a legitimate vehicle for obtaining a judgment for turnover. The Trustee must employ available tools of litigation, such as filing a motion for summary judgment, requesting injunctive relief or proceeding to trial. The Court may deny the Motion on this basis alone.

In addition, turnover motions are not appropriate where property rights are in dispute. While there is no dispute that the Empty Saddle Property is property of the estate, Ms. Chamoun has asserted a leasehold interest in the Empty Saddle Property. In the Answer, Ms. Chamoun denies many of the Trustee's allegations and raises several affirmative defenses. Given the disputed claim of turnover in the FAC, and prior to any adjudication of the claims in the FAC, the request for turnover is premature.

B. Access to Empty Saddle Property

In the Opposition, it appears Ms. Chamoun is not opposed to allowing the Trustee and/or his agent limited access to the Empty Saddle Property. Given that the Lease requires Ms. Chamoun to make the Empty Saddle Property available to the Trustee and/or the Trustee's representatives for the purpose of showing the Empty Saddle Property to prospective purchasers, and because the Trustee has provided detailed best practices and guidelines to protect from the risk of COVID-19, Ms. Chamoun should be prepared to discuss, with specificity, any additional protections she believes are necessary and why. Otherwise, the Court may set dates and deadlines for the Trustee to request injunctive relief to obtain sufficient access to the Property, in accordance with the Lease.

III. CONCLUSION

The Court will deny the Motion. The parties should be prepared to discuss procedures for the Trustee and/or his agents to access and market the Empty Saddle Property.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Antoine R Chamoun

Chapter 7

Ms. Chamoun must submit an order within seven (7) days.

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Defendant(s):

Walid R. Chamoun

Represented By
Robert S Altagen

Patricia Chamoun

Represented By
Robert S Altagen

Plaintiff(s):

David Seror, Chapter 7 Trustee

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01065 Lev Investments, LLC v. SENSIBLE CONSULTING AND

#11.00 Order to show cause re: remand and status conference
re: removed proceeding

fr. 8/12/20

Docket 1

Tentative Ruling:

Having reviewed the parties' supplemental briefs, and because the proofs of claim filed by Lisitsa Law, Inc. and Mike Kemel do not impact the Court's prior analysis, the Court will adopt its tentative ruling from the hearing on August 12, 2020, based on the analysis set forth below:

The Court will sever the claims and remand this action in part.

I. BACKGROUND

A. The State Court Complaint

On June 20, 2019, Lev Investments, LLC ("Debtor") filed a complaint in state court against Michael Leizerovitz, Sensible Consulting and Management, Inc. ("Sensible Consulting"), Ruvin Feygenberg and Ming Zhu, LLC ("Ming Zhu"), initiating this lawsuit (the "State Court Action"). Notice of Removal, Exhibit 1. The defendants filed demurrers to the complaint. *Id.* After hearings on the demurrers, the state court sustained the demurrers with leave to amend. *Id.*

On September 27, 2019, Debtor filed a first amended complaint (the "Complaint"). *Id.* Through the Complaint, Debtor asserted claims for breach of implied covenant against encumbrances, quiet title, usury and declaratory relief. *Id.* In relevant part, Debtor alleged—

On January 31, 2019, Mr. Feygenberg and Mr. Leizerovitz signed a grant deed transferring the real property located at 13854 Albers Street,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT...

Lev Investments, LLC

Chapter 11

Sherman Oaks, CA 91401 (the "Albers Property") to Debtor. Mr. Feygenberg and Sensible Consulting provided a loan secured by the Albers Property. Pursuant to the loan agreement, the interest rate amounted to 23% per annum. Mr. Feygenberg then assigned his interest in the deed of trust to Sensible Consulting.

At the time Mr. Feygenberg and Mr. Leizerovitz executed the grant deed, they covenanted that the Albers Property was free of liens and encumbrances. However, the Albers Property was encumbered by taxes and a judgment in favor of Ming Zhu. Debtor requests a judgment that it is the owner in fee simple of the Albers Property and that Defendants do not have an interest in the Albers Property.

Id.

On October 24, 2019, Ming Zhu filed a demurrer to the Complaint, and on November 1, 2019, Mr. Leizerovitz, Mr. Feygenberg and Sensible ("Defendants") filed their demurrer to the Complaint. *Id.* On February 18, 2020, the state court held hearings on the demurrers. *Id.* At that time, the state court sustained Ming Zhu's demurrer without leave to amend, dismissing Ming Zhu from this action. *Id.* The state court also dismissed the quiet title cause of action without leave to amend. *Id.* As to Mr. Feygenberg and Mr. Leizerovitz, the state court dismissed the usury and declaratory relief causes of action without leave to amend, but overruled the demurrer as to the breach of implied covenant against encumbrances claim. *Id.* Finally, as to Sensible, the state court overruled the demurrer as to the breach of implied covenant and usury claims, sustained the demurrer as to the quiet title claim without leave to amend and sustained the demurrer as to the declaratory relief claim with leave to amend. *Id.*

B. The Cross-Complaint

On March 20, 2020, Defendants filed an answer to the Complaint. *Id.* Concurrently, Defendants filed a cross-complaint (the "Cross-Complaint") against Debtor, Dmitri Liudkovski, Yevgeniya Lisitsa and Lisitsa Law, Inc. (the "Lisitsa Parties") and Real Property Trustee, Inc. ("RPT") and Mike Kemel (the "RPT Parties"). *Id.* In the Cross-Complaint, Defendants asserted causes of action for breach of contract, breach of fiduciary duty, concealment, indemnity, declaratory relief, quiet title, cancellation of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

instruments, wrongful foreclosure and declaratory relief. *Id.*

In December 2018, Mr. Feygenberg and Mr. Leizerovitz entered into an agreement with Debtor for Debtor's acquisition of the Albers Property. The parties planned to purchase a defaulted promissory note secured by a first position deed of trust (the "Note" and the "DOT"), which was in the process of foreclosure. The parties planned to complete the non-judicial foreclosure for Debtor to obtain title to the Albers Property.

Mr. Feygenberg and Mr. Leizerovitz acted as lenders secured by the Albers Property. Ms. Lisitsa and Lisitsa Law acted as counsel for all parties to the agreement. Pursuant to the agreement, Debtor was to contribute \$1,022,500 towards the purchase of the Note and the DOT. However, unbeknownst to Mr. Feygenberg and Mr. Leizerovitz, Mr. Lioudkovski made secret deals with others to obtain the funds Debtor needed to purchase the Note and the DOT and promised the secret lenders first position deeds of trust. Ms. Lisitsa was aware of the secret loans, and cross-complainants believe one of the secret lenders is a relative of Ms. Lisitsa.

On December 31, 2018, Debtor, Mr. Feygenberg and Mr. Leizerovitz acquired the Note and the DOT. On January 30, 2019, after Ms. Lisitsa represented these parties in litigation against the owner of the Albers Property, the foreclosure sale occurred. Despite the agreement that only Debtor would take title to the Albers Property, the foreclosure trustee, under the direction of Debtor and Mr. Lioudkovski, issued a Trustee's Deed naming Debtor, Mr. Feygenberg and Mr. Leizerovitz as owners. One day later, Ms. Lisitsa prepared a grant deed to divest Mr. Feygenberg's and Mr. Leizerovitz's interest in the Albers Property, and a deed of trust in favor of Mr. Feygenberg and Mr. Leizerovitz. However, Ms. Lisitsa, acting in concert with Debtor and Mr. Lioudkovski, did not record these documents until March 22, 2019, after multiple demands from cross-complainants.

In early March 2019, Debtor, acting through Ms. Lisitsa, asked the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT...

Lev Investments, LLC

Chapter 11

cross-complainants to provide a pay-off demand. Debtor also informed the cross-complainants that there was a problem because there was a judgment lien against Mr. Feygenberg; however, the problem would not have arisen had Mr. Feygenberg never been placed on title to the Albers Property.

Debtor failed to contribute the \$1,022,500 of its own funds and, as a result, breached the agreement between the parties. Debtor, Mr. Lioudkovski and the Lisitsa Parties also breached fiduciary duties owed to Defendants by concealing the secret loans, and these parties should indemnify Defendants for any costs incurred litigating the secret loans.

In addition to these allegations regarding the Albers Property, Mr. Leizerovitz also asserted causes of action for quiet title, cancellation of instruments, wrongful foreclosure and injunctive relief based on the following allegations regarding a different transaction—

Coachella Vineyard Luxury RV Park, LLC ("RV") owned vacant land in Coachella, California (the "RV Property"). Prior to July 2018, Mr. Leizerovitz held deeds of trust encumbering the RV Property. Mr. Leizerovitz agreed to release his deed of trust to allow RV to obtain new financing for development of the RV Property. The new financing included a loan, made by Debtor on July 31, 2018, in the principal amount of \$2 million. This loan was secured by a first position deed of trust against the RV Property.

In return for releasing his deeds of trust, Mr. Leizerovitz received an unsecured promissory note in the amount of \$400,000 and a promissory note secured by a deed of trust against the RV Property in the amount of \$500,000. In February 2019, RV agreed that the unsecured note would be secured by the RV Property as an extension of credit. Additionally, Mr. Leizerovitz agreed to provide RV with another \$50,000 loan secured by the deed trust. As such, the deed of trust in favor of Mr. Leizerovitz totaled \$950,000 as a third position lien.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT...

Lev Investments, LLC

Chapter 11

On June 17, 2019, Debtor declared its loan in default. The Notice of Default was prepared by RPT and Mr. Kemel and was in the amount of \$2,450,244.27. On September 19, 2019, Debtor recorded a Notice of Sale set for October 15, 2019. RV then filed a lawsuit against Debtor in state court. The state court allowed a foreclosure, but reduced Debtor's demand amount.

Mr. Leizerovitz was interested in acquiring the RV Property through the foreclosure. However, on November 12, 2019, Mr. Leizerovitz learned that the RPT Parties conducted the foreclosure for Debtor on November 7, 2019, in violation of California Civil Code § 2924g(d); Mr. Leizerovitz was denied the opportunity to attend the foreclosure and purchase the RV Property. In addition, Debtor credit bid \$2.5 million, an amount in excess of the amount allowed by the state court.

RV demanded that the foreclosure be set aside, but cross-defendants have failed to cancel the Trustee's Deed or confirm RV's title to the RV Property, which would restore Mr. Leizerovitz's secured interest in the RV Property.

C. Miscellaneous State Court Matters

On January 19, 2020, while litigating the State Court Action, Defendants filed a complaint against the Lisitsa Parties for legal malpractice (the "Malpractice Action"). Request for Judicial Notice [doc. 23], Exhibit C. The Malpractice Action involves the Lisitsa Parties' representation of Defendants in connection with the real property transactions outlined above.

On May 8, 2020, the RPT Parties filed a declaration of non-monetary status, asserting that they were sued solely in their capacity as trustee, and not because of wrongful acts or omissions on their part. *Id.* On May 22, 2020, the state court held a hearing and issued a ruling requiring the RPT Parties to participate in the lawsuit.

On May 15, 2020, Defendants filed a Notice of Related Case in the State Court Action, referencing the Malpractice Action. *Id.* On May 22, 2020, Debtor and Mr.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

Lioudkovski filed an answer to the cross-complaint. On June 12, 2020, the RPT Parties filed a motion to compel the depositions of Defendants and requested sanctions against these parties. *Id.* On June 19, 2020, the Lisitsa Parties filed a demurrer to the Cross-Complaint, set for hearing before the state court on August 13, 2020. RJN, Exhibit A.

D. Debtor's Bankruptcy Case and the Removal

On June 1, 2020, Debtor filed a voluntary chapter 11 petition. On June 26, 2020, Defendants removed the state court action to this Court.

On July 20, 2020, Ms. Lisitsa and Lisitsa Law filed a notice of appearance and request for jury trial [doc. 12]. On July 23, 2020, RPT and Mr. Kemel filed a statement under FRBP 9027(e)(3) indicating they do not consent to entry of a final order or judgment by this Court [doc. 15]. On the same day, RPT and Mr. Kemel filed a demand for a jury trial [doc. 16].

On July 24, 2020, RPT and Mr. Kemel filed a brief requesting remand of this action [doc. 18]. RPT and Mr. Kemel also provided the docket from the state court action, which reflects several upcoming hearings calendared before the state court. On the same day, Ms. Lisitsa and Lisitsa Law filed their brief requesting remand of this action [doc. 21]. On July 29, 2020, Defendants filed a brief opposing remand ("Defendants' Brief") [doc. 24]. On July 29, 2020, Debtor filed a joinder to Defendants' Brief [doc. 27].

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT...

Lev Investments, LLC

Chapter 11

this title.

- (b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. . . .

28 U.S.C. § 1452.

The party seeking removal bears the burden of establishing federal jurisdiction. *Id.* As set forth in § 1452, removal to a bankruptcy court requires that the court have jurisdiction of such claim or cause of action under 28 U.S.C. § 1334. 28 U.S.C. § 1334(b), with regard to bankruptcy cases and proceedings, provides that:

Except as provided by subsection (e)(2) and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

1. Arising Under Jurisdiction

"A matter arises under the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

2. Arising In Jurisdiction

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings" *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11" 28 U.S.C. [§ 157\(b\)\(1\)](#); *Stern v. Marshall*, 564 U.S. 462, 475-76, 131 S.Ct. 2594, 2604, 180 L.Ed.2d 475 (2011).

3. Related to Jurisdiction

Bankruptcy courts also have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pegasus Gold Corp., 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

"[C]ivil proceedings are not within 28 U.S.C. § 1334(b)'s grant of jurisdiction if they... 'are so tangential to the title 11 case or the result of which would have so little impact on the administration of the title 11 case... Put another way, litigation that would not have an impact upon the administration of the bankruptcy case, or on property of the estate, or on the distribution to creditors, cannot find a home in the district court based on the court's bankruptcy jurisdiction.'" *In re Wisdom*, 2015 WL 2128830, at *10 (Bankr. D. Idaho May 5, 2015) (quoting 1 Collier on Bankruptcy, ¶ 3.01[3][e][v] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014)).

Here, the Court does not have "arising under" jurisdiction because none of the claims asserted by any of the parties involve a provision of the Bankruptcy Code. In addition, the Court lacks "arising in" jurisdiction because the causes of action in the Complaint and Cross-Complaint are not unique to bankruptcy and do not depend on the existence of a bankruptcy case.

However, the Court has "related to" subject matter jurisdiction over the Complaint and the Cross-Complaint. Both pleadings involve claims by or against Debtor, which

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT...

Lev Investments, LLC

Chapter 11

may impact Debtor's assets and liabilities. In addition, the pleadings involve assets of the estate, such as the Albers Property and Debtor's interest in the RV Property. Nevertheless, as discussed below, the Court will remand part of this matter to state court.

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:

- (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;

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

- (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, the Court will sever the claims and remand this matter in part. The Court will not remand the remaining claims in the Complaint, or the claims in the Cross-Complaint asserted against Debtor and relating to the Albers Property (the "Albers Claims"). The Court will remand all of the claims against the Lisitsa Parties (the "Lisitsa Claims"), and all of the claims involving the RV Property (including against Debtor) to state court (the "RV Claims").

As to the Albers Claims, Defendants and Debtor consent to entry of a final order by this Court. As such, the Court will be able to adjudicate these claims in a prompt fashion. In addition, the Albers Claims may impact the sale of the Albers Property and the amount to be distributed from any such sale. To prevent significant delays related to administration of the Albers Property, and because the Court may adjudicate related issues in the *FR LLC v. Lev Investments, LLC et al.* proceeding (the "FR Proceeding") [1:20-ap-01060-VK], the Court will not remand the Albers Claims to state court.

However, the Court will remand the Lisitsa Claims and the RV Claims to state court. [FN1]. Unlike Debtor and Defendants, the Lisitsa Parties and RPT Parties do not consent to entry of a final order or judgment by this Court. While some of these claims may be statutorily "core," Defendants have not shown that any of the claims are constitutionally core under *Stern v. Marshall*, 564 U.S. 462, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011). Thus, if the Court did not remand these claims, the Court would have to submit a Report and Recommendation to the District Court, delaying final resolution of these claims.

In addition, both the Lisitsa Parties and RPT Parties have demanded a jury trial. While the demands are not timely under Local Bankruptcy Rule 9027-1(e), denying the Lisitsa Parties' and RPT Parties' request for remand would prejudice these parties

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

because they would not be deprived of a jury trial before the state court. Moreover, the Lisitsa Claims and the RV Claims involve exclusively California law, including claims not commonly litigated in bankruptcy court. Defendants also filed a Notice of Related Action before the state court, acknowledging that the Malpractice Action as a related proceeding. Further, there is no jurisdictional basis over the Lisitsa Claims and RV Claims other than 28 U.S.C. § 1334. [FN2].

III. CONCLUSION

The Court will remand the Lisitsa Claims and RV Claims to state court. The Court will not remand the Albers Claims. The Court will prepare that order.

Defendants and Debtor must be prepared to discuss the following dates and deadlines:

Within seven (7) days after this status conference, Debtor must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, Debtor and Defendants must inform the Court of their choice of Mediator and Alternate Mediator.** Debtor and Defendants should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 11/30/20.

Deadline to complete one day of mediation: 12/18/20.

Deadline to file pretrial motions: 1/15/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 2/3/21.

Pretrial: 2/17/21 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after this hearing, Debtor must submit a Scheduling Order. Within seven (7) days after this hearing, Debtor also must submit an order conforming to the ruling above. If any of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

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).

FOOTNOTES

1. The RPT Parties briefly discuss mandatory abstention. However, 28 U.S.C. § 1334(c)(2) does not apply to removed proceedings. *See In re Lazar*, 237 F.3d 967, 981 (9th Cir. 2001). In any event, because the Court is exercising its discretion to remand the RV Claims, the Court need not rely on mandatory abstention as a basis for remanding the claims involving the RPT Parties.
2. Because the Court is remanding the Lisitsa Claims and RV Claims to state court, the Court will not preside over Defendants' request for default against the RPT Parties [docs. 7-10] or the Lisitsa Parties' and RPT Parties' motions to dismiss the Cross-Complaint [docs. 19, 20].

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

SENSIBLE CONSULTING AND

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

RUVIN FEYGENBERG

Represented By
John Burgee

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC Chapter 11

Ming Zhu LLC Pro Se

DOES 1 through 100, inclusive Pro Se

Plaintiff(s):

Lev Investments, LLC Pro Se

Trustee(s):

Caroline Renee Djang (TR) Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

1:20-11134 Helping Others International, LLC

Chapter 11

Adv#: 1:20-01070 Nguyen, Trustee of Mother Nature Trust v. United Lender, LLC et al

#12.00 Motion for leave to file/amend cross-complaint

Docket 22

Tentative Ruling:

Grant.

I. BACKGROUND

On June 29, 2020, Helping Others International, LLC ("Debtor") filed a voluntary chapter 11 petition. On September 2, 2020, the Court entered an order converting Debtor's case to a chapter 7 case [doc. 69].

On January 15, 2020, Any Thy Song Nguyen, Trustee of Mother Nature Trust ("Plaintiff"), filed a complaint in state court against United Lender, LLC ("United"), Shawn Ahdoot, Albert A. Ahdoot, Megan E. Zucaro, Helping Others International, LLC ("Debtor"), Western Fidelity Associates, LLC ("Western Fidelity"), American Financial Center, Inc. ("American") and John B. Spear (collectively, "Defendants"). Notice of Removal, Exhibit 2.

On January 21, 2020, Plaintiff filed the operative first amended complaint (the "FAC"). Notice of Removal, Exhibit 14. On February 20, 2020, United filed a petition to compel arbitration (the "Arbitration Petition"). Notice of Removal, Exhibit 56.

On March 4, 2020, United filed a cross-complaint against Debtor, Plaintiff, Ms. Zucaro, Mr. Spear and Tri Star Equity Group Corp. (the "Cross-Complaint"), asserting causes of action for: (A) judicial foreclosure of deed of trust; (B) specific performance of assignment of rents; (C) appointment of receiver pursuant to provision in deed of trust; (D) injunctive relief; (E) breach of contract; (F) negligent misrepresentation; (G) fraudulent concealment; (H) negligence; (I) negligent hiring/supervision; (J) conspiracy; and (K) unjust enrichment. Notice of Removal, Exhibit 75.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Helping Others International, LLC

Chapter 11

On July 17, 2020, United Lender, LLC ("United") removed a state court action to this Court, initiating this adversary proceeding. On August 20, 2020, United filed a motion for leave to amend its cross-complaint (the "Motion") [doc. 22], requesting leave to assert claims for: (A) quiet title; (B) declaratory relief; (C) equitable lien by subrogation; and (D) tort of another.

On September 2, 2020, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 30]. In the Opposition, Plaintiff asserts that the Court should deny the Motion because this action should be remanded to state court. Plaintiff also argues that United did not obtain leave to file the original cross-complaint and, as a result, cannot move to amend that cross-complaint.

II. ANALYSIS

As a preliminary matter, on September 9, 2020, the Court decided not to remand this matter. As a result, Plaintiff's arguments related to remand are moot. Plaintiff's remaining argument is that, because United did not obtain leave from the state court to file the Cross-Complaint, the cross-complaint is not a legally operative pleading that may be amended.

Pursuant to California Code of Civil Procedure ("CCP") § 428.50(a), "[a] party shall file a cross-complaint against any of the parties who filed the complaint or cross-complaint against him or her before or at the same time as the answer to the complaint or cross-complaint." Under CCP § 1281.7, a petition to compel arbitration "may be filed in lieu of filing an answer to a complaint."

Here, on February 20, 2020, United timely filed the Arbitration Petition in lieu of an answer. *See* CCP § 412.20(a)(3) (providing that a defendant should file a response to a complaint within 30 days of service of the summons). However, United did not file the Cross-Complaint "at the same time" as the Arbitration Petition.

Under CCP § 428.50(c), "[a] party shall obtain leave of court to file any cross-complaint except one filed within the time specified in subdivision (a) or (b). Leave may be granted in the interest of justice at any time during the course of the action." Here, United did not seek leave to file the cross-complaint, rendering the cross-complaint legally inoperative. *See Intellisoft, Ltd. v. Acer Am. Corp.*, 955 F.3d 927,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Helping Others International, LLC

Chapter 11

934–35 (Fed. Cir. 2020) ("California courts have held that a pleading was "ineffective" where the party seeking to file the pleading did not obtain the required leave of court.").

Nevertheless, United still may move for leave to file a cross-complaint. CCP § 428.50(c) does not include a time limit for a party to move to file a cross-complaint. In addition, after the 2009 amendment to Federal Rule of Civil Procedure ("FRCP") 13, courts apply FRCP 15(a) to motions for leave to file a counterclaim. *See* Fed. R. Civ. P. 13 advisory committee's note to 2009 amendment; *and Osprey Consulting I, Inc. v. Westport Ins. Corp.*, 2020 WL 5106715, at *2 (D. Md. Aug. 31, 2020) (explaining amendment and applying FRCP 15(a)(2)).

Pursuant to FRCP 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Courts have the discretion to grant or deny leave to amend a complaint. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). "In exercising this discretion, a court must be guided by the underlying purpose of [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).

Here, even if the original cross-complaint is legally inoperative for failure to obtain leave from the state court, the Court may grant leave for United to file the attached "amended" cross-complaint as the operative cross-complaint. Using the factors above, there is no indication of bad faith on the record. Even if the state court had stricken United's cross-complaint for failure to obtain leave of the court, United still would be able to file a motion for leave to file a cross-complaint (both in state court and before this Court). Because this action has not progressed past the pleading stage, United would likely prevail in either forum. As such, Plaintiff's contention

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... **Helping Others International, LLC**

Chapter 11

that United timed the removal to avoid the state court's hearing on Plaintiff's demurrer and/or motion to strike does not carry significant weight.

In addition, United filed the Motion promptly upon removal of this action to this Court, such that there has not been undue delay. Moreover, on its face, the claims in the proposed cross-complaint do not appear to be futile. Although Plaintiff refers the Court to her demurrer filed in state court, the demurrer does not include an analysis under FRCP 12(b)(6), the Rule applicable to this Court's assessment of the adequacy of the proposed cross-complaint. Finally, Plaintiff has not articulated why she would suffer prejudice if United files the proposed cross-complaint. Because this action is still in the pleading stage, and because United intends to assert fewer claims than in the original cross-complaint, the record does not show that Plaintiff will suffer prejudice from responding to the proposed cross-complaint. In light of the Ninth Circuit's policy of deciding issues on the merits, the Court will grant the Motion.

III. CONCLUSION

The Court will grant the Motion.

United must submit an order within seven (7) days.

Party Information

Debtor(s):

Helping Others International, LLC	Represented By Todd J Cleary
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Defendant(s):

United Lender, LLC	Represented By Anita Jain
Shawn Ahdoot	Pro Se
Albert A. Ahdoot	Pro Se
Megan E. Zucaro	Pro Se
Helping Others International, LLC, a	Pro Se
Western Fidelity Associates, LLC, a	Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

CONT... Helping Others International, LLC Chapter 11

John B. Spear Pro Se

American Financial Center, Inc., a
Represented By
Lori E Eropkin

DOES 1 through 100, inclusive Pro Se

Plaintiff(s):

Anh Thy Song Nguyen, Trustee of
Represented By
Andrew A Smits

Trustee(s):

David Keith Gottlieb (TR)
Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 16, 2020

Hearing Room 301

2:30 PM

1:19-11921 Breann Castillo

Chapter 7

Adv#: 1:20-01058 Campolong v. Castillo

#13.00 Order setting notice of voluntary dismissal for hearing

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Breann Castillo

Represented By
David S Hagen

Defendant(s):

Breann Castillo

Represented By
David S Hagen

Plaintiff(s):

Andrew Campolong

Represented By
Michael F Chekian

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 17, 2020

Hearing Room 301

10:30 AM

1:17-11523 Shamel Sanani and Farideh Sanani

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Brutzkus Gubner, Attorneys for Chapter 7 Trustee

Menchaca & Company LLC, Accountants for Chapter 7 Trustee

Docket 164

Tentative Ruling:

The Court will continue this hearing to **10:30 a.m. on September 24, 2020.**

Appearances on September 17, 2020 are excused.

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
Jorge A Gaitan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

10:30 AM

1:17-13142 Amir Elosseini

Chapter 11

#2.00 Amended application of LibertyBell Law Group, P.C. for payment of final fees and/or expenses

fr. 8/6/20

Docket 247

Tentative Ruling:

In connection with the amended application for payment of final fees and expenses (the "Final Application") filed by LibertyBell Law Group, P.C. ("Applicant"), the Court has reviewed the *Notice of Motion and Motion For Order Approving Compromise of Controversy* [doc. 192] (the "Settlement Motion"). The Settlement Motion was the basis for the Court to approve the debtor's settlement of the state court action *International Medical Care, Inc. v. The Regents of the University of California*. Applicant prepared and filed the Settlement Motion.

The Settlement Motion states:

"There are unpaid trial expenses of \$4,664.00, consisting of \$2,255.50 for the forensic accountant who testified [at] trial and \$2,408.50 for the court reporter. The net settlement amount of \$55,336.00 will go to the Debtor . . . and will be available for Debtor's Chapter 11 Plan."

The Settlement Motion does not discuss any other unpaid trial expenses.

Previously, the Court has approved, on an interim basis, reimbursement of Applicant's expenses in the amount of \$1,187.16 (incurred from April 20, 2018 through February 20, 2019) and authorized the estate's payment of those expenses, in full. *See Order on Application for Payment of Interim Fees and/or Expenses* [doc. 177] and *Revised First Interim Application of LibertyBell Law Group for Allowance of Fees and Reimbursement of Expenses*, p. 27 [doc. 115]. At this time, the Court will approve reimbursement of those expenses, on a final basis.

At the prior hearing on the Final Application, the Court also allowed reimbursement of Applicant's expenses for the court reporter and denied reimbursement of expenses

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

10:30 AM

CONT... Amir Elosseini

Chapter 11

for the forensic accountant.

If Applicant had additional trial expenses in the amount of \$3,962.82, why didn't Applicant discuss those expenses in the Settlement Motion?

Based on the points noted above, and the failure of Applicant to file timely a supplement to its request for reimbursement of \$3,962.82 in other expenses, the Court will deny reimbursement to Applicant of any expenses which the Court has not previously approved.

In order for the Court to assess whether Applicant has turned over to the chapter 7 trustee the balance of any funds Applicant has received in connection with its representation of the debtor and/or International Medical Care, Inc. ("IMC"), net payment of Applicant's Court-approved fees and expenses, Applicant must provide an accounting to the Court of all funds that Applicant has received in connection with its representation of the debtor and/or IMC, on and after November 24, 2017.

In its employment application [doc. 13], Applicant and the debtor represented that, before the debtor filed his chapter 11 petition, the debtor had paid \$15,000.00 to Applicant.

When can Applicant file and serve such an accounting with the Court?

8/6/20 Ruling

Grant in part, at this time.

LibertyBell Law Group, P.C. ("Applicant"), special litigation counsel to the debtor – approve fees in the amount of \$40,000 and reimbursement of expenses in the amount of \$2,408.50 (for Aptus Court Reporting), pursuant to 11 U.S.C. § 330, on a final basis. At this time, the Court will not approve \$7,255.50 in fees for D.W. Pyne, CPA and reimbursement of expenses in the amount of \$3,962.82 for the reasons stated below.

D.W. Pyne, CPA is a professional employed by the estate [doc. 136]. As such, pursuant to 11 U.S.C. § 330, in order for Mr. Pyne to receive compensation, Mr. Pyne must file a final fee application that complies with the requirements of LBR 2016-1.

Pursuant to 11 U.S.C. § 330(a)(1), a court may award a professional person employed

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

10:30 AM

CONT... Amir Elosseini

Chapter 11

under § 327 "reimbursement for actual, necessary expenses." Factors relevant to determining if an expense is proper, include: "(i) whether the expense is reasonable and economical, (ii) whether the applicant has provided a detailed itemization of expenses, (iii) whether the expenses appear to be in the nature of non-reimbursable overhead, and (iv) whether the applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court." *In re GSC Group, Inc.*, 502 B.R. 673, 743 (Bankr. S.D.N.Y. 2013).

Regarding Applicant's request for reimbursement of expenses in the amount of \$3,962.82, the application does not include a description of the expenses. Without further explanation, the Court cannot determine whether the expenses are reasonable and whether they are non-compensable overhead.

The Court will continue this hearing to **September 17, 2020 at 10:30 a.m.** By **September 3, 2020**, Applicant must file and serve a supplement to the application, which includes a detailed itemization of the requested expenses as required by LBR 2016-1(a)(1)(F). Pursuant to Local Bankruptcy Rule ("LBR") 2016-1(a)(1)(F), the application must include a summary listing of all expenses by category (*i.e.*, long distance telephone, photocopy costs, facsimile charges, travel, messenger and computer research). As to each unusual or costly expense item, the application must state: (i) the date the expense was incurred; (ii) a description of the expense; (iii) the amount of the expense; and (iv) an explanation of the expense.

The Court will prepare the order.

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 17, 2020

Hearing Room 301

10:30 AM

1:17-13142 Amir Elosseini

Chapter 11

#3.00 Application for payment of interim fees and/or expenses
for Tang & Associates, debtor's attorney

fr. 07/23/20; 8/20/20

Docket 212

Tentative Ruling:

The Court will grant Tang & Associates' request to withdraw its second *Application for Payment of Interim Fees and/or Expenses*.

Appearances on September 17, 2020 are excused.

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 17, 2020

Hearing Room 301

10:30 AM

1:18-12056 Arina Builders Inc.

Chapter 7

#4.00 Trustee's Final Report and Applications for Compensation

Amy Goldman, Chapter 7 Trustee

Karl T. Anderson CPA, Inc., Accountants for Chapter 7 Trustee

Docket 37

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee - fees of \$1,598.72 and expenses of \$6.50 approved, on a final basis.

Karl T. Anderson, CPA, Inc., accountants for chapter 7 trustee - fees of \$2,915.00 and expenses of \$431.19 approved on a final basis, pursuant to 11 U.S.C. § 330.

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):

Arina Builders Inc.

Represented By
Allan S Williams

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

1:19-10785 Attilio E Armeni

Chapter 11

#5.00 Status conference re: chapter 11 case

fr. 5/23/19; 9/19/19; 11/14/19; 1/16/20; 1/23/20; 3/19/20; 4/2/20; 8/27/20

Docket 1

Tentative Ruling:

Continue to **1:00 p.m. on March 18, 2021**. On or before **March 4, 2021**, the reorganized debtor must file an updated status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **and be supported by evidence**.

Appearances on September 17, 2020 are excused.

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, September 17, 2020

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#6.00 Order to show cause why this case should not be dismissed
or converted to one under chapter 7

fr. 08/27/20

Docket 75

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, September 17, 2020

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#7.00 Debtor's application to employ Mark Brifman as Special Litigation Counsel

Docket 74

Tentative Ruling:

Does the U.S. Trustee object to the Court's approval of the application, as modified by the debtor's reply [doc. 89] and further reply [doc. 92]?

Party Information

Debtor(s):

Blanca Mohd

Represented By
Nancy Korompis

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#8.00 Status conference re: chapter 11 case

fr. 12/19/20; 12/26/19; 6/18/20; 07/23/2020; 8/27/20;

Docket 1

Tentative Ruling:

On August 26, 2020, the Court entered an order instructing the debtor to file a status report, supported by evidence, no later than September 3, 2020 [doc. 83]. Why did the debtor not timely file a status report?

Assuming the Court grants the application to employ proposed replacement bankruptcy counsel, when will that counsel be able to file a chapter 11 plan and related disclosure statement?

On December 27, 2019, the Court entered the Order Setting Bar Date for Filing Proofs of Claim [doc. 51]. The resulting bar date is March 2, 2020.

Pursuant to that order, the debtor was required to serve written notice of the bar date on all creditors, using the court's mandatory form, by December 30, 2019. Did the debtor timely serve all creditors, including all holders of disputed liens, with the required written notice of the bar date?

The Court notes that, because the debtor failed to meet the conditions which the Court set to continue the automatic stay, the debtor's motion to continue the automatic stay was denied. *See Order Denying Motion for Order Imposing a Stay or Continuing the Automatic Stay*, entered on January 23, 2020 [doc. 58].

7/23/2020 Tentative:

Contrary to the Court's order dated June 8, 2020 (the "Order") [doc. 67], the debtor did not timely file a proposed chapter 11 plan and disclosure statement. In addition, contrary to the Order, the debtor did not timely file a status report.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

CONT... Blanca Mohd

Chapter 11

The Court intends to issue an Order to Show Cause why this case should not be dismissed or converted pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(4)(E) and (J).

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, September 17, 2020

Hearing Room 301

1:00 PM

1:20-10621 Jasmin DelVillar

Chapter 11

#9.00 Status conference re: chapter 11 case

fr. 8/13/20

Docket 1

Tentative Ruling:

The parties should address the following:

On June 10, 2020, the California Department of Tax and Fee Administration filed proof of claim 17-1, asserting a secured claim in the amount of \$150,162.89 based on liens recorded pursuant to Cal. Rev. & Tax. Code § 6757.

In light of the debtor's negative net income, based on her schedules I and J, filed on March 30, 2020 [doc. 14], how does the debtor intend to address the employment tax liabilities, and the resulting lien, which caused the filing of the current chapter 11 case?

Does the debtor intend to retain special tax counsel for assistance? If not, why?

Deadline to file proof of claim ("Bar Date"): **November 30, 2020.**

Deadline to mail notice of Bar Date: **September 30, 2020.**

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.

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.

8/13/20 Ruling

On March 5, 2017, Jasmin DelVillar ("Debtor") filed a voluntary chapter 13 petition, initiating case 1:17-bk-10553-VK. Debtor was represented by Dana M. Douglas. During the pendency of that chapter 13 case, Debtor did not confirm a chapter 13

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

CONT... Jasmin DeVillar
plan.

Chapter 11

On September 21, 2017, on Debtor's motion, the Court entered an order converting Debtor's prior case to one under chapter 11 (the "Conversion Order") [1:17-bk-10553-VK, doc. 30]. Pursuant to the Conversion Order, Debtor had 14 days to file a Chapter 11 Statement of Your Current Monthly Income and a list containing Debtor's 20 largest unsecured creditors. Debtor did not timely file either of these documents. Consequently, on October 17, 2017, the Court dismissed Debtor's prior case [1:17-bk-10553-VK, doc. 34].

On March 14, 2020, Debtor filed a voluntary chapter 11 petition, initiating the pending case. Debtor is again represented by Ms. Douglas. On July 30, 2020, Debtor filed an initial chapter 11 status conference report [doc. 27]. In that status report, Debtor states that she intends to file a motion under 11 U.S.C. § 522(f) to avoid a tax lien in favor of the California Department of Tax and Fee Administration (the "CDTFA"). On June 10, 2020, the CDTFA filed proof of claim 17-1, asserting a secured claim in the amount of \$150,162.89 based on liens recorded pursuant to Cal. Rev. & Tax. Code § 6757 (the "Tax Lien").

On July 25, 2020, Ms. Douglas filed an application to be employed as debtor in possession counsel, requesting *nunc pro tunc* employment as of March 13, 2020 [doc. 25]. In that application, Ms. Douglas does not provide an explanation as to why she waited four months after she began providing services to Debtor to file an employment application. On August 6, 2020, the United States Trustee filed an objection to that employment application [doc. 28].

"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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

CONT...

Jasmin DeVillar

Chapter 11

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, Ms. Douglas has failed to provide a satisfactory explanation for her failure to file an employment application promptly after commencement of this case. Moreover, Ms. Douglas is not competent to represent Debtor as a debtor in possession. For example, after Ms. Douglas failed to file routinely required documents timely, as required by the Conversion Order, Debtor's prior chapter 11 case was dismissed

Additionally, as it is not a judicial lien, Debtor cannot avoid the Tax Lien under 11 U.S.C. § 522(f). Pursuant to 11 U.S.C. § 522(f)(1):

Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) *a judicial lien*, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)....

(emphasis added). Pursuant to 11 U.S.C. § 101(36), "[t]he term 'judicial lien' means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." Under 11 U.S.C. § 101(53), "[t]he term 'statutory lien' means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

CONT...

Jasmin DeVillar

Chapter 11

statute and whether or not such interest or lien is made fully effective by statute."

Where a valid lien is created and perfected by statute, it is statutory. *See e.g., In re Scott*, 400 B.R. 257, 265-66 (Bankr. C.D. Cal. 2009); *In re Cox*, 349 B.R. 4, 12 (Bankr. E.D. Cal. 2006). In relevant part, Cal. Rev. & Tax. Code § 6757(a) states:

If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien.

The language of this statute is clear: the lien is created and perfected by statute alone. Consequently, a lien arising from Cal. Rev. & Tax. Code § 6757 is a statutory lien for purposes of 11 U.S.C. § 101(53), and therefore, not subject to avoidance under 11 U.S.C. § 522(f). As bankruptcy counsel to an individual debtor, Ms. Douglas should be aware that the Tax Lien is not avoidable under 11 U.S.C. § 522(f).

Moreover, in this district, in the last three years (not to mention prior years), Ms. Douglas has been debtor in possession counsel in numerous cases. These cases uniformly have ended in dismissal without court approval of a disclosure statement and/or confirmation of a chapter 11 plan. The following is a list of these cases.

- 1:17-bk-10212-MT
- 1:17-bk-0293-MB
- 1:17-bk-11847-VK
- 1:17-bk-12472-MB
- 1:17-bk-12958-MT
- 1:18-bk-10459-VK - dismissed with 180-day bar
- 1:18-bk-11332-MT - dismissed with 180-day bar
- 1:19-bk-12216-VK

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

CONT...

Jasmin DeVillar

Chapter 11

- 1:19-bk-13011-VK
- 1:20-bk-10111-DS
- 2:17-bk-12606-DS
- 2:17-bk-21803-SK
- 2:18-bk-12382-BR - dismissed with 180-day bar
- 2:18-bk-23587-BR - dismissed with 180-day bar
- 8:18-bk-10423-TA
- 9:17-bk-10077-DS
- 9:18-bk-11191-DS

In case 1:19-bk-12810-VK, which is currently pending before the Court, Ms. Douglas is debtor in possession counsel. The Court recently issued an order to show cause why the case should not be dismissed or converted because Ms. Douglas failed to meet the deadline to file a chapter 11 plan and related disclosure statement and otherwise did not comply with an order of the Court [1:19-bk-12810-VK, doc. 75].

Not only has Ms. Douglas failed to file her employment application promptly, but she has consistently shown that she is not capable of prosecuting a chapter 11 case to confirmation of a chapter 11 plan of reorganization. Consequently, the Court will not approve employment of Ms. Douglas as debtor in possession counsel.

The Court will continue this status conference to **September 17, 2020 at 1:00 p.m.**, for Debtor to obtain qualified chapter 11 bankruptcy counsel. **By September 3, 2020**, Debtor must file and serve on the United States trustee a status report discussing her efforts to secure such counsel.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

CONT... Jasmin DeVillar

Chapter 11

Debtor(s):

Jasmin DeVillar

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#10.00 U.S. Trustee's Motion to dismiss or convert case under
11 U.S.C. § 1112(b)

fr. 8/27/20

Docket 6

***** VACATED *** REASON: Voluntary dismissal of motion filed 9/11/20
(doc #30)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#10.10 Status conference re: chapter 11 case

fr. 3/19/20; 4/2/20, 9/10/20

Docket 1

Tentative Ruling:

On February 11, 2020, the debtor, a two-member limited liability corporation, filed a chapter 11 petition, commencing this case. This is the debtor's third chapter 11 case. The debtor's immediately preceding chapter 11 case was filed on December 4, 2019 and dismissed on January 24, 2020.

At the last chapter 11 case status conference, the Court mandated the filing of a declaration regarding the alleged occupant(s) of the debtor's sole significant asset, *i.e.*, a single family residence located in Encino, California. The debtor has filed such a declaration of its managing member, Tyler Murphy [doc. 65]. According to the debtor's statement of financial affairs [doc. 1], Mr. Murphy holds a 90% interest in the debtor.

In his declaration, Mr. Murphy states: "Occupants were not asked to sign a written agreement at the time of rental because they were known to me and, also, we did not know at that time that it would turn out to be a long-term occupancy of the Property."

Although Mr. Murphy's declaration indicates that the "occupants" allegedly have resided in the property since "approximately 2014," are obligated to pay rent in the amount of \$1,500.00 per month (*without a written lease*), and have paid that rent except for the months of July 2020 and August 2020, the debtor's monthly operating reports indicate that rents also were not paid for February 2020 and April 2020 through June 2020. The only monthly operating report that shows receipt of *any* rental payments is the monthly operating report for March 2020 - which indicates that the debtor received \$2,000.00 in rent.

According to the debtor's statement of financial affairs [doc. 1], in 2019, the debtor received \$14,000 in rent, and in 2018, the debtor received \$16,000 in rent - which is

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

CONT... 5019 Partners, LLC

Chapter 11

less than \$1,500 per month, *i.e.*, the amount allegedly payable by the "occupants" of the debtor's property.

On August 13, 2020, the debtor filed a proposed *Disclosure Statement Describing Chapter 11 Plan* (the "Disclosure Statement") [doc. 60]. In the Disclosure Statement, the debtor indicates that it intends to file motions for authority to hire an appraiser to prepare a report as to the fair market value of the property and a motion to determine the "secured" value of the property. Given that this is the debtor's second recent chapter 11 case, and that this chapter 11 case has been pending since February 2020, why hasn't the debtor already filed such motions?

When does the debtor intend to do so?

9/10/20

Contrary to the Court's ruling at the chapter 11 case status conference held in April 2020, the debtor did not lodge an order setting a bar date or provide notice of the bar date.

The debtor's only asset is an overencumbered single family residence. Based on a recorded Grant Deed attached to the proof of claim filed by secured creditor Bank of New York Mellon (the beneficiary of a first trust deed encumbering the residence), in April 2006, the debtor received its interest in that real property for consideration of less than \$100.00.

The debtor's schedules indicate that the residence has a value of \$700,000.00, and the first deed of trust encumbering the residence secures a \$1,000,000.00 claim. However, the proof of claim filed by Bank of New York Mellon [Claim 2-1] represents that the amount of the debt secured by the first deed of trust is \$1,859,629.60, and that payments have not been made on that claim since March 1, 2009.

Although the debtor allegedly leases its real property, the debtor's monthly operating reports indicate that it has not received any rental income for April 2020 through July 2020 [docs. 50, 55, 56, 57, 58].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:00 PM

CONT... 5019 Partners, LLC

Chapter 11

Who are the current tenants in the debtor's real property?

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#11.00 Status conference re chapter 11 case

fr, 7/16/20

Docket 1

Tentative Ruling:

Proposed dates and deadlines regarding "Debtor's Chapter 11, Subchapter V Plan, Dated August 28, 2020" (the "Plan")

Hearing on confirmation of the Plan: **December 10, 2020 at 2:30 p.m.**

Deadline for the debtor to mail 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 2, 2020.**

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 Subchapter V Trustee and the United States Trustee.

Deadline to return completed ballots to the debtor: **October 30, 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: **November 9, 2020.** Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1191 are satisfied. These materials must be served on the Subchapter V Trustee, the U.S. Trustee and any party who objects to confirmation.

Deadline to file and serve any objections to confirmation: **November 19, 2020.**

Deadline for the debtor to file any reply to objections to confirmation: **November 30, 2020.**

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

2:30 PM

1:20-10543 Amerigrade Corp.

Chapter 11

#12.00 Motion by Resnik Hayes Moradi LLP to withdraw as general
bankruptcy counsel to the debtor

fr. 8/27/20

Docket 73

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Amerigrade Corp.

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 17, 2020

Hearing Room 301

2:30 PM

1:20-10659 Nasrin Nino

Chapter 7

#13.00 Motion of Chapter 7 Trustee for order compelling turnover of personal property

Docket 42

*** VACATED *** REASON: Notice rescheduling hearing for 10/8/20 at
1:30 PM filed 9/1/20 [Dkt.44]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

2:30 PM

1:20-11134 Helping Others International, LLC

Chapter 11

#14.00 Trustee's Motion to compel entry into and inspection of real property

Docket 60

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):

Helping Others International, LLC

Represented By
Todd J Cleary

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

2:30 PM

1:19-11902 John Christian Lukes

Chapter 11

#15.00 Debtor's objection to Salisbury, Lee & Tsuda, LLP's second amended proof of claim no. 13

fr. 9/10/20

Docket 136

Tentative Ruling:

Based on the provisions in the subject settlement agreement (to which both the claimant and the debtor's estranged spouse are parties and signatories), the proofs of claim filed by the claimant prior to the parties' entry into that agreement (in particular, claim no. 13-2), the motion to approve the settlement and the order thereon, the Court will sustain the objection.

On October 24, 2019, Salisbury, Lee and Tsuda, LLP ("SLT") filed its initial proof of claim no. 13 in the amount of \$152,621.77 [claim 13-1]. In its initial proof of claim, SLT described that claim as based on a money judgment. SLT characterized that claim as secured and also as entitled to priority under 11 U.S.C. § 507(a), as a domestic support obligation.

On November 4, 2019, SLT filed an amended proof of claim no. 13 in the amount of \$326,129.14 (the "Amended Claim") [claim 13-2]. In the Amended Claim, SLT stated that: (1) it has a secured claim in the amount of \$152,621.77, based on a money judgment, and that the secured claim also was entitled to priority under 11 U.S.C. § 507(a), as a domestic support obligation; and (2) it has an unsecured claim in the amount of \$173,507.37 based on "legal fees on behalf of debtor's spouse Kathryn A. Lukes prior to 7/29/2019 which may become an obligation of debtor." SLT also characterized its unsecured claim as entitled to priority under 11 U.S.C. § 507(a), as a domestic support obligation

On January 7, 2020, the debtor, SLT and Mrs. Lukes entered into a settlement agreement (the "Settlement Agreement") [doc. 138, exh. D]. In the Settlement Agreement, Section 2.2 of the Settlement Agreement provides, in pertinent part:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

2:30 PM

CONT...

John Christian Lukes

Chapter 11

2.2.1 The Debtor shall pay SLT \$152,622 in settlement of its POC No. 13 within 2 business days of receipt of the settlement funds from the Lukes 1 Settlement.

2.2.2. Within 2 business days of receipt of the settlement funds from the Debtor, SLT shall: (a) withdraw its POC from the Bankruptcy Case.

Section 2.3 of the Settlement Agreement provides that:

In exchange for the above stated good and valuable consideration, the receipt of which is acknowledged, as well as the releases and waivers mutually exchanged under the terms thereof, Mrs. Lukes and SLT relieve, release and forever discharge the Debtor, from all liabilities associated with the attorney's fee order made in favor of SLT on March 18, 2019 *and all liabilities associated with child support and spousal support orders made in favor of Mrs. Lukes to the extent such liabilities have accrued through January 1, 2020.*

(Emphasis added). This language encompasses both the secured claim and the unsecured claim identified in SLT's Claim 13-2, which was filed prior to the parties' entry into the Settlement Agreement and which refers to legal fees on behalf of the debtor's spouse which accrued long prior to January 1, 2020.

If the debtor complied with the Settlement Agreement, SLT agreed to withdraw that claim, and the debtor's estranged spouse agreed to release the debtor from that liability. Because the debtor complied with the Settlement Agreement, SLT is no longer entitled to a claim against the debtor based on his potential obligation to pay legal fees of his estranged spouse, as a result of any services that SLT provided to her, before January 1, 2020.

The debtor must submit the order within seven (7) days.

Party Information

Debtor(s):

John Christian Lukes

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 17, 2020

Hearing Room 301

2:30 PM

CONT...

John Christian Lukes

Roksana D. Moradi-Brovia

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#1.00 Motion for relief from stay [RP]

NEWREZ LLC, DBA SHELLPOINT MORTGAGE SERVICING
VS
DEBTOR

fr: 1/8/20; 2/5/20; 3/4/20; 4/29/20; 6/17/20; 7/15/20; 8/26/20

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Hernandez

Represented By
Donald E Iwuchuku

Movant(s):

Bayview Loan Servicing, LLC., as

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, September 23, 2020

Hearing Room 301

9:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#2.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 6/3/20; 7/15/20(stip); 8/26/20

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mercedes Benitez

Represented By
Matthew D. Resnik

Movant(s):

The Bank of New York Mellon 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, September 23, 2020

Hearing Room 301

9:30 AM

1:20-10276 Hormoz Ramy

Chapter 7

#3.00 Motion for relief from stay [AN]

WV SPE 2017-2S, LLC, AS ASSIGNEE
VS
DEBTOR

Docket 51

Tentative Ruling:

Deny. There is not cause for the Court to grant movant relief from the automatic stay in order for movant to amend the application for renewal of the subject judgment, amend the related abstracts of judgment (recorded in Los Angeles, Ventura and Riverside counties) and/or record a certified copy of the amended application for renewal of the subject judgment.

On April 5, 2019, the prior assignee of the judgment, Guaranty Solutions, LLC ("Guaranty"), filed its Application for and Renewal of Judgment. However, at that time, Guaranty did not include a list of the recorded abstracts of judgment or add the pertinent missing information to the abstracts of judgment.

On February 4, 2020, the debtor filed his chapter 7 petition. On May 22, 2020, Guaranty assigned the judgment to movant. Movant's postpetition acquisition of the renewed judgment (through assignment) does not constitute cause for movant to obtain relief from the automatic stay to correct or alter Guaranty's renewal of the judgment or to amend the recorded abstracts of judgment.

In addition, the Court will not abstain from determining the validity of Movant's lien(s).

This decision does not reflect the Court's determination that any liens arising from the recorded abstracts of judgment are subject to avoidance.

At this time, the Court has insufficient evidence of whether or not the judgment creditor, who had the abstracts of judgment recorded, had knowledge of the last four

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

9:30 AM

CONT...

Hormoz Ramy

Chapter 7

digits of the debtor's social security number and/or driver's license number, at the time that the judgment creditor had each of the three abstracts of judgment recorded, or that Guaranty had that information, when Guaranty applied for renewal of the judgment. Consequently, the Court cannot currently determine if the absence of that information from the recorded abstracts of judgment make any liens subject to avoidance, pursuant to 11 U.S.C. § 544(a)(3).

If and when the chapter 7 trustee files an adversary proceeding to avoid Movant's lien(s), on the basis that the last four digits of the debtor's social security number and/or his driver's license number are missing from the recorded abstracts of judgment, the Court will decide that dispute.

The chapter 7 trustee must submit the order within seven (7) days.

Party Information

Debtor(s):

Hormoz Ramy

Represented By
Siamak E Nehoray

Trustee(s):

David Seror (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

9:30 AM

1:20-10659 Nasrin Nino

Chapter 7

#4.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

RE: 20897 Kelvin Pl. Los Angeles CA 91367 [3rd deed of trust)

fr. 6/3/20

Docket 19

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to 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):

Nasrin Nino

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 23, 2020

Hearing Room 301

9:30 AM

CONT... Nasrin Nino

Chapter 7

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Jennifer C Wong

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

9:30 AM

1:20-10659 Nasrin Nino

Chapter 7

#5.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

RE: 20897 Kelvin Pl. Los Angeles CA 91367 [2nd deed of trust]

fr. 6/3/20

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 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, September 23, 2020

Hearing Room 301

9:30 AM

CONT... Nasrin Nino

Chapter 7

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Jennifer C Wong

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

9:30 AM

1:20-10659 Nasrin Nino

Chapter 7

#6.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

fr. 6/17/20

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.

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):

Nasrin Nino

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

9:30 AM

CONT...

Nasrin Nino

Carmela Pagay

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

9:30 AM

1:15-14192 Maria Trinidad De Anda

Chapter 13

#7.00 Motion for relief from stay [RP]

BANK OF AMERICA, N.A.
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 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):

Maria Trinidad De Anda

Represented By
D Justin Harelik

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

9:30 AM

1:19-13078 Gerie G Annan and Bennett Annan

Chapter 7

#8.00 Motion for damages, attorney's fees, and punitive damages for plaintiff's violation of the automatic stay

Docket 27

Tentative Ruling:

Deny.

I. Background

On November 15, 2018, Nancy S. Tenggren (the "Plaintiff") filed a Request for Entry of Default against Gerie G. Annan (the "Debtor") – also known as Gerie Guo Ying Keh or Gerie Keh – in the Superior Court of California, County of Los Angeles ("LASC") [doc. 30, ¶ 11; Exh. 1]. On June 18, 2019, the LASC rejected the Plaintiff's Request for Default Judgment because of "insufficiency of proof of damages." [doc. 30, ¶ 13; Exh. 2].

On October 10, 2019, the Plaintiff filed a Request for Entry of Default Judgment based on an Amended Statement of Damages against the Debtor [doc. 30, ¶ 14; Exh. 4]. The LASC determined that this request was filed on November 12, 2019. [doc. 30, ¶ 9; Exh. 6].

On December 11, 2019, the Debtor filed a voluntary chapter 7 petition. The Debtor did not file a Notice of Stay or Notice of Automatic Stay in the Plaintiff's LASC action.

On February 25, 2020, the LASC denied the Plaintiff's Request for Default Judgment because there was no proof of service of a statement of damages prior to entry of default, and the Plaintiff had not justified the claim for general and special damages [doc. 27, ¶ 15; Exh. 6].

II. The Motion

On August 24, 2020, the Debtor filed a *Notice of Motion and Motion for Damages*,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

9:30 AM

CONT... **Gerie G Annan and Bennett Annan**

Chapter 7

Attorney's Fees, and Punitive Damages for Plaintiff's Violation of the Automatic Stay; Declaration of Michael D. Luppi (the "Motion") [doc. 27]. In the Motion, the Debtor contends that "Plaintiff, despite knowing of the Bankruptcy, and without obtaining relief from stay" filed an Entry of Default Judgment in violation of the automatic stay. The Debtor requests the following monetary relief: (1) \$1,000.00 in damages; (2) \$1,500.00 in attorney's fees; and (3) \$5,000.00 in punitive damages. The Debtor has not submitted any evidence of his actual damages or attorney's fees he incurred, as a result of the Plaintiff's putative violation of the automatic stay.

III. The Opposition

On September 9, 2020, the Plaintiff filed an *Opposition to Defendant's Notice of Motion for Attorney's Fees and Punitive Damages for Plaintiff's Violation of the Automatic Stay; Declaration of Andrew J. Spielberg; Declaration of Robert P. Goe* (the "Opposition") [doc. 30]. In the Opposition, the Plaintiff contends that her counsel, Andrew J. Spielberg, was not aware of the Debtor's bankruptcy filing until March 13, 2020 [doc. 30, ¶ 1; Declaration of Andrew J. Spielberg]. Plaintiff argues that she "never knowingly, willfully, intentionally or in bad faith violated the Automatic Stay" and that she "never propounded discovery nor brought any law and motion matters against the debtor nor after the 12/11/19 bankruptcy" [*Id.*, ¶¶ 2–3]. The Plaintiff asserts that the Debtor has not met his burden of proof and is not entitled to damages.

IV. Discussion

Section 362 of the Bankruptcy Code 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

9:30 AM

CONT...

Gerie G Annan and Bennett Annan

Chapter 7

- the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
 - (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secured a claim that arose before the commencement of the case under this title;
 - (6) any act to collect, assess, or a recover a claim against the Debtor that arose before the commencement of the case;
 - (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor[.]

"[A]ctions taken in violation of the automatic stay are void." *In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000) (citing *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992)). An affirmative duty is imposed on non-debtor parties to comply with the stay, and to remedy any violations, even if inadvertent, of the automatic stay. *In re Dyer*, 322 F.3d 1178, 1191–92 (9th Cir. 2003).

Pursuant to 11 U.S.C. § 362(k)(1), a debtor "injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney's 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).

"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)).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

9:30 AM

CONT... Gerie G Annan and Bennett Annan

Chapter 7

An award of punitive damages requires "some showing of reckless or callous disregard for the law or rights of others." *In re Snowden*, 769 F.3d 651, 657 (9th Cir. 2014) (quoting *In re Bloom*, 875 F.2d 224, 228 (9th Cir. 1989)).

Here, the Debtor has failed to show that he is entitled to attorney's fees, damages and/or punitive damages. The Debtor has not shown that the Plaintiff acted with willful conduct and that the Debtor was injured. According to the Plaintiff's counsel, counsel did not become aware of the Debtor's bankruptcy filing until March 13, 2020. Moreover, on February 25, 2020, the LASC denied the Plaintiff's Request for Entry of Default Judgment.

The Debtor has not provided any evidence of damages. Default judgment in the Plaintiff's favor against Debtor was never entered, and in response to the Plaintiff's Request for Entry of Default Judgment, filed in late 2019, the Debtor apparently took no action in the LASC. Therefore, the Debtor is not entitled to damages pursuant to 11 U.S.C. § 362(k)(1). Because the Plaintiff did not recklessly or callously disregard the automatic stay, the Debtor also is not entitled to punitive damages.

Consequently, the Court will deny the Motion.

Respondent must submit the order within seven (7) days.

Party Information

Debtor(s):

Gerie G Annan

Represented By
Michael D Luppi

Joint Debtor(s):

Bennett Annan

Represented By
Michael D Luppi

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 23, 2020

Hearing Room 301

9:30 AM

1:20-11513 Wilder O. Mendez and Lizette L. Mendez

Chapter 13

#8.10 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 22

Tentative Ruling:

Grant.

Movants must submit the order within seven (7) days.

Party Information

Debtor(s):

Wilder O. Mendez

Represented By
Mark T Young

Joint Debtor(s):

Lizette L. Mendez

Represented By
Mark T Young

Trustee(s):

Elizabeth (SV) 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 23, 2020

Hearing Room 301

1:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01086 Abel v. Zuckerman et al

- #9.00** 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; 11/13/19; 1/22/20; 3/25/20; 6/10/20(stip); 6/17/20

Docket 75

Tentative Ruling:

On July 15, 2020, the Court entered judgment in favor of the plaintiff on his claim under 11 U.S.C. § 523(a)(2)(A) (the "Judgment") [doc. 225]. The plaintiff's remaining claims remain pending.

During the prior status conference, on June 17, 2020, the Court instructed the plaintiff either to file a status report by September 9, 2020, or to dismiss the remaining claims in his operative second amended complaint. The plaintiff did not timely file a status report, nor has he requested dismissal of the remaining claims. As such, the Court will issue an Order to Show Cause why the plaintiff's remaining claims should not be dismissed for failure to prosecute.

If the Court dismisses the plaintiff's remaining claims, the Court will take the status conference off calendar until the appeal on the Judgment is resolved.

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

1:30 PM

CONT... Robert Edward Zuckerman

Stuart I Koenig

Chapter 11

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
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

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

#10.00 Status conference re: first amended complaint: (1) To avoid and recover fraudulent transfers for the benefit of the estate; (2) To Avoid and recover preferential transfers for the benefit of the estate; (3) For breach of contract; (4) Turnover of estate property; and (5) Unjust enrichment

fr. 11/20/19; 6/17/20; 8/19/20

Stip to continue filed 9/10/20

Docket 27

***** VACATED *** REASON: Order approving stip entered 9/11/20.
Hearing continued to 12/9/20 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

1:30 PM

CONT... Antoine R Chamoun

Chapter 7

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, September 23, 2020

Hearing Room 301

1:30 PM

1:19-11696 Peter M. Seltzer

Chapter 11

Adv#: 1:19-01151 Kessler v. Seltzer

#11.00 Status conference re: first amended complaint for the denial of discharge pursuant to 11 U.S.C. sec 727(a)(2), (a)(4) and (a)(5) and non-dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2), (a) (4) and (a)(6)

fr. 2/19/20; 4/8/20; 4/29/20; 6/24/20; 8/5/20

Docket 15

Tentative Ruling:

Given that this is an action under 11 U.S.C. §§ 523 and 727, 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)); and *In re Dung Anh Phan*, 607 B.R. 598, 605 (Bankr. S.D. Tex. 2019) (holding that, notwithstanding *Stern*, bankruptcy courts have constitutional authority to enter final judgments in actions under 11 U.S.C. § 727).

Parties should be prepared to discuss the following:

Deadline to complete discovery: 3/1/21.

Deadline to file pretrial motions: 3/15/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 4/7/21.

Pretrial: 4/21/21 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

1:30 PM

CONT... Peter M. Seltzer

Chapter 11

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):

Peter M. Seltzer

Represented By
Michael H Raichelson

Defendant(s):

Peter M. Seltzer

Pro Se

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

1:30 PM

1:19-12150 Houchik Boyadjian

Chapter 7

Adv#: 1:19-01132 Sridhar Equities, Inc., as assignee v. Boyadjian et al

#12.00 Pretrial conference re: amended complaint for non dischargeability

fr. 1/15/20; 3/18/20; 4/1/20

Docket 25

Tentative Ruling:

The Court will set the plaintiff's motion for partial summary adjudication [doc. 35] for hearing at **2:30 p.m. on November 18, 2020**. The plaintiff must file and serve notice of the hearing **no later than October 7, 2020**.

The Court will continue the status conference to **2:30 p.m. on November 18, 2020**, to be held in connection with hearing on the motion for partial summary adjudication.

Appearances on September 23, 2020 are excused.

Party Information

Debtor(s):

Houchik Boyadjian Pro Se

Defendant(s):

Houchik Boyadjian Pro Se

DOES 1 through 100, inclusive Pro Se

Plaintiff(s):

Corrdary LLC Represented By
Catherine Schlomann Robertson

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 23, 2020

Hearing Room 301

1:30 PM

1:19-13145 Daniel Michael Uzan

Chapter 7

Adv#: 1:20-01035 Mitchell et al v. Uzan

#13.00 Status conference re: first amended complaint for determination of nondischargeability pursuant to 11 U.S.C. sec 523(a)(2)(B), 523(a)(4) and 523(a)(6)

fr. 5/20/20; 6/17/20; 7/29/20

Docket 20

Tentative Ruling:

The Court will set the defendant's motion to dismiss [doc. 21] for hearing at **2:30 p.m. on October 21, 2020**. The defendant must file and serve notice of the hearing **no later than September 30, 2020**.

The Court will continue the status conference to **2:30 p.m. on October 21, 2020**, to be held in connection with the hearing on the motion to dismiss.

Appearances on September 23, 2020 are excused.

Party Information

Debtor(s):

Daniel Michael Uzan

Represented By
Mark T Jessee

Defendant(s):

Daniel Michael Uzan

Pro Se

Plaintiff(s):

Jason Mitchell

Represented By
Stella A Havkin

JHM Ventures, a California

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

1:30 PM

CONT... Daniel Michael Uzan

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 23, 2020

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

Adv#: 1:20-01074 Overland Direct, Inc. v. Transpine, Inc.

#14.00 Status conference re: removed proceeding

Docket 1

***** VACATED *** REASON: Amended order ent. 9/9/20. Continued to
10/14/20 at 1:30 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen

Defendant(s):

Transpine, Inc.

Pro Se

Plaintiff(s):

Overland Direct, Inc.

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

1:30 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#15.00 Status conference re involuntary bankruptcy case

Docket 1

***** VACATED *** REASON: Parties instructed to obtain new summons.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mayallpostan LLC

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

1:10-17214 Darin Davis

Chapter 7

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

#16.00 Defendant Darin Davis' motion for the court to order disbursement of funds out of the bankruptcy court's registry

Docket 344

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Darin Davis

Represented By
Alan W Forsley
Casey Z Donoyan

Defendant(s):

Darin Davis

Represented By
Alan W Forsley

Plaintiff(s):

Asphalt Professionals Inc

Represented By
Ray B Bowen JR

Trustee(s):

David Seror (TR)

Represented By
Richard K Diamond (TR)
Robert A Hessling

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT...

Darin Davis

Chapter 7

Robert A Hessling
Michael G D'Alba
Richard K Diamond

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

- #17.00** Defendant's motion to dismiss plaintifff Bright Enabuele's complaint for:
1) Failure to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6); and
2) Insufficient service of plaintiff's complaint pursuant to LBR 7004-1(a)(1)(B) and FRBP 7004(b)(1) and (e)

fr. 7/8/20; 7/15/20(stip)

Stip to continue filed 9/16/20

Docket 11

***** VACATED *** REASON: Order approving stip entered 9/17/20.
Hearing continued to 11/18/20 at 2:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Represented By
Michael Jay Berger

Plaintiff(s):

Bright Enabulele

Represented By
Levi Reuben Uku

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 23, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

#18.00 Status conference re: first amended complaint for non-dischargeability under 11 U.S.C. sec 523(A)(2) (4) and (6)

fr. 5/20/20; 6/3/20; 7/15/20(stip)

Stip to continue filed 7/16/20

Docket 6

***** VACATED *** REASON: Order approving stip entered 9/17/20.
Hearing continued to 11/18/20 at 2:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Bright Enabulele

Represented By
Levi Reuben Uku

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 23, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#19.00 Defendant Shobert Vartan's motion to dismiss adversary complaint pursuant to FRCP 12(B)(6)

fr. 7/8/20; 7/15/20; 08/19/20;

Docket 7

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On December 18, 2019, Shobert Vartan ("Defendant") filed a voluntary chapter 7 petition. On March 24, 2020, Philip Alvarez and Philip Alvarez, as Successor Trustee of the Evangelina Alvarez Living Trust of 2015 ("Plaintiffs"), initiated this adversary proceeding. On March 26, 2020, Plaintiffs filed the first amended complaint (the "FAC") [doc. 4], requesting nondischargeability of the debt owed to them under 11 U.S.C. § 523(a)(2), (a)(4) and (a)(6). In relevant part, Plaintiffs allege:

On April 24, 2016, Mr. Alvarez's mother passed away; her estate included a residence occupied by herself and Mr. Alvarez. The property is a single-family residence located at 925 E. Stockton Avenue, Compton, California 90221 (the "Property"). At the time of Mr. Alvarez's mother's death, the Property was paid off with no mortgage liens or any other liens or encumbrances.

After Mr. Alvarez's mother passed away, Mr. Alvarez decided to remodel the Property to rent the unit in the back of the house. Mr. Alvarez had a fixed disability income of \$909.40 per month, and desired additional income from the rental. To raise money for the remodeling, Mr. Alvarez obtained a \$90,000.00 hard money loan (the "Original Loan") against the Property. However, Mr. Alvarez eventually realized that the contractor and his company

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT...

Shobert Vartan

Chapter 7

were scam artists.

Around this same time, Mr. Alvarez watched a television program which touted Unicitizen Financial Inc. ("Unicitizen") as a company that could help people with their mortgage companies. As such, Mr. Alvarez called Unicitizen and spoke with Defendant. Defendant came out to the Property and said he could help Plaintiffs get out of the Original Loan and get the Property fixed the way it was supposed to be fixed by the previous contractor. Defendant stated Plaintiffs would just need to refinance with Unicitizen, and Plaintiffs agreed.

Defendant, Unicitizen, Adenheim, Inc. ("Adenheim") and REO Group Inc. ("REO Group") were all aware that Mr. Alvarez occupied the Property as his residence and had no ability to repay the loan. Defendant, Unicitizen, Adenheim and REO Group acted to avoid Dodd-Frank protections by preparing and funding a hard money loan as a "non-owner occupied" transaction. They did this because it was impossible to make a scenario where Mr. Alvarez's sole income of \$909.40 would make any loan possible to repay, especially with the balloon due in two years. Defendant was in full possession of Plaintiffs' income and expenses, and was on full notice of Plaintiffs' true economic situation. Defendant, Unicitizen, Adenheim and REO Group checked to see if Mr. Alvarez occupied the Property with the county recorder property mailing address, county property taxes mailing address, his driver's license, property insurance mailing address and with the credit bureaus when running a credit report; each showed Mr. Alvarez's residence as the same as the Property.

On December 18, 2016, Mr. Alvarez signed a deed of trust in favor of REO Group. The deed secured a note for \$155,000.00. On January 30, 2017, REO Group recorded the deed of trust with the Los Angeles county recorder. The note rate on the loan was represented as being 12%, but Plaintiffs were never given copies of the loan documents. The loan contained six months of pre-paid interest from February 2017 through the end of July 2017.

In early April 2017, Defendant informed Mr. Alvarez that he could get a better loan for the Property and that Defendant was working on a refinance so

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT...

Shobert Vartan

Chapter 7

Plaintiffs could remove the \$155,000 deed of trust and complete the remodel of the Property. Defendant knew that Mr. Alvarez occupied the Property as his residence and that Plaintiffs did not have the ability to repay this loan.

On May 3, 2017, Plaintiffs signed a deed of trust in favor of RIDEDEC. The deed secures a note for \$198,000.00. The note rate on the loan appeared to be 12%, but Plaintiffs were never given copies of the loan documents. Plaintiffs received no real benefit from this new loan. Over \$35,000.00 was paid to 3rd parties so Plaintiffs could end up with the same interest rate. This loan had a balloon of one year and became due June of 2018, which Plaintiffs had no ability to pay. In total, as a result of the wrongdoing of Defendant and his co-conspirators, Plaintiffs received just 11.49% of the money lent, or \$22,748.19 of the \$198,000.00 in loans.

Defendant was aware that Mr. Alvarez lived in the Property and purposely schemed to define Mr. Alvarez's property as non-owner occupied. Defendant did this to enrich himself since there was no way to write the loans for Mr. Alvarez if he occupied the Property. Mr. Alvarez did not have the economic means to repay the debt with his very limited and fixed income.

On October 16, 2017, RIDEDEC recorded a notice of default and election to sell under the deed of trust. In January 2018, Plaintiffs filed a complaint against Defendant in the Los Angeles Superior Court for breach of written contract, breach of an oral contract fraud, constructive fraud, breach of fiduciary duty, unjust enrichment and unfair business practices.

On July 24, 2019, Defendant entered into a settlement agreement that provided for payment of \$65,000, with \$20,000 payable upon signing the agreement, and the remainder paid in \$1,000 per month for forty-five months. At the time he entered into the agreement, Defendant had no intent or ability to perform under the settlement agreement.

Plaintiff incorporated the July 9, 2019 settlement agreement (the "Settlement Agreement") into the FAC. FAC, Exhibit 1. The Settlement Agreement is signed by Defendant and includes the following admissions—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT...

Shobert Vartan

Chapter 7

- 1) The defendants Shobert Vartan and Aram Tekeian admits, verifies, and agrees to each cause of action as pled against them
- 2) The defendants Shobert Vartan and Aram Tekeian admits, verifies, and agrees that each and every element to each cause of action pled against them as required has been met.
- 3) The defendants Shobert Vartan and Aram Tekeian admits, verifies, and agrees that the Plaintiff has met his burden as to each cause of action pled against them.
- 4) The defendants Shobert Vartan and Aram Tekeian admits, verifies, and agrees that they committed a wrongful act; the act was done intentionally; which necessarily caused injury to Philip Alvarez; and was done without just cause or excuse; and the Plaintiff was harmed and damaged by the defendant.

... The lawsuit as it applies to Shobert Vartan arises out of (1) the defendant Shobert Vartan soliciting the plaintiff Philip Alvarez for the refinancing [of] his residence, the "property"; (2) prepared multiple hard money loan applications for the plaintiff; (3) solicited plaintiff's hard money loan applications to RIDECA directly and through ADVANCED FUNDING AND FIDELITY FINANCE, (5) resulting in a hard money loan that funded on or about 30 January 2017 with the REO GROUP; (6) with the Deed of Trust recorded on 15 May 2015....; (7) resulting in another hard money loan funded on or about 15 May 2017 with the RIDECA; (8) with the Deed of Trust recorded on 15 May 2015....

Id.

On April 24, 2020, Defendant filed a motion to dismiss the FAC (the "Motion") [doc. 7]. In the Motion, Defendant argues that Plaintiffs have failed to state a claim.

On July 1, 2020, Plaintiffs filed an opposition to the Motion (the "Opposition") [doc. 17]. In connection with the Opposition, Plaintiffs filed a request for judicial notice,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT...

Shobert Vartan

Chapter 7

attaching, *inter alia*, the verified state court complaint. Request for Judicial Notice [doc. 17], Exhibit 1. In the verified state court complaint, Plaintiffs asserted a cause of action for fraud against Defendant.

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 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); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009)). "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 555 (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT...

Shobert Vartan

Chapter 7

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). Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

B. 11 U.S.C. § 523(a)(2)(A)

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the Plaintiffs must prove by a preponderance of the evidence the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT...

Shobert Vartan

Chapter 7

- 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)).

In the Motion, Defendant argues that Defendant's role in the alleged scheme to defraud Plaintiffs is not clear. However, in the FAC, Plaintiffs allege that Defendant himself made false representations on which Mr. Alvarez relied. FAC, pp. 13-14. In addition, Plaintiffs incorporate the Settlement Agreement into the FAC. The Settlement Agreement provides that Defendant "admits, verifies, and agrees to each cause of action as pled against" him and "admits, verifies, and agrees that each and every element to each cause of action pled against" him has been met. The state court complaint includes a claim for fraud against Defendant. *See Symington*, 51 F.3d at 1484 (holding that exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper). As such, even if the body of the FAC is not specific enough regarding Defendant's role in the general scheme, the incorporation of the Settlement Agreement sufficiently establishes a claim under § 523(a)(2)(A).

Plaintiffs' second claim under § 523(a)(2)(A) is based on allegations that Defendant fraudulently entered into the Settlement Agreement. Defendant contends that the allegations are insufficient to establish fraud; Defendant asserts the allegations sound in breach of contract. However, Plaintiffs allege that Defendant entered into the Settlement Agreement knowing that his representation that he would perform under the Settlement Agreement was false, and that Defendant made such representations intentionally. Under Rule 9(b), allegations regarding intent may be alleged generally. As such, Plaintiffs also have adequately alleged a claim under § 523(a)(2)(A) on this basis.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT...

Shobert Vartan

Chapter 7

C. 11 U.S.C. § 523(a)(4)

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

i. Existence of Trust/Fiduciary Relationship

Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); *see also In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) ("The definition of 'fiduciary capacity' under § 523(a)(4) is governed by federal law."). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796; *see also In re Stern*, 403 B.R. 58, 66 (Bankr. C.D. Cal. 2009) ("In order for the debt to be actionable for nondischargeability, the debtor must have been a trustee before the alleged wrong and without reference thereto; the debtor must have already been a trustee before the debt was created."); *Cantrell*, 269 B.R. at 420 ("Only relationships arising from express or technical trusts qualify as fiduciary relationships under § 523(a)(4)."). Under § 523(a)(4), a court must consider state law to ascertain whether there is the required express or technical trust. *In re Honkanen*, 446 B.R. 373, 379 (B.A.P. 9th Cir. 2011).

"A trust under California law may be formed by express agreement, by statute, or by case law." *Cantrell*, 269 B.R. at 420. An express trust under California law requires the following five elements: (1) present intent to create a trust; (2) a trustee; (3) trust property; (4) a proper legal purpose; and (5) a beneficiary. *Honkanen*, at 379 n.6 (citing Cal. Prob. Code §§ 15201–15205). A technical trust under California law is one "arising from the relation of attorney, executor, or guardian, and not to debts due by a bankrupt in the character of an agent, factor, commission merchant, and the like." *Id.*, at n.7 (quoting *Royal Indemnity Co. v. Sherman*, 269 P.2d 123, 125 (Cal. Ct. App. 1954)). Additionally, "[t]rusts arising as remedial devices to breaches of implied or

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT... **Shobert Vartan**

Chapter 7

express contracts—such as resulting or constructive trusts—are excluded, while statutory trusts that bear the hallmarks of an express trust are not." *Id.* (citing *In re Pedrazzini*, 644 F.2d 756, 759 (9th Cir. 1981)).

ii. Embezzlement or Larceny

"Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1) property rightfully in the possession of the non-owner debtor, (2) the non-owner's misappropriation of the property to a use other than that for which it was entrusted, and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). "The elements of larceny differ only in that a larcenous debtor has come into possession of funds wrongfully." *In re Mickens*, 312 B.R. 666, 680 (Bankr. N.D. Cal. 2004). A finding of larceny requires proof of the debtor's fraudulent intent in taking the creditor's property. *In re Sokol*, 170 B.R. 556, 560 (Bankr. S.D.N.Y. 1994).

"Fraudulent appropriation requires an intent to deprive, which can be inferred from the conduct of the person accused and from the circumstances of the situation." *Savonarola v. Beran*, 79 B.R. 493, 496 (Bankr. N.D. Fla. 1987). For purposes of embezzlement and larceny, a fiduciary relationship is not required. *Littleton*, 942 F.2d at 555.

Here, the FAC does not include sufficient allegations under § 523(a)(4). Plaintiffs have not alleged that an express or technical trust, which was imposed before and without reference to the wrongdoing that caused the debt, existed. In the Opposition, Plaintiffs acknowledge *Honkanen*, *supra*, which held that, in light of the Ninth Circuit Court of Appeals' ruling in *In re Cantrell*, 329 F.3d 1119 (9th Cir. 2003), "a California real estate licensee does not meet the fiduciary capacity requirement of § 523(a)(4) solely based on his or her status as a real estate licensee." *Honkanen*, 446 B.R. at 381. Under *Honkanen*, the licensee must hold property in trust for the plaintiff. *Id.*

Nevertheless, Plaintiffs reference two cases that predate *Honkanen* and *Cantrell*. See *In re Briles*, 228 B.R. 462 (Bankr. S.D. Cal. 1998); and *In re Rodriguez*, 196 B.R. 537 (N.D. Cal. 1996). However, *Briles* and *Rodriguez* relied on *In re Woosley*, 117 B.R. 524 (B.A.P. 9th Cir. 1990), to hold that the debtor's real estate license established a fiduciary relationship for purposes of § 523(a)(4). See *id.* In *Honkanen*, the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT...

Shobert Vartan

Chapter 7

Bankruptcy Appellate Panel of the Ninth Circuit recognized that *Cantrell* abrogated *Woosley. Honkanen*, 446 B.R. at 381-82. As such, Plaintiffs' references are outdated, and Plaintiffs have not established a fiduciary relationship under § 523(a)(4).

In addition, Plaintiffs do not sufficiently allege embezzlement or larceny. The FAC fails to allege facts indicating that Defendant embezzled money from Plaintiffs. While the FAC does allege that various entities involved in generating the January and May 2017 loans received loan proceeds in connection with facilitating the loans, the FAC does not allege that *Defendant* received funds that were misappropriated. As such, Plaintiffs have not adequately alleged a claim under § 523(a)(4).

D. 11 U.S.C. § 523(a)(6)

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 140 L.Ed. 2d 90 (1998). In the Ninth Circuit, " § 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Ormsby*, 591 F.3d at 1206 (quoting *In re Su*, 290 F.3d 1140, 1142 (9th Cir.2002)). "The Debtor is charged with the knowledge of the natural consequences of his actions." *Id.* (citing *In re Cohen*, 121 B.R. 267, 271 (Bankr.E.D.N.Y.1990)). *See also Su*, 290 F.3d at 1146 ("In addition to what a debtor may admit to knowing, the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action.").

Under § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.* at 1147. Maliciousness does not require "personal hatred, spite, or ill-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

Plaintiffs adequately allege that Defendant willfully and maliciously injured Plaintiffs.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT... Shobert Vartan

Chapter 7

In the FAC, Plaintiffs allege that Defendant induced Plaintiffs to enter into loans secured by the home in January 2017 and May 2017, with the same excessive interest rate, and that each loan was worse than the previous loan and made solely to enrich Defendant and his co-conspirators. Plaintiffs further allege that each loan sold or pushed by Defendant put Plaintiffs' home at risk and was a predatory loan that was illegal, in that the home was owner-occupied and Defendant knew that the home was owner-occupied and that Plaintiffs had no ability to make the payments. Plaintiffs state that Defendant's acts were done with specific intent to harm Plaintiffs.

In addition, the incorporated Settlement Agreement contains Defendant's admissions that his actions were malicious. In the Settlement Agreement, Defendant admitted that: (A) he committed a wrongful act; (B) the act was done intentionally; (C) the act necessarily caused injury to Mr. Alvarez; (D) the act was done without just cause or excuse; and (E) Mr. Alvarez was harmed and damaged by Defendant. As such, the FAC and the Settlement Agreement establish a claim under § 523(a)(6).

III. CONCLUSION

The Court will dismiss Plaintiffs' claim under 11 U.S.C. § 523(a)(4) with leave to amend. The Court will deny the Motion as to Plaintiffs' claims under 11 U.S.C. § 523(a)(2)(A) and (a)(6).

If Plaintiffs elect to amend the FAC, they must file and serve a second amended complaint **no later than October 21, 2020**. Otherwise, **no later than October 21, 2020**, Plaintiffs must file and serve a notice that they will not be amending the FAC. No later than **November 12, 2020**, Defendant must file and serve a response to any second amended complaint, or, if one is not filed, an answer to the FAC.

Plaintiffs must submit an order within seven (7) days.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

CONT... Shobert Vartan

Chapter 7

Defendant(s):

Shobert Vartan

Represented By
Michael Jay Berger

Plaintiff(s):

Philip Alvarez

Represented By
Fritz J Firman

Philip Alvarez as Successor Trustee

Represented By
Fritz J Firman

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 23, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#20.00 Status conference re: first amended complaint to determine dischargeability of debt 11 U.S.C. sec 523(a)(2); fraud; fraud or defecation while acting in a fiduciary capacity 11 U.S.C. sec 523(a)(4); and willful and malicious injury 11 U.S.C. sec 523(a)(6)

fr. 5/20/20; 7/8/20; 7/15/20; 8/19/20;

Docket 4

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on December 9, 2020**. No later than **November 25, 2020**, the parties must file a joint status report.

Plaintiffs must submit a scheduling order within seven (7) days.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Philip Alvarez

Represented By
Fritz J Firman

Philip Alvarez as Successor Trustee

Represented By
Fritz J Firman

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 23, 2020

Hearing Room 301

2:30 PM

CONT... Shobert Vartan

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

Adv#: 1:20-01074 Overland Direct, Inc. et al v. Transpine, Inc.

#21.00 Motion to compel defendant Daniel Tepper aka Danny Tepper
aka Dan Tepper to appear for deposition and request for sanctions

Docket 6

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on November 4, 2020**, to determine if this action will be remanded prior to adjudicating any motions by the parties.

Appearances on September 23, 2020 are excused.

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen

Defendant(s):

Transpine, Inc.

Pro Se

Plaintiff(s):

Daniel J. McCarthy

Represented By
Daniel J McCarthy

Overland Direct, Inc.

Represented By
Daniel J McCarthy

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 23, 2020

Hearing Room 301

2:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

Adv#: 1:20-01074 Overland Direct, Inc. et al v. Transpine, Inc.

#22.00 Motion to compel a further response and production to request for production of documents, set one, from Nisan Tepper, individually and as Trustee of the Tepper Family Revocable Trust

Docket 8

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on November 4, 2020**, to determine if this action will be remanded prior to adjudicating any motions by the parties.

Appearances on September 23, 2020 are excused.

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen

Defendant(s):

Transpine, Inc.

Pro Se

Plaintiff(s):

Daniel J. McCarthy

Represented By
Daniel J McCarthy

Overland Direct, Inc.

Represented By
Daniel J McCarthy

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 24, 2020

Hearing Room 301

10:30 AM

1:14-14686 Elmer Alexander Uceda

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Gottlieb, Chapter 7 Trustee

Lewis Brisbois Bisgaard & Smith LLP, Attorneys for Chapter 7 Trustee

Berkeley Research Group, LLC, Accountant for Chapter 7 Trustee

Docket 347

Tentative Ruling:

David Gottlieb, chapter 7 trustee – approve fees of \$1,373.11 and reimbursement of expenses of \$166.26, 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.

Lewis Brisbois Bisgaard & Smith LLP ("LBBS"), counsel to chapter 7 trustee – approve fees of \$7,041.00 and reimbursement of expenses of \$10.20. LBBS is authorized to collect 100% of the approved fees and reimbursement of expenses.

Berkeley Research Group, LLC ("Berkeley"), accountant to chapter 7 trustee – approve fees of \$12,213.50 and reimbursement of expenses of \$56.45, pursuant to 11 U.S.C. § 330, on a final basis. The Court will not approve \$9.00 in fees for the reason 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 24, 2020

Hearing Room 301

10:30 AM

CONT... **Elmer Alexander Uceda**

Chapter 7

factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 7 case, "the court shall not allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

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 Berkeley for the service identified below:

Date	Timekeeper	Description	Time	Fee	Reason
3/7/18	VC	Updated case files	0.10	\$9.00	Secretarial

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 24, 2020

Hearing Room 301

10:30 AM

CONT... Elmer Alexander Uceda

Chapter 7

Party Information

Debtor(s):

Elmer Alexander Uceda

Represented By
Anthony A Friedman

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Doah Kim
Amy L Goldman
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 24, 2020

Hearing Room 301

10:30 AM

1:17-11523 Shamel Sanani and Farideh Sanani

Chapter 7

#1.10 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Brutzkus Gubner, Attorneys for Chapter 7 Trustee

Menchaca & Company LLC, Accountants for Chapter 7 Trustee

fr. 9/17/20

Docket 164

Tentative Ruling:

David Seror, chapter 7 trustee – approve fees of \$3,416.82 and reimbursement of expenses of \$302.42, on a final basis. The trustee is authorized to collect 100% of the approved fees and reimbursement of expenses.

Brutzkus Gubner, counsel to chapter 7 trustee – approve fees of \$19,356.50 and reimbursement of expenses of \$337.05, pursuant to 11 U.S.C. § 330, on a final basis. Brutkus Gubner is authorized to collect the 100% of the approved fees and reimbursement of expenses.

Menchaca & Company LLP ("Menchaca"), accountant to chapter 7 trustee – approve fees of \$2,242.50 and reimbursement of expenses of \$19.85, pursuant to 11 U.S.C. § 330, on a final basis. Menchaca is authorized to collect the 100% 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 the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 24, 2020

Hearing Room 301

10:30 AM

CONT... Shamel Sanani and Farideh Sanani

Chapter 7

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
Jorge A Gaitan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 24, 2020

Hearing Room 301

1:30 PM

1:20-11528 BurbankHills, LLC

Chapter 11

#2.00 Status conference re chapter 11, subchapter V case

Docket 1

Tentative Ruling:

In its original chapter 11 petition [doc. 1], the debtor elected to proceed under subchapter V of chapter 11. In addition, on September 8, 2020, the debtor filed a Subchapter V Status Report [doc. 14]. However, on September 14, 2020, the debtor filed an amended petition [doc. 17], identifying itself as a small business debtor but no longer checking the box to proceed under subchapter V of chapter 11.

Does the debtor no longer wish to proceed under subchapter V of chapter 11?

On August 27, 2020, the Court entered an order setting this status conference [doc. 4] and requiring the debtor to file a declaration including the following information: (A) any litigation in which the debtor is involved; (B) whether the debtor intends to hire any professionals and, if so, when the debtor intends to file the related employment application(s); and (C) 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 debtor has not filed a declaration including this information.

If the debtor will not be proceeding under subchapter V, the debtor still must provide for payment of the subchapter V trustee's Court-approved fees and expenses. In addition, the debtor will have to pay the U.S. Trustee's quarterly fees, incurred after it is no longer proceeding under subchapter V.

The bar date has been set for **February 22, 2021**.

In the event the debtor will not be proceeding under subchapter V, the Court will set **March 12, 2021** as the deadline for the debtor to file a proposed chapter 11 plan and related disclosure statement.

If the debtor elects to proceed in subchapter V, the parties should address the following:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 24, 2020

Hearing Room 301

1:30 PM

CONT... BurbankHills, LLC

Chapter 11

Pursuant to 11 U.S.C. § 1189(b), the debtor's deadline to file a proposed plan is **November 23, 2020**.

Continued chapter 11 case status conference to be held at **2:30 p.m. on December 17, 2020**.

The debtor must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the Subchapter V Trustee, not 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 status report must address the following:

What efforts has the debtor made so far to obtain the consent of creditors for a consensual plan?

If the debtor expects that the plan will be a nonconsensual plan, i.e., a plan confirmed under 11 U.S.C. § 1191(b), why does it expect that?

Any additional information the debtor would like to disclose to the Court concerning this chapter 11 case or the plan (e.g. executory contracts or unexpired leases or sale or surrender of real and/or personal property).

The Court will prepare an order continuing the status conference and setting the deadline to file and serve the related status report, as well as the deadline to file a chapter 11 plan and related disclosure statement, if the debtor is not proceeding under subchapter V of chapter 11.

Party Information

Debtor(s):

BurbankHills, LLC

Represented By
Michael R Totaro

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 24, 2020

Hearing Room 301

2:30 PM

1:18-10886 Exotic Euro Cars, Inc. and Kain Kumar

Chapter 7

#3.00 Trustee's motion to approve compromise of controversy

Docket 125

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):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 24, 2020

Hearing Room 301

2:30 PM

1:19-11777 Winters-Schram & Associates

Chapter 7

#4.00 Motion of chapter 7 trustee for an order approving the sale of certain assets of the debtor's estate free and clear of liens, claims, interests, and encumbrances pursuant to 11 U.S.C. §§ 105 and 363 and related relief

Docket 58

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Winters-Schram & Associates

Represented By
Daniel H Reiss
Lindsey L Smith

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan
Jeremy Faith

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 24, 2020

Hearing Room 301

2:30 PM

1:20-10901 Andrea R Castillo

Chapter 7

#5.00 Debtor's motion to avoid lien under 11 U.S.C. sec 522(f) and, if applicable for turnover of property with Interinsurance Exchange of the Automobile Club

Docket 14

Tentative Ruling:

On August 27, 2020, the Court entered an order setting this motion for hearing and instructing the debtor to serve Interinsurance Exchange of the Automobile Club at 3333 Fairview Road, Costa Mesa, California 92626, Attn: Gail Louis (agent for service), with the motion and notice of the hearing on the motion, **no later than September 3, 2020**. The debtor did not timely file proof of service of the motion and notice of the hearing on the motion. Consequently, the Court will deny the motion.

The Court will prepare the Order.

Party Information

Debtor(s):

Andrea R Castillo

Represented By
Steven Abraham Wolvek

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 24, 2020

Hearing Room 301

2:30 PM

1:20-11134 Helping Others International, LLC

Chapter 11

#6.00 Trustee's Motion to compel entry into and inspection of real property
fr; 9/17/20

Docket 60

Tentative Ruling:

At the hearing held on September 17, 2020, the Court instructed Steve Mills, who appeared via telephone, with the assistance of counsel, to file a written response to this motion no later than **4:00 p.m. on September 22, 2020**. Mr. Mills did not timely file a written response. As such, the Court will grant the motion.

The movant must submit an order within seven (7) days.

9/17/2020 Tentative:

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):

Helping Others International, LLC

Represented By
Todd J Cleary

Trustee(s):

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, September 24, 2020

Hearing Room 301

2:30 PM

CONT...

Helping Others International, LLC

Monica Y Kim

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 29, 2020

Hearing Room 301

9:30 AM

1:19-12557 Judy A Scott

Chapter 7

Adv#: 1:19-01144 West Medical Center, Inc. v. Scott

#1.00 Trial re: first amended complaint objecting to discharge under section 523 of the Bankruptcy Code

fr. 2/5/20; 4/29/20; 6/17/20

Join by Computer

Meeting URL: <https://cacb.zoomgov.com/j/1610393295>

Meeting ID: 161 039 3295

Password: 655278

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 039 3295

Password: 655278

Docket 14

***** VACATED *** REASON: Stipulated judgment entered 9/23/20 [doc. 32].**

Party Information

Debtor(s):

Judy A Scott

Represented By
James G. Beirne

Defendant(s):

Judy A Scott

Pro Se

Plaintiff(s):

West Medical Center, Inc.

Represented By
Adam Van Susteren

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, September 29, 2020

Hearing Room 301

9:30 AM

CONT... Judy A Scott

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**

Tuesday, October 6, 2020

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 302 Calendar**

Tuesday, October 6, 2020

Hearing Room 302

9:30 AM

1:20-11501 Gorden Eugene Campbell, Jr.

Chapter 13

#2.10 Confirmation hearing re First Amended Chapter 13 Plan

Docket 15

Tentative Ruling:

Does ELF Financial, LLC ("Creditor") intend to provide evidence regarding the appropriate risk-adjusted rate of interest for payment of its claim, secured by a junior lien encumbering real property, over the life of the proposed chapter 13 plan (the "Plan")?

If so, can Creditor provide any such evidence no less than two weeks prior to a continued hearing on confirmation of the Plan?

Party Information

Debtor(s):

Gorden Eugene Campbell Jr.

Represented By
Jeffrey J Hagen

Movant(s):

Gorden Eugene Campbell Jr.

Represented By
Jeffrey J Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 6, 2020

Hearing Room 301

10:30 AM

1:15-12261 Jesus Leon and Victoria Cabrales

Chapter 13

#27.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 51

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 6, 2020

Hearing Room 301

10:30 AM

1:15-13042 Ericka Evalinda Mitchell

Chapter 13

#28.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 81

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, October 6, 2020

Hearing Room 301

10:30 AM

1:15-14074 Jennifer D. Mead

Chapter 13

#29.00 Trustee's motion for order modifying the plan to increase the plan payment pursuant to 11 U.S.C. sec 1329(a) and the percentage to be paid to unsecured creditors or, in the alternative, dismissing the ch 13 petition due to debtor's failure to make debtor's best efforts to repay creditors pursuant to 11 U.S.C. sec 1307(c)(6)

fr: 9/8/20;

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jennifer D. Mead

Represented By
Lenelle C Castille

Trustee(s):

Elizabeth (SV) 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 6, 2020

Hearing Room 301

10:30 AM

1:16-10495 Indira LaRoda

Chapter 13

#30.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 107

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Indira LaRoda

Represented By
Michael F Chekian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 6, 2020

Hearing Room 301

10:30 AM

1:16-10632 Ahmad Ammar

Chapter 13

#31.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 38

***** VACATED *** REASON: Withdrawal of motion filed 9/24/20. [Dkt.42]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ahmad Ammar

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, October 6, 2020

Hearing Room 301

10:30 AM

1:16-10666 Paula Trickey

Chapter 13

#32.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 106

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, October 6, 2020

Hearing Room 301

10:30 AM

1:16-10925 Josue Soncuya Villanueva

Chapter 13

#33.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 113

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, October 6, 2020

Hearing Room 301

10:30 AM

1:16-11316 Sergio Luquin and Lorena Palacios Luquin

Chapter 13

#34.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 57

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, October 6, 2020

Hearing Room 301

10:30 AM

1:16-12389 David A Neporent

Chapter 13

#35.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 58

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David A Neporent

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 6, 2020

Hearing Room 301

10:30 AM

1:16-12523 Brent Carpenter

Chapter 13

#36.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 77

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, October 6, 2020

Hearing Room 301

10:30 AM

1:16-13377 Nahed Talei

Chapter 13

#37.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 109

***** VACATED *** REASON: Voluntary Dismissal of motion filed 9/16/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nahed Talei

Represented By
Michael F Frank

Trustee(s):

Elizabeth (SV) 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 6, 2020

Hearing Room 301

10:30 AM

1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

#38.00 Trustee's motion for order modifying the plan to increase the plan payment pursuant to 11 U.S.C. §1329(a) and the percentage to be paid to unsecured creditors, or in the alternative, dismissing the chapter 13 petition due to debtors' failure to make debtors' best efforts to repay creditors pursuant to 11 U.S.C. §1307(c)(6)

fr. 2/11/20; 5/5/20; 7/14/20

Docket 103

Tentative Ruling:

Tentative Ruling from May 5, 2020

Grant. Pursuant to 11 U.S.C. §§ 1329(a) and 1325(b), the plan payment will increase to \$6,412.89 per month.

Movant must submit the order within seven (7) days.

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, October 6, 2020

Hearing Room 301

10:30 AM

1:17-12522 Taghreed Yaghnam

Chapter 13

#39.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 09/08/20;

Docket 99

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Taghreed Yaghnam

Represented By
James G. Beirne

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 6, 2020

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

#40.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kathleen Moore

Represented By
Nathan Berneman
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, October 6, 2020

Hearing Room 301

10:30 AM

1:17-13161 Gerald J. Mathews

Chapter 13

#41.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 43

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerald J. Mathews

Represented By
James G. Beirne

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 6, 2020

Hearing Room 301

10:30 AM

1:17-13190 Seferino Carlin

Chapter 13

#42.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 48

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, October 6, 2020

Hearing Room 301

10:30 AM

1:17-13192 Stephanie Marie Wilson

Chapter 13

#43.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 09/08/20;

Docket 69

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, October 6, 2020

Hearing Room 301

10:30 AM

1:17-13313 Pedro Mejia Lopez

Chapter 13

#44.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pedro Mejia Lopez

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 6, 2020

Hearing Room 301

10:30 AM

1:18-11015 Rosa Tejada

Chapter 13

#45.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosa Tejada

Represented By
James G. Beirne

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 6, 2020

Hearing Room 301

10:30 AM

1:18-11105 Debby Sandra Levy

Chapter 13

#46.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 52

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Debby Sandra Levy

Represented By
Rob R Nichols

Trustee(s):

Elizabeth (SV) 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 6, 2020

Hearing Room 301

10:30 AM

1:18-11251 James Lemond Robinson

Chapter 13

#47.00 Trustee's motion to dsmiss case for failure to make plan payments

fr. 8/11/20

Docket 48

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, October 6, 2020

Hearing Room 301

10:30 AM

1:18-11504 Juan Pedro Torres

Chapter 13

#48.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Pedro Torres

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 6, 2020

Hearing Room 301

10:30 AM

1:18-11945 Rosa Aminta Cordova de Rodriguez

Chapter 13

#49.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosa Aminta Cordova de Rodriguez

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, October 6, 2020

Hearing Room 301

10:30 AM

1:18-12027 Yuma Vanessa Perez

Chapter 13

#50.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 30

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, October 6, 2020

Hearing Room 301

10:30 AM

1:18-12588 Dean Edward Schinnerer

Chapter 13

#51.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean Edward Schinnerer

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, October 6, 2020

Hearing Room 301

10:30 AM

1:19-10039 Keith Tatsukawa

Chapter 13

#52.00 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

fr. 09/08/20;

Docket 70

***** VACATED *** REASON: withdrawal filed on 9/24/20 doc #82**

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, October 6, 2020

Hearing Room 301

10:30 AM

1:19-12509 Elia Blanco

Chapter 13

#53.00 Trustee's motion to dismiss case for failure to make plan payments

fr: 09/08/20;

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elia Blanco

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 6, 2020

Hearing Room 301

10:30 AM

1:19-12947 Ronaldo Garcia

Chapter 13

#54.00 Trustee's motion to dsmiss case for failure to make plan payments

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronaldo Garcia

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 6, 2020

Hearing Room 301

10:30 AM

1:16-12941 Allison Maxene Frome

Chapter 13

#54.10 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 80

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, October 6, 2020

Hearing Room 301

10:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#54.20 Trustee's Motion to Dismiss Case for Failure to Make Plan Payments

Docket 82

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, October 6, 2020

Hearing Room 301

11:00 AM

1:19-10022 Gus Albert Bolona and Deirdre Marie Bolona

Chapter 13

#55.00 Motion for objection to the notice of mortgage payment change filed by U.S. Bank Trust National Trust Association as Trustee for GIFM Holdings Trust on June 23, 2020

fr. 09/08/2020;

Docket 64

Tentative Ruling:

At the last hearing on this matter, the Court instructed the debtor and the lender to file and serve, **no later than September 22, 2020**, documentary evidence regarding the source of funding for the subject insurance payments. On September 22, 2020, debtor Gus Albert Bolona filed a declaration testifying that the debtors have made all insurance payments and attaching certain payments as documentary evidence of such payment. The lender has not timely filed any evidence of its own.

As such, the Court will sustain the debtors' objection to the lender's notice of mortgage change.

The debtors must submit an order within seven (7) days.

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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 6, 2020

Hearing Room 301

11:00 AM

1:20-11487 Ronald Behar

Chapter 13

#56.00 Motion on debtor's request to vacate order of dismissal and
reinstate original chapter 13 case

Docket 17

Tentative Ruling:

Contrary to Local Bankruptcy Rule 1017-2(c), the debtor has not "include[d] as exhibits to the motion all of the documents that were not timely filed...." The Court will not grant this motion until the debtor files each of the documents that the debtor did not timely file prior to dismissal.

The Court will continue this matter to **11:00 a.m. on November 10, 2020**. If the debtor submits the required documents by **October 27, 2020**, the Court will grant the motion.

Appearances on October 6, 2020 are excused.

Party Information

Debtor(s):

Ronald Behar

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, October 7, 2020

Hearing Room 301

9:30 AM

1:17-10747 Alvin Isidro

Chapter 13

#1.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA
VS
DEBTOR

fr. 9/9/20

Stip for adequate protection fld 09/30/20

Docket 64

*** VACATED *** REASON: Order approving stip entered 10/1/20.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alvin Isidro

Represented By
Robert M Aronson

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, October 7, 2020

Hearing Room 301

9:30 AM

1:16-12176 Luis Trigueros

Chapter 13

#2.00 Motion for relief from stay [RP]

TOWD POINT MORTGAGE TRUST ASSET-BACKED SECURITIES
VS
DEBTOR

fr. 9/9/20

Stip for adequate protection filed 10/5/2020

Docket 60

*** VACATED *** REASON: Order approving stip entered 10/5/20.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luis Trigueros

Represented By
Todd L Turoci
Jaime A Cuevas Jr.

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

9:30 AM

1:20-11420 Yelena Chistyakova

Chapter 13

#3.00 Motion for relief from stay [RP]

ARKADY VAPNIK
VS
DEBTOR

fr. 9/9/20

Docket 10

Tentative Ruling:

I. BACKGROUND

On September 26, 2019, Vladislav Fedorenko (the "Borrower") executed a promissory note (the "Note") in the principal sum of \$730,000, which was made payable to Arkady Vapnik (the "Movant") [doc. 10-1, Exh. 1]. The Note is secured by a deed of trust ("Deed of Trust"), executed by the Borrower, encumbering the real property located at 5351 Yolanda Avenue, Tarzana, California 91356 (the "Property"). *Id.* at Exh. 2. The Deed of Trust describes the Borrower, "a Married Man as his Sole and Separate Property as trustor." Pursuant to the terms of the Note, the Borrower agreed that:

Interest-only payments shall be due and payable in consecutive monthly installments of \$5,468.92 on the 1st day of each month beginning on 12/01/2019. Such payments shall continue until the entire indebtedness evidenced by this Note and all accrued and unpaid interest and fees are fully paid, with any unpaid principal and interest due and payable on 11/01/2020 (the "Maturity Date").

Id. at Exh. 1. The Note further contained a "balloon payment" provision, which required the Borrower to make a payment of \$730,000 along with any accrued interest and fees on November 1, 2020. *See id.*

On March 24, 2020, the Movant recorded a notice of default against the Property,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

9:30 AM

CONT...

Yelena Chistyakova

Chapter 13

reflecting a default in the amount of \$26,089.26 [doc. 10-1, Exh. 4]. Accordingly, on July 6, 2020, the Movant recorded a notice of trustee's sale, which set a foreclosure sale of the Property for August 4, 2020. *Id.* at Exh. 5. This sale was postponed to August 11, 2020. *Id.* at 13.

On August 10, 2020, one day before the scheduled foreclosure sale, Yelena Chistyakova (the "Debtor") filed a voluntary chapter 13 petition. On that same day, the Borrower executed a quitclaim deed to transfer title from the Property to the Debtor [doc. 10-1, Exh. 6]. Debtor contends that she has a community property interest in the Property, as the Borrower's spouse.

In her Schedules, the Debtor provides the following information:

Value of the Property	\$1,140,926.00
Debtor's net monthly income	\$3,979.32
Borrower's net monthly income	\$4,771.98
Total monthly income	\$8,751.00
Total monthly expenses	\$7,194.00
Monthly net income	\$1,557.00

[*See* doc. 14, Schedules I, J; doc. 15, Schedule A/B]. In her Schedule I, the Debtor indicated that she does not expect an increase in income within the year after filing.

II. THE MOTION

On August 18, 2020, the Movant filed a motion for relief from the automatic stay (the "Motion") [doc. 10]. In the Motion, the Movant contends that the Debtor filed her bankruptcy petition in bad faith and that the unauthorized transfer of the Property one day before the scheduled foreclosure sale was part of a scheme to delay, hinder, or defraud the Movant.

III. THE OPPOSITION

On August 24, 2020, the Debtor filed a chapter 13 plan, which proposes to pay \$83,505.30 in arrears to the Movant [doc. 18]. The Debtor's proposed plan payment is \$1,557.00 per month for sixty months. Additionally, the Debtor will pay a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

9:30 AM

CONT...

Yelena Chistyakova

Chapter 13

\$1,391.76 monthly dividend to the Movant to cure the arrearage. The proposed plan is a 100% plan.

On August 26, 2020, the Debtor filed a response to the Motion (the "Opposition") [doc. 23]. In the Opposition, the Debtor argues that her bankruptcy petition was not filed in bad faith because: (1) the Property has an estimated value of \$1,250,000.00 based on a new property appraisal [doc. 23, Exh. B]; (2) the Movant's secured claim of \$813,505.00 is fully covered; and (3) the Debtor has an equity cushion in the amount of \$336,495.00. The Debtor also argues that the \$83,505.13 in accrued interest is excessive and demands an accounting.

IV. THE REPLY

On September 23, 2020, the Movant filed a reply to the Debtor's Opposition (the "Reply") [doc. 32]. In the Reply, the Movant contends that, because the loan is set to mature on November 1, 2020, the Debtor's chapter 13 plan is not feasible and demonstrates bad faith. Specifically, the Movant states that at least \$880,665.56 is due on November 1, 2020 and that the Debtor's monthly net income of \$1,557.00 is insufficient to cure the arrearage and maintain the required plan payments at the same time.

On September 23, 2020, the Movant objected to the Debtor's proposed chapter 13 plan because, among other things, the Debtor has insufficient income to confirm a chapter 13 plan, which pays the Movant's secured claim in full over the term of the plan, and that the Debtor filed the pending case in bad faith.

V. DISCUSSION

11 U.S.C. § 362(d)(1) and (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—

(1) for cause, including the lack of adequate protection of an

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

9:30 AM

CONT...

Yelena Chistyakova

Chapter 13

interest in property of such party in interest;

...

(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.

11 U.S.C. § 1322(c) provides that:

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

9:30 AM

CONT... Yelena Chistyakova

Chapter 13

- (2) in a case in which the last payment on the original schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

The Debtor's proposed chapter 13 plan cannot be confirmed without agreement from the Movant. Pursuant to 11 U.S.C. § 1322(c)(2), the Debtor must pay Movant's allowed secured claim in full, in accordance with 11 U.S.C. § 1325(a)(5), *during the term of a confirmed chapter 13 plan*. However, the Debtor does not have sufficient income to do so.

Given the Debtor's contention that there is a large equity cushion in the Property, and attempts to negotiate a compromise with the Movant have stalled, is the Debtor willing to convert her case to one under chapter 7?

Party Information

Debtor(s):

Yelena Chistyakova

Represented By
Alla Tenina

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

9:30 AM

1:16-10666 Paula Trickey

Chapter 13

#4.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC
VS
DEBTOR

Stip to resolve motion fld 10/6/20

Docket 109

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):

Paula Trickey

Represented By
Todd J Roberts

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

9:30 AM

CONT... Paula Trickey

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 7, 2020

Hearing Room 301

9:30 AM

1:19-12658 Dan S Watanabe

Chapter 13

#5.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

Stip for adequate protection fld 09/24/20

Docket 80

*** VACATED *** REASON: Order approving stip entered 9/24/20. [Dkt. 84]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dan S Watanabe

Represented By
Randolph L Neel

Trustee(s):

Elizabeth (SV) 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 7, 2020

Hearing Room 301

9:30 AM

1:19-11648 Maryam Sheik

Chapter 11

#6.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
VS
DEBTOR

Order appr stip to cont hrg ent 09/24/20

Docket 123

*** VACATED *** REASON: Order cont hrg entered 09/24/2020 (doc #
129).

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01041 Sheik v. MDA Motors Corp., a California corporation et al

- #7.00** Status conference re: complaint for
1) Quit title;
2) Slander of title;
3) Declaratory relief

fr. 7/29/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on October 14, 2020**, to be held with the hearing on the plaintiff's motion for default judgment [doc. 50].

Appearances on October 7, 2020 are excused.

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

MDA Motors Corp., a California

Pro Se

Greenwood Pontiac, Inc. a dissolved

Pro Se

Jamshid Lavi, an individual

Pro Se

All Persons Or Entities Unknown

Pro Se

Does 1-10, Inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

CONT... Maryam Sheik

Chapter 11

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01042 Sheik v. Protax, LLC, a California Limited Liability Compan

#8.00 Status conference re: complaint for
1) Quiet title;
2) Slander of title;
3) Declaratory relief

fr. 7/29/20

Stipulation for entry of judgment filed 8/3/20

Docket 1

***** VACATED *** REASON: Order approving stipulated judgment
entered 8/3/20 [Doc #17]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Protax, LLC, a California Limited

Pro Se

All Persons or Entities Unknown

Pro Se

Does 1 to 10, Inclusive

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By

Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01043 Sheik v. Lilly Group, a trust et al

#9.00 Status conference re: complaint for:

- 1) Fraud;
- 2) Fraud based on forgery
- 3) Civil conspiracy
- 4) Quiet title
- 5) Cancellation of instruments
- 6) Slander of title
- 7) Declaratory relief
- 8) Injunctive relief

fr: 6/3/20; 7/29/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on October 14, 2020**, to be held with the hearing on the plaintiff's motion for default judgment [doc. 39].

Appearances on October 7, 2020 are excused.

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Lilly Group, a trust

Pro Se

Lavender Enterprises, a trust

Pro Se

RA Sterling Investments & Holdings

Pro Se

Andrew Alcaraz, an individual

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

CONT... Maryam Sheik

Chapter 11

All Persons or Entities Unknown

Pro Se

Does 1 to 10, Inclusive

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01039 Lewis v. Vartan

#10.00 Status conference re: first amended complaint to determine dischargeability of debt 11 U.S.C. § 523(a)(2)(A); fraud; fraud or defecation while acting in a fudiciary capacity 11 U.S.C. § 523 (a)(4) and wilful and malicious injury 11 U.S.C. §523(a)(6)

fr. 5/20/20(stip); 6/10/20; 7/15/20

Docket 4

Tentative Ruling:

Has the plaintiff decided how to proceed with this action?

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Lester L Lewis

Represented By
Elissa Miller

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 7, 2020

Hearing Room 301

1:30 PM

1:20-10659 Nasrin Nino

Chapter 7

Adv#: 1:20-01061 GOTTLIEB v. Bilal

- #11.00** Status conference re: complaint for
1) Avoidance and recovery of preferential transfer
[11 U.S.C. sec 547(b), 550(a), and 551],
2) Avoidance and recovery of post-petition transfer
[11 U.S.C. sec 549(a), 550(a), and 551] and
3) Disallowance of any claim held by defendant
[11 U.S.C. sec 502(d)]

fr. 8/5/20(stip)

Stip to continue filed 9/15/20

Docket 1

***** VACATED *** REASON: Continued to 11/4/20 at 1:30 pm per order
entered on 9/22/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Defendant(s):

Kamal Bilal

Pro Se

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Carmela Pagay

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01060 FR LLC v. Lev Investments, LLC et al

#12.00 Order to show cause why this adversary proceeding should not be dismissed for failure to prosecute

Docket 18

Tentative Ruling:

On July 29, 2020, the Court entered a scheduling order [doc. 13], instructing the parties to file a joint status report no later than August 5, 2020. On August 26, 2020, the Court held a status conference. Prior to the status conference, FR, LLC ("Plaintiff") did not timely file a status report. As such, on August 28, 2020, the Court issued an Order to Show Cause why this adversary proceeding should not be dismissed for failure to prosecute (the "OSC") [doc. 18]. The Court also mentioned that the debtor contends it has yet to be served with the complaint. In the OSC, the Court instructed Plaintiff to file a response no later than September 23, 2020, and for defendants to file any response no later than September 30, 2020.

On September 23, Plaintiff filed a response to the OSC (the "Response") [doc. 21]. In the Response, Plaintiff contends that it failed to file a status report because its counsel did not calendar the status conference. Plaintiff also states that service has been completed in accordance with Federal Rule of Civil Procedure 4 and Federal Rule of Bankruptcy Procedure 7004 by mailing the summons and complaint to the debtor.

On October 1, 2020, the debtor filed a reply [doc. 22], asserting that Plaintiff must personally serve the debtor in accordance with California law, and that Plaintiff is a cancelled entity that cannot prosecute the action.

With respect to Plaintiff's failure to file a status report, Plaintiff has provided a declaration from counsel satisfactorily explaining the deficiency. The debtor does not address this point in its reply. As such, the Court will not dismiss the proceeding on this basis.

However, the debtor asserts that the complaint was not properly served. According to the debtor, because the complaint was filed in state court, Plaintiff was required to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

serve the debtor in person. To the Response, Plaintiff attached a proof of service, dated December 31, 2019, showing service of the summons and complaint by mail. Under California Code of Civil Procedure ("CCP") § 415.30—

- (a) A summons may be served by mail as provided in this section. A copy of the summons and of the complaint shall be mailed (by first-class mail or airmail, postage prepaid) to the person to be served, together with two copies of the notice and acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid, addressed to the sender.

...

- (c) Service of a summons pursuant to this section *is deemed complete on the date a written acknowledgment of receipt of summons is executed*, if such acknowledgment thereafter is returned to the sender.

(emphasis added). In addition, CCP § 415.30(b) sets forth language that must be included in the notice and acknowledgment mailed to the defendant.

Here, there is no evidence that Plaintiff served the notice and acknowledgment required by CCP § 415.30(b). In addition, service under CCP § 415.30 is not effectuated until the defendant executes a written acknowledgment of receipt of summons. There is no evidence that any of the defendants executed such a written acknowledgment. Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 9027(f)—

If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued pursuant to Part VII of these rules. This subdivision shall not deprive any defendant on whom process is served after removal of the defendant's right to move to remand the case.

Because it appears service was not perfected prior to removal, Plaintiff must request another summons and serve the defendants in accordance with FRBP 7004.

The final issue raised by the debtor is that Plaintiff is a canceled entity. To this end,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

the debtor attaches a Certificate of Cancellation from the California Secretary of State. However, a search of the California Secretary of State's website also generates a record of a "FR L.L.C." That entity remains active. As such, it is not immediately clear that the Certificate of Cancellation relates to Plaintiff.

In light of the above, the Court will discharge the OSC. However, unless the defendants waive the service issues, Plaintiff must request another summons and properly serve the defendants under the Federal Rules of Bankruptcy Procedure.

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 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). Plaintiff must attach to the Another Summons a copy of the complaint and a copy of Judge Kaufman's Status Conference Instructions (the "Instructions").

The Instructions include this Court's procedures regarding a claimed right to trial by jury. If the parties dispute whether Plaintiff is entitled to a jury trial, in order for the Court to adjudicate this issue timely, the parties must follow the procedures set forth in item 7 of the Instructions.

To demonstrate proper service of the Another Summons and the complaint and Instructions to be served with that summons, Plaintiff 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 Plaintiff can obtain an issued Another Summons from the Court by October 16, 2020, the status conference will be continued to **1:30 p.m. on November 25, 2020**.

No later than **November 12, 2020**, the parties must submit a joint status report in accordance with Local Bankruptcy Rule 7016-1(a).

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

DMITRI LUDKOVSKI

Pro Se

RUVIN FEYGENBERG

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

SENSIBLE CONSULTING AND

Represented By
John Burgee

DOES 1 through 100, inclusive

Pro Se

Plaintiff(s):

FR LLC

Represented By
Michael Shemtoub

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01060 FR LLC v. Lev Investments, LLC et al

#13.00 Status conference of removed proceeding

fr. 7/15/20; 8/19/20; 8/26/20

Docket 1

Tentative Ruling:

See calendar no. 12.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

DMITRI LUDKOVSKI

Pro Se

RUVIN FEYGENBERG

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

SENSIBLE CONSULTING AND

Represented By
John Burgee

DOES 1 through 100, inclusive

Pro Se

Plaintiff(s):

FR LLC

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Michael Shemtoub

Chapter 11

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01065 Lev Investments, LLC v. SENSIBLE CONSULTING AND

#14.00 Status conference re: removed proceeding

fr. 8/12/20; 9/16/20

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 11/30/20.

Deadline to complete one day of mediation: 12/15/20.

Deadline to file pretrial motions: 1/15/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 2/3/21.

Pretrial: 2/17/21 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

SENSIBLE CONSULTING AND

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

RUVIN FEYGENBERG

Represented By
John Burgee

Ming Zhu LLC

Pro Se

DOES 1 through 100, inclusive

Pro Se

Plaintiff(s):

Lev Investments, LLC

Pro Se

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01088 Elissa D. Miler, chapter 7 trustee for the estate v. Adri

#15.00 Plaintiff's Motion for Summary Judgment; in the Alternative, for Summary Adjudication on Each Individual Claim Asserted in Trustee's Complaint

Docket 33

***** VACATED *** REASON: Notice rescheduling hearing for 10/14/20 at 2:30 PM filed on 9/25/20.**

Tentative Ruling:

- NONE LISTED -

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

Represented By
Cathy Ta
Larry W Gabriel

Elissa D. Miller

Represented By
Cathy Ta
Larry W Gabriel

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta
Larry W Gabriel
Claire K Wu

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

2:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01041 Sheik v. MDA Motors Corp., a California corporation et al

#16.00 Plaintiff's Motion for Default Judgment Under LBR 7055-1
against Jamshid Lavi, an individual

Docket 50

***** VACATED *** REASON: Notice rescheduling hearing for 10/14/20 at
2:30 PM filed on 9/25/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

MDA Motors Corp., a California

Pro Se

Jamshid Lavi, an individual

Pro Se

All Persons Or Entities Unknown

Pro Se

Does 1-10, Inclusive

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By

Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 7, 2020

Hearing Room 301

2:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01043 Sheik v. Lilly Group, a trust et al

#17.00 Plaintiff's Motion for Default Judgment Under LBR 7055-1 against Lilly Group, a trust, Lavender Enterprises, a trust, RA Sterling Investments & Holdings Ltd., a suspended California corporation, and Andrew Alcaraz, an individual

Docket 39

***** VACATED *** REASON: Notice rescheduling hearing for 10/14/20 at 2:30 PM filed on 9/25/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Lilly Group, a trust

Pro Se

Lavender Enterprises, a trust

Pro Se

RA Sterling Investments & Holdings

Pro Se

Andrew Alcaraz, an individual

Pro Se

All Persons or Entities Unknown

Pro Se

Does 1 to 10, Inclusive

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By

Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#1.00 Confirmation hearing re Debtor's Second Amended Chapter 11
Plan of Reorganization

Stip to continue filed 9/24/20

Docket 256

***** VACATED *** REASON: Order approving stip entered 9/29/20.
Hearing continued to 12/10/20 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M. Jonathan Hayes
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

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);
12/12/19; 1/23/20; 3/26/20(stip); 4/9/20; 6/25/20; 8/13/20

Stip to continue filed 9/24/20

Docket 1

***** VACATED *** REASON: Order approving stip entered 9/29/20.
Hearing continued to 12/10/20 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:00 PM

1:18-12051 Mr. Tortilla, Inc.

Chapter 11

#3.00 Post confirmation 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; 12/5/19; 1/23/20; 3/5/20; 3/19/20(stip); 4/9/20

Docket 1

***** VACATED *** REASON: Order of Final Decree entered 6/26/20.**

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, October 8, 2020

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#4.00 Hearing on adequacy of Debtor's disclosure statement describing chapter 11 plan of reorganization

Docket 108

***** VACATED *** REASON: continued to 11/5/20 at 1:00 p.m. per order entered on 10/1/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

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, October 8, 2020

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#5.00 Status conference re: chapter 11 case

fr. 8/29/19/ 1/23/20; 3/26/20; 8/13/20

Docket 1

***** VACATED *** REASON: continued to 11/5/20 at 1:00 p.m. per order
entered on 10/1/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:00 PM

1:19-11902 John Christian Lukes

Chapter 11

#6.00 Status conference re: chapter 11 case

fr. 9/19/19; 2/6/20; 4/30/20

Docket 1

Tentative Ruling:

If the debtor has filed all monthly operating reports for the period through September 2020, below are the proposed dates regarding approval for solicitation purposes of "Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization," filed on September 17, 2020 [doc. 146].

Hearing to consider approval of the proposed disclosure statement: **1:00 p.m. on December 3, 2020.**

Deadline to file and serve notice of: (1) hearing to consider approval of disclosure statement and (2) deadline to file and serve any objections to its approval: **October 15, 2020**. The debtor must serve the notice on all creditors, parties requesting special notice and the United States Trustee. Fed. R. Bankr. P. 2002(b).

Deadline to file and serve any objections to Court's approval of disclosure statement: **November 12, 2020.**

Deadline to file and serve any reply to any objections to Court's approval of disclosure statement: **November 19, 2020.**

Status Conference to be continued to **December 3, 2020 at 1:00 p.m.**

The debtor must submit an order incorporating the above dates, times and deadlines within seven (7) days.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:00 PM

CONT... John Christian Lukes

Chapter 11

Debtor(s):

John Christian Lukes

Represented By
Matthew D Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:00 PM

1:20-11590 Final Level Productions LLC

Chapter 7

#7.00 Order to show cause re: dismissal of case

Docket 8

Tentative Ruling:

The Court will dismiss this case. The debtor has not filed a petition and otherwise appeared with counsel as required by LBR 9011-2(a).

The Court will prepare the order.

Party Information

Debtor(s):

Final Level Productions LLC	Pro Se
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Trustee(s):

David Seror (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, October 8, 2020

Hearing Room 301

1:30 PM

1:17-10378 Kandy Kiss of California, Inc. and Mary Teresa Barnes

Chapter 7

#8.00 Chapter 7 Trustee's Omnibus Motion to (1) Disallow Claims for Failure to Attach Supporting Documentation, and (2) Disallow Late-Filed Claims

Docket 243

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:30 PM

1:18-11729 Richard Philip Dages

Chapter 7

#9.00 Debtor's Motion to Convert Case From Chapter 7 to 13

Docket 180

Tentative Ruling:

Deny.

I. BACKGROUND

On July 10, 2018, Richard Phillip Dages (the "Debtor") filed a voluntary chapter 11 petition. In his schedules, the Debtor provided the following information:

Employment	Self-employed manager
Monthly income	\$11,740.33
Monthly expenses	\$10,060.00
Net monthly income	\$1,680.33

[See Doc.1, Schedules I and J]. Furthermore, in his schedules, the Debtor stated that Mr. Cooper f/k/a Nationstar Mortgage ("Mr. Cooper") has a secured claim in the amount of \$1,400,00.00 [doc. 1, Sch. D]. The Debtor also stated that the property securing Mr. Cooper's claim is valued at \$810,000.00 [Doc. 1, Sch. D]. The Debtor scheduled \$17,305.00 in other unsecured debt. None of the Debtor's debts are described as unliquidated or contingent.

In its proof of claim 2-1, filed on July 19, 2018, Mr. Cooper set forth that it has a secured claim, as of the petition date, in the amount of \$1,201,784.09.

On November 1, 2019, the Debtor filed his chapter 11 plan of reorganization and related disclosure statement [docs. 117, 118]. On January 9, 2020, the Court held a hearing on the adequacy of the Debtor's proposed disclosure statement and case status conference. At the hearing, the Court denied the adequacy of the disclosure statement [doc. 131].

On May 5, 2020, the Court entered an order converting the case from chapter 11 to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:30 PM

CONT... **Richard Philip Dages** **Chapter 7**

one under chapter 7 [doc. 170]. Diane C. Weil was appointed as chapter 7 trustee (the "Trustee") [doc. 174].

II. THE MOTION

On July 27, 2020, the Debtor filed a *Motion to Convert Case Under 11 U.S.C. §§ 706(a) or 1112(a)* (the "Motion") [doc. 180]. In the Motion, the Debtor seeks to convert his case from chapter 7 to one under chapter 13. The Debtor avers that he is a 73-old Navy veteran and seeks to keep his home by converting his case to one under chapter 13. The Debtor states that he can pay off his unsecured creditors, through chapter 13.

III. THE OPPOSITION

On September 24, 2020, the Trustee filed an *Opposition to Debtor's Motion to Convert Case to a Case under Chapter 13* (the "Opposition") [doc. 190]. In the Opposition, the Trustee contends that the Debtor does not qualify to be a debtor in a chapter 13 case. Specifically, the Trustee contends that the Debtor's secured debt exceeds the \$1,184,200.00 debt limit pursuant to 11 U.S.C. § 109(e).

IV. DISCUSSION

Pursuant to 11 U.S.C. § 706(a) and (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 of this title unless the debtor may be a debtor under such chapter.

Pursuant to 11 U.S.C. § 109(e)—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:30 PM

CONT...

Richard Philip Dages

Chapter 7

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200 may be a debtor under chapter 13 of this title.

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 a chapter 13 under § 706(a) if the debtor engages in bad faith conduct that would warrant dismissal or reconversion of a chapter 13 case.

The Supreme Court also determined that there is 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. *Marrama*, 549 U.S. at 372. The Supreme Court looked to the reasons why a debtor may not qualify to be a 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.*

A chapter 7 debtor may convert the case to chapter 11, 12, or 13 at any time. 11 U.S.C. § 706(a). However, a debtor may not convert a chapter 7 case to a case under another chapter unless the debtor is eligible for relief under that chapter. 11 U.S.C. § 706(d). Pursuant to 11 U.S.C. § 109(e), only individuals with regular income whose debts are below the applicable ceilings may be debtors under chapter 13. An "individual with regular income" means an individual who has "sufficiently stable and regular" monthly income "to enable them to make plan payments in chapter 13." 11 U.S.C. § 101(30). A debtor without excess income to fund a plan or who cannot establish a reasonable certainty that income is forthcoming to fund a plan does not meet the eligibility requirements for chapter 13. *In re Jones*, 174 B.R. 8, 13 (Bankr. D.N.H. 1994).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:30 PM

CONT... Richard Philip Dagues

Chapter 7

A debtor must meet the debt limits as of the petition date. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 981 (9th Cir. 2001). Post-petition events do not change the debt limit analysis. *Slack v. Wilshire Insurance Company (In re Slack)*, 187 F.3d 1070, 1072 (9th Cir. 1999). A court looks at a debtor's schedules to determine whether the debtor meets the debt limit requirements. *Scovis*, 249 F.3d at 982.

Here, the Debtor's debts exceed the section 109(e) ceilings of \$1,184,200 for secured debts and \$394,725 for unsecured debts. Because the Debtor filed his petition in 2018, the operative debt limit to determine chapter 13 eligibility is \$1,184,200 for secured claims and \$394,725 for unsecured claims.

Mr. Cooper filed a proof of claim in the amount of \$1,201,784.09. This amount is more than \$1,184,200.00 for secured claims. Conversely, the unsecured portion of Mr. Cooper's claim of \$391,784.09, as subtracted from its proof of claim and taking into account the scheduled value of the Debtor's real property, combined with other scheduled unsecured claims, totals \$409,089.09 in unsecured debt. This amount is more than the applicable limit of \$394,725.00 for unsecured claims. Consequently, the Debtor is not eligible to convert his case from chapter 7 to one under chapter 13.

V. CONCLUSION

The Court will deny the Motion.

The Trustee must submit the order within seven (7) days

Party Information

Debtor(s):

Richard Philip Dagues

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 8, 2020

Hearing Room 301

1:30 PM

1:20-10394 Vadim Konviser

Chapter 7

#10.00 Debtor's Motion to Compel Abandonment of Any and All Assets,
or in the Alternative for an Order Compelling the Chapter 7 Trustee
to File a No Asset Report

Docket 29

Tentative Ruling:

Grant as to the debtor's request to compel abandonment of assets. Deny as to the debtor's alternative request to compel the chapter 7 trustee to file a no asset report.

The debtor must submit an order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Vadim Konviser

Represented By
Blake J Lindemann

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 8, 2020

Hearing Room 301

1:30 PM

1:20-10659 Nasrin Nino

Chapter 7

#11.00 Motion of Chapter 7 Trustee for order compelling turnover of personal property

fr. 9/17/20

Docket 42

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On March 20, 2020, Nasrin Nino ("Debtor") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee"). In her schedule A/B, Debtor identified an interest in NNP Partnership (the "Partnership"), stating—

Debtor owns a 50% interest in NNP Partnership which was formed upon the dissolution of her marriage to Antone Nino in 1/2013. At the time of the dissolution, the parties owned an interest in several gas stations under different corporate names and the land in West Hills at which a gas station owned by a trust (debtor has no relationship to the trustors or the trust) is operating. Upon the dissolution, the respective interests of the parties became a partnership. Debtor's ex husband died in 2014 and Jeffrey Siegel has been appointed by the probate court to administer Antone's estate. The stations were sold and Siegel is holding about \$350,000 for Antone's estate.

On August 27, 2020, the Trustee filed the Motion [doc. 42], requesting turnover of the assets held by the custodian, Mr. Siegel, pursuant to 11 U.S.C. § 543. The Trustee notes that Mr. Siegel informed the Trustee that he does not oppose the Motion, and will turn over the assets upon entry of an order by the Court. According to the Trustee, Mr. Siegel is holding approximately \$345,000 in funds.

On September 17, 2020, Kamal Bilal, a creditor, filed an opposition to the Motion (the "Opposition") [doc. 47]. In the Opposition, Mr. Bilal contends that he has a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:30 PM

CONT... Nasrin Nino

Chapter 7

judgment against the Partnership, and that the assets held by Mr. Siegel are not property of the bankruptcy estate. Instead, Mr. Bilal contends that Mr. Siegel must use the Partnership's funds to satisfy the debt owed to Mr. Bilal. Mr. Bilal also provided a *Judgment Pursuant to Stipulation* (the "Stipulated Judgment"), dated January 10, 2020, wherein Mr. Siegel and Mr. Bilal agreed that the Partnership owes Mr. Bilal \$300,000. Declaration of Robert M. Ungar, ¶ 11, Exhibit 5.

II. ANALYSIS

The parties do not dispute that the Partnership has not been wound up. Nevertheless, in the Motion, the Trustee appears to assert that the funds being held by Mr. Siegel are property of the estate. The Trustee has set forth no authority in support of his contention that the Partnership's assets are property of the estate.

"[W]hile the individual's interest in the partnership or corporation (which could be a 100 percent interest) would be property of the estate, the assets of the partnership or corporation itself would not be." *In re Shapow*, 599 B.R. 51, 71 (Bankr. C.D. Cal. 2019) (quoting 2 Collier on Bankruptcy ¶ 101.30[3] (16th ed. 2018)).

It is axiomatic that the mere bankruptcy of a partner does not bring the partnership's assets within the jurisdiction of the bankruptcy court. A debtor's interest in a partnership is an asset of the debtor's estate under 11 U.S.C § 541; the assets of the partnership are not. Before a partner is entitled to receive his share of the partnership's property, or his right to the profits of the partnership, if any, the partnership's creditors are entitled to payment.

In re Katz, 341 B.R. 123, 128 (Bankr. D. Mass. 2006) (internal citations omitted). As in *Katz*, which analyzed the issues under Massachusetts law, pursuant to California Corporations Code § 16807(a)—

In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subdivision (b).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:30 PM

CONT... **Nasrin Nino**
(emphasis added).

Chapter 7

As such, prior to any distribution of the Partnership's assets to Debtor's estate, the Partnership must pay its obligations to creditors. The Stipulated Judgment evidences a debt owed by the Partnership to Mr. Bilal in the amount of \$300,000. Even if Mr. Siegel turns the subject funds over to the Trustee, the Trustee may not use the funds as property of the estate unless the Partnership's obligations are satisfied; any surplus left after such satisfaction, which would normally be distributed to Debtor as the sole remaining partner, may then become part of Debtor's bankruptcy estate.

Although the Partnership's assets are not property of the estate, the Trustee succeeded to Debtor's rights as the sole partner tasked with winding up the Partnership, and this Court has jurisdiction to oversee the winding up process of the Partnership. "[T]he general rule that the simple act of a partner's filing of bankruptcy does not confer jurisdiction over the partnership's assets does not mean that a bankrupt partner's estate includes only his personal property interest in the partnership. It includes certain rights given to him by law and/or contract, including the rights to seek an accounting, and to request a judicially supervised wind-up and termination of the partnership." *Katz*, 341 B.R. at 128. For instance, one court explained—

The Court agrees with Defendants that a court imposed wind up of the Partnership is a non-core matter. The Court disagrees, however, that this Court lacks jurisdiction. *Carolina Preservation Partners, Inc. v. Weinhold*, 414 B.R. 754, 759 (M.D. Fla. 2009) (proceeding regarding partnership property is a related to proceeding); *In re Katz*, 341 B.R. at 131–32 (finding related to jurisdiction over a court ordered wind up because the right to make such a request was property of the estate). Under the applicable standard of related to jurisdiction, the procedures regarding the wind up of the Partnership undeniably impact the estate and the administration of the estate. "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." *The Matter of Lemco Gypsum, Inc.*, 910 F.2d 784, 788 (11th Cir.1990).

In re Thadikamalla, 488 B.R. 791, 793–94 (Bankr. N.D. Ga. 2013).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

1:30 PM

CONT... Nasrin Nino

Chapter 7

Here, Mr. Siegel has agreed to turn over the Partnership's funds to the Trustee. Because Mr. Siegel holds funds in excess of the amount owed to Mr. Bilal pursuant to the Stipulated Judgment, the wind up of the Partnership may impact the estate by potentially bringing a surplus into the estate for distribution to creditors. Thus, the Court has subject matter jurisdiction over this matter.

In light of the authorities above, the Court will order that Mr. Siegel turn over the subject funds to the Trustee. However, the funds are not property of the estate. The Trustee may use the funds to wind up the Partnership in accordance with California law, including by complying with California Corporations Code § 16807(a).

III. CONCLUSION

The Court will grant the Motion in part and deny the Motion in part.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

**#12.00 Debtor's Motion To Approve The Payment And Satisfaction
Of General Unsecured Claim With Non-Estate Funds Pursuant
to 11 U.S.C. § 105(A)**

Docket 204

Tentative Ruling:

Deny.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11 petition. On June 12, 2020, The Sands Law Group, APLC ("Sands Law") filed a proof of claim, asserting a prepetition claim against the estate in the amount of \$10,500.01.

On August 10, 2020, Debtor filed an objection to Sands Law's claim (the "Objection to Claim") [doc. 130]. On September 17, 2020, the Court entered an order overruling in part and sustaining in part the Objection to Claim (the "Claim Order") [doc. 208]. In the Claim Order, the Court allowed a general unsecured claim in favor of Sands Law in the amount of \$9,750.01.

On September 17, 2020, Debtor filed a motion to approve the payment of satisfaction of a general unsecured claim (the "Motion") [doc. 204]. In the Motion, Debtor states that Debtor's principal, Dmitri Lioudkouski, has agreed to pay Sands Law's claim in full while waiving a right of repayment from the estate. As such, Debtor requests an order authorizing Mr. Lioudkouski to transfer \$9,750.01 to the estate for payment in full of Sands Law's claim.

II. ANALYSIS

Debtor cites 11 U.S.C. § 105(a) as its only authority in support of the Motion. However, "[i]t is hornbook law that § 105(a) does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code." *Law v. Siegel*,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

2:30 PM

CONT...

Lev Investments, LLC

Chapter 11

571 U.S. 415, 421, 134 S.Ct. 1188, 1194, 188 L.Ed.2d 146 (2014) (internal quotation omitted). "Section 105(a) confers authority to 'carry out' the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits." *Id.*

The Code does not expressly authorize courts to allow preferential payment of pre-petition obligations in contravention of its claims priority scheme or outside of a confirmed plan of reorganization.

A pre-petition creditor's continued business with the debtor-in-possession is often the stimulus for seeking payment of one creditor's prepetition debt over the others under a "doctrine of necessity" or "critical vendor" theory. These terms are not defined in the Bankruptcy Code. Indeed, most circuit courts, including the Ninth, have held that the bankruptcy court does not have general equitable power under § 105(a) to overrule the Code's priority scheme by favoring one class of unsecured creditors over another....

Even those courts that would allow such payments, under § 105(a), or under other code sections, such as a § 363 use of estate funds outside the ordinary course, demand a stringent evidentiary test showing that the payment of the pre-petition claims is critical to the debtor's reorganization.

In re Berry Good, LLC, 400 B.R. 741, 746–47 (Bankr. D. Ariz. 2008) (internal citations and quotations omitted). In addition, "[t]he general rule is that a distribution on pre-petition debt in a Chapter 11 case should not take place except pursuant to a confirmed plan of reorganization, absent extraordinary circumstances." *In re Air Beds, Inc.*, 92 B.R. 419, 422–424 (B.A.P. 9th Cir. 1988). As explained by the Supreme Court of the United States—

The Code's priority system constitutes a basic underpinning of business bankruptcy law. Distributions of estate assets at the termination of a business bankruptcy normally take place through a Chapter 7 liquidation or a Chapter 11 plan, and both are governed by priority. In Chapter 7 liquidations, priority is an absolute command—lower priority creditors cannot receive anything until higher priority creditors

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

2:30 PM

CONT...

Lev Investments, LLC

Chapter 11

have been paid in full. See 11 U.S.C. §§ 725, 726. Chapter 11 plans provide somewhat more flexibility, but a priority-violating plan still cannot be confirmed over the objection of an impaired class of creditors. See § 1129(b).

The priority system applicable to those distributions has long been considered fundamental to the Bankruptcy Code's operation. See H.R.Rep. No. 103–835, p. 33 (1994) (explaining that the Code is "designed to enforce a distribution of the debtor's assets in an orderly manner ... in accordance with established principles rather than on the basis of the inside influence or economic leverage of a particular creditor")....

The importance of the priority system leads us to expect more than simple statutory silence if, and when, Congress were to intend a major departure.

Czyzewski v. Jevic Holding Corp., 137 S.Ct. 973, 983–84, 197 L.Ed.2d 398 (2017).

Here, Debtor's latest amended schedule E/F [doc. 48] and the claims register identify several unsecured creditors other than Sands Law. Debtor's request to pay Sands Law ahead of other creditors of the estate contravenes the statutory priority and distribution scheme in the Bankruptcy Code. Under the authorities above, the Court does not have the power to alter that scheme by operation of § 105(a). Debtor having provided no other authority for the relief requested, the Court will deny the Motion.

III. CONCLUSION

The Court will deny the Motion.

The Court will prepare the Order.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 8, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Juliet Y Oh

Chapter 11

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, October 14, 2020

Hearing Room 301

9:30 AM

1:17-11962 Ruth Ann Brown

Chapter 13

#1.00 Motion for relief from stay [RP]

PINGORA LOAN SERVICING LLC
VS
DEBTOR

fr. 6/24/20; 8/5/20; 9/16/20

Stip for adequate protection filed 9/25/20

Docket 42

*** VACATED *** REASON: Order approving stip entered 9/29/20.
[Dkt.48]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ruth Ann Brown

Represented By
Michael E Clark
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**

Wednesday, October 14, 2020

Hearing Room 301

9:30 AM

1:17-13028 Hector Garcia and Edelmira Avila Garcia

Chapter 13

#2.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

fr. 8/5/20; 9/16/20(stip)

Docket 62

***** VACATED *** REASON: Order appr stip to cont hrg to 12/16/20.**

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**

Wednesday, October 14, 2020

Hearing Room 301

9:30 AM

1:16-10666 Paula Trickey

Chapter 13

#2.10 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC
VS
DEBTOR

fr. 10/7/20

Docket 109

***** VACATED *** REASON: Stipulated order entered on 10/7/20**

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**

Wednesday, October 14, 2020

Hearing Room 301

9:30 AM

1:20-11420 Yelena Chistyakova

Chapter 13

#2.20 Motion for relief from stay [RP]

ARKADY VAPNIK
VS
DEBTOR

fr. 9/9/20; 10/7/20

Stip for dismissal of motion filed 10/9/20

Docket 10

*** VACATED *** REASON: Order approving stip entered 10/13/20.[Dkt. 45]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yelena Chistyakova

Represented By
Alla Tenina

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

9:30 AM

1:19-12947 Ronaldo Garcia

Chapter 13

#3.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS.
DEBTOR

Stip to cont hrg fld 10/12/20

Docket 31

***** VACATED *** REASON: Order approving stip entered 10/13/20.
Hearing continued to 11/11/20 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronaldo Garcia

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**

Wednesday, October 14, 2020

Hearing Room 301

9:30 AM

1:20-11319 Christopher G Fazzi

Chapter 13

#4.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS.
DEBTOR

Docket 26

***** VACATED *** REASON: Case dismissed 10/7/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher G Fazzi

Represented By
Onyinye N Anyama

Trustee(s):

Elizabeth (SV) 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 14, 2020

Hearing Room 301

9:30 AM

1:20-11286 Transpine, Inc.

Chapter 11

#5.00 Motion For Order Extending The Automatic Stay
to Non-Debtor Defendants To Litigation

Docket 47

Tentative Ruling:

The Court will continue this hearing to **9:30 a.m. on October 21, 2020.**

Appearances on October 14, 2020 are excused.

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen
Paul M Kelley

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

1:18-11150 Robert Edward Zuckerman

Chapter 11

Adv#: 1:18-01086 Abel v. Zuckerman et al

- #6.00** 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; 11/13/19; 1/22/20; 3/25/20; 6/10/20(stip); 6/17/20;
9/23/20

Docket 75

***** VACATED *** REASON: Order entered on 10/9/20, dismissing all claims that are not pending appeal.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Edward Zuckerman

Represented By
Sandford L. Frey
Stuart I Koenig

Defendant(s):

Robert Edward Zuckerman

Pro Se

Continental Communities, LLC, a

Pro Se

Valley Circle Estates Realty Co., a

Pro Se

Zuckerman Building Company, a

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT... Robert Edward Zuckerman Chapter 11

Contiental San Jacinto, LLC, a	Pro Se
San Jacinto Z, LLC, a California	Pro Se
Rezinate San Jacinto, LLC, a	Pro Se
Maravilla Center, LLC, a California	Pro Se
Sunderland/McCutchan, Inc., a	Represented By Edward McCutchan
Nickki B Allen, an individual	Pro Se
DOES 1-20	Pro Se
Phoenix Holdings, LLC a California	Pro Se
Sunderland/McCutchan LLP, a	Pro Se
B. Edward McCutchan Jr. an	Pro Se

Plaintiff(s):

Richard Abel	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01041 Sheik v. LBS Financial Credit Union, a California corporati

#7.00 Status conference re: complaint for:

- 1) Quiet title;
- 2) Slander of title;
- 3) Declaratory relief

fr. 5/20/20; 8/5/20

Docket 1

***** VACATED *** REASON: Status conference being held at 2:30 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

LBS Financial Credit Union, a

Pro Se

MDA Motors Corp., a California

Pro Se

Greenwood Pontiac, Inc. a dissolved

Pro Se

Jamshid Lavi, an individual

Pro Se

All Persons Or Entities Unknown

Pro Se

Does 1-10, Inclusive

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By

Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

Adv#: 1:20-01074 Overland Direct, Inc. v. Transpine, Inc.

#8.00 Status conference re: removed proceeding

fr. 9/23/20

Docket 1

Tentative Ruling:

For the reasons discussed below, the Court will remand this adversary proceeding to the Superior Court of California, for the County of Los Angeles.

I. BACKGROUND

This case involves residential real property located at 4256 Tarzana Estates Drive, Tarzana, California 91356 (the "Tarzana Property") that has been transferred between family members, related parties and Transpine, Inc. ("Debtor"). Nisan Tepper is Debtor's CEO [Bankruptcy Docket, 20-11286, doc. 40, Corporate Ownership Statement, p. 2–3). According to his 2005 declaration, Danny Tepper purchased the Tarzana Property in 1995 and resided there with his wife and children [Adversary Docket, 20-01074, doc. 1, Exh. A, Declaration of Danny Tepper, p. 87, ¶ 6–7].

A. The State Court Action

On May 30, 2017, Overland Direct, Inc. ("Plaintiff") filed a complaint in the Superior Court of California, for the County of Los Angeles, initiating state court case no. LC105743 (the "State Court Action") [Adversary Docket, 20-01074, doc. 1, Exh. A, Third Amended Complaint, p. 7].

In July 2017, Saeed Kashefi transferred the Tarzana Property via a quitclaim deed to Tarzana Holdings, LLC [Adversary Docket, 20-01074, doc. 1, Exh. A, Quitclaim Deed, p. 175]. Based on a grant deed recorded on August 2, 2017, Tarzana Holdings, LLC transferred the Tarzana Property to Debtor [Adversary Docket, 20-01074, doc. 1, Exh. A, Grant Deed, p. 178]. Saeed Kashefi, as the managing member of Tarzana Holdings, LLC, executed this grant deed.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT... Transpine, Inc.

Chapter 11

In January 2018, Debtor granted a deed of trust, encumbering the Tarzana Property, to Wooshies, Inc. ("Wooshies") [Adversary Docket, 20-01074, doc. 1, Exh. A, Deed of Trust, p. 182]. On January 8, 2018, Nisan Tepper, Debtor's CEO, executed the Wooshies DOT. *Id.* On January 12, 2018, this deed of trust was recorded in the Los Angeles County Recorder's Office ("Wooshies DOT"). *Id.*

On November 5, 2019, Plaintiff filed a third amended complaint (the "TAC") against Yaniv Tepper, U.S. Bancorp, Quality Loan Service Corporation, Daniel Tepper, Esola Capital Investment, LLC ("Esola Capital"), Avshy Cohen, Debtor, Saeed Kashefi, Vanowen 2, LLC, Firooz Payan, Security Union Corporation, Tarzana Holdings, LLC and Does 1-50 (collectively, "Defendants") [Adversary Docket, 20-01074, doc. 1, Exh. A, TAC, p. 7–28]. Plaintiff asserts causes of action for: (1) declaratory relief; (2) voidable transfer; and (3) cancellation of written instrument. *Id.* at p. 25–27.

In the TAC, Plaintiff alleges—

Based on the fraudulent transfers, assignments, and foreclosure described herein, which Plaintiff contends are void, voidable, and/or unenforceable, Debtor has never held valid fee simple ownership of the Tarzana Property, including when it purportedly executed the Wooshies DOT securing the loan from Wooshies. As a result, Wooshies did not have the right to encumber the Tarzana Property to secure its loan and Wooshies would have been on notice of the title issues relating to the Tarzana Property had Wooshies conducted proper due diligence into the chain of title for the Tarzana Property.

At the time Transpine received its loan from Wooshies and the parties executed the Wooshies DOT securing the Tarzana Property, this lawsuit had already been pending for approximately six months (since May 30, 2017) and Debtor was an active, participating defendant in this action.

At the time the Wooshies DOT was executed, Debtor was aware the San Diego Superior Court had issued a temporary restraining order (February 23, 2017) and a preliminary injunction (March 13, 2017) as

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT...

Transpine, Inc.
to the Tarzana Property.

Chapter 11

On March 12, 2018, approximately two months after the execution of the Wooshies DOT, the San Diego Superior Court entered an order adding "Transpine, Inc. and any other entities owned or otherwise controlled by Daniel Tepper" to the preliminary injunction issued on March 13, 2017.

...

Daniel Tepper, Esola Capital, Yaniv Tepper, Kashefi, Payan, and Tarzana Holdings, LLC used Debtor as a vehicle to orchestrate a fraud to obtain title to the Tarzana Property, transfer the property to Debtor, obtain a loan from Wooshies, and use the Tarzana Property as security for the note. This was done to circumvent an injunction and to hide the Tarzana Property from Esola Capital's creditors, including Plaintiff, Cartwright Termite & Pest Control, Inc., and Michael R. Cartwright II.

Id. at p. 23–24, ¶ 61–64, 67. Based on these allegations, Plaintiff seeks, among other relief, a judicial declaration to determine who owns the Tarzana Property, injunctive relief, voidable transfer, cancellation of the Wooshies DOT and monetary damages against Defendants. *Id.* at p. 27.

In the State Court Action, defaults of several of the Defendants have been entered, and a stipulated judgment was entered against Firooz Payan. [Adversary Docket, 20-01074, doc. 21, Joint Status Report, p. 4]. Esola Capital and Vanowen 2, LLC have not filed answers, although their defaults apparently have not yet been entered. *Id.*

Wooshies already has prevailed on a demurrer, and judgment was entered in Wooshies' favor to avoid cancellation of the Wooshies DOT. [Bankruptcy Docket, 20-11286, doc. 49, Declaration of Daniel J. McCarthy, p. 16, ¶ 6; Adversary Docket, 20-01074, doc. 8-1, p. 167]. The remaining active Defendants are Debtor, Yaniv Tepper, Daniel Tepper and Nisan Tepper, individually and as trustee of the Tepper Family Revocable Trust. [Adversary Docket, 20-01074, doc. 21, Joint Status Report, p. 4].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT...

Transpine, Inc.

Chapter 11

On August 7, 2020, Debtor filed a notice of the automatic stay in the State Court Action [Adversary Docket, 20-01074, doc. 1, Notice of Removal, p. 3, line 11]. The Superior Court of California, for the County of Los Angeles (the "State Court") had scheduled a hearing on Plaintiff's motion to compel deposition and motion to compel further responses, which was to take place on August 10, 2020 [Adversary Docket, 20-01074, doc. 8-1, p. 166]. Prior to the hearing, the State Court issued a lengthy tentative decision that Plaintiff had met its burden of showing good cause for the motions to compel. *Id.*, at pp. 166-69.

On August 10, 2020, the State Court issued a minute order recognizing the automatic stay, resulting from Debtor's bankruptcy filing [Adversary Docket, 20-01074, doc. 1, Exh. C, State Court Minute Order, p. 259]. Consequently, the State Court rescheduled the hearing on Plaintiff's motion to compel deposition and motion to compel further discovery responses. *Id.* On August 19, 2020, Debtor removed the State Court Action to this Court.

At this time, in the State Court Action, several motions are set for hearing on December 1, 2020, including Plaintiff's motions to compel and a trial setting conference [Adversary Docket, 20-01074, doc. 21, Attachment to Joint Status Report: Nisan Tepper and Transpine, p. 6].

B. Debtor's Bankruptcy Case and the Removal

On July 22, 2020, Debtor filed a voluntary chapter 11 petition. In its Schedule A, Debtor lists as assets its interest in the Tarzana Property and \$246.91 in cash. Debtor's Schedule G indicates that it has no unexpired leases [Bankruptcy Docket, 20-11286, doc. 40, Schedule G]

Based on Debtor's schedules, the Tarzana Property is encumbered by a single deed of trust, *i.e.*, the Wooshies DOT, securing a claim in the amount of \$1.3 million [Bankruptcy Docket, 20-11286, doc. 40, Schedule D]. Based on Debtor's Schedule A, the Tarzana Property has a value of \$2.4 million [Bankruptcy Docket, 20-11286, doc. 40, Schedule A].

At this time, and throughout 2020, Debtor is not producing any rental or other income. [Bankruptcy Docket, 20-11286, July 2020 monthly operating report, doc. 39;

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT... Transpine, Inc.

Chapter 11

Statement of Financial Affairs, Part 1, doc. 40].

Other than Wooshies' claim, Debtor has: (1) two priority unsecured tax debts; (2) non-priority unsecured debts payable to Nisan Tepper, its CEO; (3) non-priority unsecured debt payable to counsel of record for Nisan Tepper and Debtor in the State Court Action, *i.e.*, Kelley Semmel, LLP; and (4) non-priority unsecured debt, described as contingent, unliquidated and disputed, payable to Plaintiff [Bankruptcy Docket, 20-11286, doc. 40, Schedules E and F].

According to Nisan Tepper, the "Debtor's primary asset is its 100% ownership of the [Tarzana] Property. The Bankruptcy Case was largely precipitated by a pending foreclosure sale by the purported first trust deed holder, Wooshies, Inc." [Bankruptcy Docket, 20-11286, doc. 47, Declaration of Nisan Tepper, p. 8, ¶ 8].

On September 9, 2020, the Court issued an *Amended Order to Show Cause re: Remand and Notice of Setting Status Conference (Removed Proceeding)* (the "OSC") [doc. 13]. 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.

No party timely filed a response to the OSC. On September 30, 2020, the parties filed a *Joint Status Report* (the "Status Report") [Adversary Docket, 20-01074, doc. 21]. In the Status Report, Plaintiff demands a jury trial and does not consent to this Court's authority to enter final judgment. Defendants dispute that Plaintiff has a right to a jury trial, and they consent to this Court's authority to enter a final judgment.

II. DISCUSSION

1. 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT...

Transpine, Inc.

Chapter 11

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,' which provides that federal jurisdiction exists only when a federal question is presented on the fact 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. 1992) ("Subject matter jurisdiction cannot be conferred upon the court by consent or waiver."); *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. Section 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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT...

Transpine, Inc.

Chapter 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).

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," "objection 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, 180 L.Ed.2d 475 (2011).

Where the court does not have power to enter final judgment, the court only may "issue final rulings on pretrial matters, including claim-dispositive motions, that do not require factual findings." *In re AWTR Liquidation Inc.*, 547 B.R. 831, 839 (Bankr. C.D. Cal. 2016). Otherwise, the court must either submit proposed findings of fact and conclusions of law to the United States District Court, or the parties must withdraw the reference for the United States District Court to preside over trial. *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 31, 134 S. Ct. 2165, 2170, 189 L.Ed.2d 83 (2014).

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,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT... Transpine, Inc.

Chapter 11

1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pegasus Gold Corp., 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted).

Here, the State Court Action did not "arise under" the Bankruptcy Code because the causes of action asserted by Plaintiff do not depend on bankruptcy statutes. In addition, this proceeding does not "arise in" Debtor's bankruptcy case because it is not a matter that is unique to bankruptcy, and the State Court Action could (and did) exist independent of Debtor's bankruptcy case.

However, this Court has subject matter jurisdiction over the issues raised in the State Court Action. Although the TAC includes state law 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 Plaintiff seeks to void the transfer of the Tarzana Property to Debtor. As such, the litigation involves issues regarding ownership of property of the estate. A resolution of the State Court Action may impact whether the Tarzana Property will remain property of the estate. Consequently, the Court has subject matter jurisdiction over the State Court Action.

2. 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, that "[t]he 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT...

Transpine, Inc.

Chapter 11

courts to find that those matters are more properly adjudicated in state court.'" *Parke v. Cardsystem Solutions, Inc.*, 2006 WL 2917604 (N.D. Cal. Oct. 11, 2006) (quoting *Williams v. Shell Oil Co.*, 169 B.R. 684, 690 (S.D. Cal. 1994)).

Courts generally consider up to fourteen factors in deciding whether to remand a case to state court. *Enron*, 296 B.R. at 508. Factors courts should consider in deciding whether to remand are:

- (1) the effect or lack thereof on the efficient administration of the estate if the court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdiction basis, if any, other than [section] 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden on the bankruptcy court's docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of nondebtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

Id. at 508 n. 2; *see also In re Cytodyn of New Mexico, Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007).

Here, although the Court has subject matter jurisdiction over this matter, the Court will remand this matter to the State Court based on the following factors.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT...

Transpine, Inc.

Chapter 11

a. Effect on the Efficient Administration of the Estate

The impact of this litigation on administration of the estate is significant. This litigation concerns whether the Tarzana Property should remain an asset of Debtor and its bankruptcy estate. However, because this litigation has been pending in State Court since 2017, and the State Court already has decided various motions, including a dispositive motion regarding the Wooshies DOT, judicial efficiency favors remand.

b. Predominance of State Law Issues/Jurisdictional Basis Other than 1334

Here, the state law issues predominate over bankruptcy issues. There is no jurisdictional basis other than 28 U.S.C. § 1334. Through the State Court Action, Plaintiff seeks to determine who owns the Tarzana Property and to prevent Defendants from selling or transferring the Tarzana Property, based on state law. There are no issues dependent on bankruptcy law.

a. Difficult or Unsettled Nature of Law/Burden on the Bankruptcy Court's Docket

The State Court Action has been pending since 2017, and Debtor's notice of removal contains over forty pages of case information concerning future hearing dates, court rulings and procedural history [Adversary Docket, 20-01074, doc. 1, Exh. B, p. 212–257]. The State Court already has granted a demurrer regarding the Wooshies' DOT. Moreover, the State Court already has assessed the pending motions to compel, and the litigation concerns solely state law and prior orders of one or more state courts. Although the causes of action in the litigation appear to be a well-settled areas of the law, it is burdensome for this Court to assess matters which already have been assessed by the State Court, and with which the State Court has developed substantial familiarity.

b. Likelihood of Forum Shopping

It appears that Debtor removed the State Court Action as forum shopping. Plaintiff contends that Debtor and related parties have transferred (or encumbered) the Tarzana Property in violation of a preliminary injunction and to hinder Plaintiff from

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT... Transpine, Inc.

Chapter 11

collecting state court awarded judgments against Daniel Tepper and Esola Capital.

On August 10, 2020, the State Court provided a lengthy tentative ruling, in Plaintiff's favor, on Plaintiff's motions to compel the deposition of Daniel Tepper, production of documents from Nisan Tepper (Debtor's CEO) and preparing the case to go to trial.

The significant amount of time that this litigation had proceeded in the State Court, the proximity of the State Court hearing on August 10, 2020, regarding Plaintiff's motions to compel deposition and production of documents with respect to Debtor's insiders, the State Court's tentative decision in Plaintiff's favor regarding those motions and Debtor's removal of this litigation to this Court on August 19, 2020 suggest that Debtor did not remove this litigation in good faith.

c. Existence of a Right to Jury Trial

In the Status Report, Plaintiff demands a jury trial, based on its fraudulent transfer claims for damages and avoidance of transfer, and states that it intends to ask the United States District Court to withdraw the reference of this action; the parties dispute whether Plaintiff has such a right. [Adversary Docket, 20-01074, doc. 21].

d. Presence of Non-Debtor Parties/Comity

The State Court Action includes numerous non-debtor defendants involved in transactions concerning the Tarzana Property. "Comity dictates that California courts should have the right to adjudicate the exclusively state law claims involving California-centric plaintiffs and California-centric transactions." *Enron*, 296 B.R. at 505. The State Court Action involves a California plaintiff and California-centric transactions. Moreover, Plaintiff contends that Debtor and other Defendants have violated a state court's preliminary injunction concerning the Tarzana Property. That issue is best adjudicated by the State Court.

III. CONCLUSION

The Court will remand the State Court Action.

The Court will prepare the order.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

1:30 PM

CONT... Transpine, Inc.

Chapter 11

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen

Defendant(s):

Transpine, Inc.

Pro Se

Plaintiff(s):

Overland Direct, Inc.

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01088 Elissa D. Miler, chapter 7 trustee for the estate v. Adri

#9.00 Plaintiff's Motion for Summary Judgment; in the Alternative, for Summary Adjudication on Each Individual Claim Asserted in Trustee's Complaint

fr. 10/7/20

Docket 33

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On February 16, 2018, Deborah Lois Adri ("Debtor") filed a voluntary chapter 11 petition. On April 8, 2019, the Court entered an order converting this case to a chapter 7 case [doc. 305]. Elissa D. Miller was appointed the chapter 7 trustee (the "Trustee"). On July 23, 2019, the Trustee filed a complaint against Debtor, requesting denial of Debtor's discharge pursuant to 11 U.S.C. § 727(a)(2)(A), (a)(2)(B), (a)(3) and (a)(4) (the "Complaint").

A. Prepetition Events

On March 7, 2017, the Franchise Tax Board (the "FTB") recorded a notice of lien against Debtor's property, based on Debtor's failure to pay California income taxes for the year of 2014. Statement of Uncontroverted Facts ("SUF") [doc. 43], ¶ 14. The FTB held a secured claim in the amount of \$311,856.48. SUF, ¶ 15. On January 10, 2018, the Los Angeles Superior Court issued a judgment against Debtor confirming a contractual arbitration award in favor of Moshe Adri in the amount of \$1,375,125.94 (the "Adri Judgment"). SUF, ¶ 16.

In January 2018, the same month as the Adri Judgment, Debtor received a distribution from her family trust in the amount of \$626,000. SUF, ¶ 17. Upon receipt, Debtor assigned the check to Robert Yaspan, Debtor's bankruptcy attorney. SUF, ¶ 19. Mr.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

Yaspan deposited the check into his client trust account. SUF, ¶ 20. Of this \$626,000, \$25,000 was allocated as Mr. Yaspan's retainer. SUF, ¶ 21.

Mr. Yaspan also sent \$100,000 of the funds to the account of Gold Girls, Inc. ("Gold Girls"). SUF, ¶ 22. Gold Girls is a California corporation solely owned by Debtor, and ceased operations on January 18, 2018. SUF, ¶¶ 23-24. The balance of the money, in the amount of \$501,000, went into three accounts in Debtor's name. SUF, ¶ 25.

B. Debtor's Bankruptcy Filing and Disclosures

On February 16, 2018, Debtor filed a voluntary chapter 11 petition [1:18-bk-10417-VK]. Concurrently with her petition, Debtor filed her schedules and statements (the "Original Disclosures") [Bankruptcy Docket, doc. 1]. Debtor read and reviewed the Original Disclosures before signing the papers under penalty of perjury. SUF, ¶ 29.

In her original schedule A/B, Debtor identified a 50% interest in Ride on Autos, LLC ("ROA"), which Debtor valued at \$1,000, and a 100% interest in Gold Girls, which Debtor valued at \$100,000. [FN1]. Debtor also identified \$501,000 in "[c]ash at Robert M Yaspan Client Trust Account on day of filing; transferred to debtor in possession general account immediately upon opening of account."

On March 29, 2018, Debtor attended her § 341(a) meeting of creditors. SUF, ¶ 32. During her examination, Debtor testified to assets, ownership interests and transactions that were not scheduled in the Original Disclosures. SUF, ¶ 33. Debtor also responded to Requests for Admissions ("RFAs"), addressing the omissions from the Original Disclosures. SUF, ¶ 34. Those omissions include—

1. \$125,614 held in an account in the name of Gold Girls [FN2];
2. Several of Debtor's bank accounts;
3. A total of \$961,700 received from the Albert Family Trust ("Trust");
4. Debtor's interest, as a beneficiary, in the Trust; and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

5. Debtor's interest in four businesses.

SUF, ¶¶ 36, 37, 39-41, 42; Declaration of Deborah Adri ("Adri Declaration") [doc. 41], ¶¶ 12, 33. The Trustee contends that Debtor also failed to disclose, in her Original Disclosures, the \$501,000 in Mr. Yaspan's client trust account. However, under Item 16, Debtor identified \$501,000 in cash held in Mr. Yaspan's client trust account.

On January 16, 2019, Debtor filed amended schedules and statements (the "Amended Disclosures") [Bankruptcy Docket, doc. 243]. Debtor signed the Amended Disclosures under penalty of perjury, and had the opportunity to review the Amended Disclosures prior to signing them. SUF, ¶¶ 45-46. In the Amended Disclosures, Debtor disclosed the omitted information above. SUF, ¶¶ 48-51.

C. Debtor's Use of Estate Funds and Monthly Operating Reports

Postpetition, using funds belonging to the estate, Debtor purchased used cars at one or more wholesale auctions. SUF, ¶ 52. At the time Debtor purchased the vehicles, she did not take title to the automobiles in her name. SUF, ¶ 53. According to Debtor, she followed protocol by leaving the title to the automobiles in the previous owner's name until it was sold, at which time title would be in the buyer's name. Adri Declaration, ¶ 18.

Debtor transferred possession of the automobiles to ROA. SUF, ¶ 54. However, Debtor did not have a written agreement with ROA regarding the terms of the consignment agreement with ROA. *Id.* According to Debtor, she entered into a verbal agreement with ROA, through which Debtor would receive 70% of the profits and ROA would receive 30% of the profits after payment of fees and expenses. Adri Declaration, ¶ 18. Overall, Debtor made 27 postpetition transfers totaling \$472,000 by purchasing used cars for resale as part of her car consignment business. SUF, ¶ 56.

In her second amended February 2018 monthly operating report ("MOR"), Debtor indicated that the aggregate ending balance in all her disclosed accounts was \$506,178.73. SUF, ¶ 57. As of December 31, 2018, Debtor's ending balance in her general debtor in possession account, money market account and tax account had decreased to \$12,261.54. SUF, ¶ 58. In addition, the ending balance of Gold Girls'

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

bank account (which is not an operating business and held approximately \$125,000 as of February 2018) decreased to \$10,926.83. *Id.* Based on all of Debtor's MORs, from February 16, 2018 through December 31, 2018, in connection with ROA, Debtor spent \$534,279.28. SUF, ¶ 59.

However, Debtor's original MORs contained no information about the vehicles she purchased (whether in her name or another). SUF, ¶ 60. On December 7, 2018, the Court entered an order requiring Debtor to file amended MORs no later than December 31, 2018 [Bankruptcy Docket, doc. 212]. Among other things, the Court instructed Debtor to properly complete various sections of the MORs and attach bank statements. Debtor did not timely file the MORs. On the same date, creditor Moshe Adri filed a motion to appoint a chapter 11 trustee (the "Motion to Appoint Trustee") [Bankruptcy Docket, doc. 216].

On January 11, 2019, Debtor filed only three amended MORs for February 2018, March 2018 and April 2018. SUF, ¶ 63. On January 25, 2019, Debtor filed bank statements for May through October 2018 (the "Bank Statements"). SUF, ¶ 64. On January 31, 2019, Debtor filed second amended MORs for February 2018, March 2018 and April 2018. SUF, ¶ 65. In Debtor's second amended March 2018 MOR, Debtor indicated, for the first time, that she distributed \$22,000 to ROA as a loan for operating expenses [Bankruptcy Docket, doc. 265]. Debtor did not obtain Court approval to make the loan.

On February 7, 2019, the Court held a hearing on the Motion to Appoint Trustee. At that time, the Court issued a ruling granting the Motion to Appoint Trustee (the "Trustee Appointment Ruling"), and set forth the following chart illustrating the differences between the Original Disclosures and Amended Disclosures—

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... **Deborah Lois Adri**

Chapter 7

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 - \$15,00.00 • 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

[Bankruptcy Docket, doc. 280]. The Court also stated, in relevant part—

The amended MORs show that Debtor has been using previously

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

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 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. From March 2018 to May 2018, Debtor spent \$11,421.42 from Gold Girls' bank account on personal living expenses.

Trustee Appointment Ruling, pp. 4-5. As such, on February 8, 2019, the Court entered an order appointing a chapter 11 trustee [Bankruptcy Docket, doc. 278]. On April 8, 2019, the Court entered an order converting Debtor's case to a chapter 7 case [Bankruptcy Docket, doc. 305].

D. The Adversary Proceeding

On July 23, 2019, the Trustee filed the Complaint. On March 30, 2020, the Trustee filed a motion for summary judgment (the "Motion") [doc. 33]. Among other things, the Trustee argues that Debtor waived any defense based on advice of counsel because Debtor has not waived her attorney-client privilege. On September 16, 2020, Debtor filed an opposition to the Motion (the "Opposition") [doc. 40]. In the Opposition, Debtor asserts that there is a genuine issue of material fact as to Debtor's intent, and raises advice of her counsel, Mr. Yaspan, as a defense. Debtor also filed a declaration in support of the Opposition [doc. 41]. On September 23, 2020, the Trustee filed a reply to the Opposition (the "Reply") [doc. 44].

On October 6, 2020, the parties filed a stipulation agreeing that Debtor waives her right to assert the attorney-client privilege as to her relationship with Mr. Yaspan (the "Privilege Waiver") [doc. 48]. On the same day, the Court entered an order approving the Privilege Waiver [doc. 49].

II. ANALYSIS

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

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.").

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

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. 11 U.S.C. § 727(a)(2)

11 U.S.C. § 727(a)(2) provides that a court shall grant a debtor a discharge unless "the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property ... has transferred, removed, destroyed, mutilated, or concealed ... (A) property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate, after the date of the filing of the petition."

"Two elements comprise an objection to discharge under § 727(a)(2)(A): 1) a disposition of property, such as transfer or concealment, and 2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor..." *In re Beauchamp*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999). The transfer must occur within one year prepetition. *In re Lawson*, 122 F.3d 1237, 1240 (9th Cir. 1997). "The standard for denial of discharge under § 727(a)(2)(B) is the same as § 727(a)(2)(A), but the disposition must be of estate property occurring after the petition date." *In re Miller*, 2015 WL 3750830, at *3 (Bankr. C.D. Cal. June 12, 2015).

In examining the circumstances of a transfer under § 727(a)(2), certain "badges of fraud" may support a finding of fraudulent intent. These factors, not all of which need be present, include (1) a close relationship between the transferor and the transferee; (2) that the transfer was in anticipation of a pending suit; (3) that the transferor debtor was insolvent or in poor financial condition at the time; (4) that all or substantially all

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

of the debtor's property was transferred; (5) that the transfer so completely depleted the debtor's assets that the creditor has been hindered or delayed in recovering any part of the judgment; and (6) that the debtor received inadequate consideration for the transfer. *In re Retz*, 606 F.3d 1189, 1200 (9th Cir. 2010).

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).

Here, the Trustee has met her burden of proving that Debtor transferred property within one year of the petition date. Specifically, in January 2018, approximately one month before the petition date, Debtor transferred the \$626,000 distribution she received from the Trust to Mr. Yaspan. From that amount, \$100,000 was transferred to Gold Girls' account. Debtor does not dispute that these transfers occurred.

However, the Trustee has not met her burden of proving that Debtor transferred the funds with intent to hinder, delay or defraud creditors or officers of the estate. "Where intent is at issue, summary judgment is seldom granted." *In re Gertsch*, 237 B.R. 160, 165 (B.A.P. 9th Cir. 1999) (citing to *Provenz v. Miller*, 102 F.3d 1478, 1489 (9th Cir. 1996), *cert. denied*, 522 U.S. 808 (1997)). "Summary judgment is ordinarily not appropriate in a § 727 action where there is an issue of intent." *In re Wills*, 243 B.R. 58, 65 (B.A.P. 9th Cir. 1999). "Evidence of fraud is conclusive enough to support summary judgment in a § 727(a)(2)(A) action when it yields no plausible conclusion but that the debtor's intent was fraudulent." *In re Marrama*, 445 F.3d 518, 522 (1st Cir. 2006) (affirming denial of debtor's discharge on summary judgment). "Fraud claims, in particular, normally are so attended by factual issues (including those related to intent) that summary judgment is seldom possible." *In re Stephens*, 51 B.R. 591, 594 (B.A.P. 9th Cir. 1985).

Here, while certain badges of fraud are present, such as a judgment and other liabilities near the time of transfer and inadequate consideration for the transfer, there is a genuine issue of material fact regarding whether Debtor acted with the requisite intent. For instance, while Debtor did not provide complete disclosures related to this transfer in her Original Disclosures, Debtor scheduled \$501,000 of the funds in her schedule A/B, which funds ended up in the debtor in possession account. In addition,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Debtor contends she disclosed the \$100,000 in her schedules by identifying Gold Girls as a company in which Debtor has an interest, and valuing Gold Girls at \$100,000. Adri Declaration, ¶ 41.

Moreover, Debtor asserts that she relied on Mr. Yaspan's advice in making the transfer. In the Adri Declaration, to which the Trustee has not objected, Debtor testifies that Mr. Yaspan informed Debtor that she could "legally distribute to [Debtor] \$100,000 of those funds from that account to [Debtor] for use in [her] clothing company, The Gold Girls, Inc." and that Debtor asked Mr. Yaspan "whether this strategy was legal, and [Mr. Yaspan] said it was because it was going to a corporation" that Debtor "did not have to place this money into a debtor in possession account." Adri Declaration, ¶ 41. Although the Trustee initially asserted that Debtor had waived her right to assert an advice of counsel defense, on the basis that Debtor refused to waive her attorney-client privilege, the Privilege Waiver moots this argument.

In the Reply, the Trustee contends that Debtor admitted to hindering, delaying or defrauding her creditors when she stated, in the Adri Declaration, that she was concerned about depositing the \$626,000 distribution from the Trust into her personal account in case a judgment creditor levied upon and seized the funds through judgment enforcement. Adri Declaration, ¶ 7. While this testimony is relevant to Debtor's intent, Debtor's evidence regarding reliance on advice of her counsel creates a genuine issue of material fact. As noted by the Ninth Circuit Court of Appeals, "the advice of counsel claim is not a separate defense, but rather 'a circumstance indicating good faith which the trier of fact is entitled to consider on the issue of fraudulent intent.'" *In re Maring*, 338 F.App'x 655, 658 (9th Cir. 2009) (citing *Bisno v. U.S.*, 299 F.2d 711, 719 (9th Cir. 1961)).

Thus, Debtor's evidence serves to create a genuine issue of material fact by negating the Trustee's evidence of intent. Because the Court may not assess Debtor's credibility through this motion for summary judgment, the Court will not enter judgment on the Trustee's § 727(a)(2)(A) claim. However, the Court will grant the Trustee's request for partial summary adjudication as to the fact that Debtor made the prepetition transfers above.

With respect to § 727(a)(2)(B), the Trustee has not met her burden of proof. The

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Trustee appears to base her claim under § 727(a)(2)(B) on Debtor's alleged use of a bank account in the name of Street Resources, LLC ("Street Resources") to pay her personal expenses. The Trustee has set forth no evidence that Debtor withdrew funds from Street Resources' account, or that such funds were withdrawn with intent to hinder, delay or defraud creditors or officers of Debtor's bankruptcy estate. While the Trustee included these facts in her conclusions of law, she did not include them in her statement of uncontroverted facts, and there is no other evidence included with the Motion regarding use of Street Resources' funds.

In her statement of facts, the Trustee also discusses the following postpetition transfers: (A) the use of \$472,000 of estate funds to purchase used vehicles; (B) a \$22,000 loan to ROA; and (C) the depletion of the debtor in possession account and Gold Girls account. The Trustee does not discuss these transfers in connection with her analysis of the § 727(a)(2)(B) claim. To the extent the Trustee intends to rely on these transfers as a basis for her § 727(a)(2)(B) claim, Debtor either admits to these facts, or the Court make take judicial notice of Debtor's MORs, which reflect the transfers. As such, the Court may adjudicate that Debtor made these postpetition transfers. However, for the reasons stated above, at this time, the Court will not make an intent determination.

C. 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)).

To succeed on its objection to discharge under § 727(a)(3), Plaintiffs must show "(1) that [Defendant] failed to maintain and preserve adequate records, and (2) that such failure rendered it impossible to ascertain [Defendant's] financial condition and material business transactions." *In re Cox*, 41 F.3d 1294, 1296 (9th Cir. 1994) (quoting *Meridian Bank v. Alten*, 958 F.2d 1226, 1232 (3d Cir. 1992)). Generally, records are sufficient if they allow the court and creditors to trace the debtor's financial dealings. *In re Ridley*, 115 B.R. 731, 733 (Bankr. D. Mass. 1990).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

The Trustee bases her claim under § 727(a)(3) on Debtor's omissions from her Original Disclosures and MORs, and Debtor's depletion of estate assets. However, the Trustee has not articulated how such omissions or use of assets qualify as a failure to maintain and preserve records. The Trustee does not assert that Debtor does not have records sufficient to ascertain Debtor's financial condition. In fact, the Trustee's claims under § 727(a)(2) and (a)(4) are based on omissions discovered after Debtor presented records evidencing her true financial condition. *See In re May*, 579 B.R. 568, 597-98 (Bankr. D. Utah 2017) ("[Section] 727(a)(3) does not deal with making false statements on one's bankruptcy schedules; that is the province of § 727(a)(4). If falsification of bankruptcy schedules were actionable under § 727(a)(3), that would largely turn § 727(a)(4)(A) into a dead letter, since few plaintiffs would go to the trouble of proving intent."). As such, the Court will not enter judgment in favor of the Trustee under § 727(a)(3).

D. 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:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

The creditor must show that (1) the debtor made the representations; (2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the creditors; (4) that the creditors relied on such representations; (5) that the creditors sustained loss and damage as the proximate result of the representations having been made.

Roberts, 331 B.R. at 884. Intent must usually be established by circumstantial evidence or inferences drawn from the debtor's course of conduct. *Khalil*, 379 B.R. at 174 (circumstances might include multiple omissions or failure to clear up omissions).

A debtor's voluntary disclosure of transactions not listed on schedules at the § 341(a) meeting of creditors may show a lack of intent to defraud under § 727(a)(4). *Baker v. Mereshian (In re Mereshian)*, 200 B.R. 342, 347 (9th Cir. B.A.P. 1996); *see also Gullickson v. Brown (In re Brown)*, 108 F.3d 1290, 1294 (10th Cir. 1997); *Isaacson*, 478 B.R. at 784. In addition, "[e]vidence that demonstrates confusion or a believable lack of understanding on the part of a debtor may . . . militate against an inference of fraudulent intent." *Isaacson*, 478 B.R. at 784.

Here, the Trustee has met her burden of proving that Debtor omitted the following material assets from her Original Disclosures and/or MORs [FN3]:

1. Multiple accounts and Debtor's expenditure of funds from the accounts;
2. The Trust and funds on hand in the Trust;
3. The estate's entitlement to a 42% distribution from the Trust when due;
4. A Toyota Sienna;
5. A total of \$961,700 in distributions from the Trust;
6. Debtor's interest in four businesses; and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

7. Property in storage.

The Court will grant the Trustee's request for partial summary adjudication as to the fact that Debtor omitted the information above, and that the information was material.

The Trustee has not met her burden of proving that Debtor made a false oath in connection with the \$501,000 that was originally in Mr. Yaspan's client trust account. Debtor disclosed the cash, as well as the fact that the cash was initially in Mr. Yaspan's client trust account, in her Original Disclosures. To the extent the Trustee argues that Debtor concealed the initial transfer from the Trust to Mr. Yaspan's client trust account, that issue is more appropriately addressed by the Trustee's claims under § 727(a)(2), discussed above.

Regarding intent, the Trustee has not met her burden of proving that Debtor made the false oaths knowingly or fraudulently. In the Adri Declaration, Debtor contends that she did not fully understand many of the questions in the schedules and statements and, when she asked Mr. Yaspan's office about these questions, was told "not to worry about it or that it would be handled later." Adri Declaration, ¶ 13. Debtor also contends that she provided all required information to Mr. Yaspan, who did not include the information in the Original Disclosures, and that she generally relied on Mr. Yaspan's advice. Adri Declaration, ¶¶ 14-17. In addition, Debtor made many of the omitted disclosures during her § 341(a) meeting of creditors. As such, for the same reasons discussed above, Debtor has created a genuine issue of material fact as to her intent, and the Court will not make an intent determination at this stage.

E. The Trustee's Arguments Regarding the Adri Declaration

In the Reply, the Trustee asserts that Debtor made a false oath in the Adri Declaration by stating that she has a California license to sell automobiles, and that Debtor violated California law by not having a written consignment agreement with ROA. However, as to the first basis, the Court will not enter judgment denying Debtor a discharge based on an issue raised for the first time in the Reply. In addition, Debtor did not necessarily make a false oath; specifically, Debtor stated—

I have an automobile dealer license #90344 with the DMV. I followed

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT...

Deborah Lois Adri

Chapter 7

standard legal protocol when purchasing and selling any and all vehicles, in accordance with California law. *I was simply purchasing them with the Ride on Auto license*, as I was legally allowed to do, and then entering them into the dealer inventory as a consigned vehicle in my name.

Adri Declaration, ¶ 18 (emphasis added). Because Debtor stated, in the same paragraph, that she used ROA's license, it is not clear that Debtor meant to testify that she *personally* has an automobile dealer license.

The Trustee's additional contentions that Debtor violated the law by conducting her consignment business without a license and failing to enter into a written consignment agreement have no bearing on whether Debtor should be denied a discharge. Further, the Trustee has not articulated how these matters impact Debtor's intent related to the false oaths identified by the Trustee, such as the omissions from Debtor's schedules and statements. To the extent the Trustee is attempting to prove a lack of credibility, the Court may not make such a finding through a motion for summary judgment.

F. *The Trustee's Arguments Regarding Failure to Comply with a Court Order*

For the first time in the Reply, the Trustee contends that Debtor should be denied a discharge because she failed to comply with an order of the Court. Specifically, the Trustee asserts that Debtor did not timely file amended MORs by the Court's deadline.

Although the Trustee does not explicitly cite 11 U.S.C. § 727(a)(6), the Trustee quotes from the statute and references a case related to § 727(a)(6). The Trustee did not assert a claim under 11 U.S.C. § 727(a)(6) in the Complaint. In addition, the Trustee did not include any argument related to § 727(a)(6) in the Motion. The Trustee's additional cases relate to contempt sanctions, not denial of a debtor's discharge. As such, the Court will disregard the Trustee's arguments under § 727(a)(6).

III. CONCLUSION

The Court will grant the Trustee's request for partial summary adjudication as to the fact that Debtor made the transfers or omitted the disclosures outlined above.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Otherwise, the Court will deny the Motion.

The Trustee must submit an order within seven (7) days.

FOOTNOTES

1. The parties contend that Debtor valued ROA at \$5,000; however, Debtor's original schedule A/B valued ROA at \$1,000. *See* Bankruptcy Docket, doc. 1, Item 19.
2. Although Debtor disputes the existence of the account, Debtor's citation to the identified paragraph in her declaration does not include any pertinent information contradicting the Trustee's statement. Debtor does admit to failing to disclose \$25,614 of this amount. However, the Court takes judicial notice of Debtor's schedules and statements, which do not identify any part of the \$125,614. To the extent Debtor contends she scheduled these funds by valuing Gold Girls at \$100,000, Debtor's original schedule A/B states that the \$100,000 value is the "fair market value" of Gold Girls, and does not include any information about the amount of money in Gold Girls' account. Debtor's Statement of Financial Information is silent as to the transfer of the \$125,614 from Debtor to Gold Girls' account.
3. The Trustee relies on the SUFs, Debtor's Original and Amended Disclosures, Debtor's original and amended MORs and the Court's Trustee Appointment Ruling as proof of omissions made by Debtor. Debtor does not meaningfully dispute that she omitted this information from her Original Disclosures.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

Defendant(s):

Deborah Lois Adri

Pro Se

Plaintiff(s):

Elissa D. Miler, chapter 7 trustee for

Represented By
Cathy Ta
Larry W Gabriel

Elissa D. Miller

Represented By
Cathy Ta
Larry W Gabriel

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta
Larry W Gabriel
Claire K Wu

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01041 Sheik v. MDA Motors Corp., a California corporation et al

#10.00 Plaintiff's Motion for Default Judgment Under LBR 7055-1
against Jamshid Lavi, an individual

fr. 10/7/20

Docket 50

Tentative Ruling:

Grant motion for default judgment.

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT within seven (7) days.

Plaintiff's appearance on October 14, 2020 is excused.

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

MDA Motors Corp., a California

Pro Se

Jamshid Lavi, an individual

Pro Se

All Persons Or Entities Unknown

Pro Se

Does 1-10, Inclusive

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By

Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... Maryam Sheik

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01041 Sheik v. MDA Motors Corp., a California corporation et al

#10.10 Status conference re: complaint for
1) Quit title;
2) Slander of title;
3) Declaratory relief

fr. 7/29/20; 10/7/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

MDA Motors Corp., a California

Pro Se

Greenwood Pontiac, Inc. a dissolved

Pro Se

Jamshid Lavi, an individual

Pro Se

All Persons Or Entities Unknown

Pro Se

Does 1-10, Inclusive

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By

Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01043 Sheik v. Lilly Group, a trust et al

#11.00 Plaintiff's Motion for Default Judgment Under LBR 7055-1 against Lilly Group, a trust, Lavender Enterprises, a trust, RA Sterling Investments & Holdings Ltd., a suspended California corporation, and Andrew Alcaraz, an individual

fr. 10/7/20

Docket 39

Tentative Ruling:

Grant motion for default judgment.

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT within seven (7) days.

Plaintiff's appearance on October 14, 2020 is excused.

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Lilly Group, a trust

Pro Se

Lavender Enterprises, a trust

Pro Se

RA Sterling Investments & Holdings

Pro Se

Andrew Alcaraz, an individual

Pro Se

All Persons or Entities Unknown

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... Maryam Sheik
Does 1 to 10, Inclusive

Pro Se

Chapter 11

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01043 Sheik v. Lilly Group, a trust et al

#11.10 Status conference re: complaint for:

- 1) Fraud;
- 2) Fraud based on forgery
- 3) Civil conspiracy
- 4) Quiet title
- 5) Cancellation of instruments
- 6) Slander of title
- 7) Declaratory relief
- 8) Injunctive relief

fr: 6/3/20; 7/29/20; 10/7/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Lilly Group, a trust

Pro Se

Lavender Enterprises, a trust

Pro Se

RA Sterling Investments & Holdings

Pro Se

Andrew Alcaraz, an individual

Pro Se

All Persons or Entities Unknown

Pro Se

Does 1 to 10, Inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

CONT... Maryam Sheik

Chapter 11

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 14, 2020

Hearing Room 301

2:30 PM

1:19-11921 Breann Castillo

Chapter 7

Adv#: 1:20-01058 Campolong v. Castillo

#12.00 Defendant's motion for order dismissing complaint and to non-timely filing and for failure to state a cause of action [Motion for Summary Judgment per 8/26/20 ruling]

fr.8/26/20

Docket 4

***** VACATED *** REASON: Order vacating as moot entered 9/22/20 [doc. 24].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Breann Castillo

Represented By
David S Hagen

Defendant(s):

Breann Castillo

Represented By
David S Hagen

Plaintiff(s):

Andrew Campolong

Represented By
Michael F Chekian

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 14, 2020

Hearing Room 301

2:30 PM

1:19-11921 Breann Castillo

Chapter 7

Adv#: 1:20-01058 Campolong v. Castillo

#13.00 Status conference re: complaint to determine dischargeability of debt pursuant to code sections 523(a)(2), (a)(4), (a)(6) and also to revoke discharge per code section 727(d)(1)

fr. 7/29/20; 8/26/20

Docket 1

***** VACATED *** REASON: Status conference continued to 11/4/20 at 1:30 PM per ruling on 9/16/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Breann Castillo

Represented By
David S Hagen

Defendant(s):

Breann Castillo

Pro Se

Plaintiff(s):

Andrew Campolong

Represented By
Michael F Chekian

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, October 15, 2020

Hearing Room 301

10:30 AM

1:13-15687 Antonio Lamar Dixon

Chapter 7

#1.00 Application for Compensation for Levene, Neale, Bender, Yoo & Brill L.L.P

Docket 217

***** VACATED *** REASON: Hearing set in error**

Tentative Ruling:

- NONE LISTED -

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 15, 2020

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#2.00 Debtors' proposed disclosure statement describing chapter 11 plan of reorganization

fr. 9/10/20

Docket 117

Tentative Ruling:

Pursuant to 11 U.S.C. § 1125, the Court will approve the "Debtors' First Amended Disclosure Statement Describing First Amended Chapter 11 Plan of Reorganization."

Proposed dates and deadlines regarding "Debtors' First Amended Chapter 11 Plan of Reorganization" (the "Plan"):

Hearing on confirmation of the Plan: **December 3, 2020 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 debtor: **October 16, 2020.**

The debtors must serve the notice and the other materials on all creditors, parties who have requested special notice and the Office of the United States Trustee.

Deadline to file and serve any objections to confirmation and to return completed ballots to the debtors: **November 13, 2020.**

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: **November 23, 2020.** 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 Office of the U.S. Trustee and any party who objects to confirmation.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 15, 2020

Hearing Room 301

1:00 PM

CONT... Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

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**

Thursday, October 15, 2020

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 11/21/19; 4/9/20; 7/9/20, 7/16/20; 9/10/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to be held with the confirmation hearing on the debtors' first amended plan of reorganization.

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**

Thursday, October 15, 2020

Hearing Room 301

1:00 PM

1:20-11286 Transpine, Inc.

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"): **December 18, 2020.**

Deadline to mail notice of Bar Date: **October 16, 2020.**

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 15, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on February 4, 2021.**

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, addressing the debtor's progress toward confirmation of a chapter 11 plan, 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(s) 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
Courtroom 301 Calendar**

Thursday, October 15, 2020

Hearing Room 301

1:00 PM

CONT... Transpine, Inc.

Chapter 11

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen
Paul M Kelley

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 15, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

#5.00 Application by Nancy Hoffmeier Zamora, Chapter 7 Trustee, for approval to employ Rodeo Realty, Inc. as Real Estate Broker

fr. 08/06/20 (stip); 8/13/20

Docket 15

Tentative Ruling:

Grant.

The debtor filed an objection to the application on the basis that the debtor had requested conversion of this case to a chapter 13 case, which would moot the chapter 7 trustee's application to employ a real estate broker. However, on August 25, 2020, the Court entered an order denying the debtor's motion to convert this case [doc. 56]. There being no other cause to deny the application, the Court will approve the application to employ a real estate broker.

The chapter 7 trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 15, 2020

Hearing Room 301

2:00 PM

1:20-10910 Thomas A Perez

Chapter 7

#6.00 Application by Nancy Hoffmeier Zamora, Chapter 7 Trustee, for approval to employ Rodeo Realty, Inc. as Real Estate Broker

fr. 08/06/20 (stip) ; 8/13/20

Docket 15

***** VACATED *** REASON: Rescheduled for 1:30 PM calendar.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, October 20, 2020

Hearing Room 302

8:30 AM

1:

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

You will not be permitted to be physically present in the courtroom. All appearances for the October 20, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply). Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Join By Computer

Meeting URL: <https://cacb.zoomgov.com/j/1619229829>

Meeting ID: 161 922 9829

Password: 673250

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 922 9829

Password: 673250

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, October 20, 2020

Hearing Room 302

8:30 AM

CONT...

Chapter

Docket 0

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 20, 2020

Hearing Room 301

8:30 AM

1:20-10940 Marvin Marroquin and Ana M. Marroquin

Chapter 7

#1.00 Reaffirmation agreement between debtor and Ally Bank

Docket 21

Party Information

Debtor(s):

Marvin Marroquin

Represented By
R Grace Rodriguez

Joint Debtor(s):

Ana M. Marroquin

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, October 20, 2020

Hearing Room 301

8:30 AM

1:20-11155 Lei-Lani Yung Ran Miller

Chapter 7

#2.00 Reaffirmation agreement between debtor and
American Honda Finance Corporation

Docket 19

Party Information

Debtor(s):

Lei-Lani Yung Ran Miller

Represented By
R Grace Rodriguez

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 20, 2020

Hearing Room 301

8:30 AM

1:20-11191 Alejandro Serrano

Chapter 7

#3.00 Reaffirmation agreement between debtor and
American Honda Finance Corporation

Docket 31

***** VACATED *** REASON: Notice of withdrawal filed 10/6/20 [Dkt.34]**

Party Information

Debtor(s):

Alejandro Serrano

Represented By
R Grace Rodriguez

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 20, 2020

Hearing Room 301

8:30 AM

1:20-11531 Kelly Hanson Rodriguez

Chapter 7

#5.00 Reaffirmation agreement between debtor and Logix Federal Credit Union

Docket 9

Party Information

Debtor(s):

Kelly Hanson Rodriguez

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

9:30 AM

1:19-13078 Gerie G Annan and Bennett Annan

Chapter 7

#1.00 Motion for damages, attorney's fees, and punitive damages for plaintiff's violation of the automatic stay

fr. 9/23/20

Docket 27

***** VACATED *** REASON: Notice of withdrawal filed 10/20/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerie G Annan

Represented By
Michael D Luppi

Joint Debtor(s):

Bennett Annan

Represented By
Michael D Luppi

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 21, 2020

Hearing Room 301

9:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#2.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 6/3/20; 7/15/20(stip); 8/26/20; 9/23/20

Stip to continue filed 10/19/20

Docket 63

*** VACATED *** REASON: Order approving stip entered 10/19/20.
Hearing continued to 11/25/20 at 9:30 AM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mercedes Benitez

Represented By
Matthew D. Resnik

Movant(s):

The Bank of New York Mellon 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, October 21, 2020

Hearing Room 301

9:30 AM

1:19-11648 Maryam Sheik

Chapter 11

#3.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 10/07/20

Stip to continue filed 10/16/20

Docket 123

***** VACATED *** REASON: continued to 11/18/20 at 9:30 a.m. per order
entered on 10/19/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

9:30 AM

1:20-10156 Shalva Tikva

Chapter 7

#4.00 Motion for relief from stay [PP]

DAIMLER TRUST
VS
DEBTOR

Docket 87

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):

Shalva Tikva

Represented By
Michael R Totaro

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 21, 2020

Hearing Room 301

9:30 AM

1:20-11398 Esther Christina Martinez

Chapter 7

#5.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT CAOMPANY 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 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):

Esther Christina Martinez

Represented By
Barry E Borowitz

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 21, 2020

Hearing Room 301

9:30 AM

CONT... Esther Christina Martinez

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

9:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#6.00 Motion for relief from stay [AN]

CALIFORNIA BOARD OF PSYCHOLOGY
VS
DEBTOR

Docket 228

Tentative Ruling:

I. BACKGROUND

A. Administrative Complaint

On December 18, 2018, Kenneth C. Scott ("Debtor") filed a voluntary chapter 13 petition.

Prior to Debtor filing his petition, on June 28, 2017, H. Samuel Hopper filed a complaint with the California Board of Psychology (the "Board") against Debtor for, among other things, violations of the laws and regulations relating to the practice of psychology. Doc. 229, Declaration of Sandra Monterrubio, attached thereto as Exh. B ("Monterrubio Decl."), ¶ 2.

On July 18, 2017, the Division of Investigations, Department of Consumer Affairs ("DOI") initiated an investigation. On November 11, 2018, the DOI interviewed Debtor. *Id.*

On February 22, 2019, the Board sent its completed investigation, finding that Debtor had violated the rules and regulations governing the practice of psychology, to the Office of the Attorney General for the State of California for review and consideration of disciplinary charges. *Id.*, at ¶ 4.

On August 9, 2019, the Executive Officer of the Board filed an Accusation against Debtor for: (1) charging and deducting rent from a psychological assistant; (2) improper deduction of psychological assistant registration and renewal fees; (3) exploitative relationship with a psychology assistant; and (4) harm to supervisees.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

9:30 AM

CONT...

Kenneth C. Scott

Chapter 13

Doc. 229, *Accusation*, attached thereto as Exh. A. The Executive Officer of the Board requested that the Board issue a decision: (1) "[r]evoking or suspending" Debtor's psychologist license; and (2) ordering Debtor to pay the Board the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring. *Id.*, at p. 32.

On August 23, 2019, Debtor requested an administrative hearing on the charges contained in the Accusation. Doc. 229, Declaration of Colleen M. McGurrin, attached thereto as Exh. C ("McGurrin Decl."), ¶ 5; Monterrubio Decl., ¶ 6.

On October 31, 2019, the Office of the Attorney General for the State of California filed a request for an administrative hearing before the Office of Administrative Hearings ("OAH"). McGurrin Decl., ¶ 7. An administrative hearing was scheduled for May 11, 2020 and, at Debtor's request, subsequently continued to November 16, 2020. Monterrubio Decl., ¶ 7–9; McGurrin Decl., ¶¶ 10–11.

On or about March 30, 2020, the parties to the action participated in a telephonic prehearing conference with the Administrative Law Judge (ALJ) assigned to hearing the case. That same day, the parties also participated in a mandatory settlement conference with another ALJ in an attempt to informally resolve the matter. Settlement negotiations have not been successful. McGurrin Decl., ¶ 9.

B. Motion for Relief from the Automatic Stay

On September 29, 2020, the Board filed a *Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)* (the "Motion") [doc. 228]. The Board argues that, under 11 U.S.C. § 362(b)(4), the Board, as a state or a governmental unit, may continue to exercise its regulatory power, by prosecuting the Accusation before the OAH, as an exception to the automatic stay.

C. Opposition to the Motion

On October 7, 2020, Debtor filed an *Opposition to Board of Psychology's Motion for Relief from Automatic Stay* (the "Opposition") [doc. 236]. In the Opposition, Debtor contends that the Board was not served notice of his bankruptcy petition because the Board has never been a creditor nor has a judgment been awarded in its favor. Following the Board's filing of the Accusation, Debtor claims that the Board was

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

9:30 AM

CONT...

Kenneth C. Scott

Chapter 13

notified of his bankruptcy petition. Doc. 236, Declaration of Seth Weinstein ("Weinstein Decl."), attached as Exh. 1 thereto, ¶ 5.

Furthermore, Debtor argues that section 362(b)(4) does not apply because "the [Board's] action is not a claim for the protection of public health or safety. The [Board's] action is based on Mr. Hopper and [his bankruptcy counsel's] attempts to sidestep this Court's automatic stay and prosecution of the Hopper matter in a forum outside of the bankruptcy court."

II. DISCUSSION

Pursuant to 11 U.S.C. § 101(27), a "governmental unit" is defined as:

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.

Pursuant to 11 U.S.C. § 362(b)(4), in pertinent part:

- (a) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

- (4) under paragraph (1), (2), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained, in an action or proceeding by the governmental unit or to enforce such governmental unit's or organization's police or regulatory power[.]

The Bankruptcy Code provides certain exceptions to the automatic stay, that should be read narrowly. *In re Dunbar*, 235 B.R. 465, 470 (B.A.P. 9th Cir. 1999), *aff'd*, 245

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

9:30 AM

CONT...

Kenneth C. Scott

Chapter 13

F.3d 1058 (9th Cir. 2001). Section 364(b)(4) provides an exception to the automatic stay for "the commencement or continuation of an action or proceeding by a governmental unit or to enforce such governmental unit's police or regulatory power." *In re Universal Life Church, Inc.*, 128 F.3d 1294, 1297 (9th Cir. 1997). "The phrase 'police or regulatory power' refers to the enforcement of laws affecting health, welfare, morals and safety, but not regulatory laws that directly conflict with the control of the res or property by the bankruptcy court." *Id.* (citing *Hillis Motors, Inc. v. Hawaii Auto Dealers' Ass'n*, 997 F.2d 581, 591 (9th Cir. 1993)).

The section 364(b)(4) exception "has been applied in a variety of contexts, including labor law enforcement, state bar disciplinary proceedings, and employment discrimination actions brought by the Equal Employment Opportunity Commission." *In re Dingley*, 852 F.3d 1143, 1146 (9th Cir. 2017) (quoting *Universal Life Church*, 128 F.3d at 1297). For example, courts have held that section 362(b)(4) excepts the actions of a medical or healthcare board to initiate a license revocation proceeding against a debtor. *See In re Thomassen*, 15 B.R. 907, 909 (B.A.P. 9th Cir. 1981) ("[Debtor] has been accused of malpractice and professional incompetence and with fraud in the handling of his patients' and employees' funds. The State's interest in this matter is in punishing such misconduct and in preventing future acts of the type which [Debtor] has been accused. This is a valid police and regulatory interest."); *see also In re Emerald Casino, Inc.*, 2003 WL 23147946 (N.D. Ill. Dec. 24, 2003) (same).

The Ninth Circuit applies two tests to determine whether a state's actions fall within the section 362(b)(4) exception: (1) the "pecuniary purpose" test; and (2) the "public policy" test. *Universal Life Church*, 128 F.3d at 1297. When an action satisfies either test, the action is exempt from the automatic stay under 11 U.S.C. § 362(b)(4). *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1108 (9th Cir. 2005).

Under the pecuniary purpose test, the court must determine "whether the government action relates primarily to the protection of the government's pecuniary interest in the debtor's property or to matters of public safety and welfare." *Id.* (citing *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 833 (9th Cir. 1991)). When the action is pursued "solely to advance a pecuniary interest of the government unit," the automatic stay will be imposed. *Universal Life Church*, 128 F.3d at 1297 (citing *In re Thomassen*, 15 B.R. 907, 909 (B.A.P. 9th Cir. 1981); *see also Mirant*, 398 F.3d at 1109 ("If the suit seeks to protect the government's pecuniary interest, the § 362(b)(4) exception does not apply. On the other hand, if the suit seeks to protect public safety

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

9:30 AM

CONT...

Kenneth C. Scott

Chapter 13

and welfare, the exception does apply.") Put another way, the court "must look to what specific acts the government wishes to carry out and determine if such execution would result in an economic advantage to the government or its citizens over third parties in relation to the debtor's estate." *See In re Charter First Mortgage, Inc.*, 42 B.R. 380, 382 (Bankr. D.Or. 1984).

Under the public policy test, the court attempts to "distinguish between government actions that effectuate public policy and those that adjudicate private rights." *Universal Life Church*, 128 F.3d at 1297 (quoting *Continental Hagen*, 932 F.2d at 833). "Under this test, the court considers whether the administrative agency is exercising legislative, executive, or judicial functions." *In re Poule*, 91 B.R. 83, 86 (B.A.P. 9th Cir. 1988). "Where the agency's action affects only the parties immediately involved in the proceeding, it is exercising a judicial function and the debtor is entitled to the same protection from the automatic stay as if the proceeding were being conducted in a judicial forum." *Id.* (citing *Charter First Mortg.*, 42 B.R. at 383–84). As such, "a governmental unit cannot escape the automatic stay by adjudicating the private rights of its citizens under the guise of public protection." *See In re Medicar Ambulance Co., Inc.*, 166 B.R. 918, 926 (N.D. Cal. 1994) (citing *Charter First Mortg.*, 42 B.R. at 383–84). "A suit does not satisfy the 'public purpose' test if it is brought primarily to advantage discrete and identifiable individuals or entities rather than some broader segment of the public." *Mirant*, 398 F.3d at 1109 (quoting *Continental Hagen*, 932 F.2d at 833).

A. Governmental Unit

Here, the Board meets the definition of a governmental unit. The Board is charged with the authority to enforce the rules and regulations that govern practicing psychologists in the State of California by "exercising its licensing, regulatory, and disciplinary functions" to protect the public. *See Cal Bus. & Prof. Code* §§ 2920, 2920.1, 2928; *In re Wade*, 115 B.R. 222, 227 (B.A.P. 9th Cir. 1990) ("[C]ourts apply a functional approach by examining the entity at issue is carrying out a governmental function."). The Board, therefore, is carrying out a governmental function on behalf of the State of California.

B. Section 362(b)(4) Exception

Here, the Board satisfies both the pecuniary purpose test and public policy test to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

9:30 AM

CONT...

Kenneth C. Scott

Chapter 13

qualify for relief under 11 U.S.C. § 362(b)(4). Under the pecuniary purpose test, the Board seeks disciplinary action against Debtor for alleged mistreatment of a psychology assistant in violation of the rules and regulations governing the practice of psychology. Therefore, Board seeks to protect the public and the profession of psychology by suspending or revoking Debtor's psychology license.

Under the public policy test, the Board is engaging in a governmental action rather than adjudicating private rights. By seeking to suspend or revoke Debtor's psychologist license, the Board is not exercising a judicial function; its actions affect the broader public, in preventing future violations, rather than the rights of private parties. *See Medicar*, 166 B.R. at 926–927 ("In applying the public policy test a court must determine whether the action is an attempt to prevent future violations of the law rather than an attempt to determine the liability of private parties.")

Consequently, the Court finds that the Board's suit comes within the "police or regulatory power" exception under section 362(b)(4), and the Board may continue its disciplinary action against Debtor.

C. Annulment

"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 Board has met the requirements for annulment. First, the Board was unaware of Debtor's bankruptcy petition. The Board did not receive notice of Debtor's bankruptcy petition for a lengthy period of time; it appears that Debtor's attorney did not notify the Board of Debtor's pending bankruptcy case until January 27, 2020, *i.e.*, long after Debtor had filed his chapter 13 petition and had requested an administrative hearing regarding the Accusation. Weinstein Decl., ¶ 5.

Second, the Board would experience prejudice. As discussed, the Board seeks to discipline Debtor for alleged misconduct. If the Board is unable to continue the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

9:30 AM

CONT... Kenneth C. Scott

Chapter 13

disciplinary action, it undermines the purpose of the Board to govern the practice of psychology in the State of California.

III. CONCLUSION

The Court will: (1) allow the Board to continue its disciplinary action against Debtor before the OAH; and (2) annul the automatic stay, to the extent that the automatic stay applies. On the other hand, at this time, the Court will not grant relief from the automatic stay for the Board to enforce against Debtor and/or the bankruptcy estate any monetary judgment it obtains for the reasonable costs of the investigation and enforcement of the disciplinary proceeding. The Board may file a proof of claim with respect to any such monetary judgment, in its favor.

The Board must submit the order within seven (7) days.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdeh

Trustee(s):

Elizabeth (SV) 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 21, 2020

Hearing Room 301

9:30 AM

1:19-12523 John Jairo Barrios

Chapter 13

#7.00 Motion for relief from stay [RP]

MILL CITY MORTGAGE LOAN TRUST 2017-1
VS
DEBTOR

Stip for adequate protection filed 10/14/20

Docket 60

***** VACATED *** REASON: Order approving stip entered 10/15/20.
[Dkt.65]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Jairo Barrios

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 21, 2020

Hearing Room 301

9:30 AM

1:20-11739 Mario Alberto Cerritos

Chapter 13

#8.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 8

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Mario Alberto Cerritos

Represented By
Jaime A Cuevas Jr.

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

9:30 AM

1:20-11286 Transpine, Inc.

Chapter 11

#8.10 Order to Show Cause why the court should not grant relief from the automatic stay pursuant to 11 U.S.C. §§ 105(a) and 362(d)

Docket 53

Tentative Ruling:

The Court will continue this hearing to **9:30 a.m. on November 4, 2020.**

Appearances on October 21, 2020 are excused.

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen
Paul M Kelley

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

9:30 AM

1:20-11286 Transpine, Inc.

Chapter 11

#8.20 Motion For Order Extending The Automatic Stay
to Non-Debtor Defendants To Litigation

fr. 10/14/20

Docket 47

Tentative Ruling:

The Court will continue this hearing to **9:30 a.m. on November 4, 2020.**

Appearances on October 21, 2020 are excused.

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen
Paul M Kelley

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01019 Miller, Chapter 7 Trustee v. Ride on Autos. a California corporation

#9.00 Status conference re: complaint for 1. breach of oral contract;
2. money had and received; 3. open book account; 4. accounting;
5. declaratory relief; 6. turnover of property of the estate; 7. avoidance
of postpetition transfers; 8. recovery of postpetition transfers; and
9. preservation of postpetition transfers

fr. 4/15/20(stip), 4/29/20; 6/17/20; 8/12/20;

Docket 1

Tentative Ruling:

On August 11, 2020, the Clerk of the Court entered default against the defendant [doc. 34]. Subsequently, the defendant obtained new counsel and filed an answer to the complaint [docs. 35, 40]. Does the defendant intend to move to vacate the default?

Unless the parties stipulate to vacating the default, the Court will set the motion for default judgment, filed by the plaintiff, for hearing at **2:30 p.m. on December 9, 2020**. If the defendant intends to file a motion to vacate the default, the defendant must file and serve that motion no later than **November 4, 2020**. If the defendant timely files and serves a motion to vacate the default, the Court also will set that motion for hearing at **2:30 p.m. on December 9, 2020**.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Ride on Autos. a California

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

1:30 PM

CONT... Deborah Lois Adri

Chapter 7

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Cathy Ta

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 21, 2020

Hearing Room 301

1:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#10.00 Pre-Trial re: first amended 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

fr. 6/12/19; 8/7/19; 4/15/20; 6/17/20(stip); 7/1/20; 7/22/20

STIP TO CONTINUE FILED 9/29/20

Docket 7

***** VACATED *** REASON: Order approving stip entered 9/30/20.
Hearing continued to 1/20/21 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Anderson

Represented By
Daniel King

Defendant(s):

Susan Biddle

Pro Se

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

1:30 PM

CONT... Christopher Anderson

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

1:30 PM

1:19-10272 Zaven Armen Pehlevanian

Chapter 7

Adv#: 1:19-01141 Pehlevanian v. Wells Fargo et al

#11.00 Pretrial conference re: complaint for declaratory judgment
for bankruptcy relief of student loan debt

fr. 2/5/20; 4/8/20

Docket 1

Tentative Ruling:

Contrary to the Court's scheduling order [doc. 11] and Local Bankruptcy Rule 7016-1(b), the plaintiff did not timely file a pretrial stipulation or unilateral pretrial statement.

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):

Zaven Armen Pehlevanian	Pro Se
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Defendant(s):

Wells Fargo	Pro Se
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Navient	Pro Se
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Plaintiff(s):

Zaven Armen Pehlevanian	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**

Wednesday, October 21, 2020

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mor et al

- #12.00** Status conference re: amended complaint for:
1. Fraud and Intentional Deceit;
 2. Breach of the Covenant of Good Faith and Fair Dealing;
 3. Agency by Estoppel; and
 4. Financial Elder Abuse

fr. 10/2/19; 11/6/19(stip); 12/4/19; 03/18/20 (stip); 4/15/20(stip);
5/27/20 (stip); 6/24/20; 08/19/20 (stip)

Stip to continue filed 9/30/20

Docket 25

***** VACATED *** REASON: Order approving stip entered 10/1/20.
Hearing continued to 12/23/20 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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

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
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

1:30 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#13.00 Status Conference re: first amended complaint to determine dischargeability and objection to discharge

fr. 5/13/20; 5/20/20; 6/24/20; 8/19/20; 8/26/20

Docket 15

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: 1/15/21.

Deadline to complete one day of mediation: 2/1/21.

Deadline to file pretrial motions: 2/12/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 2/24/21.

Pretrial: 3/10/21 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, October 21, 2020

Hearing Room 301

1:30 PM

CONT... Husnutkin K Zairov

Chapter 7

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Pro Se

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

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 21, 2020

Hearing Room 301

1:30 PM

1:20-11134 Helping Others International, LLC

Chapter 11

Adv#: 1:20-01070 Nguyen, Trustee of Mother Nature Trust v. United Lender, LLC et al

#14.00 Status conference re removed proceeding

fr. 9/9/20

Docket 1

Tentative Ruling:

The Court will set the motions to dismiss filed by defendants American Financial Center, Inc. [doc. 13], United Lender, LLC [doc. 45] and the chapter 7 trustee [doc. 50] for hearing at **2:30 p.m. on November 25, 2020**. The defendants must file and serve notice of the hearing on their motion no later than **November 4, 2020**.

Appearances on October 21, 2020 are excused.

Party Information

Debtor(s):

Helping Others International, LLC	Represented By Todd J Cleary
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Defendant(s):

United Lender, LLC	Represented By Anita Jain
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Shawn Ahdoot	Pro Se
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Albert A. Ahdoot	Pro Se
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Megan E. Zucaro	Pro Se
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Helping Others International, LLC, a	Pro Se
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Western Fidelity Associates, LLC, a	Pro Se
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John B. Spear	Pro Se
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American Financial Center, Inc., a	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, October 21, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC

Chapter 11

DOES 1 through 100, inclusive Pro Se

Plaintiff(s):

Anh Thy Song Nguyen, Trustee of Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

1:10-17214 Darin Davis

Chapter 7

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

- #15.00** Defendant Darin Davis' motion for attorney's fees against Asphalt Professionals, Inc. ("API") for fees Davis incurred to defend the API's appeal of the 9th Circuit Court of Appeals of this court's order granting Davis \$92,347.79 for attorney's fees Davis Incurred to defend API's 11 U.S.C. section 523(a)(2)(A) claim

Docket 331

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On June 15, 2020, Darin Davis ("Debtor") filed a voluntary chapter 7 petition. On August 16, 2010, Asphalt Professionals, Inc. ("API") filed a complaint against Debtor, initiating this adversary proceeding. After the Court entered judgment on API's claims (the "Judgment"), Debtor moved for an award of attorneys' fees [doc. 228]. On December 3, 2018, the Court entered an order granting in part and denying in part Debtor's request for attorneys' fees (the "Fee Order") [doc. 260]. Subsequently, API appealed the Judgment, the Fee Order and several subsequent orders allowing Debtor recovery of incurred fees and costs.

On June 24, 2020, Debtor filed a motion requesting fees and costs incurred defending an appeal, before the Ninth Circuit Court of Appeals, of this Court's \$92,347.70 award of attorneys' fees and costs (the "First Motion") [doc. 331]. On June 30, 2020, Debtor filed another motion request attorneys' fees and costs incurred defending an appeal, before the Bankruptcy Appellate Panel of the Ninth Circuit, of this Court's \$55,671.25 award of attorneys' fees and costs (the "Second Motion") [doc. 334]. API opposes both the First Motion and the Second Motion (the "Oppositions") [docs. 354, 355], arguing that: (A) certain portions of briefs filed by Debtor are duplicative of arguments made in prior briefs filed by Debtor; (B) some requested fees are excessive; and (C) Debtor did not agree to stay litigation of his prior attorneys' fees motions and, as a result, did not mitigate the amount of attorneys' fees or costs incurred.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT... Darin Davis

Chapter 7

II. ANALYSIS

A. General Lodestar Standard

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.

B. API's Arguments Regarding Excessive and/or Duplicate Billing

In the Oppositions, API asserts that the requested fees should be reduced by the same percentage as the amount of duplicative lines in Debtor's briefs. However, API sets forth no legal authority that provides for this method of reduction. In fact, while courts may reduce fees on the basis that they are "*unnecessarily* duplicative," courts must "articulate[] [their] reasoning with... specificity." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112-13 (9th Cir. 2008). As explained by the *Moreno* court—

The court may reduce the number of hours awarded because the lawyer performed unnecessarily duplicative work, but determining whether work is unnecessarily duplicative is no easy task. When a case goes on for many years, a lot of legal work product will grow stale; a competent lawyer won't rely entirely on last year's, or even last

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT...

Darin Davis

Chapter 7

month's, research: Cases are decided; statutes are enacted; regulations are promulgated and amended. A lawyer also needs to get up to speed with the research previously performed. All this is duplication, of course, but it's *necessary* duplication; it is inherent in the process of litigating over time. Here, there was a previous appeal (of the district court's grant of summary judgment) which would have added to the delay and rendered much of the research stale. One certainly expects *some* degree of duplication as an inherent part of the process. There is no reason why the lawyer should perform this necessary work for free.

...

After all, duplication always happens when a task is started, stopped and then taken up again later. But necessary duplication—based on the vicissitudes of the litigation process—cannot be a legitimate basis for a fee reduction. It is only where the lawyer does *unnecessarily* duplicative work that the court may legitimately cut the hours.

Id.

As a preliminary matter, API does not cite specific billing entries as duplicative. Instead, API compares briefs filed by Debtor to note that the briefs contain duplicative portions. However, the billing entries attached to the Motions identify the amount of time spent on the subject briefs as a whole, not on specific parts of the briefs. As such, it is not evident that Debtor's counsel billed for the duplicative portions of the briefs, rather than the new research, analysis and argument set forth in those briefs.

As explained by Debtor, while portions of certain briefs included similar language, Debtor's counsel was required to perform new work, such as assessing and supplementing API's excerpts of record, researching and analyzing new legal arguments made by API (such as API's arguments regarding merger) and responding to questions posed by the appellate courts, such as the Ninth Circuit Court of Appeals' instruction that the parties be prepared to discuss the significance of a specific California case. Declaration of Alan W. Forsley [doc. 359], ¶¶ 8-13. The subject briefs were not so identical to prior briefs to warrant the drastic reduction

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT... **Darin Davis**
requested by API.

Chapter 7

In addition, API's proposed method of reduction does not provide room for a qualitative analysis of whether the requested fees and costs are *unnecessarily* duplicative, instead of merely duplicative. As noted by *Moreno*, duplicative work may be necessary, such as ensuring that legal research is not stale and updating briefs for argument before a different appellate body. Finally, API's calculations are not sound; API suggests calculating the percentage of duplicate lines in a single brief and then using that percentage to reduce API's *total* requested fees, not just the total fees incurred drafting the subject brief. Such a calculation would result in reducing *all* work performed by Debtor's counsel by a significant percentage, despite the fact that API does not dispute much of the other work for which counsel bills. Rather than arbitrarily reduce the requested fees by the percentage of duplicative lines, the Court will assess whether the requested fees and costs are reasonable under the lodestar method, discussed above.

C. The First Motion

Regarding API's arguments related to Debtor's counsel's work on legal research, drafting Debtor's response to the appellate brief and preparing for oral argument, the Court believes the total of 17.3 hours spent on research, and 25.7 spent drafting Debtor's brief (excluding the amounts billed for review of API's brief and excerpts of record and drafting the table of authorities and table of contents), is excessive. After assessing the appellate brief, the Court believes allowing a total of 12 hours for legal research and a total of 18 hours for drafting the brief is reasonable. Consequently, the Court will reduce the requested fees by \$5,525.

API also asserts that the Court should reduce the fees incurred for work on opposing API's stay enforcement motions and participating in the Court of Appeals' mediation program. However, Debtor's counsel spent a total of 7.4 hours opposing the first motion for stay enforcement, 5.9 hours opposing the second motion for stay enforcement and 3.5 hours opposing the third motion for stay enforcement. This amount is not unreasonable for the time required to draft three oppositions; in addition, API's own filings necessitated these responses by Debtor. As to the time spent on mediation, Debtor's counsel spent a total of approximately 3 hours preparing a mediation questionnaire, reviewing API's questionnaire, reviewing the Court of Appeals' mediation conference orders, participating in multiple meetings and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT...

Darin Davis

Chapter 7

conference calls and corresponding with Debtor regarding mediation. This is a minimal amount of work for participation in mediation. As such, the Court will not reduce the requested fees on these bases.

D. The Second Motion

As to the Second Motion, Debtor's counsel incurred only 4.8 hours to draft a response to API's appellate brief (excluding minimal time spent analyzing API's brief and excerpt of records and preparing a table of authorities and table of contents), 3.3 hours to prepare for oral argument and 1.70 hours to attend oral argument. These amounts are not excessive or unnecessary in relation to the work performed by Debtor's counsel.

API also asserts that Debtor should not recover fees for time spent drafting a motion for extension of time. Debtor's counsel billed only 1.10 hours to draft this motion, and the appellate court granted the motion. API does not articulate why incurring fees for drafting a motion for extension of time is inherently unreasonable or unnecessary, particularly where the motion was successful. Finally, API argues that Debtor should not recover fees for the appellate court's memorandum of decision. The only billing entries on the subject date referenced by API are for counsel's review of the notice of judgment, for 0.10 hours, and for corresponding to Debtor regarding the judgment, for another 0.10 hours. The total 12 minutes to perform these tasks are neither unnecessary nor unreasonable. Consequently, the Court will not reduce any of the requested fees in the Second Motion.

E. API's Argument Regarding Mitigation

API's final argument, in response to both the First Motion and the Second Motion, is that Debtor failed to "mitigate damages" by refusing to stay prosecution of Debtor's motions for attorneys' fees and costs. To the extent API's case, which does not relate to attorneys' fees and costs, applies to this case, API has not demonstrated that Debtor failed to mitigate losses.

Pursuant to Federal Rule of Bankruptcy Procedure 7054(b)(2) and Federal Rule of Civil Procedure 54(d)(2)(B)(i), a motion for attorneys' fees must be filed no later than 14 days after the entry of judgment. To obtain attorneys' fees and costs, Debtor was required to file his motions by this deadline. After such filing, the onus was on API

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT...

Darin Davis

Chapter 7

to move for stay of prosecution of the motions, or for stay of enforcement of the resulting orders. There is no case law, federal rule or local rule that places an obligation for prevailing parties to stay prosecution of their motions for attorneys' fees until resolution of an appeal. On the other hand, federal rules allow the opposing party to move for stay of motions and/or orders. API did not move for such relief. Thus, the Court will not punish Debtor by reducing his incurred fees for API's failure to move for a stay of the motions timely filed by Debtor.

III. CONCLUSION

The Court will deduct \$5,525 from the fees requested in the First Motion, for a total allowed amount of \$40,232. The Court will allow the requested fees from the Second Motion in full.

Debtor must submit an order 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

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, October 21, 2020

Hearing Room 301

2:30 PM

1:10-17214 Darin Davis

Chapter 7

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

#16.00 Darin Davis' motion for attorney's fees and costs incurred to defend Asphalt Professionals, Inc.'s ("API") appeal to the 9th Circuit Bankruptcy Appellate Panel of this court's order granting Davis' fees incurred in defending the appeals of section 523(a)(2)(A) action and related fee order

Docket 334

Tentative Ruling:

See calendar no. 15.

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 21, 2020

Hearing Room 301

2:30 PM

1:19-13145 Daniel Michael Uzan
Adv#: 1:20-01035 Mitchell et al v. Uzan

Chapter 7

#17.00 Defendant's motion to dismiss first amended complaint

Docket 21

Tentative Ruling:

Grant.

I. BACKGROUND

On December 18, 2019, Daniel Michael Uzan ("Defendant") filed a voluntary chapter 7 petition. On March 23, 2020, Jason Mitchell and JHM Ventures ("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)(4) and (a)(6).

On May 26, 2020, Defendant filed a motion to dismiss the Complaint (the "First Motion") [doc. 8]. On July 29, 2020, the Court held a hearing on the First Motion. At that time, the Court issued a ruling [doc. 16] dismissing the Complaint on the following bases: (A) the misrepresentations alleged by Plaintiffs were statements respecting Defendant's financial condition and, as a result, Plaintiffs did not state a claim under § 523(a)(2)(A); (B) Plaintiffs did not allege that the subject misrepresentations were in writing, such that Plaintiffs did not adequately plead a claim under § 523(a)(2)(B); and (C) Mr. Mitchell, the sole plaintiff moving for relief under § 523(a)(4) and (a)(6), did not adequately allege damages. On August 11, 2020, the Court entered an order granting the First Motion and allowing Plaintiffs leave to amend the Complaint [doc. 18].

On August 19, 2020, Plaintiffs filed the first amended complaint (the "FAC") [doc. 20], requesting nondischargeability of the debt owed to them under 11 U.S.C. § 523(a)(2)(B), (a)(4) and (a)(6). Plaintiffs no longer request relief under § 523(a)(2)(A). As relevant to Plaintiffs' claim under § 523(a)(2)(B), Plaintiffs allege—

Defendant told Mr. Mitchell that he had agreements with an electrical union for \$2 million, plus a \$500,000 job in Santa Monica. This representation was confirmed in writing when Defendant sent a text

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT...

Daniel Michael Uzan

Chapter 7

message to Mr. Mitchell, informing Mr. Mitchell that Defendant had a meeting with the electrical union. In addition to this representation, Defendant represented that he performed \$150,000 - \$200,000 in electrical jobs every year and had several clients, including celebrity clients, who wanted home automation services.

To the FAC, Plaintiffs also attach the subject text message containing the alleged representation. FAC, Exhibit B. In relevant part, the attached text exchange reads:

Mr. Mitchell: Hope everything is alright. Not sure the plan today, but tw is coming to put in the phone line. You coming by today?

Defendant: Going to meet with the electrical Union today I'll hit you up after.

Mr. Mitchell: Calling or coming by? What's your timing?

Defendant: Not sure how long meeting will take its 40 thousand square feet.

...

Mr. Mitchell: Where'd you go? How did the meeting go... Watching directv?

Defendant: With kids

FAC, Exhibit B. As to the remaining claims, Plaintiffs amended the FAC to: (A) indicate that only JHM requests relief under 11 U.S.C. § 523(a)(4); and (B) include two different claims under 11 U.S.C. § 523(a)(6), one asserted by Mr. Mitchell and the other by JHM. Regarding the claims asserted by JHM, Plaintiffs allege that Defendant breached a shareholder agreement between Mr. Mitchell and Defendant (the "Shareholder Agreement") and misappropriated assets of Elements Smart Homes Solutions, Inc. ("Elements"), including a loan from JHM.

On September 9, 2020, Defendant filed a motion to dismiss the FAC (the "Motion") [doc. 21]. In the Motion, Defendant argues: (A) the only representation alleged to be in writing is not material; and (B) JHM has not alleged why it, instead of Elements, was damaged by JHM's allegations under § 523(a)(4) and (a)(6). Defendant does not

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT... Daniel Michael Uzan

Chapter 7

request dismissal of Mr. Mitchell's claim under § 523(a)(6).

On October 7, 2020, Plaintiffs filed an opposition to the Motion (the "Opposition") [doc. 24]. On October 14, 2020, Defendant filed a reply to the Opposition [doc. 25].

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 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); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009)). "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 555 (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT...

Daniel Michael Uzan

Chapter 7

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).

"A complaint that merely recites statutory language fails to state a claim under Rule 12(b)(6)." *In re Kubick*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994). This is because "mere statutory language does not plead facts sufficiently so that they may be answered or denied." *Id.* "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Id.*

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)

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:"

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT...

Daniel Michael Uzan

Chapter 7

- (i) that is materially false;
- (ii) respecting the debtor's or an insider's financial condition;
- (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
- (iv) that the debtor caused to be made or published with intent to deceive....

"Material misrepresentations for this statutory section are substantial inaccuracies of the type which would generally affect a lender's or guarantor's decision." *In re Candland*, 90 F.3d 1466, 1470 (9th Cir. 1996); *see also In re Greene*, 96 B.R. 279, 283 (B.A.P. 9th Cir. 1989) (holding that a materially false statement is one which "paints a substantially untruthful picture of a financial condition by misrepresenting information of the type which would normally effect the decision to grant credit").

The determination of reliance...requires a two-part analysis. First, the court must determine whether the creditor actually relied on the debtor's statements. Actual reliance means that the creditor in fact relied on the omission or misrepresentation.

Second, the court must determine whether the creditor's reliance was reasonable. The standard in the Ninth Circuit for "reasonable reliance" does not require adherence to any particular list of factors; rather, the bankruptcy court is to make its determination on a case-by-case basis in light of the totality of the circumstances.

...

In the end, the degree of reliance required—reasonable—is more stringent than the justifiable reliance required under § 523(a)(2)(A), and evidences Congressional intent to create a heightened bar to discharge exceptions. This heightened requirement was not erected to shield dishonest debtors, but to balance the potential misuse by both debtors and creditors of statements reflecting a debtor's financial condition.

In re Maxwell, 600 B.R. 62, 70 (B.A.P. 9th Cir. 2019). "Reasonable reliance means reliance that would have been reasonable to a hypothetical average person." *In re Bacino*, 2015 WL 9591904, at *20 (B.A.P. 9th Cir. 2015) (citing *In re Machuca*, 483 B.R. 726, 736 (B.A.P. 9th Cir. 2012)). "Reasonable reliance is analyzed under a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT... Daniel Michael Uzan

Chapter 7

'prudent person' test." *Id.* (citing *In re McGee*, 359 B.R. 764, 774 (B.A.P. 9th Cir. 2006)).

Here, the only written representation referenced by Plaintiffs is a text message in which Defendant allegedly states he had a meeting with an electrical union. First, Plaintiffs do not allege that this representation is false; the FAC is devoid of any allegation that Defendant did not meet with the electrical union.

However, even if Plaintiffs allege that the representation was false, they have not adequately explained why such a representation is material or why it relates to Defendant's financial condition. In the subject text messages, Defendant did not represent that the electrical union was his client, or that he had secured any business with the union. The text messages, without more, are not the type of representation that would generally impact a lender's or guarantor's decision. On their face, the text messages also do not appear to relate to Defendant's financial condition.

Finally, Plaintiffs have not adequately alleged reasonable reliance on the text messages. First, Plaintiffs themselves do not allege that they relied on the text message; instead, when discussing reliance, Plaintiffs refer to other, oral representations allegedly made by Defendant. As such, Plaintiffs have not met the "actual reliance" prong of the analysis. In addition, Plaintiffs have not adequately alleged why a hypothetical, prudent person would rely on a text message regarding a meeting to lend money to a business. Thus, the Court will dismiss Plaintiffs' claim under § 523(a)(2)(B), with prejudice.

C. 11 U.S.C. § 523(a)(4)

"Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1) property rightfully in the possession of the non-owner debtor, (2) the non-owner's misappropriation of the property to a use other than that for which it was entrusted, and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). "The elements of larceny differ only in that a larcenous debtor has come into possession of funds wrongfully." *In re Mickens*, 312 B.R. 666, 680 (Bankr. N.D. Cal. 2004). For purposes of embezzlement and larceny, a fiduciary relationship is not required. *Littleton*, 942 F.2d at 555.

Defendant asserts that JHM does not have standing to prosecute its embezzlement

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT... Daniel Michael Uzan

Chapter 7

claim. In the FAC, Plaintiffs allege that Defendant misappropriated Elements' assets by using money and inventory contributed by Mr. Mitchell and JHM for his own personal use, and that Defendant breached the Shareholder Agreement.

As to the allegations regarding violation of the Shareholder Agreement, Plaintiffs allege that *Mr. Mitchell* was a party to the Shareholder Agreement; there are no allegations indicating that JHM was a party to the Shareholder Agreement. Because the claim under § 523(a)(4) is being asserted by JHM, JHM does not have standing to assert a breach of the Shareholder Agreement.

Plaintiffs also have not alleged why JHM had an interest in assets of Elements. JHM is not alleged to be a shareholder, and, although Plaintiffs allege that JHM contributed assets to Elements, Plaintiffs do not specify which assets were allegedly contributed by JHM or whether JHM maintained a security interest in such assets.

The only contribution by JHM specifically alleged by Plaintiffs is a loan. However, Plaintiffs do not allege relevant terms of the loan, or that JHM had a security interest in assets of Elements arising from such a loan. As to the loan funds, the recipient of the funds becomes the owner. *See In re Bren*, 284 B.R. 681, 698 (Bankr. D. Minn. 2002) ("Payment of a contract price in exchange for the recipient to undertake an obligation of future performance transfers the ownership of the money to the recipient."). As such, JHM no longer owned the funds and, as a result, does not have standing to assert a claim for embezzlement. Consequently, the Court will dismiss JHM's claim under § 523(a)(4), with prejudice.

D. 11 U.S.C. § 523(a)(6)

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, *not* merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 140 L.Ed. 2d 90 (1998). In the Ninth Circuit, "§ 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Ormsby*, 591 F.3d at 1206 (quoting *In re Su*, 290 F.3d 1140,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT... Daniel Michael Uzan

Chapter 7

1142 (9th Cir.2002)). "The Debtor is charged with the knowledge of the natural consequences of his actions." *Id.* (citing *In re Cohen*, 121 B.R. 267, 271 (Bankr.E.D.N.Y.1990)).

Under § 523(a)(6), the injury must also be the result of maliciousness. *Su*, 290 F.3d at 1146. Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.* at 1147. Maliciousness does not require "personal hatred, spite, or ill-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

Plaintiffs base their claim under § 523(a)(6) on Defendant's alleged misappropriation of Elements' assets. For the same reasons explained above, Plaintiffs have not adequately alleged why JHM has standing to sue Defendant for misappropriation of Elements' assets. Plaintiffs have not alleged that JHM had an interest in Elements, or specified which assets were misappropriated and whether JHM had an interest in such assets (in fact, in the FAC, Plaintiffs allege that *Mr. Mitchell* had an interest in the corporate assets, not JHM). As such, the Court will dismiss JHM's claim under § 523(a)(6), with prejudice.

III. CONCLUSION

The Court will dismiss Plaintiffs' first, second and third claims, with prejudice. Defendant must file and serve an answer to Plaintiffs' fourth claim no later than **November 11, 2020**. The Court will continue the status conference to **1:30 p.m. on December 9, 2020**. No later than **November 25, 2020**, the parties must file and serve a joint status report in accordance with Local Bankruptcy Rule 7016-1(a).

Defendant must submit an order within seven (7) days.

Party Information

Debtor(s):

Daniel Michael Uzan

Represented By
Mark T Jessee

Defendant(s):

Daniel Michael Uzan

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, October 21, 2020

Hearing Room 301

2:30 PM

CONT... Daniel Michael Uzan

Chapter 7

Mark T Jessee

Plaintiff(s):

Jason Mitchell

Represented By
Stella A Havkin

JHM Ventures, a California

Represented By
Stella A Havkin

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 21, 2020

Hearing Room 301

2:30 PM

1:19-13145 Daniel Michael Uzan

Chapter 7

Adv#: 1:20-01035 Mitchell et al v. Uzan

#18.00 Status conference re: first amended complaint for determination of nondischargeability pursuant to 11 U.S.C. sec 523(a)(2)(B), 523(a)(4) and 523(a)(6)

fr. 5/20/20; 6/17/20; 7/29/20; 9/25/20

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Michael Uzan

Represented By
Mark T Jessee

Defendant(s):

Daniel Michael Uzan

Pro Se

Plaintiff(s):

Jason Mitchell

Represented By
Stella A Havkin

JHM Ventures, a California

Represented By
Stella A Havkin

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

10:30 AM

1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan

Chapter 11

#1.00 Application for payment of final fees and/or expenses (11 U.S.C. § 330) for Sheila Esmaili, Debtor's Attorney, Period: 8/22/2017 to 10/1/2020, Fee: \$69,545.00, Expenses: \$679.15.

Docket 184

Tentative Ruling:

Law Offices of Sheila Esmaili ("Applicant"), counsel to the debtors and debtors-in-possession, approve fees in the amount of \$69,545.00 and reimbursement of expenses in the amount of \$679.15, pursuant to 11 U.S.C. § 330, for the period between August 22, 2017 through October 1, 2020, 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):

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 22, 2020

Hearing Room 301

10:30 AM

1:19-10448 Linda Moraga

Chapter 7

#2.00 First Interim fee application of Chapter 7 Trustee for approval of compensation and reimbursement of expenses
Period: 2/27/2019 to 9/28/2020, Fee: \$44,750.00, Expenses: \$996.62

Docket 78

Tentative Ruling:

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$44,750.00 and reimbursement of expenses of \$996.62 for the period covering February 27, 2019 through September 28, 2020, pursuant to 11 U.S.C. § 331, on an interim basis. The chapter 7 trustee may collect 100% of the approved fees and 100% of the approved 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 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):

Linda Moraga

Represented By
Daniel King

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, October 22, 2020

Hearing Room 301

10:30 AM

1:19-10448 Linda Moraga

Chapter 7

#3.00 Application for payment of interim (11 U.S.C. § 331) fees and expenses for Levene Neale, Bender, Yoo & Brill LLP, Trustee's Attorney, Period: 5/1/2019 to 8/31/2020, Fee: \$109,348.00, Expenses: \$2,472.07

Docket 80

Tentative Ruling:

Levene, Neale, Bender, Yoo & Brill LLP (“LNBYB”), counsel to chapter 7 trustee – approve fees of \$32,804.40 and reimbursement of expenses of \$2,472.07 for the period covering May 1, 2019 through August 31, 2020, pursuant to 11 U.S.C. § 331, on an interim basis. LNBYB may collect 100% of the approved fees and 100% of the approved expenses at this time.

At this time, the Court is not *disapproving* any of the fees billed - the Court will evaluate approval of all fees for which payment is sought at the time of the final report, when the Court can properly apply the pertinent factors.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by LNBYB is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and LNBYB will be so notified.

Party Information

Debtor(s):

Linda Moraga

Represented By
Daniel King

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, October 22, 2020

Hearing Room 301

1:00 PM

1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan

Chapter 11

#4.00 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; 10/3/19; 4/16/20;

Docket 1

Tentative Ruling:

Continue to **1:00 p.m. on April 22, 2021**. On or before **April 8, 2021**, 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 22, 2020 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 22, 2020

Hearing Room 301

1:00 PM

1:18-11729 Richard Philip Dages

Chapter 7

#5.00 Order to show cause why debtor's counsel should not be ordered to disgorge fees

fr. 3/12/20; 4/30/20

Docket 136

Tentative Ruling:

The Court will continue this hearing to **1:00 p.m. on March 18, 2021**, to assess if disgorgement is required to equalize the distribution to the chapter 11 examiner, and to determine if there are sufficient funds to pay chapter 7 administrative expenses.

Appearances on October 22, 2020 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, October 22, 2020

Hearing Room 301

1:00 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#6.00 Status conference re: chapter 11 case
fr. 3/19/20; 4/2/20, 9/10/20; 9/17/20

Docket 1

Tentative Ruling:

The Court will set a hearing on the adequacy of the debtor's disclosure statement [doc. 60] at **1:00 p.m. on Thursday, December 10, 2020.**

In accordance with Local Bankruptcy Rule 3017-1, **no later than Thursday, October 29, 2020**, 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, which is 14 days prior to the hearing.

The Court will continue this status conference to **Thursday, December 10, 2020 at 1:00 p.m.**

The debtor in possession must file a status report regarding its progress toward confirming a chapter 11 plan, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **November 25, 2020**. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order.

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:00 PM

1:20-11047 4433 Florin Road, LLC

Chapter 11

#7.00 Status conference re: chapter 11 case
fr. 8/13/20;

Docket 1

***** VACATED *** REASON: Order of dismissal entered 8/31/20.[Dkt.80]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

4433 Florin Road, LLC

Represented By
Douglas M Neistat
Jeremy H Rothstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:00 PM

1:20-11048 7171 Bowling Drive, LLC

Chapter 11

#8.00 Status conference re: chapter 11 case

fr. 8/13/20

Docket 1

***** VACATED *** REASON: Order of dismissal entered 8/31/20.[Dkt. 69]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

7171 Bowling Drive, LLC

Represented By
Douglas M Neistat
Jeremy H Rothstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#9.00 Order to show cause re: dismissal with a 180-day bar,
annulment of the automatic stay, and disgorgement

fr. 9/10/20

Docket 3

Tentative Ruling:

The Court will set a hearing on the alleged debtor's motion to dismiss this case at **1:00 p.m. on November 19, 2020**. The alleged debtor must file and serve notice of the hearing on all interested parties. The Court will continue this hearing to the same time and date.

Appearances on October 22, 2020 are excused.

Party Information

Debtor(s):

Mayallpostan LLC

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#10.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on November 19, 2020.**

Appearances on October 22, 2020 are excused.

Party Information

Debtor(s):

Mayallpostan LLC

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:00 PM

1:20-11653 Altra Mortgage Capital LLC

Chapter 11

#11.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

When does the debtor intend to file motions to reject unexpired contracts and leases?

Is the debtor currently involved in any pending litigation?

Does the debtor contemplate that it will seek to employ any other professionals, in addition to its bankruptcy counsel?

Deadline to file proof of claim ("Bar Date"): **December 31, 2020.**

Deadline to mail notice of Bar Date: **October 30, 2020.**

The debtor must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor and/or debtor in possession to file proposed plan and related disclosure statement: **May 14, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on June 3, 2021.**

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:00 PM

CONT... Altra Mortgage Capital LLC

Chapter 11

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):

Altra Mortgage Capital LLC

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

1:10-17214 Darin Davis

Chapter 7

#12.00 Darin Davis' Motion for Attorney's Fees and Costs Incurred to Defend Asphalt Professionals, Inc.'s ("API") Appeal to the 9th Circuit Court of Appeals of This Court's Order Sustaining Objection to Proofs of Claim

Docket 457

Tentative Ruling:

I. BACKGROUND

On June 15, 2020, Darin Davis ("Debtor") filed a voluntary chapter 7 petition. After the Court entered an order sustaining Debtor's objection to the claim (the "Claims Order") filed by Asphalt Professionals, Inc. ("API"), Debtor moved for an award of attorneys' fees [doc. 303]. On October 28, 2019, the Court entered an order granting the request for fees (the "Fee Order") [doc. 260]. API appealed both the Claims Order and the Fee Order.

On June 24, 2020, Debtor filed a motion requesting fees and costs incurred defending API's appeal of the Claims Order before the Ninth Circuit Court of Appeals (the "First Motion") [doc. 457]. On June 25, 2020, Debtor filed another motion requesting attorneys' fees and costs incurred defending an appeal of the Fee Order before the Bankruptcy Appellate Panel of the Ninth Circuit (the "Second Motion") [doc. 459]. API opposes both the First Motion and the Second Motion (the "Oppositions") [docs. 471, 472], arguing that: (A) certain portions of briefs filed by Debtor are duplicative of arguments made in prior briefs filed by Debtor; (B) some requested fees are excessive; and (C) Debtor did not agree to stay litigation of his prior attorneys' fees motions and, as a result, did not mitigate the amount of attorneys' fees or costs incurred.

II. ANALYSIS

A. General Lodestar Standard

Movants bear the burden of proving that the fees sought are reasonable. *Center for*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

CONT...

Darin Davis

Chapter 7

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 Corp. v. Nat'l Farm Fin. Corp.*, 2015 WL 11652518, at *4 (C.D. Cal. May 19, 2015).

B. API's Arguments Regarding Excessive and/or Duplicate Billing

In the Oppositions, API asserts that the requested fees should be reduced by the same percentage as the amount of duplicative lines in Debtor's briefs. However, API sets forth no legal authority that provides for this method of reduction. In fact, while courts may reduce fees on the basis that they are "*unnecessarily duplicative*," courts must "articulate[] [their] reasoning with... specificity." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112-13 (9th Cir. 2008). As explained by the *Moreno* court—

The court may reduce the number of hours awarded because the lawyer performed unnecessarily duplicative work, but determining whether work is unnecessarily duplicative is no easy task. When a case goes on for many years, a lot of legal work product will grow stale; a competent lawyer won't rely entirely on last year's, or even last month's, research: Cases are decided; statutes are enacted; regulations are promulgated and amended. A lawyer also needs to get up to speed with the research previously performed. All this is duplication, of course, but it's *necessary* duplication; it is inherent in the process of litigating over time. Here, there was a previous appeal (of the district court's grant of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

CONT...

Darin Davis

Chapter 7

summary judgment) which would have added to the delay and rendered much of the research stale. One certainly expects *some* degree of duplication as an inherent part of the process. There is no reason why the lawyer should perform this necessary work for free.

...

After all, duplication always happens when a task is started, stopped and then taken up again later. But necessary duplication—based on the vicissitudes of the litigation process—cannot be a legitimate basis for a fee reduction. It is only where the lawyer does *unnecessarily* duplicative work that the court may legitimately cut the hours.

Id.

As a preliminary matter, API does not cite specific billing entries as duplicative. Instead, API compares briefs filed by Debtor to note that the briefs contain duplicative portions. However, the billing entries attached to the Motions identify the amount of time spent on the subject briefs as a whole, not on specific parts of the briefs. As such, it is not evident that Debtor's counsel billed for the duplicative portions of the briefs, rather than the new research, analysis and argument set forth in those briefs.

In addition, API's proposed method of reduction does not provide room for a qualitative analysis of whether the requested fees and costs are *unnecessarily* duplicative, instead of merely duplicative. As noted by *Moreno*, duplicative work may be necessary, such as ensuring that legal research is not stale and updating briefs for argument before a different appellate body. Finally, API's calculations are not sound; API suggests calculating the percentage of duplicate lines in a single brief and then using that percentage to reduce API's *total* requested fees, not just the total fees incurred drafting the subject brief. Such a calculation would result in reducing *all* work performed by Debtor's counsel by a significant percentage, despite the fact that API does not dispute much of the other work for which counsel bills. Rather than arbitrarily reduce the requested fees by the percentage of duplicative lines, the Court will assess whether the requested fees and costs are reasonable under the lodestar method, discussed above.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

CONT...

Darin Davis

Chapter 7

C. The First Motion

As to the First Motion, Debtor's counsel incurred 7.7 hours drafting the responsive appellate brief, and 4.8 hours preparing for oral argument. This is a reasonable amount of time to spend on this type of work. First, while the brief at issue contains certain repetitive portions, the brief is not identical to prior briefs, such that Debtor's counsel likely spent time modifying the legal standards and argument for a new appellate body. In fact, had Debtor billed for *unnecessarily* duplicative work, Debtor likely would have billed much more for work on an appellate level brief. In addition, it is not unreasonable or excessive to spend 4.8 hours preparing for oral argument before an appellate court.

However, the Court will reduce the amount billed to prepare the reply [doc. 478] from the requested \$1,700 to \$850. The billed hours are slightly excessive compared to the amount of work reasonably required to prepare the subject reply.

In addition, the Court will not allow recovery of fees incurred analyzing or reviewing API's motion to dismiss the Court's Order to Show Cause (the "OSC"). The Court issued the OSC to obtain a response from API's counsel regarding whether counsel violated Federal Rule of Bankruptcy Procedure 9011. The Court did not request a response to the OSC from Debtor, and Debtor was not otherwise involved with the OSC. As such, any decision by the appellate court regarding this Court's OSC would not have any impact on Debtor's defense of this appeal. Consequently, the Court will strike the billing entries dated February 20, 2020, in the amount of \$212.50, and February 27, 2020, in the amount of \$42.50, for a total reduction of \$255.

D. The Second Motion

As to the Second Motion, Debtor's counsel again spent minimal time on legal research and drafting Debtor's responsive appellate brief. Debtor billed 1.3 hours for legal research, 11.7 hours on drafting the appellee's brief, 4.7 hours on preparing for oral argument and 1.70 hours to attend oral argument. The Court does not believe that this amount is excessive or unreasonable in light of the issues involved and the lengthy record on appeal.

API also argues that Debtor's counsel performed "minimal" work opposing API's

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

CONT...

Darin Davis

Chapter 7

motions to stay enforcement. Counsel billed a total of 16 hours to analyze and respond to two different motions for stay of enforcement filed by API. The amount spent on responding to API's multiple requests was neither unreasonable nor unnecessary. API's own filings called for a response by Debtor, and the total of 16 hours spent completing oppositions in response to two motions is not excessive.

As with the First Motion, the Court will reduce the amount billed to prepare the reply [doc. 479] from the requested \$1,700 to \$850. The billed 4 hours are slightly excessive compared to the amount of work reasonably required to prepare the subject reply. In addition, the Court will not allow recovery of fees incurred reviewing or analyzing API's motion to dismiss this Court's OSC. Debtor's counsel billed a total of 0.50 hours on such work; as a result, the Court will reduce the total request by \$212.50.

E. API's Argument Regarding Mitigation

API's final argument, in response to both the First Motion and the Second Motion, is that Debtor failed to "mitigate damages" by refusing to stay prosecution of Debtor's motions for attorneys' fees and costs. To the extent API's cited authority, which does not relate to attorneys' fees and costs, applies to this case, API has not demonstrated that Debtor failed to mitigate losses.

Pursuant to Federal Rule of Bankruptcy Procedure 7054(b)(2) and Federal Rule of Civil Procedure 54(d)(2)(B)(i), a motion for attorneys' fees must be filed no later than 14 days after the entry of judgment. To obtain attorneys' fees and costs, Debtor was required to file his motions by this deadline. After such filing, the onus was on API to move for stay of prosecution of the motions, or for stay of enforcement of the resulting orders. There is no case law, federal rule or local rule that places an obligation for prevailing parties to stay prosecution of their motions for attorneys' fees until resolution of an appeal. On the other hand, federal rules allow the opposing party to move for stay of motions and/or orders. API did not move for such relief. Thus, the Court will not punish Debtor by reducing his incurred fees for API's failure to move for a stay of the motions timely filed by Debtor.

III. CONCLUSION

The Court will reduce the total requested in the First Motion by \$1,105, for a total

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

CONT... Darin Davis

Chapter 7

allowed amount of \$12,742.50. The Court also will reduce the total requested in the Second Motion by \$1,062.50, for a total allowed amount of \$25,011.

Debtor must submit an order within seven (7) days.

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, October 22, 2020

Hearing Room 301

1:30 PM

1:10-17214 Darin Davis

Chapter 7

#13.00 Darin Davis' Motion for Attorney's Fees and Costs Incurred to Defend Asphalt Professionals, Inc.'s ("API") Appeal to the 9th Circuit Bankruptcy Appellate Panel of This Court's Order Granting Davis' Fees Incurred in Objecting to API's Proofs of Claim

Docket 459

Tentative Ruling:

See calendar no. 12.

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, October 22, 2020

Hearing Room 301

1:30 PM

1:17-11024 Kevin C. Polito and April Dawn Underwood

Chapter 11

#14.00 Motion by Reorganized Debtors for Entry of Discharge and
Entry of Final Decree

Docket 162

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):

Kevin C. Polito

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Joint Debtor(s):

April Dawn Underwood

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

1:19-11777 Winters-Schram & Associates

Chapter 7

#15.00 Motion for Order Authorizing Trustee to Compromise Controversy with 1501, LLC

Docket 62

Tentative Ruling:

I. BACKGROUND

On July 16, 2019, Winters-Schram & Associates ("Debtor") filed a voluntary chapter 7 petition. Nancy J. Zamora was appointed the chapter 7 trustee (the "Trustee").

On September 24, 2020, the Trustee filed the Motion [doc. 62], requesting approval of a compromise with 1501, LLC ("1501"). The Trustee did not attach the settlement agreement to the Motion. On October 1, 2020, the U.S. Trustee ("UST") filed an opposition to the Motion (the "Opposition") [doc. 67]. In the Opposition, the UST asserts that the Trustee must provide the settlement agreement for review by the Court and interested parties. The UST also contends that the Trustee has not discussed why the settlement agreement is subject to confidentiality under one of the exceptions set forth in 11 U.S.C. § 107.

On October 15, 2020, the Trustee filed a reply to the Opposition (the "Reply") [doc. 71]. To the Reply, the Trustee attached a lightly redacted copy of the settlement agreement. The Trustee contends that the parties have provided disclosure of all relevant terms of the settlement agreement, and only seek to protect from disclosure the involvement of certain individuals who are not parties to the settlement agreement. On October 16, 2020, 1501 filed a joinder to the Reply [doc. 72].

II. ANALYSIS

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

CONT... Winters-Schram & Associates
1986).

Chapter 7

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 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.* Pursuant to 11 U.S.C. § 107—

- (a) Except as provided in subsections (b) and (c) and subject to section 112, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.
- (b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—
 - (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
 - (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.
- (c)
 - (1) The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

CONT...

Winters-Schram & Associates

Chapter 7

finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

(A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.

(B) Other information contained in a paper described in subparagraph (A).

(2) Upon ex parte application demonstrating cause, the court shall provide access to information protected pursuant to paragraph (1) to an entity acting pursuant to the police or regulatory power of a domestic governmental unit.

(3) The United States trustee, bankruptcy administrator, trustee, and any auditor serving under section 586(f) of title 28—

(A) shall have full access to all information contained in any paper filed or submitted in a case under this title; and

(B) shall not disclose information specifically protected by the court under this title.

Here, the Trustee provided a "lightly redacted" copy of the settlement agreement. The Trustee contends that, with the information present in the redacted settlement agreement, the Court and interested parties may make an informed decision regarding the *A & C Properties* factors. However, contrary to the Trustee's assertion in the Reply, the parties did not merely redact the identities of individuals who are not parties to the agreement. In addition to redacting certain insurers' identities, the parties redacted, among other things: (A) the amount D.K. Brown Construction, Inc., a party to the settlement agreement, alleges that it is owed; (B) the identities of unknown released parties; (C) language regarding the release and discharge clause; (D) the amount to be paid by the unidentified insurers; (E) the amount which 1501 agreed to accept in resolution of its claims; (F) the amount D.K. Brown agreed to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

CONT... Winters-Schram & Associates

Chapter 7

accept in resolution of its claims; and (G) language regarding the authority of signers clause.

The Court and interested parties cannot fully evaluate the *A & C Properties* factors without the benefit of such pertinent missing information. For instance, how can parties assess the probability of success in litigation without knowing how much certain parties to the agreement allege they are owed? Or, how can parties determine if the agreement meets the paramount interest of creditors without knowing the amounts certain parties agreed to accept in resolution of their claims?

The problem is compounded by the Trustee's failure to identify a subsection of 11 U.S.C. § 107 under which the agreement is entitled to confidentiality. Thus, the Court is unable to weigh whether the parties have a statutory right to privacy. Without specifying a recognized right to privacy, the Court is bound by the general mandate of § 107(a), which provides that papers filed in bankruptcy cases "are public records and open to examination...." Consequently, unless the parties file an unredacted version of the settlement agreement or provide a statutory or otherwise legally recognized exception to § 107(a), the Court will deny the Motion.

III. CONCLUSION

Unless the parties agree to file an unredacted copy of the settlement agreement, the Court will deny the Motion. Alternatively, the Court may continue the hearing for the Trustee to provide legal authority regarding the asserted right to confidentiality.

Party Information

Debtor(s):

Winters-Schram & Associates

Represented By
Daniel H Reiss
Lindsey L Smith

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan
Jeremy Faith

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

1:20-10156 Shalva Tikva

Chapter 7

#16.00 Motion for Order Authorizing Trustee to Sell Real Property
Free and Clear of Liens, Subject to Overbid

Docket 89

Tentative Ruling:

I. BACKGROUND

On January 22, 2020, Shalva Tikva ("Debtor") filed a voluntary chapter 7 petition. Nancy J. Zamora was appointed the chapter 7 trustee (the "Trustee"). In his schedule A/B, Debtor identified a fee simple interest in real property located at 21801 San Miguel Street, Los Angeles, CA 91367 (the "Property").

On September 29, 2020, the Trustee filed the Motion [doc. 89], requesting authority to sell the Property to Seema Kwatra and Saaniya Kwatra for \$845,000. The Trustee intends to distribute the sale proceeds as follows: (A) first, to Amwest Funding Corp. ("Amwest") in the estimated amount of \$622,533.69; (B) second, to Jacqueline Stein in the reduced, agreed-upon amount of \$140,000; (C) third, to pay real property taxes owed to the County of Los Angeles in the estimated amount of \$29,508.24; (D) fourth, to pay closing costs in the amount of \$16,900; and (E) fifth, from a carve-out of Ms. Stein's security interest, approximately \$23,317.76 as a distribution to the estate. The Trustee notes that there is insufficient equity to pay a subordinated deed of trust in favor of Amos Varsha in the amount of \$30,000 (the "\$30,000 DOT").

On October 13, 2020, Mr. Varsha filed an untimely opposition to the Motion (the "Opposition") [doc. 93]. In the Opposition, Mr. Varsha contends that he did not execute a subordination agreement. In addition, Mr. Varsha asserts that he is the beneficiary of another deed of trust, securing a loan of \$40,000 (the "\$40,000 DOT"), which is senior to the deed of trust in favor of Ms. Stein. On October 15, 2020, the Trustee filed a reply to the Opposition (the "Reply") [doc. 95]. To the Reply, the Trustee attached two subordination agreements, signed by Mr. Varsha and notarized, which subordinate the \$30,000 DOT to the deeds of trust in favor of Amwest and Ms. Stein. Declaration of Nancy Hoffmeier Zamora, ¶¶ 6-7, Exhibits D-E. As to the \$40,000 DOT, the Trustee contends that stamped language on the \$40,000 DOT,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

CONT... Shalva Tikva

Chapter 7

related to a documentary transfer tax, provides that the \$40,000 DOT is a bonafide gift; as such, the Trustee states there is no evidence that Mr. Varsha is owed any debt related to the \$40,000 DOT.

II. ANALYSIS

Regarding the \$30,000 DOT, the Trustee has provided recorded subordination agreements, signed by Mr. Varsha and notarized, that demonstrate that the \$30,000 DOT was subordinated to Amwest's and Ms. Stein's security interests. For his part, other than stating in a conclusory fashion that he did not execute the subordination agreements, Mr. Varsha does not state why the subordination agreements are invalid; for instance, there is no argument that the signatures were forged or that the notarization was fraudulent. In light of the record, the subordination agreements appear to be valid, and the \$30,000 DOT should not take priority over the other deeds of trust.

As to the \$40,000 DOT, the Trustee mainly contends that the language regarding the \$40,000 DOT being a bonafide gift indicates there is no debt owed to Mr. Varsha. "A security interest cannot exist without an underlying obligation..." *All. Mortg. Co. v. Rothwell*, 10 Cal. 4th 1226, 1235, 900 P.2d 601, 606 (1995); *see also Coon v. Shry*, 209 Cal. 612, 615 (1930) ("There cannot be a mortgage if there is no debt or other obligation to be secured."); *and* 5 Miller & Starr, Cal. Real Estate (4th ed.) § 13:11 ("Because the security instrument is merely incident to and measured by the performance of the obligation, there can be no lien of a mortgage or trust deed without an underlying and enforceable debt or obligation.").

While the Trustee is correct that the \$40,000 DOT would be invalid if it does not secure an underlying debt, the \$40,000 DOT provides that it secures "[p]ayment of the indebtedness evidenced by one Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of Forty Thousand Dollars and 00/100 (\$40,000.00)..." Declaration of Amos Varsha, ¶ 5, Exhibit B. The stamped language regarding the "bonafide gift" appears to relate to a documentary transfer tax exemption. The Trustee has not provided authority regarding whether such stamped language would, without more, nullify the language in the deed of trust itself (which language references a promissory note and obligation to pay).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

1:30 PM

CONT...

Shalva Tikva

Chapter 7

Nevertheless, because Mr. Varsha did not timely file the Opposition, the Trustee has not been afforded an adequate opportunity to investigate the \$40,000 DOT. Further, the Trustee has not addressed which subsection of 11 U.S.C. § 363(f) applies to allow the Trustee to sell the Property free and clear of either the \$30,000 DOT or, assuming it is valid and/or enforceable, the \$40,000 DOT. As such, the Court will continue this hearing for the parties to provide supplemental briefing and evidence.

III. CONCLUSION

The Court will continue this hearing to **1:30 p.m. on November 19, 2020**. No later than **November 5, 2020**, the parties must file and serve supplemental briefs discussing whether: (A) the \$40,000 DOT is valid and/or enforceable (and, as to Mr. Varsha, providing evidence of the underlying debt, such as a promissory note); (B) the Trustee may sell the Property free and clear of either the \$30,000 DOT or the \$40,000 DOT under 11 U.S.C. § 363(f); and (C) in light of these issues and assuming the sale moves forward, if the Trustee can guarantee that there will be funds left over for distribution to the Internal Revenue Service.

No later than **November 12, 2020**, the parties may file and serve briefs responding to the opposing party's supplemental briefs.

Party Information

Debtor(s):

Shalva Tikva

Represented By
Michael R Totaro

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, October 22, 2020

Hearing Room 301

1:30 PM

1:20-11134 Helping Others International, LLC

Chapter 11

#17.00 Trustee's Motion to compel entry into and inspection of real property
fr; 9/17/20; 9/25/20

Docket 60

***** VACATED *** REASON: Voluntary dismissal of motion filed 10/13/20**

Tentative Ruling:

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#18.00 Debtor's Motion for entry of an order: (A) Authorizing Sale of Debtors Real Property Located At 13854 Albers Street, Sherman Oaks, California 91401 [APN 2247- 013-001], Free And Clear Of Liens, Claims, Encumbrances and Interests; (B) Approving Overbid Procedures; And (C) Granting Related Relief

Docket 226

Tentative Ruling:

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11 petition. In its schedule A/B, Debtor scheduled a fee simple interest in real property located at 13854 Albers Street, Sherman Oaks, CA 91401 (the "Property").

On October 1, 2020, Debtor filed a motion to sell the Property (the "Motion") [doc. 226], requesting authority to sell the Property. On October 7, 2020, the U.S. Trustee (the "UST") filed a limited objection to the Motion (the "UST Objection") [doc. 235]. The UST objects to Debtor's request to pay \$21,517 to LDI Ventures, LLC ("LDI") out of escrow for maintenance and repair expenses of the Property. The UST asserts that repayment of such debt is governed by 11 U.S.C. § 503(b)(1), as an administrative expense, and LDI should submit a proof of claim and seek reimbursement under that statute rather than be paid through escrow. The UST does not otherwise object to sale of the Property.

On October 8, 2020, Michael Leizerovitz and Sensible Consulting Management, Inc. (the "Leizerovitz Parties") filed a response to the Motion (the "Leizerovitz Response") [doc. 236]. The Leizerovitz Parties do not object to sale of the Property, but request additional information as to the following: (A) whether there is any relationship between the purchaser, on the one hand, and Debtor and/or its affiliates, on the other hand; (B) evidence of "haggling" over the purchase price; (C) an independent appraisal of the Property; (D) information regarding whether the sale price is the "highest" or "best" of the offers received by Debtor; and (E) information about whether there will be seller financing and, if so, more information about the terms.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

The Leizerovitz Parties also do not understand why Debtor wants to "pre-qualify" potential overbidders prior to the hearing on the Motion.

On October 9, 2020, The Sands Law Group, APLC ("Sands Law") filed a response to the Motion (the "Sands Law Response") [doc. 240]. Sands Law asserts that the Court should reconsider his opposition to the application to employ the real estate brokers involved with this sale. Sands Law also contends, without any evidence, that the purchaser is a "strawman" for another entity. However, Sands Law concludes by saying he neither endorses nor objects to the sale, and footnotes that he will not be appearing at the hearing. The Sands Law Response is not supported by a declaration.

On October 15, 2020, Debtor filed a reply to the Leizerovitz Response and the Sands Law Response (the "Reply") [doc. 242], with an attached declaration by one of the real estate brokers. Subsequently, Debtor also filed a declaration by the proposed purchaser of the Property (the "Declaration") [doc. 243]. However, Debtor has not responded to the UST Objection.

II. ANALYSIS

The Reply and the Declaration address most of the concerns raised by the Leizerovitz Parties. Regarding the Leizerovitz Parties' concerns about the overbid procedures, the Leizerovitz Parties have not provided any authority that a requirement to submit overbids three days before the hearing is so unreasonable as to chill bidding. The overbid procedures set forth in the Motion appear to be standard, and not so harsh as to stifle possible overbidding on the Property.

The Leizerovitz Parties' request for an appraisal also is unnecessary. "Generally, ...the best way to determine the market value of property is to expose the property to the marketplace." *In re Mama's Original Foods, Inc.*, 234 B.R. 500, 504 (Bankr. C.D. Cal. 1999) (citing *Bank of America NT & SA v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 119 S.Ct. 1411, 1423, 143 L.Ed.2d 607 (1999)). Here, the declarations in support of the Motion and the Reply demonstrate that the Property has been marketed for approximately three months, and the purchase price reflects the highest offer received by the brokers. Given that the purchase price reflects the actual market value of the Property, the Leizerovitz Parties have not articulated why an appraisal would provide a more accurate valuation. Debtor has otherwise provided

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 22, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

additional information responsive to the concerns set forth in the Leizerovitz Response.

As to the Sands Law Objection, Sands Law repeats arguments already adjudicated by the Court in connection with Sands Law's opposition to the application to employ the real estate brokers. In addition, Sands Law has provided no evidence, such as in the form of a declaration, in support of its remaining assertions. Sands Law has not provided a sound reason to deny the Motion.

However, Debtor has not addressed the UST Objection. Because the UST does not object to the sale itself, the Court will approve the sale, with the exception that the Court will deny Debtor's request to pay LDI via escrow. Instead, Debtor may hold the subject funds until there is a Court order allowing payment of the funds under the appropriate standards.

III. CONCLUSION

The Court will grant the Motion, with the exception that the Court will deny the request to pay LDI through escrow. LDI may file and serve a properly noticed motion requesting payment of the funds under the appropriate legal standards.

Debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 27, 2020

Hearing Room 301

10:30 AM

1:20-10293 Lloyd Weintraub

Chapter 13

**#1.00 Debtor's motion for authority to purchase real estate
to reinvest homestead proceeds**

Docket 96

Party Information

Debtor(s):

Lloyd Weintraub

Represented By
Stephen L Burton

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, October 27, 2020

Hearing Room 301

10:30 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#2.00 Motion to extend deadlines

Docket 241

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, November 4, 2020

Hearing Room 301

9:30 AM

1:20-11286 Transpine, Inc.

Chapter 11

#0.10 Motion For Order Extending The Automatic Stay
to Non-Debtor Defendants To Litigation

fr. 10/14/20; 10/21/20

Docket 47

Tentative Ruling:

Deny.

Respondent must submit the order within seven (7) days.

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen
Paul M Kelley

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

1:20-11286 Transpine, Inc.

Chapter 11

#0.20 Order to Show Cause why the court should not grant relief from the automatic stay pursuant to 11 U.S.C. §§ 105(a) and 362(d)

fr. 10/21/20

Docket 53

Tentative Ruling:

For the reasons discussed below, pursuant to 11 U.S.C. §§ 105(a) and 362(d)(1), the Court will lift the automatic stay in order to allow Overland Direct, Inc. ("Overland") to proceed to judgment in state court litigation against Transpine, Inc. ("Debtor"), as well as other defendants, concerning, *inter alia*, whether Debtor's receipt of its primary asset, an equity interest in a residence, constitutes a fraudulent transfer.

I. BACKGROUND

The Court incorporates by reference its written decision (the "Remand Decision") [Adv. No. 1:20-ap-01074-VK, doc. 23] remanding the action removed by Debtor (the "State Court Action") to the Superior Court of California, for the County of Los Angeles (the "State Court").

On October 15, 2020, the Court entered an *Order Remanding Action to the Superior Court of California, County of Los Angeles* [Adversary Docket, doc. 24].

On October 15, 2020, the Court entered an *Order to Show Cause Why the Court Should Not Grant Relief from the Automatic Stay* (the "OSC") [doc. 53]. Debtor is one of several defendants in the State Court Action which concerns, among other things, whether Debtor's receipt of an interest in residential real property located at 4256 Tarzana Estates Drive, Tarzana, California 91356 (the "Tarzana Property") constitutes a fraudulent transfer. In the State Court Action, defaults of several of the defendants have been entered, and a stipulated judgment was entered against one defendant. The remaining active defendants are Debtor and insiders of Debtor, including Nisan Tepper, who is Debtor's CEO and sole equityholder, and two sons of Nisan Tepper.

The Tarzana Property is encumbered by a deed of trust. Previously, in the State Court

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT... **Transpine, Inc.**

Chapter 11

Action, the State Court held that this deed of trust constitutes a valid lien against the Tarzana Property.

In the OSC, the Court ordered Debtor to file a response by October 19, 2020, explaining why the Court should not lift the automatic stay sua sponte in order to allow the State Court to determine whether the Tarzana Property was fraudulently transferred to Debtor.

On October 19, 2020, Debtor filed a *Response to Show Cause Why the Court Should Not Grant Relief from the Automatic Stay* (the "Response") [doc. 57]. In the Response, Debtor argues that there is no "cause" pursuant to 11 U.S.C. § 362(d)(1) to support lifting the automatic stay, under the factors articulated by *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984).

II. DISCUSSION

Pursuant to 11 U.S.C. § 105(a):

- (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Pursuant to 11 U.S.C. § 362(d)(1):

- (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
 - (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

The decision whether or not to grant or deny stay relief is within the broad discretion of the bankruptcy court. *In re Kronemyer*, 405 B.R. 915, 919 (B.A.P. 9th Cir. 2009); *In re Plumberex Specialty Products, Inc.*, 311 B.R. 551, 557 (C.D. Cal. 2004).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT...

Transpine, Inc.

Chapter 11

"Section 105(a) has been interpreted as allowing a bankruptcy court to lift the automatic stay sua sponte to allow related litigation to proceed in another court." *In re Clark*, 2014 WL 5646640, at *9 (B.A.P. 9th Cir. 2014) (citing cases); *see also In re Bellucci*, 119 BR. 763, 778–79 (Bankr. E.D. Cal. 1990). In *In re Clark*, the Bankruptcy Appellate Panel for the Ninth Circuit concluded that a bankruptcy court may lift the automatic stay sua sponte and that there was "[no] abuse of discretion in the bankruptcy court's decision to lift the automatic stay of § 362 to allow the State Court Litigation to proceed in the California state courts" *Id.*

The bankruptcy court may modify or terminate the automatic stay "for cause" under § 362(d)(1). 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).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a nonbankruptcy 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT...

Transpine, Inc.

Chapter 11

economical determination of litigation for the parties.

- (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial.
- (12) The impact of the stay on the parties and the "balance of the hurt."

In re Curtis, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984) (citations omitted); *see also In re Sonnax Industries, Inc.*, 99 B.R. 591 (D. Vt. 1989), *aff'd*, 907 F.2d 1280 (2d Cir. 1990) (listing factors).

"Although the term 'cause' is not defined in the Code, courts in the Ninth Circuit have granted relief from the stay under § 362(d)(1) when necessary to permit pending litigation to be concluded in another forum if the non-bankruptcy suit involves multiple parties or is ready for trial." *Plumberex Specialty Products*, 311 B.R. at 556 (citing *Tucson Estates*, 912 F.2d at 1166). "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceeding to continue are considerations of judicial economy and the expertise of the state court, as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." *Kronemyer*, 405 B.R. at 921 (internal citations omitted); *see also In re American Spectrum Realty, Inc.*, 540 B.R. 730 (C.D. Cal. 2015) (finding "cause" to lift the automatic stay to allow a pending state court action to proceed).

When applied to the case, the following *Curtis* factors support relief from the automatic stay.

1. Whether the relief will result in a partial or complete resolution of the issues

Overland contends that the Tarzana Property was fraudulently transferred to Debtor; the State Court Action has been pending since 2017. Allowing the State Court Action to proceed in the State Court would allow timely resolution of the dispute between Overland and Debtor. In order for Debtor to reorganize effectively, the legitimacy of its retaining title to the Tarzana Property, or distributing any net proceeds arising from Debtor's sale of the Tarzana Property, must be established. The State Court Action will resolve that issue.

2. The lack of any connection with or interference with the bankruptcy law

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT... Transpine, Inc.

Chapter 11

The State Court Action concerns whether Debtor's receipt of an interest in the Tarzana Property constitutes a fraudulent transfer, and whether Debtor may retain its equity interest in the Tarzana Property. The State Court Action involves solely state law issues that are not dependent on bankruptcy law. *See In re A Partners, LLC*, 344 B.R. 114, 122 (E.D. Cal. 2006) (citing *First Federal Bank of California v. Cogar (In re Cogar)*, 210 B.R. 803, 809 (B.A.P. 9th Cir. 1997)(state law determines nature and extent of debtor's interest in property).

3. *Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties*

Debtor has not explained how creditors or interested parties would be prejudiced, if litigation proceeds in the State Court. As evidenced by Debtor's schedules and monthly operating report, the Tarzana Property, which is the Debtor's sole significant asset, is not producing any income. Lifting the automatic stay would not prejudice creditors, because the State Court is well equipped to address whether or not Debtor receipt of its interest in the Tarzana Property constitutes a fraudulent transfer. Moreover, the State Court already has been involved with this litigation, for years, and already has decided certain pertinent issues.

4. *The interest of judicial economy and the expeditious and economical determination of litigation for the parties*

The issue of whether Debtor's receipt of title to the Tarzana Property constitutes a fraudulent transfer is a purely state law issue that has been pending before the State Court since 2017. On December 1, 2020, the State Court is set to hear several motions, including motions to compel against other defendants (for which the State Court rendered a tentative decision, before Debtor removed the State Court Action to this Court) and to hold a trial setting conference. Lifting the automatic stay would minimize the duplication of litigation in two different forums over the same issues. Therefore, judicial economy favors lifting the stay.

5. *Whether the foreign proceedings have progressed to the point where the parties are prepared for trial*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT... **Transpine, Inc.**

Chapter 11

"[A] desire to permit an action to proceed to completion in another tribunal . . . contemplates the situation in which the debtor is a party to a prepetition action that has progressed to the point where it would be a waste of the parties' and the court's resources to begin anew in bankruptcy court." *Curtis*, 40 B.R. at 805 (internal citation and quotation marks omitted).

Here, although the parties are not prepared for trial in the State Court Action, the State Court will hold a trial setting conference on December 1, 2020. Before the litigation was removed to this Court (and subsequently remanded to the State Court), the State Court: (1) entered defaults; (2) decided the validity of the single deed of trust that encumbers the Tarzana Property; and (3) issued tentative decisions to grant motions to compel. At this point, it is far more efficient for the litigation to go forward in the State Court.

6. The impact of the stay on the parties and the "balance of the hurt"

Before Debtor can reorganize or distribute any net proceeds from a sale of the Tarzana Property, the issue of whether or not Debtor's receipt of title to that property constitutes a fraudulent transfer, which is based on state law, must be determined. Having that litigation proceed in the State Court, where it has been pending for several years, will not hurt Debtor, or any other parties. Rather, it will promote and expedite the determination of a critical issue for effectuating Debtor's reorganization.

III. CONCLUSION

The Court will lift the automatic stay in order for the State Court litigation to proceed to a final judgment regarding Debtor's interest in the Tarzana Property and whether or not Debtor's receipt of its interest in the Tarzana Property constitutes a fraudulent transfer.

The Court will prepare the order.

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen
Paul M Kelley

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

1:20-10840 Jess Richard Carmona, Jr and Jayleen Carmona

Chapter 7

#1.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC
VS
DEBTOR

Docket 31

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):

Jess Richard Carmona Jr

Represented By
Sanaz Sarah Bereliani

Joint Debtor(s):

Jayleen Carmona

Represented By
Sanaz Sarah Bereliani

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT... Jess Richard Carmona, Jr and Jayleen Carmona

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 4, 2020

Hearing Room 301

9:30 AM

1:15-12329 Rene Dashiell

Chapter 13

#2.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA
VS
DEBTOR

Docket 74

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):

Rene Dashiell

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

1:20-10971 Benjamin Marsh

Chapter 13

#3.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 46

*** VACATED *** REASON: Voluntary dismissal of motion filed 10/27/20
(doc# 50)

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Benjamin Marsh

Represented By
Natalya Vartapetova

Trustee(s):

Elizabeth (SV) 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 4, 2020

Hearing Room 301

9:30 AM

1:20-11769 Dashing Properties Management, Inc.

Chapter 11

#3.10 Motion for relief from stay [RP]

SO-CAL CAPITAL, INC.
VS
DEBTOR

Docket 16

Tentative Ruling:

I. BACKGROUND

On October 1, 2020, Dashing Properties Management, Inc. (the "Debtor") filed a voluntary chapter 11 petition. Reza Safaie is Debtor's President and sole equityholder [doc. 7, Corporate Ownership Statement; doc. 18, Statement of Financial Affairs, item 28].

A. SO-CAL Capital Inc.'s Deed of Trust and Debtor's Prepetition Default

Prior to filing its bankruptcy petition, on November 4, 2019, Debtor granted a deed of trust, encumbering a condominium located at 5135 Zelzah Avenue # 107, Encino, California 91316 (the "Zelzah Property"), to SO-CAL Capital, Inc. ("Movant") [*Motion for Relief from the Automatic Stay under 11 U.S.C. § 362* ("Stay Relief Motion"), doc. 16-1, Exh. B, Deed of Trust]. On November 5, Mr. Safaie, Debtor's President, executed the SO-CAL deed of trust ("SO-CAL DOT"). *Id.* On November 7, 2019, the SO-CAL DOT was recorded in the Los Angeles County Recorder's Office. *Id.*

The SO-CAL DOT secures a promissory note (the "Note") in the amount of \$297,500.00 [doc. 16-1, Exh. C, Promissory Note]. The Note provides that: (1) the loan term is 24 months; (2) the loan interest rate is 9.50%; (3) Debtor must make monthly payments in the amount of \$2,355.21; (4) the default rate is 19.50%; and (4) the full amount of the loan is due on December 1, 2021. *Id.*

In March 2020, the Zelzah Property's insurance was canceled based on non-payment [Stay Relief Motion, doc. 16, Declaration of Patrick Lacy, ¶ 26]. Debtor renewed its property insurance in May 2020 [*id.*, Exh. I]. On May 28, 2020, Movant notified Mr.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT... **Dashing Properties Management, Inc.**

Chapter 11

Safaie that the loan was in default based on two delinquent payments and that, unless the loan was made current, Movant would begin foreclosure proceedings [*id.*, Exh. J, email dated May 28, 2020, p. 104].

On June 3, 2020, a notice of default and election to sell under the SO-CAL DOT was recorded [*id.*, Exh. K]. On September 8, 2020, a notice of trustee's sale was recorded, setting a trustee's sale on October 2, 2020 [*id.*, Exh. L].

B. Debtor's Assets and Liabilities

On October 15, 2020, Debtor filed its schedules of assets and liabilities and its Statement of Financial Affairs [doc. 18]. In its Schedule A/B, Debtor lists its interest in the Zelzah Property. Debtor's Schedule G indicates that it has an unexpired lease with two tenants.

Based on Debtor's schedules, the Zelzah Property is encumbered by two deeds of trust: (1) a deed of trust to Far Ocean Management, LLC, securing a claim in the amount of \$210,000.00 and (2) the SO-CAL DOT, securing a claim in the principal amount of \$297,500.00 [doc. 18, Schedule D]. The other secured claims are property taxes owed to the Los Angeles County Tax Collector in the amount of \$4,718.19 and HOA dues owed to Zelzah Garden Homeowners in the amount of \$2,800.00. In Debtor's Schedule A/B, Debtor states that the Zelzah Property has a value of \$550,000.00 [doc. 18].

In its Schedule A/B, Debtor also lists a claim for damages, pertaining to flood damage sustained by the Zelzah Property, in the amount of \$85,000.00 against Zelzah Garden Homeowners Association and Travelers Insurance. *Id.*

Other than the two claims secured by the deeds of trusts against the Zelzah Property and other secured debt, Debtor has: (1) a non-priority unsecured debt payable to Fara Erami in the amount of \$80,000 and (2) a non-priority unsecured debt payable to Mr. Safaie, its President, in the amount of \$76,000 [doc. 18, Schedule E/F]. Mr. Safaie represents that he provided a loan to Debtor, following the flood damage sustained by the Zelzah Property, to pay for tenants' hotel accommodations and mold remediation [doc. 20, Declaration of Reza Safaie, ¶ 9].

According to its Statement of Financial Affairs, Debtor generated no revenue during 2019 [doc. 18, Statement of Financial Affairs].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

**CONT... Dashing Properties Management, Inc.
C. *The Stay Relief Motion***

Chapter 11

On October 14, 2020, Movant filed the Stay Relief Motion [doc. 16]. Movant seeks relief pursuant to 11 U.S.C. §§ 362(d)(1) and (4).

Under 11 U.S.C. § 362(d)(1), Movant contends that its interest in the Zelzah Property is not adequately protected because: (1) it is not protected by an adequate equity cushion and (2) the fair market value of the Zelzah Property is declining and payments have not been made to Movant to protect its interest against the declining value.

In the Stay Relief Motion, Movant states that the value of the equity cushion in the Zelzah Property, calculated by the value exceeding Movant's debt and other senior debt, is \$86,777.16 and that this represents 20.42% of the fair market value of the Zelzah Property.

Based on an appraisal report, conducted in October 2019 – for which the appraiser's signed declaration has not been provided, Movant contends that the Zelzah Property has a value of \$425,000.00 [doc. 16, Exh. D, Appraisal Report]. Movant also represents that its secured claim, as of the petition date, is in the amount of \$336,951.31.

Under 11 U.S.C. § 362(d)(4), Movant argues that Debtor filed its bankruptcy case in bad faith because: (1) Movant is one of few creditors listed in Debtor's schedules; (2) Debtor filed few documents with its bankruptcy petition; and (3) Debtor has not made payments to Movant since March 2020. Movant also contends that:

Reza Safaie, principal of the Debtor, is a serial bankruptcy filer with at least three personal bankruptcy filings and at least six other bankruptcy filings where Mr. Safaie was the principal of the debtor company. The case at hand is another instance that illustrates a pattern and practice of filing for bankruptcy to forestall foreclosure on real property owned by Mr. Safaie directly or through his nominee entities.

Doc. 16, Declaration of Douglas J. Harris, ¶ 2. Movant contends that Mr. Safaie's previous bankruptcy filings demonstrate a pattern of abusing the bankruptcy system.

On October 21, 2020, Debtor filed its opposition to the Stay Relief Motion [doc. 20], and on October 28, 2020, Movant filed a reply [doc. 29]. In its reply, Movant states

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT... **Dashing Properties Management, Inc.** **Chapter 11**

that the \$210,000.00 claim secured by the first deed of trust against the Zelzah Property, listed in Debtor's Schedule D [doc. 18], may have been paid-off [doc. 29, p. 2].

D. Bankruptcy Cases Filed by Mr. Safie and Affiliated Entities

1. The First Case

On June 11, 1997, Mr. Safaie filed a voluntary chapter 13 petition, commencing case no. 1:97-bk-18016-GM (the "First Case"). On July 28, 1997, because Mr. Safaie failed to make the required chapter 13 payments and failed to appear at the 341 meeting of creditors, the Court entered an order dismissing the First Case with a 180-day bar. First Case, doc. 26.

2. The Second Case

On February 22, 1999, Mr. Safaie filed a voluntary chapter 13 petition, commencing case no. 1:99-bk-12018-GM (the "Second Case"). In his Schedule A, Mr. Safaie listed an interest in real property located at 24508 Park Granada, Calabasas, California 91302. Second Case, doc. 11. On May 4, 1999, because Mr. Safaie failed to make the required chapter 13 payments, the Court entered an order dismissing the Second Case with a 180-day bar to refiling. Second Case, doc. 35.

3. The Third Case

On January 18, 2002, Mr. Safaie filed a voluntary 13 petition, commencing case no. 1:02-bk-10478-AG (the "Third Case"). Mr. Safaie did not list any real property in his Schedule A. Third Case, doc. 18. On February 15, 2002, Mr. Safaie filed an application for voluntary dismissal of his chapter 13 case. Third Case, doc. 38. On February 19, the Court entered an order granting Mr. Safaie's voluntary dismissal with a 180-day bar to refiling. Third Case, doc. 39.

4. The Fourth Case

On November 20, 2001, S.B.R.S. Inc., a California corporation, filed a voluntary chapter 7 petition, commencing case no. 1:01-bk-20812-KT (the "Fourth Case"). S.B.R.S. Inc. did not timely file its required schedules. Fourth Case, doc. 16. Accordingly, on January 18, 2002, the Court entered an order dismissing the Fourth

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT... Dashing Properties Management, Inc.

Chapter 11

Case. Fourth Case, doc. 21.

5. The Fifth Case

On February 14, 2012, SBRS, Inc., a California corporation ("SBRS"), filed a voluntary chapter 11 petition, commencing case no. 1:12-bk-11389-MT (the "Fifth Case"). [FN1] Mr. Safaie served as president of SBRS. Fifth Case, doc. 18. In its Schedule A, SBRS listed interests in three real properties located at: (1) 3442 Malaga Court, Calabasas, California 91302; (2) 5 San Mateo Way, Corona Del Mar, California 92652; and (3) 45 La Cerra Drive, Rancho Mirage, California 92270. Fifth Case, doc. 20. On December 26, 2012, because SBRS did not timely file its required monthly operating reports and statements, the United States Trustee filed a motion to dismiss or convert the Fifth Case. The Fifth Case, doc. 72. On February 20, 2013, the Court entered an order converting the Fifth Case to one under chapter 7. Fifth Case, doc. 111. During the Fifth Case, the chapter 7 trustee sold the real property located at 5 San Mateo Way and abandoned the other two real properties. Fifth Case, *Trustee's Final Report*, doc. 239. On November 20, 2014, the Fifth Case was closed. Fifth Case, doc. 252.

6. The Sixth Case

On November 13, 2012, Desert Hot Spring Ranch, Inc. ("Desert Hot Spring") filed a voluntary chapter 11 petition, commencing case no. 1:12-bk-20005-AA (the "Sixth Case"). Mr. Safaie served as president of Desert Hot Spring. Sixth Case, *Declaration of Reza Safaie Regarding Case Commencement Deficiency Notice*, doc. 15. In the Sixth Case, Desert Hot Spring did not file schedules or a statement of financial affairs. On November 19, 2012, the United States Trustee filed a motion to dismiss or convert the case. Sixth Case, doc. 7. On November 30, 2012, Desert Hot Spring filed a notice of non-opposition requesting that its case be dismissed without a bar to refiling. Sixth Case, doc. 16. On December 10, 2012, the Court entered an order dismissing the Sixth Case. Sixth Case, doc. 17.

7. The Seventh Case

On December 28, 2012, Desert Hot Spring filed a voluntary chapter 7 petition, commencing case no. 1:12-bk-21067-VK (the "Seventh Case"). In its Schedule A, Desert Hot Spring listed an interest in real property located at 4369 Willow Glen Street, Calabasas, California 91302. Seventh Case, doc. 11. On May 21, 2013, after the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT... **Dashing Properties Management, Inc.**

Chapter 11

chapter 7 trustee filed a motion to sell the real property located at 4369 Willow Glen Street, Desert Hot Spring filed a motion to convert the Seventh Case to one under chapter 11. Seventh Case, doc. 49. On May 29, 2013, the chapter 7 trustee filed an opposition to the motion to convert, arguing that Desert Hot Spring had acted in bad faith and Mr. Safaie had repeatedly abused the bankruptcy system. Seventh Case, doc. 52. On July 17, 2013, the Court denied Desert Hot Spring's motion to convert. Seventh Case, doc. 89. On February 21, 2014, after the Court granted the chapter 7 trustee's motion to sell the real property located at 4369 Willow Glen Street, and the Trustee's Final Report was filed, the Seventh Case was closed. Seventh Case, docs. 116, 126.

8. The Eighth Case

On February 10, 2015, SBRS filed a voluntary chapter 11 petition, commencing its third bankruptcy case, case no. 8:15-bk-10657-ES (the "Eighth Case"). Mr. Safaie represented that he was the property manager for the real properties owed by SBRS. Eighth Case, *Declaration of Reza Safaie filed in support of Debtor's Motion for Order Authorizing the Interim Use of Cash Collateral*, doc. 22. In its Schedule A, SBRS listed an interest in two real properties located at: (1) 3442 Malaga Court, Calabasas, California 91302 and (2) 45 La Cerra Drive, Rancho Mirage, California 92270. Eighth Case, doc. 1. On August 10, 2015, because, among other things, SBRS failed to file its disclosure statement and plan by the Court-set deadline, failed to make post-petition mortgage payments and had no ability to reorganize, the United States Trustee filed a motion to dismiss or convert the case. Eighth Case, doc. 60. On September 23, 2015, the Court entered an order granting the United States Trustee's motion to dismiss. Eighth Case, doc. 71.

9. The Ninth Case

On November 16, 2017, S.B.R.S., Inc. ("S.B.R.S.") filed a voluntary chapter 11 petition, commencing case no. 1:17-bk-13063-MT (the "Ninth Case"). In its original Schedule A/B, S.B.R.S. listed interests in real property located at 3442 Malaga Court, Calabasas, California 91302 and real property located at 45 La Cerra Drive, Rancho Mirage, CA 92270. Ninth Case, doc. 18. Subsequently, S.B.R.S. filed an amended Schedule A/B, which listed only an interest in the real property located at 3442 Malaga Court. Ninth Case, doc. 41. On May 2, 2018, regarding the real property located at 3442 Malaga Court, the Court entered an order granting relief from the automatic stay under 11 U.S.C. §§ 362(d)(1), (2) and (4). Ninth Case, doc. 70. On May 16, 2018, the United

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT... **Dashing Properties Management, Inc.**

Chapter 11

States Trustee filed a motion to dismiss or convert the Ninth Case. Ninth Case, doc. 75. On July 15, 2018, based on that motion, the Court entered an order dismissing the Ninth Case. Ninth Case, doc. 80.

II. DISCUSSION

11 U.S.C. §§ 362(d)(1) and (4) provide, in pertinent part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

...

(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.

11 U.S.C. §§ 362(d)(1) and (4) (emphasis added).

A decision to lift the automatic stay is within the discretion of the bankruptcy court. *In re MacDonald*, 755 F.2d 715, 716 (9th Cir. 1985). "Cause" exists when, among other things, there is a lack of adequate protection. *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). An equity cushion may provide adequate protection. *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "The Ninth Circuit has held that a 20% equity cushion provides adequate protection." *In re Capitol Station 65, LLC*, 2018 WL 333863, at *11 (Bankr. E.D. Cal. Jan. 8, 2018) (citing *Mellor*, 734 F.2d at 1401).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT... **Dashing Properties Management, Inc.**

Chapter 11

Lack of adequate protection is not the only factor to consider in determining whether there is "cause" to grant relief from the automatic stay. "Many courts have found a debtor's bad faith, or lack of good faith, to constitute 'cause' for lifting the stay to permit creditors to proceed in rem against a debtor's property." *In re Mantachie Apartment Homes, LLC*, 488 B.R. 325, 331 (Bankr. N.D. Miss. 2013) (citing *Matter of Little Creek Development Co.*, 779 F.2d 1068, 1072 (5th Cir. 1986); see also *In re Trust*, 526 B.R. 668, 680 (N.D. Tex. 2015) ("Although not expressly listed in § 362(d)(1), it is well established that a debtor's lack of good faith may constitute 'cause' for relief from the automatic stay.")).

Regarding § 362(d)(1), at this time, Movant has not demonstrated that the Zelzah Property is declining in value. Moreover, there is conflicting evidence regarding the value of the Zelzah Property. Movant relies on an appraisal report that describes the value of the Zelzah Property, as of approximately one year ago, as \$425,000.00. In contrast, Debtor has submitted: (1) Mr. Safie's declaration, in which he states that the Zelzah Property has a fair market value of approximately \$550,000.000 [doc. 20] ; and (2) the declaration of a licensed real estate salesperson, Benjamin Toufer, who opines that the purchase price of the Zelzah Property "should be in the range of \$550,000.00" [doc. 21, ¶ 3]. Notably, neither of these opinions is supported by a specific, relevant comparable sales analysis.

Mr. Safie represents that Debtor has identified a potential buyer to purchase the Zelzah Property for \$520,000.00 [doc. 20]. However, Debtor provides no other evidence that it received any such offer, or entered into a contract to sell the Zelzah Property. Similarly, Debtor does not identify the alleged, potential buyer or provide any evidence of such a buyer's financial ability to consummate a purchase. Finally, although Debtor represents that it has entered into a 90-day listing agreement for the sale of the Zelzah Property, at a listing price of \$549,000.00 [doc. 20, Exh. B], Debtor has not obtained, nor sought, Court approval of that listing agreement or the employment of the pertinent broker.

Based on the conflicting, and problematic, evidence of the Zelzah Property's current fair market value, the Court may schedule an evidentiary hearing to make that determination.

Regarding whether Debtor's case was filed in bad faith, such that there would be cause to grant relief from stay, although Debtor's principal and affiliates of Debtor have

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

9:30 AM

CONT... Dashing Properties Management, Inc. Chapter 11

frequently filed bankruptcy cases, and apparently have not confirmed a chapter 11 plan in any of those cases, it is unclear whether Debtor has filed this case in bad faith. Debtor has provided explanations for its loan payment defaults, such as flooding and water damage to the Zelzah Property, resulting in the need for mold remediation, and the current pandemic's impact on Debtor's ability to generate income from leasing the Zelzah Property [doc. 20, Declaration of Reza Safie, ¶¶ 9, 13, 15]. These explanations suggest that Debtor did not file this case in bad faith.

Regarding the application of § 362(d)(4), it does not appear that an interest in the Zelzah Property has been transferred without Movant's consent, or that there have been multiple bankruptcy filings regarding the Zelzah Property. Mr. Safaie's previous bankruptcy filings, and those of affiliated entities, involved different real properties. Consequently, at this time, the Court will not grant relief from the automatic stay based on § 362(d)(4).

FOOTNOTES

FN1. SBRS, Inc., a California corporation, and S.B.R.S. Inc., a California corporation, appear to be separate, affiliated entities. Mr. Safaie was the President and sole shareholder of each of these entities. Declaration of Reza Safaie, submitted with *Response of Debtor, SBRS, Inc. to Order to Show Cause Why Case Should Not Be Dismissed*, filed in the Fifth Case [1:12-bk-11389-MT], doc. 16.

Party Information

Debtor(s):

Dashing Properties Management,

Represented By
Raymond H. Aver

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01156 Goldman v. Kumar et al

- #4.00** Pretrial conference re: complaint for:
1. Avoidance of voidable and fraudulent transfers; and
2. Recovery of avoided transfers for the benefit of the bankruptcy estate
fr. 3/4/20; 3/25/20; 08/26/20;

Docket 1

*** VACATED *** REASON: Order dismissing adversary entered 10/7/20
[doc. 36].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

Dr. Kain Kumar

Pro Se

Sharmini Kumar

Pro Se

BWC Associates, Inc.

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

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, November 4, 2020

Hearing Room 301

1:30 PM

CONT... Exotic Euro Cars, Inc.

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

1:18-11342 Victory Entertainment Inc

Chapter 7

Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

- #5.00** Status conference re: complaint for:
- 1) Avoidance and recovery of fraudulent transfers pursuant to Title 11 U.S.C. sec 544(a) and (b), 548 and 550; Title 26 U.S.C. sec 6502(a) and Cal. Civ. Code sec 3439.04 3439.07 and 3439.09;
 - 2) Avoidance and recovery of preferential transfer pursuant to Title 11 U.S.C. sec 547 and 550;
 - 3) Preservation of avoided transfers pursuant to Title 11 U.S.c sec 551;
 - 4) Declaratory relief re alter ego liability; and
 - 5) Turnover of property

fr. 7/29/20; 08/26/20;

Docket 1

Tentative Ruling:

The Court will set a hearing on the defendants' motion to dismiss [doc. 20] at **2:30 p.m. on December 9, 2020**. The defendants must file and serve notice of the hearing no later than **November 18, 2020**. The Court also will continue this status conference to **2:30 p.m. on December 9, 2020**.

Appearances on November 4, 2020 are excused.

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By
George J Paukert
Lewis R Landau

Defendant(s):

HALA Enterprises, LLC

Pro Se

Agassi Halajyan, an Individual

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

CONT... Victory Entertainment Inc

Chapter 7

Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Elissa Miller
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

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

#6.00 Pretrial conference re: complaint to determine dischargeability of debt under 11 U.S.C. sec 523(a)(2), (4), (6)

fr. 4/3/19; 10/2/19; 2/19/20(stip); 4/29/20(stip); 8/5/20(stip)

Docket 1

***** VACATED *** REASON: Continued by Stip to 2/3/21 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

Gamalat Youssef Khalil

Pro Se

Joint Debtor(s):

Gamalat 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, November 4, 2020

Hearing Room 301

1:30 PM

CONT... Remon Ramzy Hanna

Chapter 7

Randy B Soref

Raied Francis

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, November 4, 2020

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 second amended complaint for:
- (1) Avoidance of Transfer in Fraud of Creditors [Cal Civ. Code sections 3439, *et seq.*];
 - (2) Fraud & Deceit [Cal. Civ. Code sections 1572-1573, 1709-1710];
 - (3) Unlawful Retaliation [Cal. Lab. Code section 98.6];
 - (4) Unlawful Retaliation [Cal. Lab. Code section 1102.5];
 - (5) Failure to Maintain and Timely Produce Personnel Records [Cal. Lab. Code section 1198.5(k)];
 - (6) Failure to Maintain and Timely Produce Wage and Hour Records [Cal. Lab. Code, section 226(f)];
 - (7) Wrongful Constructive Termination in Violation of Public Policy;
 - (8) Unlawful Deductions from Wages [Cal. Lab. Code sections 216, 221];
 - (9) Breach of Written Contract;
 - (10) Conversion;
 - (11) Reimbursement of Business Expenses [Cal. Lab. Code section 2802];
 - (12) Waiting Time Penalties [Cal. Lab. Code section 203]; and
 - (13) Unfair Business Practices [Cal. Bus. & Prof. Code sections 17200, *et seq.*]
- fr. 9/4/19; 10/2/19; 10/16/19; 11/13/19; 2/5/20; 2/26/20;
3/4/20; 3/18/20; 4/1/20; 4/8/20; 5/6/20; 6/3/20; 7/29/20

Docket 62

Tentative Ruling:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott

Chapter 13

The Court will continue this status conference to **1:30 p.m. on January 20, 2020**, to assess the outcome of the plaintiff's motion to dismiss the debtor's bankruptcy case.

Appearances on November 4, 2020 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, November 4, 2020

Hearing Room 301

1:30 PM

1:19-11569 Guadalupe Villegas

Chapter 7

Adv#: 1:20-01072 Zamora, Chapter 7 Trustee v. Villegas et al

- #8.00** Status conference re: complaint for:
(1) Avoidance of Actual Fraudulent Transfer [11 U.S.C. § 544(b)(1);
Cal. Civ. Code §§ 3439.04, 3439.07, 3439.09];
(2) Avoidance of Constructive Fraudulent Transfer [11 U.S.C. § 544(b)(1);
Cal. Civ. Code §§ 3439.05, 3439.07, 3439.09]; and
(3) Recovery of Avoided Transfer [11 U.S.C. § 550]

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on November 25, 2020**.
No later than **November 11, 2020**, the parties must file and serve a joint status report.

Appearances on November 4, 2020 are excused.

Party Information

Debtor(s):

Guadalupe Villegas	Pro Se
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Defendant(s):

Antonio Villegas	Pro Se
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Gabriella Zapata	Pro Se
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Fabian Villegas	Pro Se
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Plaintiff(s):

Nancy J. Zamora, Chapter 7 Trustee	Represented By Jeremy Faith Anna Landa
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Trustee(s):

Nancy J Zamora (TR)	Represented By
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

CONT...

Guadalupe Villegas

Noreen A Madoyan

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

1:19-11921 Breann Castillo

Chapter 7

Adv#: 1:20-01058 Campolong v. Castillo

#9.00 Status conference re: complaint to determine dischargeability of debt pursuant to code sections 523(a)(2), (a)(4), (a)(6) and also to revoke discharge per code section 727(d)(1)

fr. 7/29/20; 8/26/20; 9/16/20

Docket 1

***** VACATED *** REASON: Order dismissing adversary entered 10/19/20 [doc. 30].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Breann Castillo

Represented By
David S Hagen

Defendant(s):

Breann Castillo

Pro Se

Plaintiff(s):

Andrew Campolong

Represented By
Michael F Chekian

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 4, 2020

Hearing Room 301

1:30 PM

1:19-13078 Gerie G Annan

Chapter 7

Adv#: 1:20-01032 Tenggren v. Annan

#10.00 Pretrial conference re: complaint objecting to debtors discharge to section 727 of the bankruptcy code

fr. 5/13/20; 5/20/20

Docket 1

Tentative Ruling:

Contrary to the Court's scheduling order [doc. 10], the plaintiff did not timely file a joint pretrial stipulation or unilateral pretrial statement. The plaintiff also has not filed any other updates regarding the status of this adversary proceeding. For instance, in the Court's scheduling order, the Court ordered the parties to complete one day of mediation by September 18, 2020. The parties have not indicated if they timely completed mediation.

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):

Gerie G Annan

Represented By
Michael D Luppi

Defendant(s):

Gerie G Annan

Pro Se

Joint Debtor(s):

Bennett Annan

Represented By
Michael D Luppi

Plaintiff(s):

Nancy S Tenggren

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

CONT...

Gerie G Annan

Andrew J Spielberger

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

1:20-10276 Hormoz Ramy

Chapter 7

Adv#: 1:20-01077 Seror v. Ramy

#11.00 Status conference re: complaint to deny debtor's discharge
11 U.S.C. § 727(a)(2), 11 U.S.C. § 727(a)(3), 11 U.S.C. § 727(a)((4)A)
and 11 U.S.C. § 727(a)(5)

Docket 1

Tentative Ruling:

Given that this is an action under 11 U.S.C. § 727, the Court does not need consent from the parties to enter final judgment. *See In re Dung Anh Phan*, 607 B.R. 598, 605 (Bankr. S.D. Tex. 2019) (holding that bankruptcy courts have constitutional authority to enter final judgments in actions under 11 U.S.C. § 727).

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: 2/26/21.

Deadline to complete one day of mediation: 3/15/21.

Deadline to file pretrial motions: 3/31/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 4/21/21.

Pretrial: 5/5/21 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after this

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

CONT... **Hormoz Ramy**

Chapter 7

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):

Hormoz Ramy

Represented By
Siamak E Nehoray

Defendant(s):

Hormoz Ramy

Pro Se

Plaintiff(s):

David Seror

Represented By
Tamar Terzian

Trustee(s):

David Seror (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

1:20-10659 Nasrin Nino

Chapter 7

Adv#: 1:20-01061 GOTTLIEB v. Bilal

- #12.00** Status conference re: complaint for
- 1) Avoidance and recovery of preferential transfer [11 U.S.C. sec 547(b), 550(a), and 551],
 - 2) Avoidance and recovery of post-petition transfer [11 U.S.C. sec 549(a), 550(a), and 551] and
 - 3) Disallowance of any claim held by defendant [11 U.S.C. sec 502(d)]

fr. 8/5/20(stip); 10/7/20

Docket 1

Tentative Ruling:

Although the defendant disputes the Court's authority to enter final judgment, and asserts a right to a jury trial, the defendant has not filed points and authorities in support of his position in accordance with the Court's status conference instructions. Those instructions provide—

6. If the parties dispute whether the adversary proceeding is "core" within the meaning of 28 U.S.C. § 157(b), they must file points and authorities in support of their positions. Any party who contends that the proceeding is "non-core" must file and serve a memorandum of points and authorities and evidence in support of his/her/its position no less than fourteen (14) days before the status conference. Any response must be filed at least seven (7) days before the status conference. If a party does not timely file and serve his/her/its papers, that failure may be deemed a consent to whatever determination the Court makes.

7. Any party claiming a right to trial by jury must make a timely demand as set forth in Local Bankruptcy Rule 9015-2. If the parties dispute whether a party has a right to a jury trial, they must file points and authorities in support of their positions. Any party who contends that he/she/it has a right to a jury trial must file and serve a memorandum of points and authorities and evidence in support of his/her/its position no

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

CONT...

Nasrin Nino

Chapter 7

less than fourteen (14) days before the status conference. Any response must be filed at least seven (7) days before the status conference. If a party does not timely file and serve his/her/its papers, that failure may be deemed a consent to whatever determination the Court makes.

The Court will continue this status conference to **1:30 p.m. on December 16, 2020**, to provide parties an opportunity to file and serve briefs regarding their positions on whether: (A) the claims involved in this proceeding are "core" or "noncore;" and (B) the defendant has a right to a jury trial. In accordance with the instructions above, the parties must file and serve their briefs no later than **December 2, 2020**. Any brief in response to these briefs must be filed and serve no later than **December 9, 2020**.

Appearances on November 4, 2020 are excused.

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Defendant(s):

Kamal Bilal

Pro Se

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Carmela Pagay

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

Adv#: 1:20-01067 ZAMORA v. Perez

- #13.00** Status conference re: complaint for:
1. Avoidance of fraudulent transfer;
 2. Avoidance of insider preference;
 3. Turnover of estate's property;
 5. Automatic preservation of avoided transfer

fr. 9/16/20;

Docket 1

Tentative Ruling:

In light of the voluntary reconveyance of the subject deed of trust, a motion for default judgment may be moot. The Court will continue this status conference to **1:30 p.m. on November 18, 2020.**

The plaintiff is instructed **not** to file a motion for default judgment, or any other pleadings in this adversary proceeding regarding this issue, unless and until the Court provides a deadline to do so.

Appearances on November 4, 2020 are excused.

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Defendant(s):

Maria Rita Perez

Pro Se

Plaintiff(s):

NANCY J ZAMORA

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

1:30 PM

CONT... Thomas A Perez

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 4, 2020

Hearing Room 301

1:30 PM

1:19-10272 Zaven Armen Pehlevanian

Chapter 7

Adv#: 1:19-01141 Pehlevanian v. Wells Fargo et al

#13.10 Pretrial conference re: complaint for declaratory judgment
for bankruptcy relief of student loan debt

fr. 2/5/20; 4/8/20; 10/21/20

Docket 1

***** VACATED *** REASON: Order dismissing adversary proceeding
entered on 10/30/20 [doc. 19].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Zaven Armen Pehlevanian	Pro Se
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Defendant(s):

Wells Fargo	Pro Se
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Navient	Pro Se
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Plaintiff(s):

Zaven Armen Pehlevanian	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**

Wednesday, November 4, 2020

Hearing Room 301

2:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

Adv#: 1:20-01074 Overland Direct, Inc. et al v. Transpine, Inc.

#14.00 Motion to compel defendant Daniel Tepper aka Danny Tepper
aka Dan Tepper to appear for deposition and request for sanctions

fr. 9/23/20

Docket 6

*** VACATED *** REASON: Order remanding proceeding entered
10/15/20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen

Defendant(s):

Transpine, Inc.

Pro Se

Plaintiff(s):

Overland Direct, Inc.

Represented By
Daniel J McCarthy

Daniel J. McCarthy

Represented By
Daniel J McCarthy

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 4, 2020

Hearing Room 301

2:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

Adv#: 1:20-01074 Overland Direct, Inc. et al v. Transpine, Inc.

#15.00 Motion to compel a further response and production to request for production of documents, set one, from Nisan Tepper, individually and as Trustee of the Tepper Family Revocable Trust

fr. 9/23/20

Docket 8

***** VACATED *** REASON: Order remanding proceeding entered
10/15/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen

Defendant(s):

Transpine, Inc.

Pro Se

Plaintiff(s):

Overland Direct, Inc.

Represented By
Daniel J McCarthy

Daniel J. McCarthy

Represented By
Daniel J McCarthy

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

10:30 AM

1:17-13142 Amir Elosseini

Chapter 11

#1.00 Amended application of LibertyBell Law Group, P.C. for payment of final fees and/or expenses

fr. 8/6/20, 9/17/20

Docket 247

Tentative Ruling:

LibertyBell Law Group, P.C. ("Applicant"), special litigation counsel to the debtor – in addition to the Court's **prior approval**, on a final basis, of fees in the amount of \$40,000.00 and reimbursement of expenses in the amount of \$2,408.50 (for Aptus Court Reporting), and other expenses in the amount of \$1,187.16 (incurred from April 20, 2018 through February 20, 2019), the Court will approve expenses in the amount of \$1,717.01, which expenses were incurred from April 1, 2019 through October 30, 2019, pursuant to 11 U.S.C. § 330, on a final basis.

Although the Court will not "approve" expenses incurred **prepetition** from February 1, 2017 through July 24, 2017, **if Applicant had a retainer at that time**, Applicant may apply that retainer to repayment of those expenses.

Applicant must submit the order within seven (7) days.

9/17/20 Tentative Ruling

In connection with the amended application for payment of final fees and expenses (the "Final Application") filed by LibertyBell Law Group, P.C. ("Applicant"), the Court has reviewed the *Notice of Motion and Motion For Order Approving Compromise of Controversy* [doc. 192] (the "Settlement Motion"). The Settlement Motion was the basis for the Court to approve the debtor's settlement of the state court action *International Medical Care, Inc. v. The Regents of the University of California*. Applicant prepared and filed the Settlement Motion.

The Settlement Motion states:

"There are unpaid trial expenses of \$4,664.00, consisting of \$2,255.50

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

10:30 AM

CONT...

Amir Elosseini

Chapter 11

for the forensic accountant who testified [at] trial and \$2,408.50 for the court reporter. The net settlement amount of \$55,336.00 will go to the Debtor and will be available for Debtor's Chapter 11 Plan."

The Settlement Motion does not discuss any other unpaid trial expenses.

Previously, the Court has approved, on an interim basis, reimbursement of Applicant's expenses in the amount of \$1,187.16 (incurred from April 20, 2018 through February 20, 2019) and authorized the estate's payment of those expenses, in full. *See Order on Application for Payment of Interim Fees and/or Expenses* [doc. 177] and *Revised First Interim Application of LibertyBell Law Group for Allowance of Fees and Reimbursement of Expenses*, p. 27 [doc. 115]. At this time, the Court will approve reimbursement of those expenses, on a final basis.

At the prior hearing on the Final Application, the Court also allowed reimbursement of Applicant's expenses for the court reporter and denied reimbursement of expenses for the forensic accountant.

If Applicant had additional trial expenses in the amount of \$3,962.82, why didn't Applicant discuss those expenses in the Settlement Motion?

Based on the points noted above, and the failure of Applicant to file timely a supplement to its request for reimbursement of \$3,962.82 in other expenses, the Court will deny reimbursement to Applicant of any expenses which the Court has not previously approved.

In order for the Court to assess whether Applicant has turned over to the chapter 7 trustee the balance of any funds Applicant has received in connection with its representation of the debtor and/or International Medical Care, Inc. ("IMC"), net payment of Applicant's Court-approved fees and expenses, Applicant must provide an accounting to the Court of all funds that Applicant has received in connection with its representation of the debtor and/or IMC, on and after November 24, 2017.

In its employment application [doc. 13], Applicant and the debtor represented that, before the debtor filed his chapter 11 petition, the debtor had paid \$15,000.00 to Applicant.

When can Applicant file and serve such an accounting with the Court?

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

10:30 AM

**CONT... Amir Elosseini
8/6/20 Ruling**

Chapter 11

Grant in part, at this time.

LibertyBell Law Group, P.C. ("Applicant"), special litigation counsel to the debtor – approve fees in the amount of \$40,000 and reimbursement of expenses in the amount of \$2,408.50 (for Aptus Court Reporting), pursuant to 11 U.S.C. § 330, on a final basis. At this time, the Court will not approve \$7,255.50 in fees for D.W. Pyne, CPA and reimbursement of expenses in the amount of \$3,962.82 for the reasons stated below.

D.W. Pyne, CPA is a professional employed by the estate [doc. 136]. As such, pursuant to 11 U.S.C. § 330, in order for Mr. Pyne to receive compensation, Mr. Pyne must file a final fee application that complies with the requirements of LBR 2016-1.

Pursuant to 11 U.S.C. § 330(a)(1), a court may award a professional person employed under § 327 "reimbursement for actual, necessary expenses." Factors relevant to determining if an expense is proper, include: "(i) whether the expense is reasonable and economical, (ii) whether the applicant has provided a detailed itemization of expenses, (iii) whether the expenses appear to be in the nature of non-reimbursable overhead, and (iv) whether the applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court." *In re GSC Group, Inc.*, 502 B.R. 673, 743 (Bankr. S.D.N.Y. 2013).

Regarding Applicant's request for reimbursement of expenses in the amount of \$3,962.82, the application does not include a description of the expenses. Without further explanation, the Court cannot determine whether the expenses are reasonable and whether they are non-compensable overhead.

The Court will continue this hearing to **September 17, 2020 at 10:30 a.m. By September 3, 2020**, Applicant must file and serve a supplement to the application, which includes a detailed itemization of the requested expenses as required by LBR 2016-1(a)(1)(F). Pursuant to Local Bankruptcy Rule ("LBR") 2016-1(a)(1)(F), the application must include a summary listing of all expenses by category (*i.e.*, long distance telephone, photocopy costs, facsimile charges, travel, messenger and computer research). As to each unusual or costly expense item, the application must state: (i) the date the expense was incurred; (ii) a description of the expense; (iii) the amount of the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

10:30 AM

CONT... Amir Elosseini

Chapter 11

expense; and (iv) an explanation of the expense.

The Court will prepare the order.

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, November 5, 2020

Hearing Room 301

10:30 AM

1:15-13561 Akop Terpogosyan and Lilit Chaghayan

Chapter 7

#2.00 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 Chapter 7 Trustee

Docket 262

Tentative Ruling:

Amy L Goldman, chapter 7 trustee – approve fees of \$9,170.00 and reimbursement of expenses of \$37.60, pursuant to 11 U.S.C. § 330, on a final basis.

Pena & Soma, APC, counsel to chapter 7 trustee – approve fees of \$30,000.00 and reimbursement of expenses of \$601.27. The Court will not approve \$412.50 in fees for the reasons below.

SLBiggs, accountant to chapter 7 trustee – approve fees of \$6,807.50 and reimbursement of expenses of \$220.71, 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 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

10:30 AM

CONT... Akop Terpogosyan and Lilit Chaghayan Chapter 7

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 for Pena & Soma, APC because it appears unnecessary and/or excessive:

Date	Timekeeper	Description	Time	Fee	New Time	New Fee	Reason
7/22/19	LP	Drafting Motion to close case with unadministered asset	3.10	\$1,162.50	2.00	\$750.00	Unnecessary/ Excessive

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):

Akop Terpogosyan

Represented By
Thomas B Ure

Joint Debtor(s):

Lilit Chaghayan

Represented By
Thomas B Ure

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**

Thursday, November 5, 2020

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#3.00 Hearing on adequacy of debtor's disclosure statement describing chapter 11 plan of reorganization

fr. 10/8/20

STIP TO CONTINUE FILED 10/29/20 - jc

Docket 108

***** VACATED *** REASON: Order approving stip entered. Hearing continued to 12/17/20 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

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 5, 2020

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#4.00 Status conference re: chapter 11 case

fr. 8/29/19/ 1/23/20; 3/26/20; 8/13/20; 10/8/20

STIP TO CONTINUE FILED 10/29/20 - jc

Docket 1

***** VACATED *** REASON: Order approving stip entered. Hearing
continued to 12/17/20 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:00 PM

1:20-10678 John Michael Smith, Jr and Rebecca Phelps Smith

Chapter 11

#5.00 Status conference re chapter 11 case

fr. 7/16/20

Docket 36

Tentative Ruling:

In their status report, the debtors request an extension of the exclusivity period for the debtors to file their chapter 11 plan. However, pursuant to 11 U.S.C. § 1121(b), the exclusivity period has expired, and the debtors did not file a motion to extend exclusivity prior to expiration of the deadline, as set forth in 11 U.S.C. § 1121(d).

To date, the Court has not set a deadline for the debtors to file a chapter 11 plan and related proposed disclosure statement.

Party Information

Debtor(s):

John Michael Smith Jr

Represented By
Louis J Esbin

Joint Debtor(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

Trustee(s):

Elizabeth (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, November 5, 2020

Hearing Room 301

1:30 PM

1:18-11620 Antoine R Chamoun

Chapter 7

#6.00 Motion for Turnover of Property of Post-Petition Rent Payments

Docket 120

***** VACATED *** REASON: Order entered 10/29/20 continuing hearing
to 11/19/20 at 1:30 PM. [Dkt. #125]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

1:19-11696 Peter M. Seltzer

Chapter 7

#7.00 Trustee's Motion for Turnover of Debtor's Real Property

Docket 175

Tentative Ruling:

Grant.

Federal Rule of Bankruptcy Procedure ("FRBP") 7070 is made applicable to this proceeding to enforce the underlying Order awarding possession.

If the debtor defaults on any of his obligations, the chapter 7 trustee may file a declaration so stating, and the debtor shall have one (1) week thereafter to file any evidence and/or legal briefing in response as to why FRBP 7070 should not be applicable to this proceeding and/or why issuance of a writ authorizing the United States Marshals Service to enforce the order mandating turnover is not appropriate.

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):

Peter M. Seltzer

Pro Se

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

1:20-10659 Nasrin Nino

Chapter 7

#8.00 Motion of Chapter 7 Trustee for order compelling turnover of personal property
fr. 9/17/20; 10/08/20;

Docket 42

Tentative Ruling:

The Court will adopt its tentative ruling from October 8, 2020.

At the last hearing, the Court instructed the parties to file supplemental briefs on the narrow issue of whether, under California law, an individual who files for bankruptcy is prohibited from acting as a partner tasked with winding up a partnership.

On October 21, 2020, Kamal Bilal filed a supplemental brief (the "Bilal Brief") [doc. 59]. In the Bilal Brief, Mr. Bilal contends that Cal. Corp. Code §§ 16601(6)(A) and 16803(a) bar the debtor (and, as a result, the chapter 7 trustee) from participating in the wind up process. Mr. Bilal also reiterates arguments from his original opposition, which arguments Mr. Bilal did not have leave to make via these supplemental briefs.

On October 29, 2020, the chapter 7 trustee (the "Trustee") filed his responsive brief [doc. 61], asserting that the partnership already had been dissolved prior to the debtor's bankruptcy filing, and, as a result, the debtor could not subsequently dissociate from an already dissolved partnership.

Pursuant to Cal. Corp. Code § 16803(a)—

After dissolution, a partner who has not dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the court, for good cause shown, may order judicial supervision of the winding up.

(emphasis added). Under Cal. Corp. Code § 16601—

A partner is dissociated from a partnership upon the occurrence of any of the following events:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

CONT... Nasrin Nino

Chapter 7

(6) The partner's act or failure to act in any of the following instances:

(A) By becoming a debtor in bankruptcy.

Mr. Bilal contends that these statutes, read together, prohibit the debtor from participating in the wind up process. However, while Cal. Corp. Code § 16803(a) prevents a partner that dissociated *prior to* dissolution from participating in the wind up process, the statute does not appear to cover dissociation after dissolution.

Prior to the Uniform Partnership Act of 1994 (the "1994 Act"), "a partner's dissociation triggered dissolution." 1. [§ 18]Statutory Development., 9 Witkin, Summary 11th Partn § 18 (2020). The 1994 Act changed the law, such that the 1994 Act "provide[d] for partnership continuity and clearly distinguishe[d] between a partner's dissociation and dissolution." *Id.* The new dissociation statutes allowed "remaining partners to carry on partnership business without the withdrawing partner and without having to start from scratch." *Corrales v. Corrales*, 198 Cal.App.4th 221, 227 (Ct. App. 2011).

As such, the dissociation statutes were meant to be separate from the dissolution statutes, and the dissociation of a partner triggers different parts of the statutory scheme from the dissolution of the partnership. For instance, the dissociation of a partner triggers a statute regarding buying out the dissociating partner, as well as a statute terminating the dissociated partner's duties of loyalty and care, among other things. *See* Cal. Corp. Code §§ 16603, 16701. On the other hand, dissolution of a partnership triggers the wind up process for the partnership. Cal. Corp. Code § 16801 et seq.

In light of this statutory distinction between dissociation and dissolution, "[a] person cannot dissociate from a dissolved partnership...." *Corrales*, 198 Cal.App.4th at 227. As noted by the *Corrales* court—

This rule is necessary to protect the partnership's creditors. In a dissociation, the partnership assets are used to buy out the withdrawing partner. (§ 16701.) In a dissolution, the assets go first to pay the creditors. (§ 16807, subd. (a).) A partner cannot get first dibs on partnership assets by dissociating when in fact the withdrawal effects a dissolution.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

CONT...

Nasrin Nino

Chapter 7

Id., 198 Cal.App.4th at 227 n.7. In addition, because "a partnership must consist of at least two persons," the departure of one partner automatically dissolves the partnership. *Id.* (citing Cal. Corp. Code § 16101). "When that happens, the dissolution procedures take over." *Id.*; see also *Kuist v. Hodge*, 2008 WL 510075, at *14 (Ct. App. Feb. 27, 2008) (holding that the sole remaining partner "could not dissociate from a continuing partnership because the... partnership ceased to exist without him").

Here, the parties do not dispute that the subject two-person partnership was dissolved when the debtor's partner died, in 2014. Declaration of Carmela T. Pagay [doc. 42], ¶ 5. At that time, the partnership was automatically dissolved, triggering the wind up statutes set forth in Cal. Corp. Code § 16801 et seq. As of the date of dissolution, the debtor had not dissociated; in fact, the debtor did not file for bankruptcy until March 20, 2020.

Upon dissolution, the dissociation statutes on which Mr. Bilal relies would no longer apply. For the reasons set forth in *Corrales*, at that time, the debtor could no longer dissociate from the dissolved partnership. The *Corrales* court's interpretation of the statutes is in harmony with the plain language of the statute and the general statutory scheme set forth in the 1994 Act. On the other hand, Mr. Bilal's reading of the statutes would create a conflict between provisions in the 1994 act, such as between the buyout provisions of Cal. Corp. Code § 16701 and the wind up provisions of Cal. Corp. Code § 16801 et seq. See *Corrales*, 198 Cal.App.4th at 227 n.7. In addition, because dissociation triggers the termination of a partner's fiduciary duties, whereas dissolution does not, allowing a partner to dissociate after dissolution would absolve partners of their post-dissolution fiduciary duties. See Cal. Corp. Code § 16404(c). Moreover, Mr. Bilal has not provided any California authority in support of his statutory interpretation.

As such, the Court will adopt its prior tentative ruling as its final ruling. The Trustee must submit an order within seven (7) days.

10/8/2020 Tentative:

Grant in part and deny in part.

I. BACKGROUND

On March 20, 2020, Nasrin Nino ("Debtor") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee"). In her schedule A/B,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

CONT... Nasrin Nino

Chapter 7

Debtor identified an interest in NNP Partnership (the "Partnership"), stating—

Debtor owns a 50% interest in NNP Partnership which was formed upon the dissolution of her marriage to Antone Nino in 1/2013. At the time of the dissolution, the parties owned an interest in several gas stations under different corporate names and the land in West Hills at which a gas station owned by a trust (debtor has no relationship to the trustors or the trust) is operating. Upon the dissolution, the respective interests of the parties became a partnership. Debtor's ex husband died in 2014 and Jeffrey Siegel has been appointed by the probate court to administer Antone's estate. The stations were sold and Siegel is holding about \$350,000 for Antone's estate.

On August 27, 2020, the Trustee filed the Motion [doc. 42], requesting turnover of the assets held by the custodian, Mr. Siegel, pursuant to 11 U.S.C. § 543. The Trustee notes that Mr. Siegel informed the Trustee that he does not oppose the Motion, and will turn over the assets upon entry of an order by the Court. According to the Trustee, Mr. Siegel is holding approximately \$345,000 in funds.

On September 17, 2020, Kamal Bilal, a creditor, filed an opposition to the Motion (the "Opposition") [doc. 47]. In the Opposition, Mr. Bilal contends that he has a judgment against the Partnership, and that the assets held by Mr. Siegel are not property of the bankruptcy estate. Instead, Mr. Bilal contends that Mr. Siegel must use the Partnership's funds to satisfy the debt owed to Mr. Bilal. Mr. Bilal also provided a *Judgment Pursuant to Stipulation* (the "Stipulated Judgment"), dated January 10, 2020, wherein Mr. Siegel and Mr. Bilal agreed that the Partnership owes Mr. Bilal \$300,000. Declaration of Robert M. Ungar, ¶ 11, Exhibit 5.

II. ANALYSIS

The parties do not dispute that the Partnership has not been wound up. Nevertheless, in the Motion, the Trustee appears to assert that the funds being held by Mr. Siegel are property of the estate. The Trustee has set forth no authority in support of his contention that the Partnership's assets are property of the estate.

"[W]hile the individual's interest in the partnership or corporation (which could be a 100 percent interest) would be property of the estate, the assets of the partnership or corporation itself would not be." *In re Shapow*, 599 B.R. 51, 71 (Bankr. C.D. Cal.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

CONT...

Nasrin Nino

Chapter 7

2019) (quoting 2 Collier on Bankruptcy ¶ 101.30[3] (16th ed. 2018)).

It is axiomatic that the mere bankruptcy of a partner does not bring the partnership's assets within the jurisdiction of the bankruptcy court. A debtor's interest in a partnership is an asset of the debtor's estate under 11 U.S.C § 541; the assets of the partnership are not. Before a partner is entitled to receive his share of the partnership's property, or his right to the profits of the partnership, if any, the partnership's creditors are entitled to payment.

In re Katz, 341 B.R. 123, 128 (Bankr. D. Mass. 2006) (internal citations omitted). As in *Katz*, which analyzed the issues under Massachusetts law, pursuant to California Corporations Code § 16807(a)—

In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, *shall be applied to discharge its obligations to creditors*, including, to the extent permitted by law, partners who are creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subdivision (b).

(emphasis added).

As such, prior to any distribution of the Partnership's assets to Debtor's estate, the Partnership must pay its obligations to creditors. The Stipulated Judgment evidences a debt owed by the Partnership to Mr. Bilal in the amount of \$300,000. Even if Mr. Siegel turns the subject funds over to the Trustee, the Trustee may not use the funds as property of the estate unless the Partnership's obligations are satisfied; any surplus left after such satisfaction, which would normally be distributed to Debtor as the sole remaining partner, may then become part of Debtor's bankruptcy estate.

Although the Partnership's assets are not property of the estate, the Trustee succeeded to Debtor's rights as the sole partner tasked with winding up the Partnership, and this Court has jurisdiction to oversee the winding up process of the Partnership. "[T]he general rule that the simple act of a partner's filing of bankruptcy does not confer jurisdiction over the partnership's assets does not mean that a bankrupt partner's estate includes only his personal property interest in the partnership. It includes certain rights given to him by law and/or contract, including the rights to seek an accounting, and to request a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

CONT...

Nasrin Nino

Chapter 7

judicially supervised wind-up and termination of the partnership." *Katz*, 341 B.R. at 128.
For instance, one court explained—

The Court agrees with Defendants that a court imposed wind up of the Partnership is a non-core matter. The Court disagrees, however, that this Court lacks jurisdiction. *Carolina Preservation Partners, Inc. v. Weinhold*, 414 B.R. 754, 759 (M.D. Fla. 2009) (proceeding regarding partnership property is a related to proceeding); *In re Katz*, 341 B.R. at 131–32 (finding related to jurisdiction over a court ordered wind up because the right to make such a request was property of the estate). Under the applicable standard of related to jurisdiction, the procedures regarding the wind up of the Partnership undeniably impact the estate and the administration of the estate. "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." *The Matter of Lemco Gypsum, Inc.*, 910 F.2d 784, 788 (11th Cir.1990).

In re Thadikamalla, 488 B.R. 791, 793–94 (Bankr. N.D. Ga. 2013).

Here, Mr. Siegel has agreed to turn over the Partnership's funds to the Trustee. Because Mr. Siegel holds funds in excess of the amount owed to Mr. Bilal pursuant to the Stipulated Judgment, the wind up of the Partnership may impact the estate by potentially bringing a surplus into the estate for distribution to creditors. Thus, the Court has subject matter jurisdiction over this matter.

In light of the authorities above, the Court will order that Mr. Siegel turn over the subject funds to the Trustee. However, the funds are not property of the estate. The Trustee may use the funds to wind up the Partnership in accordance with California law, including by complying with California Corporations Code § 16807(a).

III. CONCLUSION

The Court will grant the Motion in part and deny the Motion in part.

The Trustee must submit an order within seven (7) days.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

CONT... Nasrin Nino

Chapter 7

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

#9.00 Debtor's Motion for declaratory relief re: Court's Order of 8/25/20 incorporating tentative ruling of 8/13/20, and motion for chapter 7 discharge, or, in the alternative for dismissal of case with or without prejudice

Docket 69

Tentative Ruling:

See calendar no. 11.

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

#10.00 Application by Nancy Hoffmeier Zamora, Chapter 7 Trustee, for approval to employ Rodeo Realty, Inc. as Real Estate Broker

fr. 08/06/20 (stip); 8/13/20; 10/15/20

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

**#11.00 Chapter 7 Trustee's Motion Objecting to Debtor's
Claimed Homestead Exemption**

Docket 78

Tentative Ruling:

The chapter 7 trustee (the "Trustee") contends that she informed the debtor about her intent to pursue an avoidance action against Maria Perez at the debtor's initial § 341(a) meeting of creditors, held on June 19, 2020. However, the Trustee has not provided a transcript of the June 19, 2020 meeting of creditors.

The Court intends to continue this hearing for the Trustee to file and serve a supplemental declaration, and attach the complete transcript of the June 19, 2020 meeting of creditors. By when can the Trustee file and serve the supplemental declaration?

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

1:30 PM

1:20-10924 Tikran Eritsyian

Chapter 11

#12.00 Debtor's motion for order authorizing sale of real property 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 46

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Tikran Eritsyian

Represented By
Vahe Khojayan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

2:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#13.00 Status conference re: chapter 11 subchapter V case

fr.09/10/20;

Docket 1

Tentative Ruling:

Proposed dates and deadlines regarding "Debtor's Chapter 11, Subchapter V Plan, Dated October 19, 2020" (the "Plan") [doc. 60]

Hearing on confirmation of the Plan: **January 14, 2021 at 2:30 p.m.**

Deadline for the debtor to mail 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 12, 2020.**

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 Subchapter V Trustee and the United States Trustee.

Deadline to return completed ballots to the debtor and to file objections to confirmation: **December 10, 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: **December 24, 2020.** Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1191 are satisfied. These materials must be served on the Subchapter V Trustee, the U.S. Trustee and any party who objects to confirmation.

The Court will continue this status conference to **January 14, 2021 at 2:30 p.m.**

The debtor must submit the order within seven (7) days.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 5, 2020

Hearing Room 301

2:30 PM

CONT... Monte Verde Ranch, LLC

Chapter 11

Party Information

Debtor(s):

Monte Verde Ranch, LLC

Represented By
Ian Landsberg

Trustee(s):

Andrew W. Levin (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

9:30 AM

1:00-00000

Chapter

#0.00 PLEASE BE ADVISED THAT THE CHAPTER 13 CONFIRMATION CALENDAR
CAN BE VIEWED ON THE COURT'S WEBSITE UNDER:
JUDGES >KAUFMAN,V. >CHAPTER 13 > CHAPTER 13 CALENDAR
(WWW.CACB.USCOURTS.GOV)

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

10:30 AM

1:16-10495 Indira LaRoda

Chapter 13

#19.00 Trustee's motion to dsmiss case for failure to make plan payments
fr. 10/6/20

Docket 107

***** VACATED *** REASON: Motion withdrawn 10/20/20 - jc**

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 10, 2020

Hearing Room 301

10:30 AM

1:16-10925 Josue Soncuya Villanueva

Chapter 13

#20.00 Trustee's motion to dsmiss case for failure to make plan payments
fr. 10/6/20

Docket 113

***** VACATED *** REASON: withdrawal filed 10/19/20 doc # 121**

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 10, 2020

Hearing Room 301

10:30 AM

1:16-11316 Sergio Luquin and Lorena Palacios Luquin

Chapter 13

#21.00 Trustee's motion to dsmiss case for failure to make plan payments

fr. 10/6/20

Docket 57

***** VACATED *** REASON: withdrawal filed on 10/7/20 doc #67**

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 10, 2020

Hearing Room 301

10:30 AM

1:16-12523 Brent Carpenter

Chapter 13

#22.00 Trustee's motion to dsmiss case for failure to make plan payments
fr. 10/6/20

Docket 77

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, November 10, 2020

Hearing Room 301

10:30 AM

1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

#22.10 Trustee's motion to dismiss case for failure to make plan payments

Docket 111

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, November 10, 2020

Hearing Room 301

10:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#23.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 10/6/20

Docket 82

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, November 10, 2020

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

#24.00 Trustee's motion to dsmiss case for failure to make plan payments
fr. 10/6/20

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kathleen Moore

Represented By

Nathan Berneman

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, November 10, 2020

Hearing Room 301

10:30 AM

1:17-13161 Gerald J. Mathews

Chapter 13

#25.00 Trustee's motion to dsmiss case for failure to make plan payments

fr. 10/6/20

Docket 43

***** VACATED *** REASON: Motion withdrawn 10/21/20 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerald J. Mathews

Represented By
James G. Beirne

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

10:30 AM

1:18-11015 Rosa Tejada

Chapter 13

#26.00 Trustee's motion to dsmiss case for failure to make plan payments
fr. 10/6/20

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosa Tejada

Represented By
James G. Beirne

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

10:30 AM

1:18-11504 Juan Pedro Torres

Chapter 13

#27.00 Trustee's motion to dsmiss case for failure to make plan payments

fr. 10/6/20

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Pedro Torres

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

10:30 AM

1:18-11799 Farahnaz Alvand

Chapter 13

#28.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 101

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Farahnaz Alvand

Represented By
Armen Shaghzo
Edmond Richard McGuire

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

10:30 AM

1:18-11945 Rosa Aminta Cordova de Rodriguez

Chapter 13

#29.00 Trustee's motion to dsmiss case for failure to make plan payments

fr. 10/6/20

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosa Aminta Cordova de Rodriguez

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

10:30 AM

1:18-12027 Yuma Vanessa Perez

Chapter 13

#30.00 Trustee's motion to dsmiss case for failure to make plan payments

fr. 10/6/20

Docket 30

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 10, 2020

Hearing Room 301

10:30 AM

1:18-12588 Dean Edward Schinnerer

Chapter 13

#31.00 Trustee's motion to dsmiss case for failure to make plan payments

fr. 10/6/20

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean Edward Schinnerer

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, November 10, 2020

Hearing Room 301

10:30 AM

1:18-12939 Arianne Beth Pachter

Chapter 13

#32.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 58

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arianne Beth Pachter

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 10, 2020

Hearing Room 301

10:30 AM

1:19-10022 Gus Albert Bolona and Deirdre Marie Bolona

Chapter 13

#33.00 Trustee's motion to dismiss case for failure to make plan payments

fr: 09/08/20;

Docket 66

***** VACATED *** REASON: Withdrawal of motion filed 10/6/20. [Dkt. 83]**

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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

10:30 AM

1:19-11471 Melissa Roberta Ramirez

Chapter 13

#34.00 Trustee's motion to dismiss case for failure to make plan payments

fr. 09/08/20;

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melissa Roberta 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 10, 2020

Hearing Room 301

10:30 AM

1:19-12438 Bhavana Patel

Chapter 13

#35.00 Trustee's motion to dismiss case for failure to make plan payments

Docket 40

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bhavana Patel

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 10, 2020

Hearing Room 301

10:30 AM

1:19-12509 Elia Blanco

Chapter 13

#36.00 Trustee's motion to dismiss case for failure to make plan payments

fr: 09/08/20; 10/6/20

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elia Blanco

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 10, 2020

Hearing Room 301

10:30 AM

1:19-12947 Ronaldo Garcia

Chapter 13

#37.00 Trustee's motion to dsmiss case for failure to make plan payments
fr. 10/6/20

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronaldo Garcia

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 10, 2020

Hearing Room 301

11:00 AM

1:15-14149 Norma Castellon

Chapter 13

#38.00 Motion to extend loan modification management program period

Docket 109

Tentative Ruling:

Grant.

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):

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, November 10, 2020

Hearing Room 301

11:00 AM

1:16-12523 Brent Carpenter

Chapter 13

#39.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w)
to modify plan or suspend plan payments

Docket 80

Tentative Ruling:

On January 26, 2017, the Court entered an order confirming debtor's chapter 13 plan (the "First Order") [doc. 23]. Pursuant to the First Order, debtor was to pay \$1,519.00 per month starting September 28, 2016 and then \$3,237.00 per month starting November 28, 2016. The plan was a 100% plan.

On July 19, 2019, the Court entered an order granting debtor's motion to modify plan (the "Second Order") [doc. 61]. Pursuant to the Second Order, debtor was to pay \$1,770.00 per month starting June 29, 2019 through August 29, 2021. The plan remained a 100% plan.

On September 16, 2020, debtor filed a motion to modify his chapter 13 plan (the "Motion") [doc. 80]. In the Motion, debtor proposes to reduce the plan payment to \$1,380.00 per month from September 29, 2020 through August 29, 2021. If the Motion is granted, the last plan payment would be payable 72 months after the first plan payment was due. The proposed modification will not reduce the percentage paid to general unsecured creditors. Debtor states that he is requesting a modification of his plan because his income has decreased. Debtor works as a construction supervisor; according to debtor, because of the pandemic, the construction industry has closed. Debtor also represents that, because of the pandemic, his spouse lost her employment as a floral designer and event planner, and he is currently working part-time as a construction consultant.

On September 24, 2020, the chapter 13 trustee filed an objection to the Motion (the "Objection") [doc. 82]. In the Objection, the chapter 13 trustee states that she disapproves of the proposed modification because: (1) debtor has not served all creditors and (2) the Motion does not resolve the current delinquency in the amount of \$5,586.00

The Court will continue this hearing to **December 8, 2020 at 11:00 a.m.** By **November 24, 2020**, debtor must file a response to the Objection addressing the issues

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

11:00 AM

CONT... **Brent Carpenter**
raised by the chapter 13 trustee.

Chapter 13

Appearances on November 10, 2020 are excused.

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, November 10, 2020

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#40.00 Creditor H. Samuel Hopper's motion to compel further responses to requests for production of documents, set no. 1 to debtor Kenneth C. Scott, and for production of documents and for imposition of monetary sanctions

Docket 233

Tentative Ruling:

Grant, as set forth below.

On December 20, 2019, the creditor made the following requests for production by the debtor—

Request for Production of Documents No. 47:

ALL DOCUMENTS RELATING TO ANY payment YOU received from MPPI since October 8, 2014.

Request for Production of Documents No. 54:

ALL DOCUMENTS RELATING TO ANY income, salary, profit, distribution, gain, remuneration, OR reimbursement paid to OR earned by YOU from MPPI since October 8, 2014.

Request for Production of Documents No. 55:

ALL DOCUMENTS RELATING TO ANY income, salary, profit, distribution, gain, remuneration, OR reimbursement paid to OR earned by YOU from KSPD since December 18, 2018.

On March 2, 2020, the creditor filed a motion to compel the debtor to respond to his requests for production (the "March 2020 Motion") [Adversary Proceeding, doc. 46]. On July 29, 2020, the Court held a hearing on the March 2020 Motion. In relevant part, the Court overruled the debtor's objection to request for production no. 55; the Court also overruled the debtor's objection to requests for production nos. 47 and 54, but

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

11:00 AM

CONT... Kenneth C. Scott

Chapter 13

limited the requests to the years 2017 and 2018 [doc. 217].

On September 30, 2020, the creditor filed another motion to compel the debtor to respond to the requests for production (the "September 2020 Motion") [doc. 233]. In a joint statement submitted by the parties, the debtor contends that he provided tax returns in response to the requests, and that his accountants have certain responsive documents that the debtor does not. On October 22, 2020, the creditor filed a motion to extend deadlines, including the discovery cutoff date, based on the debtor's failure to respond completely to the requests for production (the "Motion to Extend") [doc. 241].

On October 27, 2020, the Court held a hearing on the Motion to Extend. At that time, the Court ordered the debtor to produce additional financial documents responsive to the creditor's requests, such as copies of checks and W-2s, no later than November 3, 2020. The parties have not filed updates regarding the Court's order for the debtor to produce the missing documents. Has the debtor provided these documents to the creditor?

In the joint statement, the creditor also requests attorneys' fees and costs incurred prosecuting the September 2020 Motion and for preparing for and attending the hearing on the September 2020 Motion. Pursuant to Federal Rule of Civil Procedure ("FRCP") 37(a)(4), "an evasive or incomplete disclosure answer, or response must be treated as a failure to disclose, answer, or respond." Under FRCP 37(a)(5)—

(A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted--or if the disclosure or requested discovery is provided after the motion was filed--the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

- (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
- (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or
- (iii) other circumstances make an award of expenses unjust.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

11:00 AM

CONT... Kenneth C. Scott

Chapter 13

Here, the debtor did not timely produce requested financial documents, such as the missing checks, which necessitated the filing of the September 2020 Motion. The debtor has not articulated any reason why the failure to produce the checks was substantially justified. In addition, based on the joint statement submitted by the parties, the creditor attempted to obtain the disclosure before pursuing court action. There being no other reason why an award of expenses would be unjust, the Court will order the debtor to pay the creditor the fees and costs incurred prosecuting this motion.

In his declaration, the creditor's attorney stated—

From August 25, 2020 (the date I first received Debtor's further responses to RFPD#1 and initial production of documents), through the date of this declaration, I worked in excess of 13.1 hours writing to Mr. Shirdel in a good faith attempt to gain his cooperation under the Order, preparing this Motion, including this declaration, all exhibits, the Notice, the [Proposed] Order, and all other supporting papers for presentation to the Court. I anticipate spending at least an additional 2.0 hours preparing for and attending the hearing on this Motion. Accordingly, [the creditor] has incurred or will incur attorney's fees in the amount of at least \$7,205.00 for the preparation of this Motion and its supporting papers.

Declaration of Daniel Parker Jett [doc. 234], ¶ 37. For the legal services provided to the creditor, with respect to the September 2020 Motion, the request of \$7,205.00 is reasonable. Pursuant to FRCP 37(a)(5), the Court will order the debtor to pay \$7,205.00 to the creditor **no later than December 15, 2020**.

In addition, at the hearing on October 27, 2020, the Court asked the debtor if the information in his chapter 13 statement of current monthly income, *i.e.*, Form 122C-1 (the "Statement") [doc. 98] is accurate. The Court instructed the debtor to assess the information in the Statement and to file an amended Form 122C-1, if necessary, no later than November 3, 2020. The debtor has not timely filed an amended Form 122C-1. Instead, on November 6, 2020, the debtor *untimely* filed a different form, *i.e.*, a chapter 13 calculation of disposable income, *i.e.*, Form 122C-2 [doc. 254]. The debtor's filing is not responsive to the Court's instructions.

Finally, at the hearing on October 27, 2020, the Court instructed the creditor to subpoena certain documents directly from the debtor's banks. Has the creditor served any such

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

11:00 AM

CONT... Kenneth C. Scott

Chapter 13

subpoenas on the banks, and by when does the creditor anticipate responses by the banks?

In light of the debtor's failure to respond to the Court order to file an amended Statement, and the debtor's failure to respond completely to the creditor's requests for production, the Court will grant the Motion to Extend and set the following extended deadlines:

Discovery cutoff date: **December 15, 2020**

Creditor's supplemental opposition filing deadline: **February 3, 2021**

Debtor's supplemental reply filing deadline: **February 17, 2021**

Hearing on the motion for summary judgment: **2:30 p.m. on March 3, 2021**

The parties should be prepared to discuss a continued time and date for the creditor to take the debtor's deposition.

The creditor must submit an order on the September 2020 Motion and a new scheduling 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
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#40.10 Motion to extend deadlines

fr. 10/27/20

Docket 241

Tentative Ruling:

See calendar no. 40.

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, November 10, 2020

Hearing Room 301

11:00 AM

1:19-12590 Marine Kasabyan

Chapter 13

#41.00 Objection to debtor's claim of exemption

Docket 82

Tentative Ruling:

The Court questions the credibility of the debtor's representations that she lives part-time in Nevada and that:

I spent more time in the 180 day period prior to filing the petition than I spent in California. I did travel back and forth between California and Nevada but during this time period my only source of income was from the operation of my barber shop in the Las Vegas area of Nevada and that is the reason why the majority of my time was spent in Nevada.

Declaration of Marine Kasabyan, filed on October 27, 2020 [doc. 88] (emphasis added).

The only documentary evidence that the debtor presents of her alleged residency in Las Vegas are utility bills, for post-petition periods of time. Such utility bills, for real property that the debtor owns and leases to a tenant, do not demonstrate that the debtor lives in the Las Vegas Property, part time or otherwise, nor that she lived in the Las Vegas Property, prior to the petition date.

The following facts and prior representations of the debtor undermine the accuracy of her latest representations:

In her chapter 7 petition, filed on October 15, 2019, the debtor used the address of a residence located at 16344 Itasca Street, North Hills, CA (the "North Hills Property") and represented that "Over the last 180 days before filing this petition, I have lived in this district [the Central District of California] longer than in any other district."

In her original Schedule A, the debtor stated that she has an interest in the North Hills Property, and that it is community property. In her original Schedule B, the debtor does not list any interest in a barbershop (item 19) or any equipment or inventory for a barbershop (items 40 and 41). [doc. 11].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

11:00 AM

CONT... Marine Kasabyan

Chapter 13

In her original Schedule I, the debtor states that her occupation is a "caretaker," that her employment address is the North Hills Property and that she has been employed there for 2 years. Regarding her income, the debtor states that her monthly take home pay is \$1,204.17 and that she has additional monthly income, in the amount of \$5,743.66, from Supreme Pools LA. The debtor indicates that her non-filing spouse is the owner of Supreme Pools LA. The debtor does not state that she operates a barbershop, disclose the location of a barbershop or disclose any income from a barbershop. [doc. 11].

In the *Chapter 7 Statement of Your Current Monthly Income*, the debtor does not disclose any income from a barbershop, located in Las Vegas, Nevada. [doc. 11].

In her original Statement of Financial Affairs, part 11, the debtor indicated that her only business is Supreme Pools LA. She did not list any interest in a barbershop, located in Las Vegas, Nevada. [doc. 11].

In her declaration filed in January 2020, the debtor never mentioned that she has a barbership, located in Las Vegas, Nevada, or that she earns any income from a barbership. In that declaration, filed in support of her motion to convert this case to one under chapter 13, she states that her regular income comes from two sources: 1) income from IHSS; and 2) income from the operation of the family business, Supreme Pools. [doc. 29].

In her *Chapter 7 Statement of Current Monthly Income*, the debtor indicated that she and her spouse are "living in the same household" [doc. 11].

The debtor's tax returns for 2018 indicate that her home address is the North Hills Property and that she rents her property located at 4620 Inland Ct, Las Vegas, Nevada (the "Las Vegas Property") 365 days per year. Exhibit 2 to *Chapter 7 Trustee's Response to Memorandum of Debtor in Support of Motion to Convert Case From Chapter 7 to Chapter 13; and Declaration of D. Edward Hays* [doc. 31].

In her declaration filed in January 2020, the debtor states: "I did not include any misleading information in my schedules." [Declaration of Marine Kasabyan, para. 14, doc. 29]. However, there is a huge disparity between the debtor's latest representations about her assets and income, in her amended schedules and Statement of Financial Affairs, and in her latest declaration, and the representations she made, under penalty of perjury, in her bankruptcy petition and original schedules - as well as in her earlier

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 10, 2020

Hearing Room 301

11:00 AM

CONT... Marine Kasabyan

Chapter 13

declaration, filed in January 2020.

Given this disparity, it appears that the debtor's action in filing the petition was not in good faith, such that the Court cannot confirm her chapter 13 plan [11 U.S.C. § 1325(a) (7)] and that there is cause for the Court to reconvert this case, for cause, to one under chapter 7 [11 U.S.C. § 1307(c)].

Party Information

Debtor(s):

Marine Kasabyan

Represented By
Thomas B Ure
Laila Masud

Trustee(s):

Elizabeth (SV) 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 10, 2020

Hearing Room 301

11:00 AM

1:20-11209 Carlos Alberto Luna and Patricia Andrea Ahumada Luna

Chapter 13

#42.00 Motion for an order disallowing claim filed by
Glendale I Mall Associates, Lp (proof of claim no. 8)

Order appr stip to cont hrg ent 11/6/20

Docket 26

***** VACATED *** REASON: cont to 12/8/20 per order doc # 37**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Alberto Luna

Represented By
Giovanni Orantes

Joint Debtor(s):

Patricia Andrea Ahumada Luna

Represented By
Giovanni Orantes

Trustee(s):

Elizabeth (SV) 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 10, 2020

Hearing Room 301

11:00 AM

1:20-11487 Ronald Behar

Chapter 13

#43.00 Motion on debtor's request to vacate order of dismissal and
reinstate original chapter 13 case

fr. 10/6/20

Docket 17

Tentative Ruling:

Despite the Court's instructions at the prior hearing, the debtor still has not filed Form 122C-2 *Chapter 13 Calculation of Your Disposable Income*.

Previous Tentative 10/6/2020

Contrary to Local Bankruptcy Rule 1017-2(c), the debtor has not "include[d] as exhibits to the motion all of the documents that were not timely filed...." The Court will not grant this motion until the debtor files each of the documents that the debtor did not timely file prior to dismissal.

The Court will continue this matter to **11:00 a.m. on November 10, 2020**. If the debtor submits the required documents by **October 27, 2020**, the Court will grant the motion.

Appearances on October 6, 2020 are excused.

Party Information

Debtor(s):

Ronald Behar

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 10, 2020

Hearing Room 301

11:00 AM

1:20-11545 Tarsicio Chavez Bernal

Chapter 13

#44.00 Motion for sanctions under F.R.B.P. 9011-3 against Leroy Bishop Austin for filing chapter 13 plan lacking evidentiary support and for and improper purpose

Docket 22

Tentative Ruling:

On November 6, 2020, movant filed a *Supplemental Request for Judicial Notice in Support of Movant, Ajax Mortgage's Request for Sanctions Against Leroy Bishop Austin*, [doc. 29], a *Supplemental Declaration of Andrew J. Mase in Support of Movant, Ajax Mortgage Loan Trust 2018-G's Request for Sanctions Against Leroy Bishop Austin* [doc. 30] and a *Notice of Errata* [doc. 31].

In order for Mr. Austin to have sufficient time to file and serve a response to these additional pleadings, and for the Court to have time to evaluate these pleadings and any timely filed and served response of Mr. Austin thereto, the Court will continue the hearing on the pending motion to **11:00 a.m. on December 8, 2020**.

Any response of Mr. Austin to these additional pleadings must be filed and served on movant no later than **November 17, 2020**.

Appearances on November 10, 2020 are excused.

Party Information

Debtor(s):

Tarsicio Chavez Bernal

Represented By
Leroy Bishop Austin

Trustee(s):

Elizabeth (SV) 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 10, 2020

Hearing Room 301

11:30 AM

1:09-19568 Edwin Jose Estrada and Kristin Marie Estrada

Chapter 13

#45.00 Motion to avoid junior lien with America First Credit Union

Docket 99

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.ORDER, posted on the Court's website, located at www.cacb.uscourts.gov, under "Forms/Rules/General Orders" and "Local Bankruptcy Rules & Forms." The movant should check the boxes in sections 4.b.ii, vi, vii, and viii indicating that avoidance of the junior lien is effective upon completion of the chapter 13 plan.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition 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 Jose Estrada

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Kristin Marie Estrada

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**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#1.00 Order to show cause why this case should not be dismissed or converted to one under chapter 7

fr. 08/27/20; 9/17/20

Docket 75

Tentative Ruling:

The Court will dismiss this case.

I. BACKGROUND

A. The Original Schedules

On November 7, 2019, Blanca Mohd ("Debtor") filed a voluntary chapter 11 petition. On November 21, 2019, Debtor filed her schedules and statements [doc. 12]. In her schedule A/B, Debtor identified real property located at 10437 Cedros Avenue, Mission Hills, CA 91345 (the "Cedros Property"). Debtor valued the Cedros Property at \$451,000. Debtor also identified real property located at 14915 Sandra Street, Mission Hills, CA 91345 (the "Sandra Property"). Debtor valued the Sandra Property at \$550,000. In addition, Debtor scheduled \$33,993 in personal property.

In her schedule D, Debtor identified a \$611,000 deed of trust encumbering the Cedros Property, and a \$353,829 deed of trust encumbering the Sandra Property. Debtor also identified secured debt against two vehicles totaling \$29,203.

On December 17, 2019, Debtor filed an amended schedule D [doc. 37]. In her amended schedule D, Debtor added the following liens, encumbering the Cedros and Sandra Properties: (A) a \$15,000 lien in favor of Pace Funding Group, LLC; and (B) a \$20,000 lien in favor of Renovate America, Inc. The amended schedule D also identified a \$35,000 lien in favor of Ygrene Energy Fund CA LLC; Debtor did not identify which asset(s) this lien encumbers.

In her schedule C, Debtor claimed exemptions in \$10,340 of personal property, as

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT...

Blanca Mohd

Chapter 11

well as a \$100 exemption in the Cedros Property and a \$30,725 exemption in the Sandra Property. In her schedule E/F, Debtor identified \$2,976 in unsecured debt.

In her original schedules I and J, Debtor indicated that she and her spouse are disabled, and that their monthly net income is (\$1,506). On December 17, 2019, Debtor filed amended schedules I and J [doc. 37], in which she indicated she and her spouse receive monthly net income of \$9.

B. The Motion to Continue the Automatic Stay and Amended Schedules

On November 27, 2019, Debtor filed a motion to continue the automatic stay (the "Motion to Continue Stay") [doc. 19]. On December 5, 2019, the Court entered an order [doc. 31] temporarily continuing the stay and instructing Debtor to cure certain deficiencies by filing:

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT... Blanca Mohd

Chapter 11

On December 17, 2019, in response to the Court's order, Debtor filed amended schedules [doc. 37]. Debtor also filed a declaration responding to the additional issues set forth in the Court's order, in which Debtor proposed to pay \$2,200 and \$1,763 in adequate protection payments to her lenders.

On December 18, 2019, the Court held a hearing on the Motion to Continue Stay. At that time, the Court queried how, in light of her monthly net income, Debtor would timely satisfy her proposed adequate protection payments. Nevertheless, the Court granted the Motion to Continue Stay on an interim basis, instructing Debtor to file a declaration to demonstrate that she timely made adequate protection payments to her lenders.

Debtor did not timely file a declaration regarding adequate protection payments. Instead, one day before the continued hearing on the Motion to Continue Stay, Debtor's counsel filed a declaration that Debtor had not made the required payments. As such, on January 23, 2020, the Court entered an order denying the Motion to Continue Stay.

C. Miscellaneous Matters and this Order to Show Cause

On December 26, 2019, the Court entered an order setting June 1, 2020 as the deadline for Debtor to file a proposed chapter 11 plan and related disclosure statement [doc. 49]. The Court also instructed Debtor to file and serve a status report no later than June 4, 2020.

On June 1, 2020, Debtor filed an *ex parte* request to extend the deadline to file a chapter 11 plan and disclosure statement [doc. 65]. On June 8, 2020, the Court entered an order granting the request and extending the deadline to July 16, 2020. The Court also instructed Debtor to file and serve a status report no later than July 16, 2020.

To date, Debtor has not filed a proposed chapter 11 plan and disclosure statement. Moreover, to date, Debtor has not ***timely*** filed a single monthly operating report.

On July 29, 2020, the Court issued an Order to Show Cause why this case should not be dismissed or converted to a chapter 7 case [doc. 75]. On August 13, 2020, Debtor

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT...

Blanca Mohd

Chapter 11

filed an opposition to the OSC [doc. 79], stating that Debtor is waiting for resolution of state court litigation before proposing a chapter 11 plan and disclosure statement.

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. . . .

(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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT...

Blanca Mohd

Chapter 11

(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 . . .

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

...

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

...

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

11 U.S.C. § 1112(b).

“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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT...

Blanca Mohd

Chapter 11

based on the ‘best interests of the creditors and the estate.’" *In re Nelson*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006).

Here, Debtor repeatedly has failed to timely fulfill her duties as a chapter 11 debtor in possession. Debtor did not timely file her monthly operating reports, did not timely file a chapter 11 plan and disclosure statement or timely request an extension of that deadline, did not timely file a status report and did not timely make adequate protection payments to preserve the automatic stay. Debtor has not explained how she will be able to fund a chapter 11 plan on the monthly net income reflected in her amended schedules I and J.

Moreover, to date, Debtor apparently has not reached a resolution with any of her secured creditors, which hold claims secured by real properties, regarding plan treatment. Debtor’s response to the OSC does not adequately provide an explanation for these repeated and significant deficiencies. Consequently, there is cause to dismiss or convert this case.

Because Debtor’s schedules indicate that Debtor’s assets are either fully encumbered or claimed as exempt, conversion likely would not result in any distribution to unsecured creditors. Given the additional administrative costs that would be incurred in a chapter 7 case, and because most of Debtor’s creditors have security interests in Debtor’s assets, dismissal is in the best interests of creditors.

III. CONCLUSION

The Court will dismiss this case.

The Court will prepare the Order.

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, November 12, 2020

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#2.00 Status conference re: chapter 11 case

fr. 12/19/20; 12/26/19; 6/18/20; 07/23/2020; 8/27/20; 9/17/20

Docket 1

Tentative Ruling:

See calendar no. 1.

9/17/2020 Tentative:

On August 26, 2020, the Court entered an order instructing the debtor to file a status report, supported by evidence, no later than September 3, 2020 [doc. 83]. Why did the debtor not timely file a status report?

Assuming the Court grants the application to employ proposed replacement bankruptcy counsel, when will that counsel be able to file a chapter 11 plan and related disclosure statement?

On December 27, 2019, the Court entered the Order Setting Bar Date for Filing Proofs of Claim [doc. 51]. The resulting bar date is March 2, 2020.

Pursuant to that order, the debtor was required to serve written notice of the bar date on all creditors, using the court's mandatory form, by December 30, 2019. Did the debtor timely serve all creditors, including all holders of disputed liens, with the required written notice of the bar date?

The Court notes that, because the debtor failed to meet the conditions which the Court set to continue the automatic stay, the debtor's motion to continue the automatic stay was denied. *See Order Denying Motion for Order Imposing a Stay or Continuing the Automatic Stay*, entered on January 23, 2020 [doc. 58].

7/23/2020 Tentative:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT...

Blanca Mohd

Chapter 11

Contrary to the Court's order dated June 8, 2020 (the "Order") [doc. 67], the debtor did not timely file a proposed chapter 11 plan and disclosure statement. In addition, contrary to the Order, the debtor did not timely file a status report.

The Court intends to issue an Order to Show Cause why this case should not be dismissed or converted pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(4)(E) and (J).

7/23/2020 Tentative:

Contrary to the Court's order dated June 8, 2020 (the "Order") [doc. 67], the debtor did not timely file a proposed chapter 11 plan and disclosure statement. In addition, contrary to the Order, the debtor did not timely file a status report.

The Court intends to issue an Order to Show Cause why this case should not be dismissed or converted pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(4)(E) and (J).

12/19/2019 Tentative:

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT... Blanca Mohd

Chapter 11

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):

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, November 12, 2020

Hearing Room 301

1:00 PM

1:20-10621 Jasmin DeVillar

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 8/13/20, 9/17/20

Docket 1

Tentative Ruling:

The Court will continue the status conference to **1:30 p.m. on January 14, 2021**, to take place subsequent to the hearing on the debtor's objection to the secured claim of the California Department of Tax and Fee Administration [doc. 63].

Appearances on November 12, 2020 are excused.

9/17/2020 Tentative

The parties should address the following:

On June 10, 2020, the California Department of Tax and Fee Administration filed proof of claim 17-1, asserting a secured claim in the amount of \$150,162.89 based on liens recorded pursuant to Cal. Rev. & Tax. Code § 6757.

In light of the debtor's negative net income, based on her schedules I and J, filed on March 30, 2020 [doc. 14], how does the debtor intend to address the employment tax liabilities, and the resulting lien, which caused the filing of the current chapter 11 case?

Does the debtor intend to retain special tax counsel for assistance? If not, why?

Deadline to file proof of claim ("Bar Date"): **November 30, 2020.**

Deadline to mail notice of Bar Date: **September 30, 2020.**

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT... Jasmin DeVillar

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.

8/13/20 Ruling

On March 5, 2017, Jasmin DeVillar ("Debtor") filed a voluntary chapter 13 petition, initiating case 1:17-bk-10553-VK. Debtor was represented by Dana M. Douglas. During the pendency of that chapter 13 case, Debtor did not confirm a chapter 13 plan.

On September 21, 2017, on Debtor's motion, the Court entered an order converting Debtor's prior case to one under chapter 11 (the "Conversion Order") [1:17-bk-10553-VK, doc. 30]. Pursuant to the Conversion Order, Debtor had 14 days to file a Chapter 11 Statement of Your Current Monthly Income and a list containing Debtor's 20 largest unsecured creditors. Debtor did not timely file either of these documents. Consequently, on October 17, 2017, the Court dismissed Debtor's prior case [1:17-bk-10553-VK, doc. 34].

On March 14, 2020, Debtor filed a voluntary chapter 11 petition, initiating the pending case. Debtor is again represented by Ms. Douglas. On July 30, 2020, Debtor filed an initial chapter 11 status conference report [doc. 27]. In that status report, Debtor states that she intends to file a motion under 11 U.S.C. § 522(f) to avoid a tax lien in favor of the California Department of Tax and Fee Administration (the "CDTFA"). On June 10, 2020, the CDTFA filed proof of claim 17-1, asserting a secured claim in the amount of \$150,162.89 based on liens recorded pursuant to Cal. Rev. & Tax. Code § 6757 (the "Tax Lien").

On July 25, 2020, Ms. Douglas filed an application to be employed as debtor in possession counsel, requesting *nunc pro tunc* employment as of March 13, 2020 [doc. 25]. In that application, Ms. Douglas does not provide an explanation as to why she waited four months after she began providing services to Debtor to file an employment application. On August 6, 2020, the United States Trustee filed an objection to that employment application [doc. 28].

"Both § 327 and Bankruptcy Rule 2014 explicitly require attorneys [and other professionals] to seek the approval of the court before they commence employment

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT...

Jasmin DeVillar

Chapter 11

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, Ms. Douglas has failed to provide a satisfactory explanation for her failure to file an employment application promptly after commencement of this case. Moreover, Ms. Douglas is not competent to represent Debtor as a debtor in possession. For example, after Ms. Douglas failed to file routinely required documents timely, as required by the Conversion Order, Debtor's prior chapter 11 case was dismissed

Additionally, as it is not a judicial lien, Debtor cannot avoid the Tax Lien under 11 U.S.C. § 522(f). Pursuant to 11 U.S.C. § 522(f)(1):

Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a *judicial lien*, other than a judicial lien that secures a debt of a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT...

Jasmin DeVillar

Chapter 11

kind that is specified in section 523(a)(5)....

(emphasis added). Pursuant to 11 U.S.C. § 101(36), "[t]he term 'judicial lien' means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." Under 11 U.S.C. § 101(53), "[t]he term 'statutory lien' means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute."

Where a valid lien is created and perfected by statute, it is statutory. *See e.g., In re Scott*, 400 B.R. 257, 265-66 (Bankr. C.D. Cal. 2009); *In re Cox*, 349 B.R. 4, 12 (Bankr. E.D. Cal. 2006). In relevant part, Cal. Rev. & Tax. Code § 6757(a) states:

If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien.

The language of this statute is clear: the lien is created and perfected by statute alone. Consequently, a lien arising from Cal. Rev. & Tax. Code § 6757 is a statutory lien for purposes of 11 U.S.C. § 101(53), and therefore, not subject to avoidance under 11 U.S.C. § 522(f). As bankruptcy counsel to an individual debtor, Ms. Douglas should be aware that the Tax Lien is not avoidable under 11 U.S.C. § 522(f).

Moreover, in this district, in the last three years (not to mention prior years), Ms. Douglas has been debtor in possession counsel in numerous cases. These cases uniformly have ended in dismissal without court approval of a disclosure statement and/or confirmation of a chapter 11 plan. The following is a list of these cases.

- 1:17-bk-10212-MT
- 1:17-bk-0293-MB
- 1:17-bk-11847-VK
- 1:17-bk-12472-MB

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT...

Jasmin DeVillar

Chapter 11

- 1:17-bk-12958-MT
- 1:18-bk-10459-VK - dismissed with 180-day bar
- 1:18-bk-11332-MT - dismissed with 180-day bar
- 1:19-bk-12216-VK
- 1:19-bk-13011-VK
- 1:20-bk-10111-DS
- 2:17-bk-12606-DS
- 2:17-bk-21803-SK
- 2:18-bk-12382-BR - dismissed with 180-day bar
- 2:18-bk-23587-BR - dismissed with 180-day bar
- 8:18-bk-10423-TA
- 9:17-bk-10077-DS
- 9:18-bk-11191-DS

In case 1:19-bk-12810-VK, which is currently pending before the Court, Ms. Douglas is debtor in possession counsel. The Court recently issued an order to show cause why the case should not be dismissed or converted because Ms. Douglas failed to meet the deadline to file a chapter 11 plan and related disclosure statement and otherwise did not comply with an order of the Court [1:19-bk-12810-VK, doc. 75].

Not only has Ms. Douglas failed to file her employment application promptly, but she has consistently shown that she is not capable of prosecuting a chapter 11 case to confirmation of a chapter 11 plan of reorganization. Consequently, the Court will not approve employment of Ms. Douglas as debtor in possession counsel.

The Court will continue this status conference to **September 17, 2020 at 1:00 p.m.**, for Debtor to obtain qualified chapter 11 bankruptcy counsel. **By September 3, 2020,**

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT...

Jasmin DelVillar

Chapter 11

Debtor must file and serve on the United States trustee a status report discussing her efforts to secure such counsel.

Party Information

Debtor(s):

Jasmin DelVillar

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 12, 2020

Hearing Room 301

1:00 PM

1:20-11528 BurbankHills, LLC

Chapter 11

#4.00 Status conference re chapter 11

fr. 9/24/20

Docket 1

Tentative Ruling:

The Court will continue the status conference to **1:00 p.m. on November 19, 2020**, to take place subsequent to the hearing on the pending motion for relief from the automatic stay [doc. 22].

Appearances on November 12, 2020 are excused.

Party Information

Debtor(s):

BurbankHills, LLC

Represented By
Michael R Totaro

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

1:20-11615 Coachella Vineyard Luxury RV Park LLC

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"): **January 15, 2021.**

Deadline to mail notice of Bar Date: **November 16, 2020.**

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 29, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on February 18, 2021.**

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):

Coachella Vineyard Luxury RV Park

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:00 PM

CONT...

Coachella Vineyard Luxury RV Park LLC

M. Jonathan Hayes

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:30 PM

1:19-11696 Peter M. Seltzer

Chapter 7

#6.00 Trustee's Motion to: (1) Approve sale of real property free and clear of all liens, interests, claims, and encumbrances with such liens, interests, claims, and encumbrances to attach to proceeds pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approve overbid procedures; (3) Release debtor's funds to trustee held as collateral by Merrill Lynch Credit Corporation; (4) Determine that buyer is entitled to protection pursuant to 11 U.S.C. § 363(m)

Docket 178

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Peter M. Seltzer

Pro Se

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:30 PM

1:19-11777 Winters-Schram & Associates

Chapter 7

#7.00 Motion for Order Authorizing Trustee to Compromise Controversy
with 1501, LLC

fr. 10/22/20

Docket 62

Tentative Ruling:

Grant.

Note: The U.S. Trustee has withdrawn its opposition to the Motion, and no other response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition 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

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan
Jeremy Faith

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:30 PM

1:20-11134 Helping Others International, LLC

Chapter 7

#8.00 Trustee's notice of intent to abandon estate property

Docket 90

Tentative Ruling:

The Court will allow abandonment of the subject property.

I. BACKGROUND

On June 29, 2020 ("Debtor") filed a voluntary chapter 11 petition. In its schedule A/B, Debtor identified an interest in real property located at 6475 Marigayle Circle, Huntington Beach, CA 92646 (the "Huntington Property"). On September 2, 2020, the Court entered an order converting Debtor's case to a chapter 7 case [doc. 69]. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

On October 13, 2020, the Trustee filed a notice of intent to abandon the estate's interest, if any, in the Huntington Property (the "Notice") [doc. 86]. On the same day, the Trustee filed another notice of intent to abandon the estate's interest, claims, rights and defenses in the adversary proceeding involving the Huntington Property, bearing adversary no. 1:20-ap-01070-VK [doc. 90].

On October 28, 2020, United Lender, LLC ("United") filed an opposition to the Notice (the "United Opposition") [doc. 93], objecting to abandonment without a plan addressing certain concerns regarding the Huntington Property. On November 4, 2020, the City of Huntington Beach (the "City") untimely filed an opposition to the Notice (the "City Opposition") [doc. 97], also opposing abandonment based on complaints received by the City about the Huntington Property, and requesting appointment of a receiver or trustee. On November 4, 2020, the Trustee filed an omnibus reply to the United Opposition and the City Opposition [doc. 96]. On November 5, 2020, secured creditor Anh Thy Song Nguyen, Trustee of Mother Nature Trust (the "Trust") also filed a reply to the oppositions [doc. 98], as well as evidentiary objections to the Declaration of Jesse Bosque ("Bosque Declaration"), the Declaration of Maurice Weiner (the "Weiner Declaration") and Exhibit A, all attached to the United Opposition.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC

Chapter 7

II. ANALYSIS

Pursuant to 11 U.S.C. § 554(a), "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

Here, the parties do not dispute that the Huntington Property is burdensome to the estate, and that it is of inconsequential value and benefit to the estate. Instead, United and the City argue that the Court should not allow abandonment of the Huntington Property until there is a plan in place to protect the Huntington Property, such as the appointment of a receiver.

United did not provide any authority in support of its argument. In addition, the City, in its *late-filed* City Opposition, only cites 28 U.S.C. § 959(b) (and two cases analyzing that statute). However, 28 U.S.C. § 959(b) states that "a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the *State in which such property is situated*, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." (emphasis added). The City has not set forth any *state* laws the Trustee has violated during the course of this bankruptcy case. Instead, the City references certain sections of the Huntington Beach Municipal Code. Multiple sections of the United States Code define "State" as "any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States." *Compare* 28 U.S.C. § 3002; *and* 16 U.S.C. § 2902 (defining State as quoted); *with* 11 U.S.C. § 362(b)(4) (referring to "governmental unit" when inclusive of city or municipal government).

In any event, as explained by the Supreme Court of United States, 28 U.S.C. § 959(b) "does not directly apply to an abandonment under § 554(a) of the Bankruptcy Code" and "does not de-limit the precise conditions on an abandonment;" instead, the section is relevant only as support for the notion that "Congress did not intend for the Bankruptcy Code to pre-empt all state laws that otherwise constrain the exercise of a trustee's powers." *Midlantic Nat. Bank v. New Jersey Dep't of Env'tl. Prot.*, 474 U.S.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC

Chapter 7

494, 505, 106 S.Ct. 755, 761, 88 L.Ed.2d 859 (1986). To the extent the Huntington Beach Municipal Code, which is not "state law," falls within the purview of *Midlantic*, *Midlantic* provides the relevant standard when assessing an exception to the Trustee's ability to abandon estate property.

In *Midlantic*, the Supreme Court found a narrow exception to the Trustee's power to abandon property under 11 U.S.C. § 554(a)—

In the light of the Bankruptcy trustee's restricted pre-1978 abandonment power and the limited scope of other Bankruptcy Code provisions, we conclude that Congress did not intend for § 554(a) to pre-empt all state and local laws. The Bankruptcy Court does not have the power to authorize an abandonment without formulating conditions that will adequately protect the public's health and safety. Accordingly, without reaching the question whether certain state laws imposing conditions on abandonment may be so onerous as to interfere with the bankruptcy adjudication itself, we hold that a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards.

Midlantic, 474 U.S. at 506-07. The Supreme Court specified—

This exception to the abandonment power vested in the trustee by § 554 *is a narrow one*. It does not encompass a speculative or indeterminate future violation of such laws that may stem from abandonment. The abandonment power is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from *imminent and identifiable harm*.

Id., 474 U.S. at 507 n.9 (emphases added); *see also In re Howard*, 533 B.R. 532, 545 (Bankr. S.D. Miss. 2015) ("The majority of Courts that have interpreted footnote nine (9) in *Midlantic* have held that the 'narrow' exception to a trustee's abandonment power only applies in situations where an imminent and identified harm to the public health and safety exists."). The party opposing abandonment has the burden of proving that the condition of the property creates an imminent and identified harm to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC

Chapter 7

the public. *Howard*, 533 B.R. at 547 (citing *In re St. Lawrence Corp.*, 239 B.R. 720, 726-27 (Bankr. D.N.J. 1999)).

First, neither United nor the City has provided competent evidence in support of their oppositions. The City has not provided a declaration authenticating its exhibits. As for United, the Bosque Declaration was filed in connection with a prepetition state court action and, as such, qualifies as hearsay. Further, the March 24, 2020 declaration has little bearing on the *current* condition of the Huntington Property. Moreover, the Weiner Declaration purports to authenticate documents received by the City. Mr. Weiner, who is counsel for United, has not articulated why he has personal knowledge regarding the documents, or why he is able to properly authenticate the City's records. As such, there is no evidence in support of the oppositions. This alone is sufficient to disregard the oppositions to the Notice.

In addition, the opponents have not demonstrated that violations of the statutes referenced by the City qualify as the type of public health or safety risk envisioned by *Midlantic*. *Midlantic* involved "470,000 gallons of highly toxic and carcinogenic waste oil in unguarded, deteriorating containers" that "present risks of explosion, fire, contamination of water supplies, destruction of natural resources, and injury, genetic damage, or death through personal contact." *Midlantic*, 474 U.S. at 499 n.3. A vast majority of post-*Midlantic* cases involve contaminated properties that violate state environmental laws or regulations. United and the City have not cited, and the Court could not locate, a single case preventing abandonment based on local municipal statutes similar to the ones referenced by the City, which relate to noise disturbances, loitering or the diminution of property values based on debris or junk on the property. The City has not articulated why these statutes qualify as laws or regulations calculated to protect public health or safety.

However, even if the statutes referenced by the City may be read as protecting public health or safety, and even if the Court considers the documents attached to the oppositions, the opponents have not met their burden of proving that violation of the referenced statutes will lead to *imminent* harm, as required by *Midlantic*. In the Bosque Declaration, Mr. Bosque stated that he spoke to three neighbors who stated that "the Home was at one time operating as [a] sober living facility business" and that "many people still come and go at the Home," but that, at the time they were interviewed by Mr. Bosque, the neighbors did not know who was living at the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:30 PM

CONT... **Helping Others International, LLC**

Chapter 7

Huntington Property or the nature of any operation on the Huntington Property. Bosque Declaration, ¶ 2. Mr. Bosque also stated that he saw CO2 cartridges on the Huntington Property that he believed were indicative of drug use. Bosque Declaration, ¶ 3.

Notwithstanding the speculative nature of these statements, the Bosque Declaration is dated March 24, 2020. Assuming these conditions still exist on the Huntington Property, which has not been proven, the fact that Mr. Bosque investigated these conditions *seven months* before United opposed the Notice indicates that any threat from these conditions is not imminent. Even in cases where there *was* a risk to the public health or safety, courts denied relief where the risk was not imminent. *See In re Shore Co., Inc.*, 134 B.R. 572, 579 (Bankr. E.D. Tex. 1991) ("Given the lack of action on the part of the [state water commission], this Court can only conclude that it has long been the judgment of the [commission] that the refinery property constituted more of an environmental concern than an immediate danger."); *and In re Franklin Signal Corp.*, 65 B.R. 268, 269 n.1 (Bankr. D. Minn. 1986) ("The logical inference of the State's inaction [regarding drums filled with possibly hazardous waste] is that the drums do not pose any imminent threat to the public.").

The same is true about the documents from the City. The police reports and code enforcement complaints date back to 2018. As with the issues raised in the Bosque Declaration, it does not appear the City, or any other entity, has taken any action to resolve these complaints. In addition, the nature of the complaints reinforce the lack of imminence; the complaints include: the Huntington Property being used as a sober living facility [FN1], "multiple people coming and going," "dog constantly off the leash," "filming music videos," "excessive trash build up," "rat infestation," "strong smell of marijuana," "illegal parked vehicles" and "disruptive raised voices." Weiner Declaration, ¶ 3, Exhibit 1. The police reports attached to the City Opposition include similar complaints about illegally parked vehicles, as well as some complaints about medical issues experienced by people in or around the Huntington Property.

Complaints about individual medical issues are personal, and do not pose an imminent threat to the *public*. As such, individual health or safety concerns do not come within the purview of the *Midlantic* exception. While the remaining complaints may be bothersome to the community, United and the City have provided no evidence that the health or safety of neighbors was compromised by the conditions in the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC

Chapter 7

complaints. At most, the complaints reflect more of a "concern than an immediate danger." *Shore Oil*, 134 B.R. at 579.

As discussed above, the exception to the Trustee's power to abandon is narrow, and the burden rests on opponents to demonstrate an imminent and identifiable harm. The complaints about the Huntington Property reflected in the United Opposition and the City Opposition are not comparable to the threat posed by, for example, severe environmental contamination. To place the burden to resolve the issues related to the Huntington Property on the Trustee would open the door for owners or secured creditors to oppose abandonment for the purpose of shifting the cost of property maintenance (and liability stemming therefrom) to the estate. In a case where there is no imminent and identifiable threat to public health or safety, the Court will not impose such a burden on a bankrupt estate.

III. CONCLUSION

The Court will allow abandonment of the Huntington Property.

The Trustee must submit an order within seven (7) days.

FOOTNOTES

1. While the code enforcement complaints include some discussion about whether the Huntington Property was being used as a sober living facility, the most recent emails indicate that all detox clients had been "kicked out." Weiner Declaration, ¶ 3, Exhibit 1, p. 20. As such, even the unauthenticated documents indicate that the Huntington Property may not *currently* be used as a detox center.

Tentative ruling regarding the evidentiary objections set forth below:

The Trust's Evidentiary Objections to Exhibit A of the United Opposition
Sustain.

The Trust's Evidentiary Objections to the Bosque Declaration
Sustain.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC

Chapter 7

The Trust's Evidentiary Objections to the Weiner Declaration
Sustain.

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 12, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

#9.00 Trustee's application to employ LEA Accountancy, LLP as accountant

Docket 85

Tentative Ruling:

The Court will continue this hearing to **1:30 p.m. on December 3, 2020**, to be held with the hearing on the debtor's claim of a homestead exemption.

Appearances on November 12, 2020 are excused.

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, November 17, 2020

Hearing Room 302

8:30 AM

1:

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

**You will not be permitted to be physically present in the courtroom.
All appearances for the November 17, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.**

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply). Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Join By Computer

Meeting URL: <https://cacb.zoomgov.com/j/1600517495>

Meeting ID: 160 051 7495

Password: 111720GM

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 160 051 7495

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, November 17, 2020

Hearing Room 302

8:30 AM

CONT...

Chapter

Password: 45552184

Docket 0

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 17, 2020

Hearing Room 301

8:30 AM

1:20-11531 Kelly Hanson Rodriguez

Chapter 7

#1.00 Reaffirmation agreement between debtor
and Logix Federal Credit Union

fr. 10/20/20

Docket 9

Party Information

Debtor(s):

Kelly Hanson Rodriguez

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, November 17, 2020

Hearing Room 301

8:30 AM

1:20-11646 Javier Morales

Chapter 7

#2.00 Reaffirmation agreement between debtor and Wells Fargo Bank N.A.

Docket 9

Party Information

Debtor(s):

Javier Morales

Represented By
R Grace Rodriguez

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 18, 2020

Hearing Room 301

9:30 AM

1:19-12947 Ronaldo Garcia

Chapter 13

#1.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS.
DEBTOR

fr. 10/14/20(stip)

Stipulation for adequate protection filed 11/17/20

Docket 31

*** VACATED *** REASON: Order approving stip entered 11/17/20.
[Dkt.43]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronaldo Garcia

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**

Wednesday, November 18, 2020

Hearing Room 301

9:30 AM

1:19-11648 Maryam Sheik

Chapter 11

#2.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 10/07/20; 10/21/20

Docket 123

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

9:30 AM

1:19-11777 Winters-Schram & Associates

Chapter 7

#3.00 Motion for relief from stay [AN]

MILLER WOODWORKING, INC
VS
DEBTOR

Docket 73

***** VACATED *** REASON: Judge's copy was not timely provided in
accordance with Judge's procedures**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Winters-Schram & Associates

Represented By
Daniel H Reiss
Lindsey L Smith

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan
Jeremy Faith

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

9:30 AM

1:20-11478 Amanda Regina Monzon

Chapter 7

#4.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA
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):

Amanda Regina Monzon

Represented By
Daniel King

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

9:30 AM

CONT... Amanda Regina Monzon

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

9:30 AM

1:20-10614 Jonathan Duco DelRosario and Charleen Sheryl Untaran

Chapter 13

#5.00 Motion for relief from stay [PP]

CAPITAL ONE AUTO FINANCE
VS
DEBTOR

Docket 25

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Jonathan Duco DelRosario

Represented By
David H Chung

Joint Debtor(s):

Charleen Sheryl Untaran DelRosario

Represented By
David H Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

9:30 AM

CONT... Jonathan Duco DelRosario and Charleen Sheryl Untaran

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 18, 2020

Hearing Room 301

9:30 AM

1:20-10924 Tikran Eritsyan

Chapter 11

#6.00 Motion for relief from stay [RP]

RED DRAGON INVESTMENT AND
PLATINUM BUSINESS MANAGEMENT
VS
DEBTOR

Docket 49

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tikran Eritsyan

Represented By
Vahe Khojayan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

9:30 AM

1:20-11528 BurbankHills, LLC

Chapter 11

#7.00 Motion for (A) relief from stay [RP] ; and (B) relief from turnover under 11 U.S.C. sec 543 by prepetition receiver or other custodian

MJS ENTERPRISES, INC.
VS
DEBTOR

Docket 22

Tentative Ruling:

In February 2018, the debtor paid movant \$875,000 for the real property at issue (the "Property"), made an initial payment of \$475,000 and entered into an agreement with movant to finance the remainder of the purchase price. The balance of the loan was due on April 18, 2020.

In the motion, movant states that the Property's fair market value is \$790,500.00, and that the amount payable to movant is \$419,518.40.

Regarding the request for relief under 11 U.S.C. § 362(d)(1), at this time, there appears to be a significant equity cushion regarding movant's secured claim, and movant has not demonstrated the extent to which the value of the Property is declining, given that the expiration date for the recording of a final map is March 10, 2022.

Assuming that the debtor takes no further action to develop the Property, at what point in time will movant no longer have a significant equity cushion?

Party Information

Debtor(s):

BurbankHills, LLC

Represented By
Michael R Totaro

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

9:30 AM

CONT... BurbankHills, LLC

Chapter 11

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01072 Adri v. Adri

#8.00 Status conference re: complaint to deny debtor's discharge

fr. 8/21/19; 10/2/19; 11/6/19; 1/15/20

Docket 1

Tentative Ruling:

At a hearing on a motion for summary judgment filed in the *Miller v. Adri* adversary proceeding [1:19-ap-01088-VK], held on October 14, 2020, the Court continued the pretrial conference in that adversary to **1:30 p.m. on April 21, 2021**. Because this adversary proceeding is trailing the *Miller v. Adri* adversary proceeding, the Court also will continue this pretrial conference to the same time and date.

Appearances on November 18, 2020 are excused.

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, November 18, 2020

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

#9.00 Status conference re: complaint to deny discharge

fr. 10/2/19; 11/6/19; 1/15/20

Docket 1

Tentative Ruling:

At a hearing on a motion for summary judgment filed, held on October 14, 2020, the Court continued the pretrial conference to **1:30 p.m. on April 21, 2021**. In addition, the Court set a new deadline of **April 7, 2021** for the parties to submit a joint pretrial stipulation.

Appearances on November 18, 2020 are excused.

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, November 18, 2020

Hearing Room 301

1:30 PM

1:18-11125 Marcelo Martinez

Chapter 11

Adv#: 1:20-01080 Martinez v. Saakyan et al

- #10.00** Status conference re: complaint for:
- 1) Fraud;
 - 2) Civil conspiracy;
 - 3) Quiet title;
 - 4) Cancellation of instruments;
 - 5) Slander of title;
 - 6) Declaratory relief;
 - 7) Injunctive relief

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on December 9, 2020**, to be held with the hearing on the plaintiff's motion for default judgment [doc. 15].

Appearances on November 18, 2020 are excused.

Party Information

Debtor(s):

Marcelo Martinez

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Defendant(s):

Diana Saakyan

Pro Se

Regional Trustee Services

Pro Se

Does 1 to 10 Inclusive

Pro Se

Plaintiff(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**

Wednesday, November 18, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01041 Sheik v. MDA Motors Corp., a California corporation et al

#11.00 Status conference re: complaint for
1) Quit title;
2) Slander of title;
3) Declaratory relief

fr. 7/29/20; 10/7/20; 10/14/20

Docket 1

*** VACATED *** REASON: Judgment entered 10/21/20 [doc. 61].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

MDA Motors Corp., a California

Pro Se

Greenwood Pontiac, Inc. a dissolved

Pro Se

Jamshid Lavi, an individual

Pro Se

All Persons Or Entities Unknown

Pro Se

Does 1-10, Inclusive

Pro Se

Plaintiff(s):

Maryam Sheik

Represented By

Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:20-01043 Sheik v. Lilly Group, a trust et al

- #12.00** Status conference re: complaint for:
- 1) Fraud;
 - 2) Fraud based on forgery
 - 3) Civil conspiracy
 - 4) Quiet title
 - 5) Cancellation of instruments
 - 6) Slander of title
 - 7) Declaratory relief
 - 8) Injunctive relief

fr: 6/3/20; 7/29/20; 10/7/20; 10/14/20

Docket 1

***** VACATED *** REASON: Judgment entered 10/21/20 [doc. 46].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Lilly Group, a trust

Pro Se

Lavender Enterprises, a trust

Pro Se

RA Sterling Investments & Holdings

Pro Se

Andrew Alcaraz, an individual

Pro Se

All Persons or Entities Unknown

Pro Se

Does 1 to 10, Inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

1:30 PM

CONT... Maryam Sheik

Chapter 11

Plaintiff(s):

Maryam Sheik

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

1:30 PM

1:20-10439 Ruzanna Harutyunyan

Chapter 7

Adv#: 1:20-01079 United States Trustee, Region 16 v. Harutyunyan

#13.00 Status conference re: complaint objecting to discharge pursuant to 11 U.S.C. §§ 727(a)(3), 727(a)(4)(A), and 727(a)(5)

Docket 1

***** VACATED *** REASON: Stip for judgment entered 11/4/20 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ruzanna Harutyunyan

Represented By
Gary Petrosyan

Defendant(s):

Ruzanna Harutyunyan

Pro Se

Plaintiff(s):

United States Trustee, Region 16

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, November 18, 2020

Hearing Room 301

1:30 PM

1:20-10855 Patricia Esmeralda Rangel

Chapter 7

Adv#: 1:20-01055 Rangel v. Navient Solutions LLC., dba Navient, Navient Solut

#14.00 Status conference re complaint to determine dischargeability of student loans under 11 U.S.C sec. 523(a)(8)(A)(i)(ii) and (B)

fr. 7/29/20; 8/26/20

Docket 1

Tentative Ruling:

Defendant Navient Solutions, LLC contends that the Court does not have subject matter jurisdiction over any claims other than the plaintiff's claims under 11 U.S.C. § 523(a)(8). In addition, both the defendants do not consent to entry of a final judgment by this Court. However, the plaintiff apparently seeks relief only under 11 U.S.C. § 523(a)(8). In § 523 actions, 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)).

Parties should be prepared to discuss the following:

Deadline to complete discovery: 3/1/21.

Deadline to file pretrial motions: 3/31/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 4/21/21.

Pretrial: 5/5/21 at 1:30 p.m.

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).

The Court will prepare the Scheduling Order.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

1:30 PM

CONT... Patricia Esmeralda Rangel

Chapter 7

Party Information

Debtor(s):

Patricia Esmeralda Rangel	Pro Se
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Defendant(s):

Navient Solutions LLC., dba	Represented By Dennis C. Winters
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U.S. Department of Education	Pro Se
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Plaintiff(s):

Patricia Esmeralda Rangel	Pro Se
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Trustee(s):

David Keith Gottlieb (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 18, 2020

Hearing Room 301

1:30 PM

1:20-11236 Lindsay Hemric

Chapter 13

Adv#: 1:20-01078 Hemric v. TOTAL LENDER SOLUTIONS, INC et al

- #15.00** Status conference re: amended complaint for:
1. Violation of 11 U.S.C. sec 362(a) automatic stay;
 2. Declaration of invalidity of foreclosure sale based upon violation of 11 U.S.C. sec 362(a) automatic stay;
 3. Intentional infliction of emotional distress.

Docket 2

Tentative Ruling:

The plaintiff did not timely serve the summons on the defendants.

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 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 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 that summons were timely served on the defendants. If the plaintiff can obtain an issued Another Summons from the Court by November 30, 2020, the status conference will be continued to **1:30 p.m. on February 10, 2021**.

No later than **January 27, 2021**, the parties must submit a joint status report in accordance with Local Bankruptcy Rule 7016-1(a).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

1:30 PM

CONT... Lindsay Hemric

Chapter 13

Party Information

Debtor(s):

Lindsay Hemric

Represented By
Ronda Baldwin-Kennedy

Defendant(s):

TOTAL LENDER SOLUTIONS,

Pro Se

JOSEPH BUNTON

Pro Se

Ryan Alexander

Pro Se

Joseph Bunton, as Trustee of the

Pro Se

Plaintiff(s):

Lindsay Hemric

Represented By
Ronda Baldwin-Kennedy

Trustee(s):

Elizabeth (SV) 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 18, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

Adv#: 1:20-01067 ZAMORA v. Perez

- #15.10** Status conference re: complaint for:
1. Avoidance of fraudulent transfer;
 2. Avoidance of insider preference;
 3. Turnover of estate's property;
 5. Automatic preservation of avoided transfer

fr. 9/16/20; 11/4/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on December 16, 2020.**

The plaintiff is instructed **not** to file a motion for default judgment, or any other pleadings in this adversary proceeding regarding this issue, unless and until the Court provides a deadline to do so.

Appearances on November 18, 2020 are excused.

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Defendant(s):

Maria Rita Perez

Pro Se

Plaintiff(s):

NANCY J ZAMORA

Represented By
Toan B Chung

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 18, 2020

Hearing Room 301

2:30 PM

1:18-11620 Antoine R Chamoun

Chapter 7

Adv#: 1:19-01105 Seror, Chapter 7 Trustee v. Chamoun et al

#16.00 Motion to quash subpoena to JP Morgan Chase Bank N.A.

Docket 53

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on November 25, 2020.**

Appearances on November 18, 2020 are excused.

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Defendant(s):

Walid R. Chamoun

Represented By
Robert S Altagen

Patricia Chamoun

Represented By
Robert S Altagen

Plaintiff(s):

David Seror, Chapter 7 Trustee

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

1:19-11696 Peter M. Seltzer

Chapter 7

Adv#: 1:19-01151 Kessler v. Seltzer

#17.00 Motion for summary judgment against defendant Peter M. Seltzer denying debtor's discharge under 11 U.S.C. § 727(a)(2)(A), (a)(4)(A), and (a)(5), or, in the alternative, for summary adjudication

Docket 44

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on December 2, 2020.**

Appearances on November 18, 2020 are excused.

Party Information

Debtor(s):

Peter M. Seltzer

Pro Se

Defendant(s):

Peter M. Seltzer

Represented By
Kathleen C Hipps

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies
Noreen A Madoyan

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

1:19-12150 Houchik Boyadjian

Chapter 7

Adv#: 1:19-01132 Sridhar Equities, Inc. v. Boyadjian

#18.00 Motion for partial summary adjudication

Docket 35

Tentative Ruling:

For the reasons discussed below, the Court will grant the motion in part and deny the motion in part.

I. BACKGROUND

A. State Court Proceedings

On August 23, 2012, SE-SOCAL, LLC and/or Assigns ("SOCAL"), a California limited liability company, entered into a residential income property purchase agreement (the "Purchase Agreement") to buy a 115-unit apartment building located at 13607 Cordary Avenue, Hawthorne, California 90250 (the "Property") from sellers Vatche Boyadjian, Houchick Boyadjian (the "Debtor"), John Porichis and Taline Porichis for \$12,718,073.63 [doc. 35, Exh. A, Purchase Agreement]. Vatche Boyadjian and Debtor held a 55% interest in the Property; John Porichis and Taline Porichis held the remaining 45% interest [*id.*, Exh. E, Final Award, p. 1].

SOCAL assigned the Purchase Agreement to Corrdary, LLC ("Corrdary"), a California limited liability company, to complete the purchase [*id.*, Exh. A, State Court Complaint, ¶ 5]. On October 5, 2012, at the closing of the sale, SOCAL and Corrdary assumed the full amount of the existing loan encumbering the Property held by Wells Fargo in the amount of \$11,119,161.30 [*id.*, Exh. E, Final Award, p. 1]. Corrdary transferred management of the Property to Sridhar Equities, Inc. (the "Plaintiff") [*id.*, Memorandum of Points and Authorities, p. 3].

Vatche Boyadjian acted as the agent for the sellers when negotiating the sale of the Property to SOCAL [*id.*, Exh. E, Final Award, p. 1]. Vatche Boyadjian represented to SOCAL that the Property was producing income including, among other things, that: (1) the rent rolls were accurate; (2) tenants were paying rent; (3) there were only five vacancies; (4) the loan held by Wells Fargo was current on all payments; and (5) the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT... **Houchik Boyadjian**

Chapter 7

loan was not in default. *Id.*, at p. 3.

On October 25, 2012, SOCAL and Corrdary discovered that representations made by the sellers were not accurate [*id.*, Exh. A, State Court Complaint, ¶ 7]. Specifically, SOCAL and Corrdary discovered, among other things, that: (1) the rent rolls were not accurate; (2) some tenants were not paying rent; (3) there were thirty vacancies; (4) the loan owed to Wells Fargo was not current on payments; and (5) the loan was in default [*id.*, Memorandum of Points and Authorities, p. 3; Exh. E, Final Award, p. 2–3]. As a result, the loan defaulted, incurring interest, penalties and other fees in the amount of \$472,576.11 [*id.*, Memorandum of Points and Authorities, p. 3].

Plaintiff was unable to cure the default; Wells Fargo accelerated the outstanding balance due on the loan and began foreclosure proceedings. *Id.*, at p. 4–5. On November 6, 2013, the Property was sold at a trustee's sale. *Id.*, at 5.

Consequently, on September 21, 2015, SOCAL and Corrdary (collectively, the "Plaintiffs") filed a complaint against Vatche Boyadjian, Debtor, John Porichis, Taline Porichis and Does 1-50 (collectively, the "Defendants") in the Superior Court of California, for the County of Los Angeles (the "State Court"), seeking among other things, actual damages in the minimum amount of \$1 million, exemplary damages, interest on damages, attorney's fees and costs (the "State Court Action") [*id.*, Exh. A, State Court Complaint]. In the State Court Action, Plaintiffs alleged:

[Defendants] made representations of fact to Plaintiffs that were untrue when made, including other things, that the Property produced certain income, and that the then-existing loan, which would be transferred with the Property, was current and in good standing. These representations, and others unknown at this time, were false when made, and were made with the intent to induce Plaintiffs into entering into the Purchase Agreement with Defendants.

...

Plaintiffs reasonably believed the misrepresentations by Defendants were true, and in reliance upon those misrepresentations entered into the Purchase Agreement to buy the Property.

Id., at ¶¶ 10, 18 (changes to formatting).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT...

Houchik Boyadjian

Chapter 7

Pursuant to the terms of the Purchase Agreement under Paragraph 35.B, the State Court Action was sent to arbitration [*id.*, Exh. A, Purchase Agreement, Paragraph 35.B].

On February 6, 2018, Debtor, the wife of Vatche Boyadjian, was deposed [*id.*, Exh. B, Deposition Transcript]. During the deposition, Debtor explained that she worked with her husband in the office, and that her role was limited to bookkeeping, collecting rent from tenants and paying the expenses of the Property, including the loan held by Wells Fargo. *Id.*, at p. 12–22. Debtor also stated that she was not aware that her husband misrepresented information when the Property was sold. *Id.*

From April 24, 2018 through April 26, 2018, JAMS arbitrator John W. Kennedy, Jr. held an evidentiary hearing [*id.*, Declaration of Kenneth R. Van Vleck, ¶ 5; Exh. E, p. 2]. At that hearing, each side offered documentary evidence, called witnesses and cross-examined opposing witnesses [*id.*, Exh. E, Final Award, p. 2]. At the conclusion of the presentation of evidence, the parties submitted post-arbitration briefing. *Id.*

On October 16, 2018, the arbitrator issued a Final Award (the "Arbitration Award") [*id.*, Exh. E, Final Award]. In the State Court Action, on December 12, 2018, the State Court confirmed the Arbitration Award (the "Judgment") [doc. 37, Exh. F, Order]. The Judgment is final. *Id.*

On December 27, 2018, SOCAL and Corrdary assigned the Judgment to Madhu Sridhar [doc. 12, Exh. C, Assignment of Judgment]. On January 2, 2020, Madhu Sridhar assigned the Judgment to Plaintiff [*id.*, Exh. D, Assignment of Judgment].

A. Arbitration Award and the Judgment

In relevant part, the Arbitration Award states the following:

ISSUES

...

1. Intentional misrepresentation

By clear and convincing evidence, [Plaintiffs] established that Vatche Boyadjian intentionally misrepresented tenant occupancy and corresponding rent income. While he warranted to [Plaintiffs] that there

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT...

Houchik Boyadjian

Chapter 7

were only 8 vacancies (7%), there were in fact 30 vacancies (26%). That resulted in tenant income being overstated, for example in the month of June 2012, by 23.7% (\$81,251 actual as opposed to \$100,497 reported). The impact on the apartments' bottom line was dramatic; Boyadjian reported to [Plaintiffs] that there was a positive cash flow for the first six months of 2012 in the amount of \$61,902.09. In fact, as reported by Boyadjian, to the mortgage holder, Wells Fargo Bank, the cash flow for the first six months of 2012 was a negative \$110,597.42.

Boyadjian also falsely reported the status of the Wells Fargo mortgage loan to [Plaintiffs]. In the representations and warranties, he represented that the Wells Fargo loan was current. In his deposition testimony, Boyadjian admitted that he received monthly mortgage statements from Wells Fargo up to the time he sold the property, so he knew the true status of the loan. I find that he fabricated an email (Exhibit 20) which he showed Sridhar stating that "we are current as of today [September 25, 2012]." The truth is that he received notice from Wells Fargo as of September 19, 2012 that past due payments owed to Wells Fargo were \$390,192.26 (Exhibit 35). His blatant misrepresentation of the status of the loan was clearly intended to, and did, induce [Plaintiffs] to close the sale on October 5, 2012. The lie that the loan was current was one of the most egregious lies I have encountered in 38 years as a judge and mediator/arbitrator. Accordingly, I find that the misrepresentation of the status of the Wells Fargo loan was a further fraudulent misrepresentation and I so find by clear and convincing evidence.

...

I find that it was reasonable for [Plaintiffs] to trust Boyadjian to be truthful. Also, I find that Boyadjian's false e-mail (Exhibit 35) was designed to look legitimate as a means of facilitating Boyadjian's misrepresentation. Because of its appearance of authenticity, I find that Sridhar was reasonable in relying on its truthfulness.

2. Negligent misrepresentation

I find that the misrepresentation in this case were intentional. I do not find they were negligent.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT...

Houchik Boyadjian

Chapter 7

3. Damages

In this case, once the various misrepresentations were discovered, [Plaintiffs] elected not to make any further loan payments. As a result, the loan went into default and the bank foreclosed on the property. The foreclosure sale wiped out any equity [Plaintiffs] might have had. [Defendants] take the position that [Plaintiffs] could have re-negotiated a plan with Wells Fargo and the apartment would not have had to be lost in foreclosure. [Defendants] contend that failure to make attempts to reinstate the loan constitutes a failure to mitigate damages, such failure to be considered in the assessment of damages. I conclude, however, that the misrepresentation regarding the tenant income and the excessive vacancy factor justified [Plaintiffs] in concluding that it made no sense to invest several hundred thousand dollars to cure [Defendants'] default, for the privilege of operating a money-losing apartment complex with significant deferred maintenance.

...

TOTAL FINAL AWARD

- I. As to John and Taline Porichis and Houchick Boyadjian in favor of Corrdary, LLC, a California limited liability company and SE-SOCAL, LLC, a California limited liability company, on the claim for intentional misrepresentation:

Compensatory damages	\$1,989,120.00
Attorney fees	\$122,371.00
Costs	\$23,908.59
JAMS fees	<u>\$36,355.58</u>
TOTAL AWARD	\$2,171,755.17

Liability as to Houchick Boyadjian is based upon proof that Vatche Boyadjian, her husband, was acting as her agent during the events described herein, which resulted in a finding of liability for intentional misrepresentation.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT...

Houchik Boyadjian

Chapter 7

II. As to Vatche Boyadjian in favor of Corrdary, LLC, a California limited liability company and SE-SOCAL, LLC, a California limited liability company on the claim for intentional misrepresentation:

Compensatory damages	\$1,989,120.00
Punitive damages	\$1,000,000.00
Attorney fees	\$122,371.00
Costs	\$23,908.59
JAMES fees	<u>\$36,355.58</u>
TOTAL AWARD	\$3,171,755.17

The Arbitration Award states that, because Debtor is the wife of Vatche Boyadjian and he acted as her agent in managing the Property, Debtor is liable for intentional misrepresentation when the Property was sold to SOCAL and Corrdary.

The Judgment states, in relevant part, that "Petitioners Corrdary, LLC and SE-SOCAL, LLC recover from Respondents Houchick Boyadjian, John Porichis, and Taline Porichis the sum of \$2,171,585.17, including compensatory damages, attorney fees, costs, and JAMS fees, with interest at 10% per annum from October 10, 2018 and attorney fees of \$2,680 and costs of this proceeding of \$110" [doc. 37, Exh. F, Order, p. 2].

B. The Adversary Case

On August 27, 2019, Debtor filed a voluntary chapter 7 petition, initiating case no. 1:19-bk-12150-VK. On November 5, 2019, Corrdary filed a complaint against Debtor objecting to the discharge of the debt to it pursuant to the Arbitration Award under 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6), initiating this adversary proceeding [doc. 1].

On August 31, 2020, Plaintiff, an assignee for Corrdary, filed a motion for partial summary adjudication on the 11 U.S.C. § 523 claims (the "Motion") [doc. 35] and a request for judicial notice [doc. 37]. Debtor did not file an opposition or response to the Motion.

In the Motion, Plaintiff argues that the Arbitration Award has collateral estoppel effect and the finding of fraud bars the discharge of Debtor's debt to Plaintiff under §§ 523(a)(2)(A), (a)(4) and (a)(6). Regarding the § 523(a)(4) claim, Plaintiff argues that Debtor acted wrongfully in taking money from Corrdary. Moreover, concerning the § 523(a)(6)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT... **Houchik Boyadjian**

Chapter 7

claim, Plaintiff argues that Debtor acted willfully and maliciously.

II. DISCUSSION

A. Motion for Summary Judgment

Pursuant to Rule 56 of the Federal Rules of Civil Procedure ("FRCP"), applicable to this adversary proceeding under Rule 7056 of the Federal Rules of Bankruptcy Procedure ("FRBP"), 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. *See* Fed. R. Civ. Pro. 56; Fed. R. Bankr. Pro. 7056; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). "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 judgement; the requirement is that there be no genuine issue of material fact." *Anderson*, 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 be 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, dispositions, 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, 91 L.Ed.2d 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT...

Houchik Boyadjian

Chapter 7

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 FRCP 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions and interrogatory answers. *Celotex Corp.*, 477 U.S. at 324. To establish a genuine issue, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 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 [nonmoving 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)).

"California further places an additional limitation to issue preclusion: courts may give

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT... **Houchik Boyadjian**

Chapter 7

preclusive effect to a judgment ‘only if application of preclusion furthers the public policies underlying the doctrine.’” *Plyam*, 530 B.R. at 462 (quoting *Harmon*, 250 F.3d at 1245). “The party asserting preclusion bears the burden of establishing the threshold requirements.” *Harmon*, 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)).

However, “a court’s silence concerning a pleaded allegation does not constitute adjudication of the issue.” *Harmon*, 250 F.3d at 1247. “Many jurisdictions require, as a threshold requirement to the application of collateral estoppel, a showing that a party against whom collateral estoppel is being asserted had a full and fair opportunity to litigate the issue. Under California law, the presence or absence of a full and fair opportunity to litigate usually is relevant not to the threshold inquiry, but rather to the public policy inquiry.” *Id.*

“A confirmed arbitration award has the same force and effect as a state court judgment.” *In re Briles*, 228 B.R. 462, 466 (Bankr. S.D. Cal. 1998), *aff’d*, 16 F. App’x 698 (9th Cir. 2001).

C. 11 U.S.C. § 523(a)(2)(A)

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt “for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor’s or an insider’s financial condition.”

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT... Houchik Boyadjian

Chapter 7

To prevail on a § 523(a)(2)(A) claim, the plaintiff must demonstrate, by a preponderance of the evidence, the following five elements:

- (1) Misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) Knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) An intent to deceive;
- (4) Justifiable reliance by the creditor on the debtor's statement or conduct; and
- (5) Damage to the creditor proximately caused by its reliance on the debtor's statement or conduct.

In re Weinberg, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)). A claim under § 523(a)(2)(A) may arise from the "concealment or intentional nondisclosure as well as affirmative misrepresentations of material facts." *In re Evans*, 181 B.R. 508, 515 n. 6 (Bankr. S.D. Cal. 1995).

Plaintiff has met its burden of proving that it is entitled to summary judgment on its 11 U.S.C. § 523(a)(2)(A) claim based on the fraud finding in the Arbitration Award. However, Plaintiff is not entitled to summary judgment on its 11 U.S.C. § 523(a)(4) and (a)(6) claims; respectively, larceny, and willful and malicious injury.

1. Issue Preclusion Applies to the Fraud Finding in the Arbitration Award

Through the Arbitration Award, the State Court held that Debtor was liable for intentional misrepresentation. The Arbitration Award is based on the same facts alleged in the State Court Action.

With respect to § 523(a)(2)(A), "Ninth Circuit case law conforms that the elements of fraud under California law match the ones under § 523(a)(2)(A)." *In re Davis*, 486 B.R. 182, 191 (Bankr. N.D. Cal. 2013) (citing *In re Younie*, 211 B.R. 367, 373–74 (B.A.P. 9th Cir. 1997) ("The elements of § 523(a)(2)(A) 'mirror the elements of common law fraud' and match those for actual fraud under California law."). The same elements apply to fraud in the inducement. *Parino v. BidRack, Inc.*, 838 F.Supp.2d 900, 906 (N.D. Cal. 2011) (applying California law on fraudulent in the inducement); see also *In re Nga Tuy Pham*, 2009 WL 3367046 (Bankr. N.D. Cal. 2009) ("A debt is excepted from discharge if it results from fraud in the inducement. 11 U.S.C. § 523(a)(2)[A]."). Based on these authorities, the issues are identical to the issues before this

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT... **Houchik Boyadjian**
Court.

Chapter 7

The "actually litigated" requirement addresses whether the issues were "properly raised, submitted for determination, and determined in that proceeding." *Happy Nails & Spa of Fashion Valley, L.P. v. Su*, 159 Cal. Rptr. 3d 503, 512 (Ct. App. 2013). As noted in the Arbitration Award, both parties appeared at the evidentiary hearing and presented oral and written documentary evidence. Based on the Arbitration Award, the issues related to fraud were litigated. Based on the evidence at the hearing, cross-examination and post-arbitration briefing, the arbitrator rendered his final decision. Consequently, this element is satisfied.

"In order for the determination of an issue to be given preclusive effect, it must have been necessary to a judgment." *Creative Venture, LLC v. Jim Ward & Assocs.*, 126 Cal. Rptr. 3d 564, 580 (Ct. App. 2011). The issues present here were necessarily decided in the State Court Action. The State Court could not have entered a judgment holding that Debtor is liable for fraud unless the State Court decided all of the issues under § 523(a)(2)(A), including Plaintiff's justifiable reliance. The Arbitration Award specifically found that Debtor made a false misrepresentation when Vatche Boyadjian acted as her agent; Plaintiff relied on this misrepresentation and Plaintiff was injured as a result. Accordingly, this element also is satisfied.

The Judgment is final and, on the merits, as evidenced by the Arbitration Award, which includes detailed findings about why Debtor is liable for intentional misrepresentation as asserted in the State Court Action. This element is satisfied.

The parties to this proceeding are identical to the parties in the State Court Action. Plaintiff is an assignee of Corrdary, a party in the State Court Action. As such, this element is also satisfied. Accordingly, the Court may give preclusive effect to the fraud finding in the Arbitration Award.

2. *The Entire Arbitration Award is Nondischargeable under § 523(a)(2)A*

Although the Arbitration Award's finding of fraud may be given preclusive effect, "only those damages proximately caused by the fraud . . . may be given preclusive effect." *In re Henkel*, 490 B.R. 759, 782 (Bankr. S.D. Ohio 2013); *see also Demerdjian v. Thompson (In re Thompson)*, 354 B.R. 174, 180 (Bankr. E.D. Tenn. 2006) ("Although the plaintiff has a claim for breach of contract, only that portion of the damages

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT...

Houchik Boyadjian

Chapter 7

proximately caused by the fraud is nondischargeable under § 523(a)(2)(A).") (citing *Novartis Corp. v. Luppino (In re Luppino)*, 221 B.R. 693, 703–04 (Bankr. S.D.N.Y. 1998) (finding that analysis still required on each debt to determine whether it was proximately caused by § 523(a)(2)(A) acts) (additional citations omitted); *see also Lewis v. Lowery (In re Lowery)*, 440 B.R. 914, 925 (Bankr. N.D. Ga. 2010) ("[Issue Preclusion] as to liability is not the same as [issue preclusion] as to damages, and the Court must separately analyze the damages awarded to the Plaintiff.").

The Arbitration Award states that compensatory damages can be considered proximately caused by Debtor's intentional misrepresentation. The Arbitration Award states that Corrdary and SOCAL were unable to cure the default and suffered damages in maintaining a money-losing apartment complex induced by Debtor's fraud.

Although breach of contract damages generally are dischargeable, if that breach of contract is accompanied by fraud, the damages may be nondischargeable. As the district court in *In re Roth*, 518 B.R. 63, 71 (S.D. Cal. 2014), *aff'd*, 662 F. App'x 540 (9th Cir. 2016), states:

A "fundamental polic[y] of bankruptcy law is to give a fresh start only to the 'honest but unfortunate debtor.'" Accordingly, simple breaches of contract are dischargeable. *See In re Riso*, 978 F.2d 1151, 1154 (9th Cir. 1992). However, if a debt for an intentional breach of contract is "accompanied by" a tort, it is excepted from discharge. *Id.* (refusing to discharge a debt for a breach of contract accompanied by willful and tortious conduct). This applies equally to breaches of contract accompanied by fraud under the other subdivisions of § 523. *See Banks v. Gill Distribution Centers, Inc.*, 263 F.3d 862, 868 (9th Cir. 2001). The fraud makes nondischargeable a preexisting obligation, it does not itself create a new obligation. *In re Jercich*, 238 F.3d 1202, 1205 (9th Cir. 2001). As such, the original breach of contract claim is the correct measure of the amount of the debt excepted from discharge. *See Banks*, 263 F.3d at 868.

The bankruptcy court found [the plaintiff] proved [the debtor] committed fraud by a preponderance of evidence. The alleged fraud accompanied [the debtor's] breach of contract, as [the debtor] entered

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT...

Houchik Boyadjian

Chapter 7

the contract fraudulently. Therefore, the state court judgment is the correct damage measure because it is the debt resulting from the fraud. The bankruptcy court correctly found the breach of contract damages were precluded from discharge based on [the debtor's] accompanying fraud. Accordingly, the bankruptcy court's ruling that the \$2.8 million debt is nondischargeable is affirmed.

Roth, 518 B.R. at 71.

Here, Debtor was found to have committed fraud by clear and convincing evidence. Debtor's fraud involved intentional misrepresentation, as Debtor fraudulently induced Corrdary and SOCAL to enter into the Purchase Agreement to buy a money-losing apartment complex. Accordingly, the damages awarded in the Arbitration Award for intentional misrepresentation are the correct measure of damages; it is a debt resulting from fraud.

The arbitrator clarified that, though Debtor may have not been aware of her husband's conduct, Vatche Boyadjian was acting as her agent. Therefore, Debtor is liable for intentional misrepresentation because those damages were proximately caused by Debtor's fraud. If Debtor had not fraudulently induced Corrdary and SOCAL into entering the Purchase Agreement, Plaintiff would not have suffered damages. Accordingly, pursuant to 11 U.S.C. § 523(a)(2), the intentional misrepresentation damages awarded in the Arbitration Award are nondischargeable.

Additionally, "[o]nce it is established that specific money or property has been obtained by fraud . . . 'any debt' arising therefrom is excepted from discharge," including treble damages. *Cohen v. de la Cruz*, 523 U.S. 213, 218, 118 S.Ct. 1212, 140 L.Ed.2d 341 (1998). Accordingly, the interest and costs awarded against Debtor in the Judgment also are nondischargeable.

D. 11 U.S.C. § 523(a)(4) – Larceny

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

"Federal law and not state law controls the definition of embezzlement for purposes of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT... Houchik Boyadjian

Chapter 7

section 523(a)(4)." *In re Wada*, 210 B.R. 572, 576 (B.A.P. 9th Cir. 1997).

"Embezzlement is defined as 'the fraudulent appropriation of property by a person to whom such property has been [e]ntrusted or into whose hands it has lawfully come.'" *Id.* (quoting *Moore v. United States*, 160 U.S. 268, 269, 16 S. Ct. 294, 40 L. Ed. 422 (1895)).

"Embezzlement" within the meaning of § 523(a)(4) requires three elements: (1) property rightfully in the possession of the non-owner debtor; (2) the non-owner's misappropriation of the property to a use other than that for which it was entrusted; and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). "The elements of larceny differ only in that a larcenous debtor has come into possession of funds wrongfully." *In re Mickens*, 312 B.R. 666, 680 (Bankr. N.D. Cal. 2004).

"Fraudulent appropriation requires an intent to deprive, which can be inferred from the conduct of the person accused and from the circumstances of the situation." *Savonarola v. Beran*, 79 B.R. 493, 496 (Bankr. N.D. Fla. 1987). For purposes of embezzlement and larceny, a fiduciary relationship is not required. *Littleton*, 942 F.2d at 555.

To succeed in using collateral estoppel, Plaintiff must show that the arbitrator's findings demonstrate larceny as defined by § 523(a)(4), demonstrating that Debtor "came into possession of funds wrongfully," involving "circumstances indicating fraud" and with "intent to deprive."

In this case, the arbitrator found Debtor liable for intentional misrepresentation; however, the issue of larceny was not examined. Because the arbitrator did not find that Debtor committed fraud while in wrongful possession of funds, the elements of larceny sufficient for Plaintiff to have a nondischargeable claim under § 523(a)(4) are not satisfied.

E. 11 U.S.C. § 523(a)(6)

11 U.S.C. § 523(a)(6) states that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." "Both willfulness and maliciousness must be proven to block discharge under section 523(a)(6)." *In re Ormsby*, 591 F.3d 1199, 1206 (9th Cir. 2010).

Demonstrating willfulness requires a showing that a defendant intended to cause the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT...

Houchik Boyadjian

Chapter 7

injury, not merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S. Ct. 974, 140 L. Ed. 2d 90 (1998). Debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.* at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *In re Su*, 290 F.3d 1140, 1145–46 (9th Cir. 2002); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("[T]he willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury or that the debtor believed that injury was substantially certain to occur as a result of his conduct.")

Under 11 U.S.C. § 523(a)(6), the injury must also be the result of maliciousness. *In re Su*, 290 F.3d at 1146. Maliciousness requires: (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; and (4) without cause or excuse. *Id.* at 1147. Maliciousness does not require "personal hatred, spite, or ill-will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

In *In re Cecchini*, the Ninth Circuit Court of Appeals held that a partner's conduct may be imputed to another partner for purposes of § 523(a)(6) "[w]hen a wrongful act such conversion, done intentionally, necessarily produces harm and is without just cause or excuse, it is 'willful and malicious' even absent proof of a specific intent to injure." *Cecchini*, 780 F.2d 1440, 1443 (9th Cir. 1986).

However, in *Geiger*, the United States Supreme Court concluded that establishing § 523(a)(6) liability "takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury . . . [T]he (a)(6) formulation triggers in the lawyer's mind the category 'intentional torts,' as distinguished from negligent reckless torts. Intentional torts generally require that the actor intend 'the consequences of an act,' not simply 'the act.'" *Geiger*, 523 U.S. at 61–62 (internal citations omitted). As such, nondischargeability under § 523(a)(6) may not be imputed.

"[T]he lack of a specific intent to injure holding in *Cecchini* was effectively overruled by the Supreme Court in its *Geiger* decision. Consequently, the continued efficacy of *Cecchini* as precedent on related questions is compromised." *In re Huh*, 506 B.R. 257, 268 (B.A.P. 9th Cir. 2014); *see also Matter of Miller*, 196 B.R. 334, 336 (E.D. La. 1996) ("In Section 523(a)(6), the phrase 'by the debtor' follows the phrase 'for willful and malicious injury.' Thus, the plain meaning test requires that the debtor must have been the one who caused the willful and malicious injury. Imputed liability is

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT... **Houchik Boyadjian**
insufficient.").

Chapter 7

The Bankruptcy Appellate Panel for the Ninth Circuit also has "held that 'vicarious liability' can be the basis for a claim under Section 523(a)(2) . . . [yet] Section 523(a)(6), unlike Section 523(a)(2) makes specific reference to a 'willful and malicious injury by the debtor.' This difference arguably justifies a different application of imputed liability to Sections 523(a)(2) and (a)(6)." *In re Rumjahn*, 2006 WL 6602239, at *3 (S.D. Cal. 2006) (referencing *In re Austin*, 36 B.R. 306, 312 (M. Tenn. 1984) ("[A]pplication of vicarious liability would effectively vitiate the § 523(a)(6) requirement that only debts resulting from willful acts committed by the debtor be nondischargeable.")).

Here, Plaintiff asserts that the Arbitration Award establishes a nondischargeable claim under § 523(a)(6) because the arbitrator allegedly found that Debtor engaged in deliberate wrongful acts to intentionally harm Plaintiff. However, the arbitrator held that Debtor's conduct did *not* rise to the level that warranted an award of punitive damages against her. There are no findings that *Debtor* intended to inflict injury on Plaintiff or knew that harm to Plaintiff was substantially certain. Consequently, the arbitrator's findings are not sufficient to demonstrate that Debtor acted with sufficient intent for Plaintiff's claim to be nondischargeable under § 523(a)(6).

III. CONCLUSION

The Court will grant the Motion on Plaintiff's § 523(a)(2)(A) claim in the amount of \$2,171,585.17. The Court will deny the Motion on Plaintiff's § 523(a)(4) and (a)(6) claims.

Plaintiffs must submit the order within seven (7) days.

Party Information

Debtor(s):

Houchik Boyadjian

Pro Se

Defendant(s):

Houchik Boyadjian

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 18, 2020

Hearing Room 301

2:30 PM

CONT... Houchik Boyadjian

Chapter 7

Plaintiff(s):

Sridhar Equities, Inc.

Represented By

Catherine Schlomann Robertson

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 18, 2020

Hearing Room 301

2:30 PM

1:19-12150 Houchik Boyadjian

Chapter 7

Adv#: 1:19-01132 Sridhar Equities, Inc., as assignee v. Boyadjian et al

#19.00 Status conference re: amended complaint for non dischargeability

fr. 1/15/20; 3/18/20; 4/1/20; 9/23/20

Docket 25

Tentative Ruling:

See calendar no. 18.

Party Information

Debtor(s):

Houchik Boyadjian Pro Se

Defendant(s):

Houchik Boyadjian Pro Se

DOES 1 through 100, inclusive Pro Se

Plaintiff(s):

Corrdary LLC Represented By
Catherine Schlomann Robertson

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 18, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

- #20.00** Defendant's motion to dismiss plaintiff Bright Enabuele's complaint for:
- 1) Failure to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6); and
 - 2) Insufficient service of plaintiff's complaint pursuant to LBR 7004-1(a)(1)(B) and FRBP 7004(b)(1) and (e)

fr. 7/8/20; 7/15/20(stip); 9/23/20(stip)

Docket 11

Tentative Ruling:

In light of the parties' request for a continuance in the joint status report [doc. 28], the Court will continue this hearing to **2:30 p.m. on January 13, 2021.**

Appearances on November 18, 2020 are excused.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Represented By
Michael Jay Berger

Plaintiff(s):

Bright Enabulele

Represented By
Levi Reuben Uku

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 18, 2020

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

#21.00 Status conference re: first amended complaint for non-dischargeability under 11 U.S.C. sec 523(A)(2) (4) and (6)

fr. 5/20/20; 6/3/20; 7/15/20(stip); 9/23/20(stip)

Docket 6

Tentative Ruling:

In light of the parties' request for a continuance in the joint status report [doc. 28], the Court will continue this status conference to **2:30 p.m. on January 13, 2021.**

The parties must file an updated joint status report no later than **December 30, 2020.**

Appearances on November 18, 2020 are excused.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Bright Enabulele

Represented By
Levi Reuben Uku

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

10:30 AM

1:17-13142 Amir Elosseini

Chapter 7

#1.00 Amended application for payment of final fees and/or expenses

Docket 333

Tentative Ruling:

Don Pyne, CPA, accountant to chapter 11 debtor in possession – approve fees of \$5,100.00, pursuant to 11 U.S.C. § 330, on a final basis.

Don Pyne, CPA must submit the order within seven (7) days.

Note: No opposition to the Court's approval of the fees has been filed. Accordingly, no court appearance by Don Pyne, CPA is 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):

Amir Elosseini

Represented By
Kevin Tang
David Miller

Trustee(s):

Amy L Goldman (TR)

Represented By
Katherine Bunker
Maria L Garcia
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

10:30 AM

1:19-10051 Rockin Artwork, LLC

Chapter 7

#2.00 Trustee's final report and applications for compensation

Docket 221

Tentative Ruling:

Heidi Kurtz, chapter 7 trustee – approve fees of \$2,765.94 and reimbursement of expenses of \$56.74, pursuant to 11 U.S.C. § 330, on a final basis.

Smiley Wang-Ekval, LLP, counsel to chapter 7 trustee – approve fees of \$29,185.13 and reimbursement of expenses of \$63.24, pursuant to 11 U.S.C. § 330, on a final basis.

Hahn Fife & Company, account to chapter 7 trustee – approve fees of \$1,880.55 and reimbursement of expenses of \$227.53, 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 chapter 7 trustee 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
Lei Lei Wang Ekvall
Michael Simon

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

10:30 AM

1:19-10052 Purple Haze Properties, LLC

Chapter 7

#3.00 Trustee's final report and applications for compensation

Docket 45

Tentative Ruling:

Heidi Kurtz, chapter 7 trustee – approve fees of \$5,897.69 and reimbursement of expenses of \$69.43, pursuant to 11 U.S.C. § 330, on a final basis.

Smiley Wang-Ekval, LLP, counsel to chapter 7 trustee – approve fees of \$40,802.79 and reimbursement of expenses of \$703.89, pursuant to 11 U.S.C. § 330, on a final basis.

Hahn Fife & Company, account to chapter 7 trustee – approve fees of \$3,168.00 and reimbursement of expenses of \$360.60, 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 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):

Purple Haze Properties, LLC

Represented By
David B Golubchik
Jeffrey S Kwong

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**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

1:20-10543 Amerigrade Corp.

Chapter 11

#4.00 Status conference re: chapter 11 case

fr. 4/30/20; 6/18/20

Docket 1

Tentative Ruling:

See calendar no. 5.

Party Information

Debtor(s):

Amerigrade Corp.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

1:20-10543 Amerigrade Corp.

Chapter 11

#5.00 U.S. Trustee's motion under 11 U.S.C. sec 1112(b) to dismiss or convert case

Docket 106

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 1112(b)(1) and (b)(4)(F), (4)(H) and (4)(K), this case will be dismissed.

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):

Amerigrade Corp.

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 19, 2020

Hearing Room 301

1:00 PM

1:20-10924 Tikran Eritsyan

Chapter 11

#6.00 Status conference re: chapter 11 case
fr. 7/2/20

Docket 1

Tentative Ruling:

Proposed dates and deadlines regarding "Debtor's Disclosure Statement," filed on October 30, 2020

Hearing to consider approval of the proposed disclosure statement: **1:00 p.m. on January 14, 2021.**

Deadline to file and serve notice of: (1) hearing to consider approval of disclosure statement and (2) deadline to file and serve any objections to its approval: **December 3, 2020.** The debtor must serve the notice on all creditors, parties requesting special notice and the United States Trustee. Fed. R. Bankr. P. 2002(b).

Deadline to file and serve any objections to Court's approval of disclosure statement: **December 31, 2020.**

Deadline to file and serve any reply to any objections to Court's approval of disclosure statement: **January 7, 2021.**

The debtor must submit an order incorporating the above dates, times and deadlines within seven (7) days.

Party Information

Debtor(s):

Tikran Eritsyan

Represented By
Vahe Khojayan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#7.00 Order to show cause re: dismissal with a 180-day bar,
annulment of the automatic stay, and disgorgement

fr. 9/10/20; 10/22/20;

Docket 3

Tentative Ruling:

See calendar no. 9.

Party Information

Debtor(s):

Mayallpostan LLC

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#8.00 Status conference re: chapter 11 case
fr. 10/22/20;

Docket 1

Tentative Ruling:

See calendar no. 9.

Party Information

Debtor(s):

Mayallpostan LLC

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#9.00 MayallPostan LLC's Motion to Dismiss Involuntary Bankruptcy Petition; Request for Fees and Costs in an Amount of No Less Than \$7250.00

Docket 14

Tentative Ruling:

The Court will dismiss the involuntary petition.

I. BACKGROUND

A. Relevant Prepetition History

In 1977, Nathaniel Brown, Sr. ("Nathaniel") and Beatrice Brown purchased real property located at 9126 4th Avenue, Inglewood, CA 90305 (the "Property"). Request for Judicial Notice ("RJN") [doc. 14], Exhibit 1; Declaration of Loretta Brown ("Brown Declaration") [doc. 24], ¶ 3. Their daughter, Loretta Brown ("Loretta"), contends she has an interest in the Property pursuant to a testamentary instrument. Brown Declaration, ¶ 4.

On May 2, 2018, a grant deed was executed transferring the Property from Nathaniel to Josette Brown ("Josette"), Loretta's estranged sister. RJN, Exhibit 2; Brown Declaration, ¶ 2. The grant deed was notarized by Darryl C. McConnell ("Darryl"). *Id.* Loretta contends that Josette forged Nathaniel's name on the grant deed, and Darryl notarized the grant deed using a fake California Driver's License. RJN, Exhibit 6. On May 23, 2018, Josette executed a grant deed transferring the Property to Mayallpostan LLC (the "Alleged Debtor"). RJN, Exhibit 4. Mayallpostan obtained a purchase money loan, secured by a deed of trust in favor of several entities (the "Lenders"), to fund the transfer. RJN, Exhibit 5.

On August 13, 2019, Loretta filed a complaint against the Alleged Debtor, Josette, Darryl and an individual named Larnardo Crockett ("Larnardo"), initiating case no. 19STCV28662 (the "State Court Action"). RJN, Exhibit 6; Brown Declaration, ¶ 15. Through the complaint, Loretta asserted twelve causes of action; as to the Alleged

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

CONT... Mayallpostan LLC

Chapter 7

Debtor, Loretta asserted causes of action for quiet title, cancellation of deed, actual fraudulent transfer, constructive fraudulent transfer and declaratory relief. Loretta asserted these five causes of action against the Alleged Debtor, Josette and Larnardo. On March 17, 2020, the state court held a hearing on a motion for judgment on the pleadings filed by the Alleged Debtor. Brown Declaration, ¶ 4, Exhibit 1. At that time, the state court issued a minute order denying the motion and holding that the complaint was adequately pled (the "Pleading Order"). *Id.* The state court also held that Loretta sufficiently alleged standing to pursue her quiet title cause of action. *Id.*

On June 12, 2020, the Alleged Debtor filed an answer to the complaint, denying several allegations and asserting 21 affirmative defenses, including based on expiration of applicable statute of limitations, failure to mitigate of damages, violation of certain equitable doctrines and the Alleged Debtor's assertion that qualifies as a bona fide purchaser (the "Answer"). RJN, Exhibit 7.

On March 6, 2020, a notice of default was recorded by the Lenders. RJN, Exhibit 9. On May 13, 2020, Loretta filed amendments to the complaint, adding the Lenders as defendants. RJN, Exhibit 8. On June 16, 2020, the Lenders recorded a Notice of Trustee's Sale, indicating that a foreclosure sale was scheduled for July 16, 2020. RJN, Exhibit 10.

On July 14, 2020, the state court held a hearing on ex parte application for a temporary restraining order enjoining the foreclosure sale (the "Ex Parte Application"). RJN, Exhibit 11. At that time, the state court issued a minute order postponing the foreclosure sale pending a hearing on an Order to Show Cause re: Preliminary Injunctions (the "Injunction OSC"). *Id.* On August 13, 2020, the state court held a hearing on the Injunction OSC. RJN, Exhibit 12. At that time, the state court approved a preliminary injunction on the condition that a bond be posted, in the amount of \$398,266.66, by August 17, 2020. *Id.* The state court noted that, "[i]f the bond is not posted, the Preliminary Injunction will dissolve." *Id.*

B. The Involuntary Petition

On August 17, 2020, Loretta, individually and on behalf of Nathaniel Brown, Jr. (together, "Petitioning Creditors"), filed an involuntary chapter 7 petition against the Alleged Debtor. On the same day, the Court issued an Order to Show Cause (the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

CONT... Mayallpostan LLC

Chapter 7

"OSC"), requiring Petitioning Creditors to appear at a hearing and file a brief explaining why this case should not be dismissed.

On September 10, 2020, the Court held a hearing on the OSC. At that time, the Court issued a ruling noting that Petitioning Creditors did not timely file proof of service of the involuntary summons and petition (the "Service Ruling") [doc. 10]. In the Service Ruling, the Court instructed Petitioning Creditors to obtain an Alias Summons and properly serve the Alleged Debtor with the Alias Summons and the involuntary petition within seven days. The Court also instructed Petitioning Creditors to file proof of proper service.

On September 23, 2020, the Clerk of the Court issued an Alias Summons [doc. 12]. On October 5, 2020, Petitioning Creditors filed two proofs of service indicating that, on September 28, 2020, they served a summons, notice of status conference and involuntary petition on the Alleged Debtor. The proofs of service indicated the documents were addressed to "Willie Henderson, Mayallpostan LLC, 10400 Canoga Avenue, Unit 205, Chatsworth, California 91311."

On October 5, 2020, the Alleged Debtor filed a motion to dismiss the involuntary petition (the "Motion") [doc. 14]. In the Motion, the Alleged Debtor contends that: (A) service of the summons and petition was improper; (B) Petitioning Creditors' claims are subject to a bona fide dispute; (C) alternatively, the Court may dismiss or suspend proceedings under 11 U.S.C. §§ 305(a) or 707(a); and (D) the Alleged Debtor is entitled to costs and fees under § 303(i).

On November 5, 2020, Petitioning Creditors filed an opposition to the Motion (the "Opposition") [doc. 22]. In the Opposition, Petitioning Creditors assert: (A) service was proper; (B) the Alleged Debtor failed to present evidence that it disputes the Lenders' debts; (C) the Alleged Debtor did not present evidence disputing Loretta's declaration; and (D) the Court should not require Petitioning Creditors to pay the Alleged Debtor's fees and costs. On November 12, 2020, the Alleged Debtor filed a reply to the Opposition and evidentiary objections [docs. 25, 26].

II. ANALYSIS

A. Service

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

CONT... Mayallpostan LLC

Chapter 7

As a preliminary matter, the propriety of the initial proof of service discussed by the Alleged Debtor is irrelevant. At the hearing on the OSC, the Court instructed Petitioning Creditors to obtain an Alias Summons and complete service of process using the Alias Summons. As such, the pertinent issue is whether the Alias Summons was properly served.

As to the Alias Summons, the Alleged Debtor contends it was not properly served because: (A) the postmark date on the envelope it received conflicted with the date stated in the proof of service; (B) Petitioning Creditors served Willie Henderson without specifying his title; and (C) the proof of service indicates service of the summons instead of the Alias Summons. As to the first argument, Federal Rule of Bankruptcy Procedure 7004(e) provides—

Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F.R.Civ.P. shall be by delivery of the summons and complaint within 7 days after the summons is issued. If service is by any authorized form of mail, the summons and complaint shall be *deposited in the mail within 7 days after the summons is issued.*

(emphasis added). Thus, the relevant question is not whether the summons was postmarked within 7 days, but whether the summons was deposited in the mail within 7 days. In any event, both the postmarked date and the date on the proof of service are within the 7 days required by FRBP 7004(e).

As to the second argument, FRBP 7004(b)(3) requires that service by mail on corporations be accomplished "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process...." The Rule does not state that, where an officer or agent is served by name, the officer or agent's title also must be included. The Alleged Debtor's cited authority does not support its contention. The complete quote referenced by the Alleged Debtor provides—

In serving a corporation ..., *it is not necessary for the officer or agent of the defendant to be named* in the address so long as the mail is addressed to the defendant's proper address and directed to the attention of the officer or agent by reference to his position or title.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

CONT... Mayallpostan LLC

Chapter 7

In re C.V.H. Transp., Inc., 254 B.R. 331, 333 (Bankr. M.D. Pa. 2000) (emphasis added). Thus, the court merely stated that, where an officer or agent is not named, the mail should be addressed to the attention of an officer or agent by reference to their position or title. Here, Petitioning Creditors explicitly named Willie Henderson.

Finally, as to the final argument that the proof of service refers to a summons instead of the *Alias* Summons, the Alleged Debtor admits that it received the *Alias* Summons. *See* Motion, p. 6 (“The proof of service for the *Alias* Summons identifies the document served as ‘Summons and Notice of Status Conference in an Involuntary Bankruptcy Case’ – *even though it accompanied the Alias Summons...*”) (emphasis added). The Alleged Debtor has not provided authority that referring to the *Alias* Summons as “Summons and Notice of Status Conference in an Involuntary Bankruptcy Case” counts as defective service where the Alleged Debtor received the proper documents. In any event, despite proper service, the Court will dismiss this case for the reasons discussed below.

B. Bona Fide Dispute

"Section 303 requires that creditors filing a petition for involuntary bankruptcy against a debtor have claims that are not subject to a bona fide dispute." *In re Vortex Fishing Sys., Inc.*, 277 F.3d 1057, 1064 (9th Cir. 2002). "For a majority of the federal circuits, including the Ninth Circuit, a ‘bona fide dispute’ exists if ‘there is an objective basis for either a factual or legal dispute as to the validity of a debt.’" *In re EB Holdings II, Inc.*, 589 B.R. 704, 722 (Bankr. D. Nev. 2017) (quoting *Vortex Fishing*, 277 F.3d at 1064). "The same objective test applies for determining a bona fide dispute as to the amount of a debt." *Id.* (citing *In re Marciano*, 708 F.3d 1123, 1126 (9th Cir. 2013)).

"A bankruptcy court is not asked to evaluate the potential outcome of a dispute, but merely to determine whether there are facts that give rise to a legitimate disagreement over whether money is owed, or, in certain cases, how much." *Vortex Fishing*, 277 F.3d at 1064. In the Ninth Circuit, "the mere existence of pending litigation or the filing of an answer is insufficient to establish the existence of a bona fide dispute." *Id.*, at 1066. "In contrast, the existence of affirmative defenses may suggest that a bona fide dispute exists." *Id.*, at 1067; *see also In re TPG Troy, LLC*, 492 B.R. 150, 159 (Bankr. S.D.N.Y. 2013) ("Congress intended to disqualify a creditor whenever there is an legitimate basis for the debtor not paying the debt, whether that basis is factual or

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

CONT... **Mayallpostan LLC**
legal.").

Chapter 7

The Court will take judicial notice of the documents attached to the RJN. Those documents reflect that there is an objective basis for both a factual and legal dispute as to the validity and amount of Petitioning Creditors' claims. Multiple affirmative defenses asserted by the Alleged Debtor would create a dispute over whether Petitioning Creditors hold a valid claim at all. For instance, the Alleged Debtor has asserted that it acquired the Property as a bona fide purchaser without actual or constructive notice of Petitioning Creditors' alleged interest in the Property. The objective dispute over this affirmative defense is supported by the recorded grant deeds, which do not reflect that Petitioning Creditors held title to the Property.

In addition, other affirmative defenses create a dispute over the amount of Petitioning Creditors' claims. For example, through another affirmative defense, the Alleged Debtor contends that, where other parties were responsible for certain acts or omissions, the court should apportion liability based on each party's respective faults. In the state court complaint, each cause of action asserted against the Alleged Debtor also is asserted against Josette and Larnardo. As such, there is an objective dispute regarding apportionment of each of the state court defendants' liabilities to Petitioning Creditors, if any. Aside from these affirmative defenses, the Alleged Debtor has asserted *nineteen* other affirmative defenses, most of which signal either a factual or legal dispute regarding the validity or amount of Petitioning Creditors' claims.

Petitioning Creditors reference the Pleading Order as support for their argument that a bona fide dispute does not exist. However, the Pleading Order merely allowed the action to move beyond the pleading stage. Significantly, the order predated the filing of the Answer, which includes the affirmative defenses that establish a bona fide dispute. Although Petitioning Creditors contend, in the Opposition, that the affirmative defenses are no longer "at issue," Petitioning Creditors do not offer an explanation in support of this conclusory statement. Moreover, many of the factual assertions in the Declarations filed in response to the Motion are not admissible as evidence.

As noted above, the Court "is not asked to evaluate the potential outcome of a dispute, but merely to determine whether there are facts that give rise to a legitimate disagreement over whether money is owed, or, in certain cases, how much." *Vortex Fishing*, 277 F.3d at 1064. In light of the legal and factual disputes over the Alleged

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

CONT... Mayallpostan LLC

Chapter 7

Debtor's affirmative defenses, the Petitioning Creditors' claims are in bona fide dispute over validity and amount. [FN1]. As such, the Court will dismiss the petition.

C. Abstention or Dismissal under 11 U.S.C. § 305(a)

"[N]otwithstanding a bankruptcy court's jurisdiction over an involuntary case pursuant to § 303, § 305(a) provides that the bankruptcy court may dismiss an involuntary case, or suspend all proceeding in that case, and thereby decline to exercise jurisdiction." *In re Macke Int'l Trade, Inc.*, 370 B.R. 236, 246 (B.A.P. 9th Cir. 2007). Section 305(a) provides in relevant part:

The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

- (1) the interests of creditors and the debtor would be better served by such dismissal or suspension...

11 U.S.C. § 305(a)(1). To determine dismissal or abstention under this statute, courts consider the following factors:

- (1) the economy and efficiency of administration; (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court; (3) whether federal proceedings are necessary to reach a just and equitable solution; (4) whether there is an alternative means of achieving an equitable distribution of assets; (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case; (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and (7) the purpose for which bankruptcy jurisdiction has been sought.

In re Marciano, 459 B.R. 27, 46–47 (B.A.P. 9th Cir. 2011), *aff'd*, 708 F.3d 1123 (9th Cir. 2013).

Even if Petitioning Creditors' claims were not in bona fide dispute, the Court would

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

CONT... Mayallpostan LLC

Chapter 7

abstain in accordance with 11 U.S.C. § 350(a). First, there already is a pending proceeding in state court, which is available to protect the interests of all parties. As demonstrated by Loretta's own requests for injunctions before that forum, the state court offers tools to preserve the status quo while the parties proceed with litigation. In addition, Loretta has added the Lenders as additional defendants, and asserts causes of action against other defendants, such as Josette. As such, proceeding before the state court is more efficient than involving those parties in an involuntary bankruptcy case.

Moreover, a bankruptcy case is not necessary to achieve a just and equitable solution. Petitioning Creditors contend that the Property is the Alleged Debtor's sole asset. The State Court Action revolves around that sole asset, and the causes of action asserted by Petitioning Creditors are crafted to preserve any right Petitioning Creditors may have in the Property. The state court is capable of adjudicating those rights in relation to the rights of other parties, such as the Alleged Debtor and the Lenders. The only benefit to Petitioning Creditors is use of the automatic stay to halt foreclosure of the Property; however, this does not benefit other creditors of the Alleged Debtor, such as the Lenders, who sought to foreclose on their collateral.

In addition, other than application of the automatic stay (from which interested parties may obtain relief), Petitioning Creditors have not articulated how a bankruptcy case will help the parties. If Petitioning Creditors are successful on some of their claims, the Alleged Debtor's sole asset will be taken out of the estate, and Nathaniel will have title to the Property. If Petitioning Creditors are not successful on their claims, the Lenders, the only other creditors referenced by the parties, will not need bankruptcy to collect on their debts. Given the existence of these factors, even if Petitioning Creditors' claims were not in bona fide dispute, the Court would dismiss this case under § 305(a).

D. Attorneys' Fees and Costs

The Alleged Debtor requests fees and costs incurred requesting dismissal of the petition. Pursuant to 11 U.S.C. § 303(i)—

If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

CONT...

Mayallpostan LLC

Chapter 7

judgment under this subsection, the court may grant judgment—

- (1) against the petitioners and in favor of the debtor for—
 - (A) costs; or
 - (B) a reasonable attorney's fee; or
- (2) against any petitioner that filed the petition in bad faith, for—
 - (A) any damages proximately caused by such filing; or
 - (B) punitive damages.

The Court need not make a finding of bad faith to reimburse an alleged debtor its incurred fees and costs pursuant to 11 U.S.C. § 303(i)(1); such a finding is required only for requests for damages under § 303(i)(2). The Alleged Debtor does not request damages under § 303(i)(2).

Section 303(i)(1) "is a fee-shifting provision rather than a sanctions statute. Like other fee-shifting provisions and in contrast to Rule 11, eligibility for fees turns on the merits of the litigation as a whole, rather than on whether a 'specific filing' is well founded." *In re S. California Sunbelt Developers, Inc.*, 608 F.3d 456, 462 (9th Cir. 2010). "In deciding whether to award fees, a court considers the 'totality of the circumstances,' including"—

1. the merits of the involuntary petition;
2. the role of any improper conduct on the part of the alleged debtor;
3. the reasonableness of the actions taken by the petitioning creditors; and
4. the motivation and objectives behind filing the petition.

Id. (citing *In re Vortex Fishing*, 379 F.3d 701, 707 (9th Cir. 2004) ("*Vortex II*"). As explained by the Ninth Circuit Court of Appeals in *Vortex II*—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

CONT...

Mayallpostan LLC

Chapter 7

Although we adopt the totality of the circumstances test as the appropriate standard under § 303(i)(1), we do not abandon the premise that "any petitioning creditor in an involuntary case ... should expect to pay the debtor's attorney's fees and costs if the petition is dismissed." *In re Kidwell*, 158 B.R. 203, 217 (Bankr.E.D.Cal.1993). Thus, when an involuntary petition is dismissed on some ground other than consent of the parties and the debtor has not waived the right to recovery, an involuntary debtor's motion for attorney's fees and costs under § 303(i)(1) raises a rebuttable presumption that reasonable fees and costs are authorized. *In re Scrap Metal Buyers of Tampa, Inc.*, 233 B.R. 162, 166 (Bankr.M.D.Fla.1999). This presumption helps reinforce the idea that "[t]he filing of an [i]nvoluntary [p]etition should not be lightly undertaken," *In re Advance Press & Litho, Inc.*, 46 B.R. 700, 702 (Bankr.D.Colo.1984), and "will serve to discourage inappropriate and frivolous filings." 1 COLLIER ON BANKRUPTCY ¶ 303.15 (15th ed.2004). Filing an involuntary petition should be a measure of last resort because even if the petition is filed in good-faith, it can "chill[] the alleged debtor's credit and sources of supply," and "scare away his customers." *In re Advance Press*, 46 B.R. at 702 (quoting *In re SBA Factors of Miami, Inc.*, 13 B.R. 99, 101 (Bankr.S.D.Fla.1981)).

Vortex II, 379 F.3d at 707.

Here, the applicable factors, coupled with the presumption that reasonable fees and costs are authorized, merit an award of attorneys' fees and costs. First, for the reasons discussed above, the involuntary petition lacks merit because Petitioning Creditors' claims are in bona fide dispute. In addition, the record does not reflect that the Alleged Debtor engaged in improper conduct. Further, given that Petitioning Creditors filed the petition the same day as the deadline to post a bond, it appears Petitioning Creditors were motivated by a desire to benefit from the automatic stay without posting a bond. Even if Petitioning Creditors believed they acted reasonably under the law, the factors weigh in favor of awarding fees and costs.

Although the Court will allow an award of reasonable attorneys' fees and costs, the Court will continue this hearing for the Alleged Debtor to file and serve a declaration and attach an itemized statement of the incurred fees and costs. Prior to analyzing

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

CONT... Mayallpostan LLC

Chapter 7

such an itemized statement, the Court cannot assess whether the incurred fees and costs are reasonable.

III. CONCLUSION

The Court will dismiss the involuntary petition. However, the Court will continue this hearing to **1:00 p.m. on December 17, 2020**, to assess whether the Alleged Debtor's request for fees and costs is reasonable. No later than **November 25, 2020**, the Alleged Debtor must file and serve a declaration attaching an itemized billing statement. No later than **December 3, 2020**, Petitioning Creditors must file and serve any response to that billing statement.

The Court will prepare the Order.

FOOTNOTES

1. Petitioning Creditors also assert that the Lenders' claims against the Alleged Debtor are not in bona fide dispute. The Lenders have not joined the involuntary petition, and the validity or amount of their claims are not at issue. As noted in *Vortex Fishing*, "[s]ection 303 requires that creditors filing a petition for involuntary bankruptcy against a debtor have claims that are not subject to a bona fide dispute." *Vortex Fishing*, 277 F.3d at 1064. Petitioning Creditors are the creditors which filed the involuntary petition; consequently, with respect to the Motion, the Court is assessing whether the validity or amount of *Petitioning Creditors'* claims are in dispute.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in the Declarations set forth below:

The Alleged Debtor's Evidentiary Objections to the Declaration of Loretta Brown
para. 4: sustain as to truth of the matter and as to any legal conclusion; overrule as to Loretta's belief regarding her interest in the Property
paras. 5, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18: sustain

The Alleged Debtor's Evidentiary Objections to the Declaration of Ashton Watkins
paras. 2, 3, 4, 5, 6, 9: sustain

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

CONT... Mayallpostan LLC

Chapter 7

Debtor(s):

Mayallpostan LLC

Represented By
Carley Lee

Movant(s):

Mayallpostan LLC

Represented By
Carley Lee

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

1:20-11769 Dashing Properties Management, Inc.

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"): **January 25, 2021.**

Deadline to mail notice of Bar Date: **November 23, 2021.**

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 31, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on April 22, 2021.**

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):

Dashing Properties Management,

Represented By
Raymond H. Aver

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:00 PM

1:20-11528 BurbankHills, LLC

Chapter 11

#10.10 Status conference re chapter 11

fr. 9/24/20; 11/12/20

Docket 1

Tentative Ruling:

The debtor has not timely filed its monthly operating report for October 2020.

In its order which set the deadline for the debtor to file a chapter 11 plan and related disclosure statement [doc. 20], the Court erroneously used the date of March 12, 2021, instead of November 1, 2020. November 1, 2020 was the deadline that the Court adopted at the initial chapter 11 case status conference, held on September 24, 2020.

In light of the debtor's representation that it is prepared to file a chapter 11 plan and related proposed disclosure statement significantly prior to March 12, 2021 [doc. 29], the Court will amend that deadline to December 21, 2020.

Party Information

Debtor(s):

BurbankHills, LLC

Represented By
Michael R Totaro

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan

Chapter 11

#11.00 Motion in chapter 11 case for the entry of an order closing
Case on interim basis

Docket 191

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):

Yegiya Kutyan

Represented By
Sheila Esmaili

Joint Debtor(s):

Haykush Helen Kutyan

Represented By
Sheila Esmaili

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

1:18-11620 Antoine R Chamoun

Chapter 7

#12.00 Motion for Turnover of Property of Post-Petition Rent Payments

fr. 11/5/20

Docket 120

Tentative Ruling:

Grant.

I. BACKGROUND

On June 26, 2018, Antoine R. Chamoun ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee"). At all times during this case, Debtor has been represented by counsel.

In his latest-amended schedule A/B, filed on November 29, 2018 [doc. 23], Debtor identified a fee simple interest in the real property located at 1706 Empty Saddle Road, Simi Valley, CA 93063 (the "Empty Saddle Property"). Debtor valued the Property at \$500,000. In his amended schedule C, Debtor claimed a homestead exemption in the Empty Saddle Property, pursuant to California Code of Civil Procedure ("CCP") § 704.730(a)(2), in the amount of \$100,000. In his amended schedule D, Debtor identified three encumbrances against the Empty Saddle Property: (A) a \$287,311 deed of trust in favor of Bank of America; (B) a \$46,123 deed of trust in favor of another lender; and (C) a \$333,434 lien in favor of Walid Chamoun.

In his original and amended schedule G, Debtor identified a lease with Patricia Chamoun (the "Lease"). In Debtor's original schedule G and schedule I, filed in June 2018 [doc. 1], Debtor indicated that Ms. Chamoun pays the lease payment/mortgage on the Empty Saddle Property directly to the "holder of 1st Trust Deed" or "lenders." In November 2018, when he filed his amended schedule G, Debtor attached the Lease. The attached Lease provides that, as rent, Ms. Chamoun agreed to pay the mortgage on the Empty Saddle Property directly to Bank of America, the holder of the first deed of trust encumbering the Empty Saddle Property.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

CONT... Antoine R Chamoun

Chapter 7

On January 18, 2019, the Trustee filed a Notice of Assets [doc. 26]. On February 27, 2019, the Bank of New York Mellon ("BONY") moved for relief from the automatic stay to foreclose on the Empty Saddle Property (the "BONY RFS") [doc. 28]. On March 6, 2019, the Trustee and BONY submitted a stipulation to continue the hearing on the BONY RFS (the "BONY Stipulation") [doc. 30]. In the BONY Stipulation, the parties stated that the "Trustee's proposed counsel advised [BONY's] counsel that the Trustee believes there may be sufficient net equity in the [Empty Saddle] Property to provide adequate protection to [BONY]...." Subsequently, the parties submitted two other stipulations including the same language [docs. 44, 51]. The Court approved all three stipulations [docs. 31, 45, 52].

On March 25, 2019, the Trustee filed an application to employ general bankruptcy counsel (the "Application to Employ Counsel") [doc. 33], stating that the Trustee required counsel to investigate, among other things, potential avoidance actions against Ms. Chamoun and Walid Chamoun related to the Empty Saddle Property. Debtor opposed the Application to Employ Counsel [doc. 35]. On May 9, 2019, the Court entered an order approving the Application to Employ Counsel [doc. 42].

On September 16, 2019, the Trustee filed a complaint against Ms. Chamoun and Walid Chamoun, initiating adversary proceeding [1:19-ap-01105-VK] and seeking, in relevant part, to avoid the Lease, as well as the lien against the Empty Saddle Property in favor of Walid Chamoun.

On February 19, 2020, the Trustee filed an application to employ a real estate broker (the "Application to Employ Broker") [doc. 65], explicitly stating that the Trustee needed a broker to sell the Empty Saddle Property. In response, Debtor filed a motion to convert this case to a chapter 13 case [doc. 72] and opposed the Application to Employ Broker [doc. 76], arguing that, upon conversion, the Trustee would "be divested of power over the assets of the estate." On May 7, 2020, the Court entered an order approving the Application to Employ Broker [doc. 91] and denying Debtor's request to convert this case [doc. 92].

On August 5, 2020, the Trustee filed a first amended complaint in the adversary proceeding against Ms. Chamoun and Walid Chamoun (the "FAC") [1:19-ap-01105-VK, doc. 27], asserting that Ms. Chamoun breached the Lease by failing to make payments on the mortgage. On August 25, 2020, the Trustee filed a motion for

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

CONT... Antoine R Chamoun

Chapter 7

turnover in the adversary proceeding, requesting an order for Ms. Chamoun to turn over the Empty Saddle Property based on her failure to pay the mortgage (the "First Turnover Motion") [1:19-ap-01105-VK, doc. 38].

On September 2, 2020, Ms. Chamoun filed an opposition to the First Turnover Motion (the "Chamoun Opposition") [1:19-ap-01105-VK, doc. 42]. To the Chamoun Opposition, Ms. Chamoun attached a declaration, testifying that she made payments in accordance with the Lease to *Debtor*. Declaration of Patricia Chamoun [1:19-ap-01105-VK, doc. 42], ¶ 4. In addition, Ms. Chamoun attached a Residential Lease Addendum (the "Addendum"), which provided that Ms. Chamoun must make her monthly lease payments to Debtor. *Id.*, Exhibit B.

On October 13, 2020, the Trustee filed a motion for turnover against Debtor (the "Motion") [doc. 120], requesting turnover to the estate of the rents paid to Debtor by Ms. Chamoun, totaling \$56,328. On November 6, 2020, Debtor filed an opposition to the Motion (the "Opposition") [doc. 127]. In the Opposition, Debtor admits that he received postpetition rent from Ms. Chamoun. Declaration of Antoine R. Chamoun [doc. 127], ¶ 14. However, Debtor contends he was "under the assumption" that the Trustee abandoned the Empty Saddle Property because: (A) the Trustee did not timely object to Debtor's claim of a homestead exemption; (B) the Trustee did not take any action regarding the Empty Saddle Property; and (C) there is no equity in the Empty Saddle Property after accounting for the exemption and the encumbrances against the Empty Saddle Property. As such, Debtor contends he was entitled to the postpetition rent payments. If the Court disagrees with Debtor, Debtor asks that the Court deduct the amount owed to the Trustee from Debtor's claim of a homestead exemption.

On November 12, 2020, the Trustee filed a reply to the Opposition (the "Reply") [doc. 128]. In the Reply, the Trustee contends that Debtor provided no legal support for his arguments, did not explain his prior false statements to the Court regarding Ms. Chamoun's payment of rent directly to Bank of America and did not use the rent payments he received to pay the mortgage on the Empty Saddle Property. The Trustee also asserts that, through September 2020, Debtor has continued to collect rents from the Empty Saddle Property, bringing the total Debtor owes to the estate to \$61,022.

II. ANALYSIS

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

CONT... **Antoine R Chamoun**
Pursuant to 11 U.S.C. § 541—

Chapter 7

- (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.
...
 - (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.

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.

Debtor appears to argue that, based on his claim of a homestead exemption and Debtor's belief that the "Trustee never took any action as to" the Empty Saddle Property, the Trustee abandoned the Empty Saddle Property. Debtor has cited no legal or evidentiary basis in support of this argument. Pursuant to 11 U.S.C. § 554(a), "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." Under Federal Rule of Bankruptcy Procedure 6007(a)—

Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

CONT...

Antoine R Chamoun

Chapter 7

and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.

Alternatively, under 11 U.S.C. § 554(b), "[o]n 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." Otherwise, "any property scheduled under section 521(a)(1) of this title not otherwise administered *at the time of the closing of a case* is abandoned to the debtor...." 11 U.S.C. § 554(c) (emphasis added).

Here, the Trustee has not filed a notice of abandonment of the Empty Saddle Property pursuant to § 554(a), and no party in interest has moved for abandonment of the Empty Saddle Property in accordance with § 554(b). As a property scheduled under § 521(a)(1), the Empty Saddle Property, *if not otherwise administered*, will be abandoned to Debtor *at the time of the closing of a case*. Given that a notice or motion for abandonment has not been filed, and because this case is not being closed, the Empty Saddle Property has not been abandoned.

Moreover, the record does not support Debtor's belief that the Empty Saddle Property was abandoned because "the Trustee never took any action." Opposition, p. 2. By January 2019, the Trustee filed a Notice of Assets. From February 2019 through September 2019, the Trustee repeatedly indicated that she was investigating the Empty Saddle Property, and specifically whether the Empty Saddle Property had equity. During this time, the Trustee filed: (A) multiple stipulations with BONY explicitly noting that the Trustee was investigating whether there was equity in the Empty Saddle Property; (B) the Application to Employ Counsel to investigate a possible action against Ms. Chamoun and Walid Chamoun for avoidance of the Lease and Walid Chamoun's lien against the Empty Saddle Property; and (C) an adversary complaint against Ms. Chamoun and Walid Chamoun for avoidance of these transfers.

In February 2020, the Trustee moved to employ a broker, clearly stating the broker would be used to sell the Empty Saddle Property. In response to this Application to Employ Broker, Debtor requested conversion of his case to divest the Trustee of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

CONT... Antoine R Chamoun

Chapter 7

power over assets of the estate. As such, Debtor implicitly acknowledged that the Trustee retained control over the Empty Saddle Property.

The mailing list associated with this case reveals that Debtor's counsel receives notice of every filing via the Court's electronic noticing service. As such, it is unclear why, based on this docket and this record, Debtor would believe that the Trustee did not take any action to investigate the Empty Saddle Property for the purpose of liquidation. Even if Debtor initially harbored such a belief, Debtor continued to collect rents through *September 2020*, long after the Trustee explicitly stated, in February 2020, that she intended to sell the Empty Saddle Property.

As to Debtor's arguments regarding his homestead exemption, Debtor has not explained why his claim of a homestead exemption would entitle him to rents generated post-petition by the lease of the Empty Saddle Property. To the extent Debtor asserts that his claim of a homestead exemption leaves no equity to be liquidated by the Trustee, the Trustee's avoidance action against Walid Chamoun, if successful, would preserve that lien for the benefit of the estate. *See* 11 U.S.C. § 551. In other words, if the lien is avoided, Debtor's claim of a homestead exemption remains inferior in priority to the preserved lien, which Debtor valued at \$333,434.

To the extent Debtor argues that his claim of an exemption resulted in abandonment of the Empty Saddle Property, Debtor's argument is not supported by his referenced authority. Debtor cites *In re Mwangi*, 473 B.R. 802 (D. Nev. 2012), *aff'd*, 764 F.3d 1168 (9th Cir. 2014), in support of his argument. In *Mwangi*, upon the debtors' filing of a chapter 7 petition, the debtors' bank placed a hold on the debtors' account. *Mwangi*, 473 B.R. at 804-05. Subsequently, the debtors claimed an exemption in 75% of the funds pursuant to Nevada law. *Id.*, at 805. After receiving no objection to their claim of exemption, the debtors contacted the bank to request that the hold be lifted based on the debtors' exemption in the funds. *Id.* The bank refused. *Id.*

In response, the debtors sought damages under 11 U.S.C. § 362(k). *Id.* The bankruptcy court rejected the debtors' request. *Id.* After an appeal to the Bankruptcy Appellate Panel of the Ninth Circuit, which remanded the matter to the bankruptcy court, the bankruptcy court again denied the debtors' request for damages. *Id.*, at 806-07. The debtors appealed to the District Court; as relevant to this case, the District Court had to assess when exempt property is removed from the estate, as well as whether all or part of the asset is removed from the estate. *Id.*, at 809-10. First, the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

CONT... Antoine R Chamoun

Chapter 7

District Court noted that "[t]he estate does not relinquish property until it is administered in the bankruptcy proceeding, the bankruptcy case is closed, or the estate abandons the property under 11 U.S.C. § 554." *Id.*, at 809. As to exempt property, the court held that "if no one timely objects to a debtor's claimed exemption, then the property is exempt from property of the estate and passes to the debtor upon expiration of the time to object." *Id.*

However, where the statute permitting the debtor to claim a particular exemption does not allow the debtor to exempt the entire property interest, but instead permits exemption of an interest in the property up to a particular dollar amount, "what is removed from the estate is an 'interest' in the property equal to the value of the exemption claimed at filing." *In re Gebhart*, 621 F.3d at 1210. In such cases, the underlying asset remains property of the estate, and the estate does not relinquish the property until it is administered in the bankruptcy, the trustee abandons the property, or the bankruptcy case is closed. *Id.* at 1210, 1212; *Schwab*, 130 S.Ct. at 2667 ("Where a debtor intends to exempt nothing more than an interest worth a specified dollar amount in an asset that is not subject to an unlimited or in-kind exemption under the Code ... [and] an interested party does not object to the claimed interest by the time the Rule 4003 period expires, title to the asset will remain with the estate pursuant to § 541, and the debtor will be guaranteed a payment in the dollar amount of the exemption.").

Id., at 810.

While *Mwangi* does not deal with turnover of property, the case reaffirms the fact that the Empty Saddle Property was not abandoned to and did not revert in Debtor. Debtor claimed an exemption pursuant to CCP § 704.730(a)(2), which exempts up to \$100,000 of a homestead, i.e., "a particular dollar amount." *Mwangi*, 473 B.R. at 810. Because the exemption does not allow Debtor to exempt the *entire* property, under *Mwangi*, the Empty Saddle Property remained property of the estate despite Debtor's claim of an exemption.

Finally, to the extent Debtor argues that his claim of an exemption gives Debtor the right to collect rent from the Empty Saddle Property, Debtor has not provided any relevant authority. California's statutes regarding homestead exemptions do not

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

CONT...

Antoine R Chamoun

Chapter 7

provide for exemption of rent generated from the property. Given the purpose of and requirements for claiming a homestead exemption, such a provision would not make sense.

CCP § 704.730(a)(2) allows a \$100,000 exemption in property to "the judgment debtor or spouse of the judgment debtor *who resides in the homestead...*" (emphasis added). "The factors a court should consider in determining whether the debtor has sufficient residency to establish an exemptible interest in the property and, thus, to qualify for the automatic homestead, are physical occupancy of the property and the intention with which the property is occupied." *In re Elliott*, 523 B.R. 188, 196 (B.A.P. 9th Cir. 2014). "Homestead laws are designed to protect the sanctity of the family home against a loss caused by a forced sale by creditors." *Amin v. Khazindar*, 112 Cal. App. 4th 582, 588 (Ct. App. 2003). There is no indication the statutes allow judgment debtors to exempt rental income generated by homesteads. [FN1]. Debtor having provided no law to the contrary, Debtor's claim of an exemption does not absolve Debtor of the requirement to turn over rents paid pursuant to the Lease, after Debtor filed his chapter 7 bankruptcy case, to the Trustee.

As to Debtor's request to deduct the \$61,022 he owes the estate from his claim to a homestead exemption, Debtor has not provided any law in support of this request. Given the encumbrances against the Empty Saddle Property, one of which may be avoided and preserved for the benefit of the estate, in accordance with 11 U.S.C. § 551, Debtor may not receive any proceeds from the sale of the Empty Saddle Property. Because Debtor's homestead exemption likely will not come into play, Debtor's offer does not justify his retention of post-petition rents which were inappropriately paid to him and are to be administered by the Trustee.

III. CONCLUSION

The Court will grant the Motion. No later than 14 days after entry of the Order, Debtor must pay the estate \$61,022.

The Trustee must submit an order within seven (7) days.

FOOTNOTES

1. The Court is not making any findings regarding Debtor's entitlement to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

CONT...

Antoine R Chamoun

Chapter 7

his claimed homestead exemption, which is not before the Court.

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

1:19-11482 Kimball West Small

Chapter 7

#13.00 Motion to substantively consolidate SVFCA Inc.
(dba Oakmead Sign & Maintenance Association)
with debtor's bankruptcy estate

Docket 78

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)

Represented By
David Seror
Jessica L Bagdanov
Tamar Terzian

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#14.00 Motion to determine value of real property; to stay
post petition payments

Docket 76

Tentative Ruling:

In light of Bank of New York Mellon's opposition [doc. 93], the Court will continue this hearing to **December 17, 2020 at 1:30 p.m.** in order to provide additional time for Bank of New York Mellon to obtain an appraisal of the real property and will continue the hearing on the adequacy of the debtor's proposed disclosure statement [doc. 81] to that same date and time.

Appearances on November 19, 2020 are excused.

Party Information

Debtor(s):

5019 Partners, LLC

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 19, 2020

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

#15.00 Motion to extend debtor's exclusivity period to file and obtain acceptances of debtor's plan under 11 U.S.C. § 1121(D)

Docket 62

Tentative Ruling:

For the reasons discussed below, the Court will grant in part and deny in part the motion.

I. BACKGROUND

On July 22, 2020, Transpine, Inc. ("Debtor") filed a voluntary chapter 11 petition. Debtor owns a single asset in the form of residential real property located at 4256 Tarzana Estate Drive, Tarzana, California 91356 (the "Tarzana Property"). The Tarzana Property is encumbered by a single deed of trust; as evidenced by Debtor's schedules and monthly operating reports, the Tarzana Property is not producing any income.

As discussed in the Court's ruling in the related adversary Case No. 1:20-ap-01074-VK, the Tarzana Property has been transferred between family members, related parties and Debtor [Adversary Docket, doc. 23]. On November 5, 2020, the Court entered an order modifying the automatic stay to allow Overland Direct Inc. ("Overland") to proceed to final judgment against Debtor regarding the claims asserted in Case No. LC105743, in the Superior Court of California, County of Los Angeles (the "Stay Relief Order") [doc. 66].

On October 29, 2020, Debtor filed a Motion to Extend Debtor's Exclusive Period to File and Obtain Acceptances of Debtor's Plan under 11 U.S.C. § 1121(d) (the "Motion") [doc. 62]. In the Motion, Debtor requests an extension of the plan filing exclusivity period to May 18, 2021, and period to solicit acceptances to July 19, 2021. On November 5, 2020, Overland filed an opposition to the Motion (the "Opposition") [doc. 65].

II. DISCUSSION

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

CONT... Transpine, Inc.

Chapter 11

Pursuant to 11 U.S.C. § 1121, in pertinent part:

(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.

(c) Any party in interest . . . may file a plan if and only if -

...

(2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or

(3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.

...

(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 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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

CONT... Transpine, Inc.

Chapter 11

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 would be Debtor's first extension. The case has not been pending for a long time; Debtor filed its chapter 11 petition on July 22, 2020. The deadline to file proofs of claim is December 18, 2020.

However, other factors weigh against a multi-month extension. This is a not a complicated bankruptcy case. Rather, it is a case involving Debtor's ownership of one single family home. There are few non-insider creditors. Moreover, Debtor may be proceeding in bad faith based on, among other things, a history of interests in the Tarzana Property having been transferred among family members and related parties. Debtor has not shown that it has increased its revenue and is able to pay its regular operating bills or creditors. Debtor also not shown a reasonable prospect for refinancing its secured debt, considering that its only asset, the Tarzana Property, is not producing any income.

Based on the application of the *Dow Corning factors*, the Court will deny in part the Motion to extend the exclusivity period to file a chapter 11 plan to May 18, 2021, and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, November 19, 2020

Hearing Room 301

1:30 PM

CONT...

Transpine, Inc.

Chapter 11

an extension of the exclusive right to solicit acceptance to July 19, 2021. Rather, in order for Debtor to evaluate all timely filed proofs of claim, and in light of the Court's recent entry of the Stay Relief Order, the Court will grant in part the Motion by extending Debtor's exclusivity period to file a plan to **December 31, 2020**, and if Debtor files a proposed disclosure statement and plan by that deadline, the period to solicit acceptances to **March 15, 2021**.

This extension is subject to termination if a chapter 11 trustee is appointed in this case, in accordance with 11 U.S.C. § 1121(c)(1), and without prejudice to any party in interest's ability to request, in accordance with 11 U.S.C. § 1121(d)(1), a reduction in these extended exclusivity periods, should there be cause for the Court to do so.

Debtor must submit the order within seven (7) days

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen
Paul M Kelley

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

9:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#1.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 6/3/20; 7/15/20(stip); 8/26/20; 9/23/20; 10/21/20(stip)

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mercedes Benitez

Represented By
Matthew D. Resnik

Movant(s):

The Bank of New York Mellon 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, November 25, 2020

Hearing Room 301

9:30 AM

1:20-10577 Rooter Hero Plumbing, Inc.

Chapter 7

#2.00 Motion for relief from stay [AN]

JOHN GRISSOM
VS
DEBTOR

Docket 25

Tentative Ruling:

Grant, subject to the comments set forth in the Conditional Non-Opposition of the chapter 7 trustee [doc. 30].

Movant must submit an order within seven (7) days.

Party Information

Debtor(s):

Rooter Hero Plumbing, Inc.

Represented By
David S Hagen

Movant(s):

John Grissom

Represented By
Matthew Stearns

Trustee(s):

Amy L Goldman (TR)

Represented By
Anthony A Friedman

Diane C. Weil

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

9:30 AM

1:20-11554 Maria De La Paz Avalos

Chapter 7

#3.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 8

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Maria De La Paz Avalos

Represented By
Francis Guilardi

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 25, 2020

Hearing Room 301

1:30 PM

1:19-11569 Guadalupe Villegas

Chapter 7

Adv#: 1:20-01072 Zamora, Chapter 7 Trustee v. Villegas et al

- #4.00** Status conference re: complaint for:
(1) Avoidance of Actual Fraudulent Transfer [11 U.S.C. § 544(b)(1);
Cal. Civ. Code §§ 3439.04, 3439.07, 3439.09];
(2) Avoidance of Constructive Fraudulent Transfer [11 U.S.C. § 544(b)(1);
Cal. Civ. Code §§ 3439.05, 3439.07, 3439.09]; and
(3) Recovery of Avoided Transfer [11 U.S.C. § 550]

fr. 11/4/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on December 23, 2020**. No later than **December 9, 2020**, the parties must file and serve a joint status report.

Appearances on November 25, 2020 are excused.

Party Information

Debtor(s):

Guadalupe Villegas Pro Se

Defendant(s):

Antonio Villegas Pro Se

Gabriella Zapata Pro Se

Fabian Villegas Pro Se

Plaintiff(s):

Nancy J. Zamora, Chapter 7 Trustee Represented By
Jeremy Faith
Anna Landa

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

1:30 PM

CONT... Guadalupe Villegas

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01060 FR LLC v. Lev Investments, LLC et al

#5.00 Status conference of removed proceeding

fr. 7/15/20; 8/19/20; 8/26/20; 10/7/20

Docket 26

Tentative Ruling:

The Court will set the defendants' motions to dismiss [docs. 32, 34] for hearing at **2:30 p.m. on December 16, 2020**. No later than **November 25, 2020**, the defendants must timely file and serve notice of the hearings on the plaintiff. The Court also will continue this status conference to the same time and date. At the continued status conference, if the Court does not dismiss the amended complaint, the Court will assess the defendants' opposition to the plaintiff's demand for a jury trial [doc. 35].

Appearances on November 25, 2020 are excused.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

DMITRI LUDKOVSKI

Pro Se

RUVIN FEYGENBERG

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

1:30 PM

CONT... **Lev Investments, LLC**
SENSIBLE CONSULTING AND

Represented By
John Burgee

Chapter 11

DOES 1 through 100, inclusive

Pro Se

Plaintiff(s):

FR LLC

Represented By
Michael Shemtoub

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

1:18-11620 Antoine R Chamoun

Chapter 7

Adv#: 1:19-01105 Seror, Chapter 7 Trustee v. Chamoun et al

#5.10 Motion to quash subpoena to JP Morgan Chase Bank N.A.

fr. 11/18/20

Docket 53

Tentative Ruling:

Deny.

I. BACKGROUND

On June 26, 2018, Antoine R. Chamoun ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee"). In his schedule A/B [Bankruptcy Docket, doc. 23], Debtor identified an interest in real property located at 1706 Empty Saddle Road, Simi Valley, CA 93063 (the "Property").

On September 16, 2019, the Trustee filed a complaint against Patricia Chamoun and Walid R. Chamoun, initiating this adversary proceeding. In the operative amended complaint (the "FAC") [doc. 27], the Trustee requests, in relevant part: (A) avoidance of a marital settlement agreement between Ms. Chamoun and Debtor; (B) avoidance of a lease agreement between Ms. Chamoun and Debtor (the "Lease"), through which Ms. Chamoun agreed to lease the Property by paying the mortgage on the Property; (B) damages based on Ms. Chamoun's alleged breach of the Lease; (C) turnover of the Property; and (D) unjust enrichment based on Ms. Chamoun's tenancy in the Property without making payments under the Lease.

On August 25, 2020, the Trustee filed a motion for turnover against Ms. Chamoun (the "Turnover Motion") [doc. 38], requesting turnover of the Property based on Ms. Chamoun's failure to pay the mortgage on the Property. On September 2, 2020, Ms. Chamoun filed an opposition to the Motion, arguing that she made payments under the Lease to Debtor, in accordance with an addendum to the Lease (the "Addendum"). In his reply to the Opposition, the Trustee questioned the validity of the Addendum, as well as Ms. Chamoun's assertion that she had made rent payments to Debtor [doc. 43].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... **Antoine R Chamoun**

Chapter 7

On September 24, 2020, the Trustee served a notice of a subpoena to produce documents, information or objects issued to JPMorgan Chase Bank, N.A. (the "Chase Subpoena"). Declaration of Robert Altagen [doc. 53], ¶ 1, Exhibit A. Through the Chase Subpoena, the Trustee requested "[a]ll account statements, checks, wire transfers, payments and all other documents related to any account in the name of Patricia Chamoun... from 1/1/2016 through present." *Id.*

On October 20, 2020, Ms. Chamoun filed a motion to quash the Chase Subpoena (the "Motion") [doc. 53]. In the Motion, Ms. Chamoun argues that, while bank records prior to execution of the marital settlement agreement (in July 2016) are relevant, the request for records dated after the marital settlement agreement is irrelevant and overbroad. Ms. Chamoun also argues that the Chase Subpoena violates her right to financial privacy under California law.

On November 4, 2020, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 56]. In the Opposition, the Trustee asserts he needs the bank records to verify if Ms. Chamoun made payments to Debtor under the Lease, and that the information is relevant to the Trustee's claim that Ms. Chamoun breached the Lease. The Trustee further contends that, with the exception of invoices executed by Ms. Chamoun and Debtor and processed checks produced for February 2020 through July 2020, Ms. Chamoun has provided no evidence verifying that she consistently made payments under the Lease. The Trustee also argues that Ms. Chamoun does not have a right to financial privacy under federal law. Ms. Chamoun has not timely filed a reply to the Opposition.

II. ANALYSIS

A. Whether the Bank Records are Protected by a Financial Privilege

Pursuant to Fed. R. Evid. 501—

The common law--as interpreted by United States courts in the light of reason and experience--governs a claim of privilege unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute; or
- rules prescribed by the Supreme Court.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... Antoine R Chamoun

Chapter 7

But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.

"The federal law of privilege applies unless state law supplies the rule of decision as to the claim or defense in an action, in which case state law of privilege would apply. Where the complaint alleges both federal and state law claims concerning the same conduct, the federal law of privilege would control." *Oyarzo v. Toulumne Fire Dist.*, 2013 WL 1758798, at *9 (E.D. Cal. Apr. 24, 2013) (citing to *Agster v. Maricopa County*, 422 F.3d 836, 839 (9th Cir. 2005)). Federal privilege law applies to actions brought under the Bankruptcy Code. *See, e.g. In re Yassai*, 225 B.R. 478, 482-83 (Bankr. C.D. Cal. 1998) (finding that federal privilege law applied in a denial of discharge action under 11 U.S.C. § 727).

Here, although the FAC includes claims under California law, the FAC also includes several claims under the Bankruptcy Code. As a complaint that alleges both federal and state law claims, under the authorities above, the federal law of privilege applies. In the Motion, Ms. Chamoun references only California law.

"The Ninth Circuit has stated that it knew 'of no authority which recognizes a privilege for communications between bank and depositor' and 'decline[d] to create such a privilege....'" *Yassai*, 225 at 483 (quoting *Harris v. United States*, 413 F.2d 316, 319 (9th Cir. 1969)). "In subsequent cases, courts have uniformly held that the 'banker depositor privilege was not recognized at common law' and 'does not exist in the Federal Courts.'" *Id.* (quoting *Delozier v. First Nat'l Bank of Gatlinburg*, 109 F.R.D. 161, 163 (E.D. Tenn. 1986)). "Additionally, assuming that a state constitution creates a right to privacy in financial records, such state privilege does not preclude discovery of bank records in a federal court suit." *Id.* (internal quotation omitted).

"The party who resists discovery has the burden to show that discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections." *Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 283 (C.D. Cal. 1998).

In light of the above, Ms. Chamoun may not assert financial privilege as a shield to discovery. Ms. Chamoun's reference to California law is insufficient to show a privilege preventing the Trustee from obtaining the information requested in the Chase Subpoena. Thus, the Court will not grant the Motion on this basis.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... Antoine R Chamoun

Chapter 7

B. Whether the Chase Subpoena is Irrelevant or Overbroad

"Upon motion of the party opposing a subpoena, the court 'must quash or modify a subpoena that . . . subjects a person to undue burden. The party seeking to quash a subpoena has the 'burden of persuasion.'" *Id.* (quoting *Travelers Indem. Co. v. Metropolitan Life Ins. Co.*, 228 F.R.D. 111, 113 (D. Conn. 2005)). "However, the party issuing the subpoena must demonstrate, in turn, that the information sought is relevant and material to the allegations and claims at issue in the proceedings." *Rocky Mountain Medical Management, LLC, v. LHP Hospital Group, Inc.*, 2013 WL 6446704, at *2 (D. Idaho 2013). "In all controverted cases, it is up to the court to strike a balance among the degrees of relevance of the requested material, the severity of the burden on the subpoenaed person or entity, and the utility of the protective mechanisms provided by the Federal Rules." *Id.* Pursuant to Rule 26(b)(1)—

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. (emphasis added).

"Relevant information for purposes of discovery is information reasonably calculated to lead to the discovery of admissible evidence." *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005) (internal quotation omitted). "District courts have broad discretion in determining relevancy for discovery purposes." *Id.*

Here, Ms. Chamoun has not met her burden of showing that the Chase Subpoena is unduly burdensome or irrelevant. First, as noted by the Trustee, the production of documents will not burden Ms. Chamoun because Ms. Chamoun is not required to act in response to the Chase Subpoena. Ms. Chamoun's bank will bear the burden of producing the requested documents.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT...

Antoine R Chamoun

Chapter 7

As to relevance, Ms. Chamoun does not dispute that bank records from January 2016 through July 2016, when Ms. Chamoun and Debtor entered into their marital settlement agreement, are relevant. Instead, Ms. Chamoun asserts that bank records after that time are irrelevant and beyond the scope of discovery. Ms. Chamoun does not articulate why records dated after July 2016 are irrelevant.

In fact, such records are highly relevant to the Trustee's claims against Ms. Chamoun for breach of the Lease, turnover of the Property and unjust enrichment. As explained by the Trustee, the Trustee needs such records to verify whether Ms. Chamoun made required payments under the Lease and, if so, to whom. The information in the bank records directly impacts whether the Trustee can prove up his allegations. Ms. Chamoun did not timely file a reply disputing the Trustee's stated need for the records. As such, Ms. Chamoun not having met her burden, the Court will not quash the Chase Subpoena on the bases of undue burden or irrelevance.

III. CONCLUSION

The Court will deny the Motion.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Defendant(s):

Walid R. Chamoun

Represented By
Robert S Altagen

Patricia Chamoun

Represented By
Robert S Altagen

Plaintiff(s):

David Seror, Chapter 7 Trustee

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 25, 2020

Hearing Room 301

2:30 PM

CONT... Antoine R Chamoun

Chapter 7

Robyn B Sokol

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

1:20-11134 Helping Others International, LLC

Chapter 7

Adv#: 1:20-01070 Nguyen, Trustee of Mother Nature Trust v. United Lender, LLC et al

#6.00 Motion to dismiss portions of plaintiff's first amended complaint

Docket 45

***** VACATED *** REASON: Off calendar per Order entered 10/30/20
[Dkt.71]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helping Others International, LLC	Represented By Todd J Cleary
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Defendant(s):

United Lender, LLC	Represented By Anita Jain
Shawn Ahdoot	Represented By Anita Jain
Albert A. Ahdoot	Represented By Anita Jain
Megan E. Zucaro	Pro Se
Helping Others International, LLC, a	Pro Se
Western Fidelity Associates, LLC, a	Pro Se
John B. Spear	Pro Se
American Financial Center, Inc., a	Represented By Lori E Eropkin
DOES 1 through 100, inclusive	Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... Helping Others International, LLC

Chapter 7

Plaintiff(s):

Anh Thy Song Nguyen, Trustee of

Represented By
Andrew A Smits

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

1:20-11134 Helping Others International, LLC

Chapter 7

Adv#: 1:20-01070 Nguyen, Trustee of Mother Nature Trust v. United Lender, LLC et al

#7.00 Chapter 7 trustee's motion to dismiss portions of plaintiff's first amended complaint

Docket 50

***** VACATED *** REASON: Off calendar per Order entered 10/30/20 [Dkt.71]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helping Others International, LLC	Represented By Todd J Cleary
-----------------------------------	---------------------------------

Defendant(s):

United Lender, LLC	Represented By Anita Jain
Shawn Ahdoot	Represented By Anita Jain
Albert A. Ahdoot	Represented By Anita Jain
Megan E. Zucaro	Pro Se
Helping Others International, LLC, a	Pro Se
Western Fidelity Associates, LLC, a	Pro Se
John B. Spear	Pro Se
American Financial Center, Inc., a	Represented By Lori E Eropkin
DOES 1 through 100, inclusive	Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... Helping Others International, LLC

Chapter 7

Plaintiff(s):

Anh Thy Song Nguyen, Trustee of

Represented By
Andrew A Smits

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

1:20-11134 Helping Others International, LLC

Chapter 7

Adv#: 1:20-01070 Nguyen, Trustee of Mother Nature Trust v. United Lender, LLC et al

#8.00 Motion to dismiss first amended complaint in its entirety as against defendant American Financial Center, Inc. and to strike punitive damages claim;

Docket 13

***** VACATED *** REASON: Off calendar per Order entered 10/30/20 [Dkt.71]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helping Others International, LLC	Represented By Todd J Cleary
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Defendant(s):

United Lender, LLC	Represented By Anita Jain
Shawn Ahdoot	Represented By Anita Jain
Albert A. Ahdoot	Represented By Anita Jain
Megan E. Zucaro	Pro Se
Helping Others International, LLC, a	Pro Se
Western Fidelity Associates, LLC, a	Pro Se
John B. Spear	Pro Se
American Financial Center, Inc., a	Represented By Lori E Eropkin
DOES 1 through 100, inclusive	Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... Helping Others International, LLC

Chapter 7

Plaintiff(s):

Anh Thy Song Nguyen, Trustee of

Represented By
Andrew A Smits

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

1:20-11134 Helping Others International, LLC

Chapter 7

Adv#: 1:20-01070 Nguyen, Trustee of Mother Nature Trust v. United Lender, LLC et al

#9.00 Order to Show Cause Why This Adversary Proceeding
Should Not Be Dismissed for Lack of Subject Matter
Jurisdiction or, in the Alternative, Remanded to State Court

Docket 71

Tentative Ruling:

The Court will remand this matter to state court.

I. BACKGROUND

A. *The State Court Action and Relevant Pleadings*

On January 15, 2020, Any Thy Song Nguyen, Trustee of Mother Nature Trust ("Plaintiff") filed a complaint in state court against United Lender, LLC ("United"), Shawn Ahdoot, Albert A. Ahdoot, Megan E. Zucaro, Helping Others International, LLC ("Debtor"), Western Fidelity Associates, LLC ("Western Fidelity"), American Financial Center, Inc. ("American") and John B. Spear (collectively, "Defendants"). Notice of Removal, Exhibit 2.

On January 21, 2020, Plaintiff filed the operative first amended complaint (the "FAC"), asserting causes of action for: (A) wrongful foreclosure – fraud; (B) fraud and deceit – intentional misrepresentation; (C) negligence; (D) breach of contract; (E) relief based on rescission of contract; (F) quieting title; (G) cancellation of written instruments; (H) declaratory relief; and (I) unfair business practices. Notice of Removal, Exhibit 14. Plaintiff demanded a jury trial. *Id.* In the FAC, Plaintiff alleges—

Plaintiff was the seller of residential real property located at 6475 Marigayle Circle, Huntington Beach, CA 92648 (the "Huntington Property"). United is the purported holder of a first deed of trust against the Huntington Property; Shawn and Albert Ahdoot are principals and alter egos of United. Debtor was the buyer of the Huntington Property and the trustor or debtor under the first deed of trust encumbering the Huntington Property; Ms. Zucaro is a principal and alter ego of Debtor,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT...

Helping Others International, LLC

Chapter 7

as well as a licensed real estate broker. Western Fidelity is the trustee under the first deed of trust, and recorded a Notice of Trustee's Sale with a sale set for January 27, 2020. Mr. Spear is a licensed real estate broker and the "responsible broker" for Ms. Zucaro. Finally, American Financial is the purported holder of a third deed of trust against the Huntington Property. Defendants were agents of one another and co-conspirators.

In March 2019, Plaintiff received a call from Ms. Zucaro, who stated she was a real estate broker interested in buying the Huntington Property. Plaintiff told Ms. Zucaro she would sell the Huntington Property for \$2.5 million. However, Ms. Zucaro stated she did not have sufficient funds for the purchase, but would pay \$3 million if Plaintiff would carry a promissory note secured by a second deed of trust for one year, while Ms. Zucaro sold other properties. Ms. Zucaro also requested an additional \$150,000 commission. Plaintiff sold the Huntington Property to Debtor on these terms and obtained a promissory note from Debtor, secured by a second priority deed of trust, in the amount of \$1.2 million.

Subsequently, Debtor did not make any payments to Plaintiff. On July 1, 2019, Debtor obtained a loan from American secured by a third priority deed of trust in the amount of \$75,000. On September 18, 2019, United caused Western Fidelity to record a Notice of Default and Election to Sell Under Deed of Trust. On December 20, 2019, United caused Western Fidelity to record a Notice of Trustee's Sale, setting a foreclosure sale for January 27, 2020.

Since then, Plaintiff discovered that United sent a letter to Debtor noting that Debtor and Ms. Zucaro were current on United's loan. Plaintiff also discovered that Defendants have engaged in similar fraudulent conduct related to other real property. As such, Plaintiff believes Defendants acted in concert to steal Plaintiff's equity in the Huntington Property.

Id. On these allegations, Plaintiff seeks, among other relief, rescission of the sale agreement, a judgment that Defendants have no interest in the Huntington Property and monetary damages. *Id.*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... **Helping Others International, LLC**

Chapter 7

On March 4, 2020, United filed a cross-complaint against Debtor, Plaintiff, Ms. Zucaro, Mr. Spear and Tri Star Equity Group Corp. (the "Cross-Complaint"), asserting causes of action for: (A) judicial foreclosure of deed of trust; (B) specific performance of assignment of rents; (C) appointment of receiver pursuant to provision in deed of trust; (D) injunctive relief; (E) breach of contract; (F) negligent misrepresentation; (G) fraudulent concealment; (H) negligence; (I) negligent hiring/supervision; (J) conspiracy; and (K) unjust enrichment. Notice of Removal, Exhibit 75. United also demanded a jury trial. *Id.* In the Cross-Complaint, United alleges—

On April 3, 2019, Debtor submitted to United a request for a loan secured by the Huntington Property. On May 1, 2019, Debtor and United entered into a loan transaction through which United provided \$1,957,000 in financing for the purchase and sale of the Huntington Property. Pursuant to the promissory note executed in connection with this transaction, Debtor was to make monthly payments on the first of each month, beginning on June 1, 2019.

Debtor defaulted on the promissory note, which is due and payable in full, in the total sum of \$2,234,390.66. Debtor has refused to cure its defaults. In addition, United believes that Debtor is using the Huntington Property as an unlicensed halfway house or sober living facility. United believes the other cross-defendants have conspired with Debtor to defraud United by inflating the sale price and using United's loan to enrich themselves.

Id. On these allegations, United seeks, among other things, sale of the Huntington Property, enforcement of its deed of trust as a first priority deed of trust, specific performance of the deed of trust and a monetary judgment. *Id.*

B. Removal of the State Court Action and the First OSC

On June 29, 2020, Debtor filed its chapter 11 petition. On July 17, 2020, United removed the state court action to this Court, initiating this adversary proceeding. On July 24, 2020, the Court issued an Order to Show Cause re: Remand (the "First OSC") [doc. 5]. On September 2, 2020, the Court entered an order converting Debtor's case to a chapter 7 case [Bankruptcy Docket, doc. 69]. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee"). In response to the First OSC, the Trustee filed a brief

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... **Helping Others International, LLC** **Chapter 7**

opposing remand and asserting that the Huntington Property was a "primary asset" and the outcome of this adversary proceeding would be "critical" to administration of Debtor's estate [doc. 24].

On September 9, 2020, the Court held a hearing on the First OSC. At that time, the Court issued a ruling holding that the applicable factors weighed against remanding this matter to state court (the "First Ruling") [doc. 33]. Taking into account the Trustee's preliminary evaluation and position, the Court stated—

[T]he impact of this proceeding on administration of the estate is significant. The proceeding will impact whether one of Debtor's critical scheduled assets remains property of the estate, as well as the amount of secured claims encumbering the Huntington Property (and asserted as claims against the estate in general). The Complaint, the Cross-Complaint and United's proposed first amended cross-complaint indicate a high degree of relatedness to the main bankruptcy case.

First Ruling, p. 10. In addition, because Plaintiff did not consent to entry of a final order or judgment by this Court, or to jury trial held by this Court, the Court noted the possibility that the United States District Court either would withdraw the reference, or the Court would have to issue a report and recommendation to the District Court. First Ruling, p. 11.

C. Abandonment of the Huntington Property and the Current OSC

On October 13, 2020, the Trustee filed a notice of intent to abandon the Huntington Property, as well as a notice of intent to abandon the estate's interest, claims, rights, and defenses in this adversary proceeding (the "Notices to Abandon") [Bankruptcy Docket, docs. 86, 90]. After hearing opposition to one of the Notices to Abandon, the Court entered an order approving abandonment of the Huntington Property [Bankruptcy Docket, doc. 108].

In light of the Notices to Abandon, on October 30, 2020, the Court issued another Order to Show Cause (the "OSC") [doc. 71], asking the parties to brief why this adversary proceeding should not be dismissed for lack of subject matter jurisdiction or, in the alternative, remanded to state court. On November 11, 2020, United filed a response to the OSC [doc. 74], asserting that the Court has subject matter jurisdiction because this

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... **Helping Others International, LLC**

Chapter 7

proceeding will impact the ability of creditors to recover from the estate, as well as the validity of liens against the Huntington Property. As to remand, United contends that: (A) the state court will have more difficulty than this Court resolving the "adverse conditions" at the Huntington Property; (B) this Court may expeditiously approve the sale of the Huntington Property; (C) other bankruptcy cases may impact the Huntington Property; (D) United prefers the Federal Rules of Bankruptcy Procedure related to service; (E) there is no right to a jury trial in a quiet title action; (F) federal courts are faster than state courts; and (G) jury trials in state court are delayed.

On the same day, the Trustee filed a response to the OSC [doc. 78], noting that: (A) creditors impacted by the lawsuit are likely secured creditors; (B) the Trustee believes Debtor's case will be a "no-asset" case, such that unsecured creditors are unlikely to receive a distribution; and (C) in light of the Notices to Abandon, the Trustee will not be pursuing a sale of the Huntington Property.

American also timely filed a response to the OSC [doc. 79], noting concerns about delay and asking the Court to retain jurisdiction over an anticipated motion under Federal Rule of Bankruptcy Procedure 9011 ("Rule") against Plaintiff. Finally, Plaintiff filed a response to the OSC [doc. 80], requesting remand of this matter to state court.

II. ANALYSIS

A. 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.").

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).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... Helping Others International, LLC

Chapter 7

2. Arising In Jurisdiction

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings" *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11" 28 U.S.C. [§ 157\(b\)\(1\)](#); *Stern v. Marshall*, 564 U.S. 462, 475-76, 131 S.Ct. 2594, 2604, 180 L.Ed.2d 475 (2011).

3. Related to Jurisdiction

Bankruptcy courts also have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pegasus Gold Corp., 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

At this time, it is questionable whether the Court has subject matter jurisdiction over this matter. This proceeding involves the Huntington Property, and the Trustee has abandoned both the Huntington Property and any interest the estate has in this adversary

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... **Helping Others International, LLC**

Chapter 7

proceeding. In addition, adjudication of the validity of liens against the Huntington Property will not impact the estate. The Trustee anticipates filing a "no-asset" report; if the Trustee determines that there are no assets to distribute to unsecured creditors, any unsecured claims that may be impacted by this proceeding also will not have an effect on the estate. Nevertheless, because the Trustee has not yet issued a "no-asset" report, the Court may have subject matter jurisdiction over this proceeding based on the possible impact on claims against the estate. Either way, for the reasons discussed below, the Court will remand this matter to state court.

B. Equitable 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:

- (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;

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT...

Helping Others International, LLC

Chapter 7

- (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).

Given the Trustee's authorized and effective abandonment of both the Huntington Property and the estate's interest in this adversary proceeding, the factors heavily weigh in favor of remand. In the First Ruling, relying on the Trustee's evaluation of the Huntington Property and this action, as of that time, the Court held that this proceeding would have a significant impact on the estate, and a high degree of relatedness to the main bankruptcy case, because this proceeding involved one of "Debtor's critical scheduled assets," i.e., the Huntington Property. At that time, these factors, coupled with certain other factors, justified retention of this proceeding, despite concerns regarding other factors. The abandonment of the Huntington Property changes the landscape.

Now that the Huntington Property has been abandoned, any claims that impact title to the Huntington Property will not alter the estate. While creditors involved in this proceeding may assert unsecured claims against the estate, the Trustee's updated assessment is that the estate will not have any assets to distribute to such creditors. As such, this proceeding will not have a significant impact on the efficient administration of the estate, and no longer maintains a high degree of relatedness to the main bankruptcy case. Consequently, retaining this adversary proceeding will be a burden on the Court's docket.

In addition, the pleadings assert California law causes of action; under the current circumstances, comity dictates remand of this proceeding. Further, in light of the Notices to Abandon, none of the parties have articulated why any of the causes of action would qualify as "core."

Further, as noted in the First Ruling, Plaintiff requested a jury trial and did not consent to entry of a final judgment by this Court. Although United contends that quiet title causes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... Helping Others International, LLC

Chapter 7

of action are not entitled to a jury trial, United does not discuss whether Plaintiff is entitled to a jury trial on its remaining claims. In any event, even without entitlement to a jury trial, the balance of factors weighs in favor of remand.

United's additional arguments do not impact this analysis. First, United's arguments that this Court may resolve the adverse conditions at the Huntington Property and expeditiously sell the Huntington Property no longer apply; the Court already approved abandonment of the Huntington Property. As to United's preference for federal rules of procedure or noticing timelines, United has not articulated why the Court should give priority to such a preference over the objection of other parties and in spite of the established factors outlined above. Such preference is not a basis to refrain from equitable remand in the presence of many factors weighing in favor of remand. Further, United's concerns regarding possible future bankruptcy filings involving the Huntington Property are speculative.

There also is no guarantee that this Court will enter judgment or accommodate a jury trial faster than the state court. As noted in the First Ruling, retaining this action likely means the Court would have to issue a report and recommendation to the United States District Court, which would delay entry of a final judgment. While such report and recommendation *may* be done faster than a state court's entry of judgment, the same constraints on jury trials are present in both state and federal courts. Covid-19 impacts the ability to select and conduct jury trials in federal courts for the same reason it has an effect on jury trials in state court.

Finally, as to American's arguments, American does not appear to contest remand of this matter. Instead, American requests that the Court retain jurisdiction over an anticipated Rule 9011 motion.

Regarding American's contention that Plaintiff is pursuing frivolous claims against American, American may make such arguments before the state court, based on state law. This Court will not make any findings regarding the merits of Plaintiff's claims. The state court may properly adjudicate such substantive issues, and this Court will not issue any rulings, concerning the merits of the claims, or the conduct of the parties, that may have a preclusive effect on the state court.

With respect to American's arguments regarding delay, United was the party that removed this action to this Court, not Plaintiff. In addition, as discussed in the First

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... **Helping Others International, LLC** **Chapter 7**

Ruling, removal was not improper at the time. The delays caused by Covid-19 also are not attributable to Plaintiff. Consequently, the Court will remand this matter to state court.

III. CONCLUSION

The Court will remand this matter to state court.

The Court will prepare the Order.

Party Information

Debtor(s):

Helping Others International, LLC	Represented By Todd J Cleary
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Defendant(s):

United Lender, LLC	Represented By Anita Jain
Shawn Ahdoot	Represented By Anita Jain
Albert A. Ahdoot	Represented By Anita Jain
Megan E. Zucaro	Pro Se
Helping Others International, LLC, a	Pro Se
Western Fidelity Associates, LLC, a	Pro Se
John B. Spear	Pro Se
American Financial Center, Inc., a	Represented By Lori E Eropkin
DOES 1 through 100, inclusive	Pro Se

Plaintiff(s):

Anh Thy Song Nguyen, Trustee of	Represented By
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... Helping Others International, LLC

Chapter 7

Andrew A Smits

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

1:20-11134 Helping Others International, LLC

Chapter 7

Adv#: 1:20-01070 Nguyen, Trustee of Mother Nature Trust v. United Lender, LLC et al

#10.00 Status conference re removed proceeding

fr. 9/9/20; 10/21/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helping Others International, LLC	Represented By Todd J Cleary
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Defendant(s):

United Lender, LLC	Represented By Anita Jain
Shawn Ahdoot	Pro Se
Albert A. Ahdoot	Pro Se
Megan E. Zucaro	Pro Se
Helping Others International, LLC, a	Pro Se
Western Fidelity Associates, LLC, a	Pro Se
John B. Spear	Pro Se
American Financial Center, Inc., a	Pro Se
DOES 1 through 100, inclusive	Pro Se

Plaintiff(s):

Anh Thy Song Nguyen, Trustee of	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 25, 2020

Hearing Room 301

2:30 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#11.00 LLC member David Schwartz's motion for an order to enforce joint stipulation; to judicially Estop Chandu Vanjani from denying Schwartz as a voting member

Docket 68

Tentative Ruling:

Grant.

I. BACKGROUND

A. Prepetition Events

In March 2014, Pacific Precision Laboratories, LLC ("PPL") purchased real property located at 1465 Donhill Drive, Beverly Hills, CA 90210 (the "Property") for \$3.8 million. Declaration of Chandu Vanjani ("Vanjani Declaration") [doc. 81], ¶ 2. Chandu Vanjani is a member of PPL. *Id.*

In November 2017, Mr. Vanjani formed 1465V Donhill Drive, LLC ("Debtor"). Vanjani Declaration, ¶ 4. In connection with creating Debtor, Mr. Vanjani filed Articles of Incorporation with the California Secretary of State and executed the *LLC Operating Agreement* (the "Operating Agreement"). Vanjani Declaration, ¶ 4, Exhibit 1. The Operating Agreement identified PPL as a member of Debtor. *Id.* In relevant part, the Operating Agreement provides—

Names and Addresses of Members. The Members' names and addresses are attached as Exhibit 1 to this Agreement.

...

Classification of Membership Interests. The Company shall issue Class A Voting Capital ("Voting Capital") to the voting Members (the "Voting Members"). The Voting Members have the right to vote in proportion to their respective Percentage Voting Interest ("PVI"). The PVI shall be calculated by dividing the individual Member's Voting Capital by the total Voting Capital. The membership interests are included in Exhibit 1.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT...

1465V Donhill Drive, LLC

Chapter 11

Percentage Ownership. The percentage ownership shall be calculated by combining the total of a Member's Voting Capital and Nonvoting Capital and dividing the sum by the total of all the Members' Voting and Nonvoting Capital. The initial percentages are included in Exhibit 1.

Management by Voting Members. The Voting Members shall manage the Company and vote upon all matters upon which the Members have the right to in proportion to their PVI. The nonvoting Members have no right to vote or participate in management. The Voting Members may only act collectively and unanimously.

Id., p. 1. The Operating Agreement also states that it "may be amended or modified only by a written agreement signed by all of the Members." *Id.*, p. 4.

On June 25, 2018, PPL, Debtor and David Schwartz entered into a project development agreement (the "PDA"). Vanjani Declaration, ¶ 6, Exhibit 2. At this time, Exhibit 1 to the Operating Agreement was amended to add Mr. Schwartz as a 25% member of Debtor. Vanjani Declaration, ¶¶ 4, 6, Exhibits 1, 2. Specifically, the PDA provided—

The LLC currently has one member, Pacific Precision Laboratories, Inc. (the "Existing Member"). The parties desire to enter to an agreement whereby [Mr. Schwartz] will acquire a 25% membership interest in the LLC, [Mr. Schwartz] will be retained by the LLC as the manager for all improvements to the Property ("Project Manager") to oversee and supervise: (i) the subdivision of the Property into two parcels, with the House located on one of the two parcels (the "House Parcel") and no improvements located on the other parcel (the "Second Parcel"); (ii) the renovation and expansion of the House on the House Parcel; (iii) the sale of the House Parcel; (iv) the design and construction of a driveway to the Second Parcel; (v) the construction of a new residence on the Second Parcel; and (vi) the sale of the Second Parcel (collectively, the "Project"), all on the terms and conditions set forth below.

...

Management of the LLC. The LLC shall be managed by one manager (the "Manager"), which shall be PPL. The LLC shall be operated in

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT...

1465V Donhill Drive, LLC

Chapter 11

accordance with its Operating Agreement. The Manager shall execute all agreements on behalf of the LLC and make all final decisions, but shall delegate day-to-day work of supervising and completing the Project to [Mr. Schwartz] as the Project Manager.

Control of the Project. The Project shall be controlled by the Manager, which will be responsible for making all decisions concerning the Project, in consultation with the Project Manager, except for those matters which the Manager delegates to the Project Manager. The Manager shall be responsible for handling all funds and finances of the Project and for making all payments which may be required.

Engagement and Duties of Project Manager. The LLC hereby engages [Mr. Schwartz] to provide services with respect to the Project and the Property in accordance with the terms and provisions of this Agreement (the "Services"). [Mr. Schwartz] is being engaged to oversee and supervise the renovation of the Property and completion of the Project, subject to the approval of the Manager, including specifically... (iv) to provide recommendations to the Manager of potential options during the course of construction in an attempt to maximize the potential sale value of the House; (v) to provide recommendations to the Manager and assist the Manager in connection with the sale of the House once the House renovations have been completed;... (ix) to assist the Manager in connection with the sale of the Second Parcel once the improvements have been completed...; and (x) to supervise the Project in an effort to maximize the profit to the LLC from the completion and sale of the House Parcel and Second Parcel.

Vanjani Declaration, ¶ 6, Exhibit 2, pp. 1-2. As concerns the contemplated sale of the Property, the PDA also provided that pertinent decisions regarding the sale of the Property would be made by the "Manager in consultation with" Mr. Schwartz. *Id.*, pp. 4-6. Finally, the PDA stated that "[n]o modification or amendment of this Agreement shall be effective unless made in writing executed by the parties hereto." *Id.*, p. 6.

B. Debtor's Bankruptcy Case

On June 29, 2020, Debtor filed a voluntary chapter 11 petition. On July 20, 2020, Mr.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... 1465V Donhill Drive, LLC

Chapter 11

Schwartz filed a motion to convert the case to a chapter 7 case (the "Motion to Convert") [doc. 16]. In the Motion to Convert, Mr. Schwartz asserted that he did not consent to the filing of a chapter 11 case, and that his consent was required by the Operating Agreement. Debtor opposed the Motion to Convert [doc. 36].

On August 13, 2020, the Court held a hearing on the Motion to Convert. At that time, the Court issued a ruling noting that Debtor had not adequately addressed whether it had authority to file the chapter 11 petition without Mr. Schwartz's consent. The Court continued the hearing for Debtor and Mr. Schwartz to provide supplemental briefing about the issue.

On August 27, 2020, Mr. Schwartz voluntarily dismissed the Motion to Convert [doc. 45]. On the same day, Debtor, PPL and Mr. Schwartz executed a stipulation to permit this case to continue as a chapter 11 case (the "Stipulation") [doc. 47]. In relevant part, the Stipulation provides—

F. The Voting Members desire to have this bankruptcy case continue and not be dismissed. The Voting Members acknowledge that they disagree with each other on many of the key decisions that are facing the Debtor.
...

2. The Members agree that LLC Operating Agreement, a copy of which is attached hereto as Exhibit A, is amended pursuant to Section IX, sub part 9, to provide that Section II, subpart 4, shall be replaced in its entirety and shall now read as follows: The Voting Members along with Jeffrey Golden shall manage the Company and all management decisions of the Company will be made by them jointly as set forth below. Any Voting Member may make a proposal to the others regarding any aspect of the operations of the Company. If the Voting Members are unable to agree on any decision or proposal made by either of them to the other, Jeffrey Golden shall be and hereby is given the power to attempt to mediate and if necessary, to vote on the proposal and thus "break the tie."

3. The Voting Members agree that they will speak to each other either by telephone or by email and try to reach an agreement about any proposal made by the other regarding any facet of the operations of the Company. If they cannot agree, either Voting Member will ask Mr. Golden for a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT...

1465V Donhill Drive, LLC

Chapter 11

meeting to discuss the issue. Mr. Golden will meet with the Voting Members with or without counsel as they choose and try to help them reach an agreement. If they do not reach an agreement, Mr. Golden is authorized to make the decision on the particular proposal as he sees fit.

...

7. The Voting Members agree to list the property for sale with an agent to be determined either by themselves or with Mr. Golden casting the deciding vote. The Members also agree to file a Plan on time to continue the case as chapter 11.

On September 17, 2020, the Court entered an order approving the Stipulation [doc. 60]. On November 6, 2020, Mr. Schwartz filed the Motion [doc. 68]. In the Motion, Mr. Schwartz contends that Mr. Vanjani, Mr. Golden and Mr. Schwartz attended a meeting and made several decisions regarding the sale of the Property. According to Mr. Schwartz, Mr. Vanjani did not agree to a number of decisions made by Mr. Golden and Mr. Schwartz. Mr. Schwartz asserts that, subsequent to this meeting, Mr. Vanjani claimed that Mr. Schwartz is not a voting member of Debtor and, as such, should not have a say in decisions regarding Debtor. As such, Mr. Schwartz requests an order enforcing the Stipulation.

On November 13, 2020, PPL filed an opposition to the Motion (the "Opposition") [doc. 81]. In the Opposition, PPL argues that, pursuant to the PDA, PPL has the sole right to make decisions on behalf of Debtor. PPL also asserts that the Stipulation may be terminated at any time, and, as the sole voting member, PPL has the authority to remove Mr. Golden as a "provisional director."

II. ANALYSIS

Mr. Schwartz asserts that judicial estoppel prevents PPL from arguing that Mr. Schwartz is not a voting member. In response, PPL argues that issue preclusion (a different doctrine) does not apply. Neither type of estoppel is pertinent to the dispute between the parties. Judicial estoppel applies where a "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." *New Hampshire v. Maine*, 532 U.S. 742, 750-51, 121 S.Ct. 1808, 1815, 148 L.Ed.2d 968 (2001) (internal quotations omitted). Here, PPL has not previously

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... 1465V Donhill Drive, LLC

Chapter 11

argued that Mr. Schwartz is a voting member of Debtor. In addition, although the parties refer to Mr. Schwartz as a voting member in the Stipulation, prior to execution of the Stipulation, the parties did not brief whether Mr. Schwartz qualifies as a voting member or ask for a legal determination from this Court regarding that issue. Thus, neither party "succeeded in persuading [the Court] to accept" the position that Mr. Schwartz is a voting member.

For similar reasons, issue preclusion also does not apply to this dispute. "[C]ollateral 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). Here, regarding the issue of Mr. Schwartz qualifying as a voting member, the Court has not entered a final order *on the merits*. The Court did not make a final decision in response to the Motion to Convert because Mr. Schwartz withdrew the Motion to Convert and the parties settled by executing the Stipulation. In addition, the Court's entry of an order approving the Stipulation was not a decision on the merits; the Court merely approved the parties' agreement.

Rather than the doctrines of judicial estoppel or issue preclusion, the parties' own agreements govern the outcome of this dispute. PPL asserts that the PDA designates PPL as the sole voting member of Debtor. While there is no language in the PDA regarding voting rights, the PDA does designate PPL as the manager of Debtor, with authority to "execute all agreements on behalf of the LLC and make all final decisions...." Although this language appears to have assigned decision-making authority to PPL, other portions of the PDA delegate managerial and supervision authority to Mr. Schwartz. For instance, Mr. Schwartz is defined as the "manager for all improvements to the Property... to oversee and supervise" improvements *and* the sale of the Property. Other provisions in the PDA require PPL to consult with Mr. Schwartz regarding the sale of the Property. Thus, at least as concerns the parties' dispute over the sale of the Property, it is not clear that the PDA prohibits Mr. Schwartz from providing his input.

Nevertheless, even if the PDA stated that PPL was the sole voting member of Debtor, the parties subsequently amended the Operating Agreement to explicitly designate Mr. Schwartz a manager and voting member of Debtor. First, the Operating Agreement allowed for amendments or modifications by a written agreement signed by all members

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... 1465V Donhill Drive, LLC

Chapter 11

of Debtor. The same is true for the PDA; the PDA may be modified in writing signed by the parties to the PDA. Thus, the Stipulation properly amends the Operating Agreement and modifies the rights set forth in the PDA because it is signed by both PPL and Mr. Schwartz and explicitly states, in writing, that the parties intend to make Mr. Schwartz a manager with voting rights. [FN1].

Next, there is no ambiguity to the language in the Stipulation: Mr. Schwartz and PPL agreed to provide *both* Mr. Schwartz and Mr. Golden management rights *and* to give Mr. Schwartz voting power, with Mr. Golden providing the tiebreaker vote if needed. Both the original Operating Agreement and the PDA predate the Stipulation; as the most recent agreement executed by the parties, the language in the Stipulation controls over any language in the original Operating Agreement or PDA. *See Frangipani v. Boecker*, 64 Cal.App.4th 860, 863 (Ct. App. 1998) ("Where there is an inconsistency between two agreements both of which are executed by all of the parties, the later contract supersedes the former.").

PPL asserts that referring to Mr. Schwartz as a voting member in the Stipulation is insufficient to give Mr. Schwartz voting rights. However, notwithstanding the fact that PPL does not offer a reasonable alternative interpretation of such language, the Stipulation explicitly provides Mr. Schwartz management rights. *See* Stipulation, p. 3 ("The Voting Members along with Jeffrey Golden *shall manage the Company and all management decisions of the Company will be made by them jointly....*") (emphasis added). PPL bases its own voting rights on the language in the PDA that provided PPL management rights over Debtor. As such, the Court's interpretation of the Stipulation is not founded solely on the reference to Mr. Schwartz as a voting member, but also on the language designating Mr. Schwartz and Mr. Golden managers of Debtor.

Moreover, although Mr. Vanjani argues that he did not intend to provide Mr. Schwartz voting rights, Mr. Vanjani acknowledges that he signed the Stipulation to accomplish his own goal, i.e. to prevent conversion or dismissal of this case. This goal also is stated in the Stipulation. As such, Mr. Vanjani benefitted from the Stipulation, and the unambiguous compromise to allow Mr. Vanjani to retain that benefit was to provide voting and management rights to Mr. Schwartz and Mr. Golden. In addition, Mr. Vanjani's comments regarding Debtor's counsel are not pertinent to this issue; Debtor's counsel did not represent Mr. Vanjani and/or PPL, and neither Mr. Vanjani nor PPL elected to hire counsel prior to execution of the Stipulation. Not being represented by counsel is not grounds to nullify a valid agreement between the parties.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

CONT... 1465V Donhill Drive, LLC

Chapter 11

PPL also argues that the Stipulation "can be terminated at any time," but provides no law in support of this assertion. Instead, PPL appears to rely on the fact that the Stipulation does not contain a provision that it remains effective for a certain period of time. However, the lack of a provision regarding expiration of the Stipulation leads to the opposition conclusion: that the Stipulation permanently amends the Operating Agreement to add the language regarding Mr. Schwartz's and Mr. Golden's roles.

Finally, PPL asserts that Mr. Schwartz breached the terms of the Stipulation by failing to communicate with PPL in the manner outlined in the Stipulation. However, PPL has not moved for enforcement of the Stipulation, or otherwise argued in a properly noticed motion that Mr. Schwartz breached the terms of the Stipulation. Having set forth no valid reason to disregard the Stipulation, the Court will instruct PPL to comply with the terms of the Stipulation.

III. CONCLUSION

The Court will grant the Motion.

Mr. Schwartz must submit an order within seven (7) days.

FOOTNOTES

1. PPL mentions that Mr. Golden has not signed the Stipulation. However, the Operating Agreement and the PDA require only that Mr. Schwartz and PPL must sign an agreement modifying or amending those documents. Thus, the signatures by Mr. Schwartz and PPL are sufficient.

Party Information

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

Movant(s):

David Schwartz

Represented By
Eric Bensamochan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, November 25, 2020

Hearing Room 301

2:30 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#12.00 Motion to approve application to employ Todd Wohl as debtor's real estate agent and related listing agreement

Docket 72

Tentative Ruling:

Many of the issues mentioned by Pacific Precision Laboratories, Inc. ("PPL") in its response concern the debtor's motion to enforce the stipulation between PPL and David Schwartz, not to the proposed employment of the real estate agent.

As to PPL's opposition to the listing price, the debtor's reply indicates that the real estate agent relied on, among other things, an appraisal valuing the subject property at \$7.57 million. In light of this information, PPL has not articulated why the Court should question the debtor's business judgment and the assessment of the debtor's proposed real estate agent.

In addition, PPL's assertion that Nelson Shelton Real Estate ("NSRE") may be entitled to a commission, based on an executed postpetition listing agreement, is inaccurate. The Court has not entered an order approving the employment of NSRE, or approving the payment of any compensation to NSRE.

Todd Wohl has not signed the declaration of disinterestedness. The debtor must file a **signed** declaration of disinterestedness. If the debtor files the signed declaration, the Court will grant the motion employing Mr. Wohl as real estate broker.

Party Information

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

Movant(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

1:19-11696 Peter M. Seltzer

Chapter 7

Adv#: 1:19-01151 Kessler v. Seltzer

#1.00 Motion for summary judgment against defendant Peter M. Seltzer denying debtor's discharge under 11 U.S.C. § 727(a)(2)(A), (a)(4)(A), and (a)(5), or, in the alternative, for summary adjudication

fr. 11/18/20

Docket 44

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On July 9, 2019, Peter M. Seltzer ("Debtor") filed a voluntary chapter 11 petition. On December 26, 2019, the Court entered an order converting this case to a chapter 7 case [Bankruptcy Docket, doc. 98].

On December 16, 2019, Darren Kessler filed a complaint against Debtor, initiating this adversary proceeding. On May 12, 2020, Mr. Kessler filed the operative first amended complaint against Debtor (the "FAC") [doc. 15], requesting denial of Debtor's discharge under 11 U.S.C. § 727(a)(2), (a)(4) and (a)(5) and an exception to discharge under 11 U.S.C. § 523(a)(2), (a)(4) and (a)(6).

On October 7, 2020, Mr. Kessler filed a motion for summary judgment, requesting judgment on his claims under 11 U.S.C. § 727 (the "Motion") [doc. 44] or partial summary adjudication. Debtor timely opposed the Motion [doc. 52].

A. The Original Schedules and Statement of Financial Affairs

On July 21, 2019, Debtor filed his original set of schedules and statements (the "Original Schedules") [Bankruptcy Docket, doc. 10]. Debtor signed the Original Schedules under penalty of perjury. Undisputed Fact from Debtor's Responsive Separate Statement ("Undisputed Fact") [doc. 52], ¶ 7. In his schedule A/B, Debtor

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

identified real and personal property totaling \$7,098,581, including a fee simple interest in real property located at 4179 Prado de la Puma, Calabasas, CA 91302 (the "Calabasas Property"). Debtor noted that the Calabasas Property "is in disrepair because of smoke damage caused by the fire in November 2018...."

In the Original Schedules, Debtor also identified, among other things: (A) a Chase checking account with \$121,000, which Debtor stated was "held in trust for insurance proceeds for property damage to house and furniture;" (B) a Merrill Lynch account with \$435,967, which Debtor stated was encumbered; and (C) a Frost IRA with \$69,678 [Bankruptcy Docket, doc. 10].

In his Statement of Financial Affairs ("SOFA"), filed with the Original Schedules, Debtor indicated that: (A) in 2019, he received no income from employment or operation of a business; (B) in 2018, he received \$250,000 from employment; (C) within 90 days before he filed for bankruptcy, he did not make any transfers within the scope of Item 6; (D) within one year before he filed for bankruptcy, he made no payments to insiders within the scope of Items 7 or 8; (E) within two years before he filed for bankruptcy, he did not give any gifts within the scope of Items 13 and 14; (F) within one year before he filed for bankruptcy, he did not lose anything because of theft, fire, other disaster or gambling; (G) within two years before he filed for bankruptcy, he did not make any transfers within the scope of Item 18; and (H) within four years before he filed for bankruptcy, he was a member of three business entities: ITM, 2305 LLC and Jakdyl LLC. Undisputed Fact, ¶ 13.

B. The § 341(a) Meeting of Creditors and Mr. Kessler's Discovery

On August 15, 2019, Debtor appeared for his § 341(a) meeting of creditors (the "Meeting of Creditors"), where he testified under oath regarding his assets and liabilities. Undisputed Fact, ¶ 14. Subsequently, Mr. Kessler conducted discovery; specifically, from August 26, 2019 through September 26, 2019, Mr. Kessler filed several motions to examine, under Federal Rule of Bankruptcy Procedure ("Rule") 2004, Debtor and several other entities (collectively, the "Rule 2004 Examinations") [Bankruptcy Docket, docs. 21, 22, 36, 45, 47, 50]. With the exception of the motion to examine Debtor, which the Court denied based on Mr. Kessler's initiation of this adversary proceeding against Debtor, the Court entered orders granting Mr. Kessler's requests for Rule 2004 Examinations [Bankruptcy Docket, docs. 39, 40, 48, 52, 54].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

Documents obtained by Mr. Kessler, coupled with Debtor's testimony at the Meeting of Creditors, revealed the following:

i. Transfers from the accounts of 2305 LLC and ITM

At the Meeting of Creditors, the U.S. Trustee (the "UST") asked questions about Debtor's interests in 2305 LLC and ITM. Regarding his interest in 2305 LLC, Debtor testified that the company had approximately \$35,000 in an account, and that it was Debtor's personal LLC that he used for various businesses. Undisputed Fact, ¶¶ 21-22; Declaration of Craig G. Margulies ("Margulies Declaration") [doc. 46], ¶ 4, Exhibit A, 22:19-24. As to ITM, Debtor testified that he set up the company to receive his salary from ACC Enterprises, LLC ("ACC Enterprises") in 2018, but that ITM was "being let go" because he no longer worked for ACC Enterprises. Margulies Declaration, ¶ 4, Exhibit A, 23:8-13.

During the chapter 11 portion of this case, monthly operating reports ("MORs") filed by Debtor reflected that Debtor maintained an account under the name of 2305 LLC (the "2305 Account") and an account under the name of ITM (the "First ITM Account"). Undisputed Fact, ¶ 39. For instance, on September 18, 2019, Debtor filed his July 2019 MOR [Bankruptcy Docket, doc. 41], which showed that 2305 LLC maintained a bank account with Wells Fargo (the "2305 Account").

On October 31, 2019, after Debtor had filed the July 2019 MOR, Mr. Kessler filed a Rule 2004 motion to examine Wells Fargo [Bankruptcy Docket, doc. 61]. The bank statements from Wells Fargo reveal the following prepetition transfers from the 2305 Account: (A) on February 26, 2019, a wire transfer to Fidelity National Title in the amount of \$50,000; (B) on March 18, 2019, a wire transfer to Etw Management in the amount of \$150,000; (C) on April 19, 2019, a wire transfer to Harris Ritoff in the amount of \$100,000; (D) on May 20, 2019, two withdrawals in the amounts of \$28,000 and \$7,000; and (E) on May 28, 2019, a withdrawal in the amount of \$4,000. Margulies Declaration, ¶ 12, Exhibit D.

Debtor's July 2019 MOR, filed on September 18, 2019 [Bankruptcy Docket, doc. 41], also showed that ITM maintained a bank account with Frost Bank, ending in x0639 (the "First ITM Account"). On September 26, 2019, Mr. Kessler filed a Rule 2004 motion to examine Frost Bank [Bankruptcy Docket, doc. 50]. Subsequently, Mr.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

Kessler obtained bank statements from Frost Bank regarding a different bank account, ending in x0647 (the "Second ITM Account" and, together with the First ITM Account, the "ITM Accounts"). Margulies Declaration, ¶ 13, Exhibit E.

The bank statements show that, in January 2019, the First ITM Account had \$73,823.80 and the Second ITM Account had \$809,850.56. *Id.* In July 2019, shortly before the petition date, the First ITM Account had \$37,449.76 and the Second ITM Account had \$12.53. *Id.* Mr. Kessler also references the following transfers: (A) on August 27, 2018, Debtor transferred \$800,000 from the First ITM Account to the Second ITM Account; (B) on February 7, 2019, Debtor wired \$10,000 from the Second ITM Account to the 2305 Account; (C) on February 12, 2019, Debtor wired \$500,000 from the Second ITM Account to Fidelity National Title; (D) on March 13, 2019, Debtor transferred \$170,000 from the Second ITM Account to the First ITM Account; (D) on March 15, 2019, Debtor wired \$170,000 from the First ITM Account to the 2305 Account; (E) on March 15, 2019, Debtor transferred \$60,000 from the Second ITM Account to the First ITM Account; (F) on May 13, 2019, Debtor transferred \$20,000 from the Second ITM Account to the First ITM Account; and (G) on May 28, 2019, Debtor transferred \$45,431.68 from the Second ITM Account to the First ITM Account. Margulies Declaration, ¶¶ 13, 16, Exhibits E, G. Prior to and during the chapter 11 portion of Debtor's bankruptcy case, Debtor used the 2305 Account and the First ITM Account to pay most of his personal expenses, such as gas, restaurants, travel, utilities and car payments. UF, ¶ 40.

ii. The Harris Transfer

At the Meeting of Creditors, Debtor testified that he had never provided anyone money for the purchase of real property. Margulies Declaration, ¶ 4, Exhibit A, 30:6-17. When questioned about an individual named Neal Harris, Debtor responded that Mr. Harris was a former employee of ACC Enterprises. *Id.*, 31:6-9. Debtor also testified he was not suing Mr. Harris. *Id.*, 10-12.

The bank statements from Frost Bank show that, in February 2019, Debtor transferred a total of \$550,000 from the 2305 Account and the Second ITM Account to Fidelity National Title in Las Vegas, Nevada. Margulies Declaration, ¶¶ 12-13, 16, Exhibits D-E, G. The outgoing wire transfer receipt included a memo line that read "sale/purchase of property." Margulies Declaration, ¶ 16, Exhibit G.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

In two gift letters regarding this "sale/purchase of property" (the "Gift Letters"), Debtor indicated the funds were a gift to be applied toward the purchase of real property located at 4201 San Alivia Court, Las Vegas, NV (the "LV Property"). Margulies Declaration, ¶ 18, Exhibit H. Despite contributing 30% of the purchase price, the LV Property was not acquired in Debtor's name, or in the name of one of Debtor's businesses. Undisputed Fact, ¶ 70. Instead, the LV Property was purchased in the name of Neal and Francesca Harris. *Id.* The Gift Letters stated that Mr. and Mrs. Harris are Debtor's nephew and niece. Margulies Declaration, ¶ 18, Exhibit H.

iii. The Fire Damage and Insurance Proceeds

During the Meeting of Creditors, Debtor testified that the Calabasas Property was damaged by the Woolsey Fire, and that Debtor had submitted a claim with his insurance company. Margulies Declaration, ¶ 4, Exhibit A, 9:21 – 10:8. When asked by the UST about the claim, Debtor stated that the insurance company had accepted "some things" but that Debtor was in the process of negotiating reimbursement for other things. *Id.*, 10:18-25. Debtor further testified that the funds were "not [his] money," and that he placed the insurance proceeds in "the debtor account... to pay for all the construction workers to do all the different work." *Id.*, 11:1-6.

Through discovery, Mr. Kessler obtained bank statements from Chase Bank for an account in Debtor's name, ending in x7875 (the "Chase Account"). Margulies Declaration, ¶ 9, Exhibit B. The Chase Account reflected that, in May 2019, Debtor made deposits from Nat Gen Premier totaling approximately \$178,750. *Id.* The statements also show that, on May 29, 2019, Debtor transferred \$40,000 to Tactical Mitigation Services. Margulies Declaration, ¶ 15, Exhibit F. In addition, on July 8, 2019, Debtor withdrew \$9,866.64 from the Chase Account. Margulies Declaration, ¶ 9, Exhibit B. On July 22 and July 23, 2020, i.e., postpetition, Debtor withdrew another \$126,000 and \$2,832.76, respectively. *Id.*

C. The Amended Schedules

On October 15, 2019, Debtor filed amended schedules and statements (the "Amended Schedules") [Bankruptcy Docket, doc. 56]. The following chart reflects information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

in the Amended Schedules that was not included in the Original Schedules:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

Regarding the businesses, at the Meeting of Creditors, Debtor's counsel had noted that the UST identified a total of 20 businesses about which the UST needed additional information. Margulies Declaration, ¶ 4, Exhibit A, 4:1-5. Debtor's counsel stated that, of the 20 businesses, Debtor identified "two or three businesses" that would be added to an amended SOFA. *Id.*, 4:11-13. During the Meeting of Creditors, the UST and Debtor also discussed ACC Enterprises and ACG Industries, Inc. ("ACG Industries"). *Id.*, 4:22-25, 19:1-15.

In the Amended Schedules, Debtor stated that he held an interest in ACG Industries and that ACG Industries was shut down in 2017. Undisputed Fact, ¶ 83. Debtor also testified, at the Meeting of Creditors, that he shut down ACG Industries in 2017. Undisputed Fact, ¶ 84. In the Amended Schedules, Debtor also indicated that, in 2018, he made \$250,000 in employment income and \$6,850 in income from operating a business. Undisputed Fact, ¶ 82.

The Second ITM Account's bank statements show that, in March 2018, this account received \$20,000 from ACC Enterprises. Margulies Declaration, ¶ 13, Exhibit E, p. 104. The bank statements also show that, from March 2018 through May 2018, this account received wire transfers totaling \$925,000. *Id.*, pp. 104, 106, 109.

On January 9, 2020, Debtor filed another amended schedule A/B [Bankruptcy Docket, doc. 106], adding an interest in Resurgent valued at \$9,500.

II. ANALYSIS

A. General Motion for Summary Judgment Standard

Pursuant to Federal Rule of Civil Procedure ("Rule") 56, applicable to this adversary proceeding under Federal Rule of Bankruptcy Procedure ("FRBP") 7056, the Court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2509-10, 91 L.Ed.2d 202 (1986); Rule 56; FRBP 7056. "By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

summary judgment; the requirement is that there be no *genuine* issue of *material* fact." 477 U.S. at 247–48 (emphasis in original).

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . . [S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. . . .

Id. at 248–50 (internal citations omitted). Additionally, issues of law are appropriate to be decided in a motion for summary judgment. *See Camacho v. Du Sung Corp.*, 121 F.3d 1315, 1317 (9th Cir. 1997).

The initial burden is on the moving party to show that no genuine issues of material fact exist based on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed. 265 (1986). Once the moving party meets its initial burden, the nonmoving party bearing "the burden of proof at trial on a dispositive issue" must identify facts beyond what is contained in the pleadings that show genuine issues of fact remain. *Id.*, at 324; *see also Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.").

The nonmoving party meets this burden through the presentation of "evidentiary materials" listed in Rule 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, and interrogatory answers. *Id.* To establish a genuine issue, the nonmoving 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 [nonmoving party's] position will be insufficient."). Rather, the nonmoving party must provide "evidence of such a caliber that 'a fair-minded jury could return a verdict for the [nonmoving

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

party] on the evidence presented.'" *U.S. v. Wilson*, 881 F.2d 596, 601 (9th Cir. 1989) (quoting *Anderson*, 477 U.S. at 266).

B. 11 U.S.C. § 727(a)(2)(A)

Regarding objections to discharge, as a whole, "[i]n keeping with the 'fresh start' purposes behind the Bankruptcy Code, courts should construe § 727 liberally in favor of debtors and strictly against persons objecting to discharge. This does not alter the burden on the objector, but rather means that actual, rather than constructive, intent is required on the part of the debtor." *In re Retz*, 606 F.3d 1189, 1196 (9th Cir. 2010) (internal citations and quotations omitted).

11 U.S.C. § 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 ... 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). The transfer must occur within one year prepetition. *In re Lawson*, 122 F.3d 1237, 1240 (9th Cir. 1997).

In examining the circumstances of a transfer under § 727(a)(2), certain "badges of fraud" may support a finding of fraudulent intent. These factors, not all of which need be present, include (1) a close relationship between the transferor and the transferee; (2) that the transfer was in anticipation of a pending suit; (3) that the transferor debtor was insolvent or in poor financial condition at the time; (4) that all or substantially all of the debtor's property was transferred; (5) that the transfer so completely depleted the debtor's assets that the creditor has been hindered or delayed in recovering any part of the judgment; and (6) that the debtor received inadequate consideration for the transfer. *In re Retz*, 606 F.3d at 1200.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

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).

"Where intent is at issue, summary judgment is seldom granted." *In re Gertsch*, 237 B.R. 160, 165 (B.A.P. 9th Cir. 1999) (citing to *Provenz v. Miller*, 102 F.3d 1478, 1489 (9th Cir. 1996), *cert. denied*, 522 U.S. 808 (1997)). "Summary judgment is ordinarily not appropriate in a § 727 action where there is an issue of intent." *In re Wills*, 243 B.R. 58, 65 (B.A.P. 9th Cir. 1999). "Evidence of fraud is conclusive enough to support summary judgment in a § 727(a)(2)(A) action when it yields no plausible conclusion but that the debtor's intent was fraudulent." *In re Marrama*, 445 F.3d 518, 522 (1st Cir. 2006) (affirming denial of the debtor's discharge on summary judgment). "Fraud claims, in particular, normally are so attended by factual issues (including those related to intent) that summary judgment is seldom possible." *In re Stephens*, 51 B.R. 591, 594 (B.A.P. 9th Cir. 1985).

i. ***Transfers from the 2305 Account***

With the exception of the \$50,000 wired to Fidelity National Title from the 2305 Account in February 2019, Mr. Kessler has not met his burden of proving that Debtor concealed or transferred property of *Debtor*. Margulies Declaration, ¶ 12, Exhibit D. As to the \$50,000, the Gift Letters state that the funds were gifted to Debtor's relatives, and named Debtor, personally, as the donor. Margulies Declaration, ¶ 18, Exhibit H. Debtor also indicated in the Amended Schedules that he has a personal claim against Mr. Harris for \$550,000 [Bankruptcy Docket, doc. 56]. Thus, the Court will adjudicate that Debtor transferred \$50,000 of his property from the 2305 Account within one year of the petition date.

While the bank statements for the 2305 Account show the other transfers to which Mr. Kessler refers, there is no showing that the transferred funds belonged to *Debtor*, instead of to the company. For instance, Mr. Kessler has not proven that Debtor otherwise would be entitled to receive the transferred funds. Although Mr. Kessler contends that the 2305 Account was used as Debtor's personal account, at the Meeting of Creditors, Debtor testified that he used 2305 LLC for "various businesses." Margulies Declaration, ¶ 4, Exhibit A, 22:19-24. The record does not include any contradictory evidence showing that the referenced transfers were not used for business purposes. As such, with the exception of the \$50,000 transfer to Fidelity

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

National Title in February 2019, it is not clear that the transfers from the 2305 Account were transfers of property of Debtor.

Mr. Kessler has not met his burden of proving that Debtor made these transfers with intent to hinder, delay or defraud creditors. In the Motion, Mr. Kessler states, in a conclusory fashion, that Debtor transferred funds between his business accounts, such as the 2305 Account and the ITM Accounts, in an effort to shield funds from creditors. However, Mr. Kessler has not provided any circumstantial evidence demonstrating intent, and has not provided evidence showing the presence of the applicable badges of fraud.

As evidence of the requisite intent, Mr. Kessler also points to the fact that Debtor did not schedule the 2305 Account in his Original Schedules or Amended Schedules. However, Mr. Kessler has not identified where in the schedules or statements Debtor was required to identify an account in the name of one of his businesses. In his Original Schedules, Debtor *did* identify 2305 LLC as a business in which he had an interest. In addition, Debtor attached bank statements from the 2305 Account to his first filed MOR. Mr. Kessler's referenced pattern of transfers from one account to another may be a factor in demonstrating intent at trial. However, at this summary judgment stage, the evidence as a whole is not so strong as to yield "no plausible conclusion but that the debtor's intent was fraudulent." *Marrama*, 445 F.3d at 522.

ii. Transfers from the ITM Accounts

The same issues are present with respect to the transfers from the ITM Accounts. Although Debtor testified at the Meeting of Creditors that ITM was a vehicle for receiving his salary from ACC, the bank statements reflect funds wired from other, unspecified sources. As such, with the exception of the \$500,000 transfer to Fidelity National Title, it is not clear that the transfers from the ITM Accounts were of Debtor's property.

However, the Court will adjudicate that the \$500,000 gift to his relatives, evidenced by the Gift Letters in which Debtor was named as the donor, was a transfer of Debtor's property within one year of the petition date. As noted above, Debtor himself stated in his Amended Schedules that he has a personal claim against Mr. Harris, worth \$550,000.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

Nevertheless, Mr. Kessler has not proven that Debtor acted with the requisite intent. Mr. Kessler has not provided evidence of the relevant badges of fraud, or other circumstantial evidence that would prove intent by a preponderance of the evidence.

Further, Mr. Kessler notes that Debtor did not identify the ITM Accounts in his Original Schedules or Amended Schedules. As with the 2305 Account, Mr. Kessler has not identified where in the schedules or statements Debtor was required to list accounts in the name of his businesses; Debtor identified ITM in his Original Schedules. Once again, while the pattern of transfers may be a factor evidencing intent after trial, at this time, Mr. Kessler has not satisfied his burden of proof.

iii. The Harris Transfer

As discussed above, the Court will adjudicate that, within one year of the petition date, Debtor transferred \$550,000 of his property to the Harrises.

At this time, the Court will not enter judgment as to intent. Certain badges of fraud may be present, such as a close relationship between Debtor and the Harrises (if they are related), and that Debtor may have received inadequate consideration for the transfer, if it was a gift. Mr. Kessler also references certain inconsistencies between Debtor's testimony at the Meeting of Creditors, the Gift Letters and the Amended Schedules.

However, Mr. Kessler has not provided any evidence as to the remaining factors. In addition, the Court will need to assess Debtor's credibility regarding the inconsistencies noted above, which must be done at trial.

iv. The Burr Transfer

The Court will adjudicate that, within one year of the petition date and according to Debtor's own Amended Schedules, Debtor transferred \$50,000 to Mr. Burr. However, Mr. Kessler has not met his burden of proving that Debtor made this transfer with intent to hinder, delay or defraud creditors.

Mr. Kessler does not provide evidence of any badges of fraud related to this transfer,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

such as a close relationship between Mr. Burr and Debtor, collection efforts by creditors at the time Debtor transferred the funds, whether the transfer depleted all or substantially all of Debtor's assets or any other factor that would support a finding of intent. Instead, Mr. Kessler merely argues that Debtor's comments regarding this transfer, in the Amended Schedules, do not make sense. This is insufficient to show intent, and an assessment of whether Debtor's testimony "makes sense" requires a credibility determination by the Court. Thus, at this time, the Court will not enter judgment as to this transfer.

v. *Concealment of Businesses and Insurance Proceeds*

Section 727(a)(2)(A) involves a debtor's *prepetition* concealment of property. The failure to disclose the businesses and insurance proceeds occurred postpetition, when Debtor filed the Original Schedules and Amended Schedules. As such, these concerns are more appropriately addressed by § 727(a)(4), below.

C. *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." *Retz*, 606 F.3d at 1198 (quoting *In re Khalil*, 379 B.R. 163, 173 (B.A.P. 9th Cir. 2007)). "A debtor acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198 (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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

Circuit Court of Appeals has described as follows:

The creditor must show that (1) the debtor made the representations; (2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the creditors; (4) that the creditors relied on such representations; (5) that the creditors sustained loss and damage as the proximate result of the representations having been made.

Roberts, 331 B.R. at 884. Intent usually must 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).

i. Debtor's 2018 Income

Mr. Kessler contends that Debtor misrepresented the amount of income he received in 2018, and falsely represented that ACG Industries shut down in 2017. The evidence does not support Mr. Kessler's contention. Regarding Mr. Kessler's assertion that Debtor received \$905,000 from ACG Industries in 2018, the relevant bank statements actually reflect a \$20,000 receipt from *ACC Enterprises*, not ACG Industries, and \$925,000 of transfers from unspecified sources. There is no evidence that Debtor received funds from ACG Industries in 2018, and, as such, no evidence that Debtor misrepresented that ACG Industries shut down in 2017.

Next, Mr. Kessler contends that Debtor testified that he used the ITM Accounts solely to receive salary from ACG Industries, which, in turn, must mean that the receipt of funds into the First ITM Account constituted Debtor's salary from ACG Industries. However, during the Meeting of Creditors, Debtor actually testified that he used the ITM Accounts to receive salary from *ACC Enterprises*. In addition, the bank statements reflect that Debtor frequently transferred funds from one business account to another. Thus, it is not clear that the receipt of \$925,000 came from income or operation of business, as opposed to transfers of existing funds from different accounts. During the time period referenced by Mr. Kessler, the bank statements show only \$20,000 received from *ACC Enterprises*. Consequently, Plaintiff has not demonstrated that Debtor made a false oath as to ACG Industries shutting down in 2017, or with respect to Debtor's stated income in 2018.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

ii. The Harris Transfer

The Court will adjudicate that Debtor made a false oath in connection with the Harris Transfer by failing to include the transfer in his Original Schedules, and failing to identify his claim against Mr. Harris in the Original Schedules. In the Amended Schedules, Debtor indicated he was supposed to get investment returns from this transaction, and valued his claim at \$550,000. As such, the Court also will adjudicate that the omission was material.

However, Mr. Kessler has not proven that Debtor omitted this information knowingly or fraudulently. As discussed above, in connection with § 727(a)(2)(A), "[w]here intent is at issue, summary judgment is seldom granted." *Gertsch*, 237 B.R. at 165. To prove intent conclusively, Mr. Kessler would have to show that the record "yields no plausible conclusion but that the debtor's intent was fraudulent." *Marrama*, 445 F.3d at 522. At this time, the evidence is not so conclusive as to show that Debtor acted knowingly and fraudulently in omitting information about the Harris Transfer. The Court will assess Debtor's credibility at trial.

iii. Failure to Disclose Fire Damage and Insurance Payments

The Court will adjudicate that Debtor did not disclose the prepetition transfers of insurance proceeds in his Original Schedules or Amended Schedules. The Court also will adjudicate that Debtor did not respond to Item 15 of his original SOFA, which calls for information about loss suffered from fire or other disaster. The Court also will adjudicate that these omitted facts were material.

However, Mr. Kessler has not met his burden of proving intent. Although Debtor did not respond to Item 15 of the SOFA in his Original Schedules, Debtor stated in his *original* schedule A/B that the Calabasas Property was "in disrepair because of smoke damage caused by the" November 2018 Woolsey Fire. Thus, Debtor *did* make certain disclosures about the fire damage. As to the insurance proceeds, Debtor testified at the Meeting of Creditors that the proceeds were "not [his] money," and were meant to be used to pay for construction work. In the Original Schedules, Debtor indicated the insurance proceeds were in a checking account held "in trust" for the purpose of fixing property damage.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

Further, at the Meeting of Creditors, Debtor discussed both the fire damages and receipt of certain insurance proceeds. *See In re Mereshian*, 200 B.R. 342, 347 (B.A.P. 9th Cir. 1996) (holding that disclosure of transactions not included in schedules at the first § 341(a) meeting of creditors may show lack of intent). In light of these facts negating intent, at this time, Mr. Kessler has not proven that Debtor acted knowingly and fraudulently.

iv. Transfers from the 2305 Account and the ITM Accounts

Mr. Kessler has not demonstrated that Debtor had an obligation to disclose, in his schedules and statements, the specified transfers from the 2305 Account and the ITM Accounts. Given that these accounts are in the name of Debtor's businesses, and because Debtor disclosed both businesses in his Original Schedules, Mr. Kessler has not shown where in the schedules and statements Debtor should have disclosed transfers made by these businesses.

To the extent Mr. Kessler argues the funds actually belonged to Debtor, and not the businesses, Mr. Kessler has not made such a showing. For instance, Mr. Kessler has not demonstrated that the entities were sham entities hiding Debtor's personal funds, or that the transferred funds otherwise would have been paid to Debtor as his income. Although Mr. Kessler makes conclusory statements asserting these companies were "shell" entities, Mr. Kessler has provided no evidence or legal authority in support of this conclusion. Thus, Mr. Kessler has not proven that Debtor made a false oath in connection with the transfers from the 2305 Account and the ITM Accounts.

Even if Debtor made a false oath, Mr. Kessler has not made a showing of intent. Debtor identified 2305 LLC and ITM as businesses in which he had an interest in the Original Schedules. Debtor also attached bank statements from both businesses to his first filed MOR, and discussed both businesses at the Meeting of Creditors. In light of these facts negating intent, Mr. Kessler has not shown, at this time, that Debtor acted knowingly or fraudulently.

v. The Omitted Businesses

The Court will adjudicate that Debtor omitted nine businesses from his Original

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

Schedules. The Court also will adjudicate that the missing information was material, because the information relates to Debtor's business transactions.

However, Mr. Kessler has not met his burden of proving intent. In the Amended Schedules, Debtor indicated that the omitted businesses either were shut down or nonoperational, or that Debtor was no longer involved with the business. Mr. Kessler has not provided contradictory evidence. In addition, Debtor openly discussed a few of these businesses at the Meeting of Creditors, prior to any discovery by Mr. Kessler. Given these factors that negate intent, Mr. Kessler has not, at this time, met his burden regarding intent.

D. 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.

Retz, 606 F.3d at 1205. See also *Devers*, 759 F.2d at 754 (concluding that debtors could be denied discharge under § 727(a)(5) where they failed to offer a "satisfactory explanation" for the "disappearance" of a tractor they had owned that they did not produce for repossession).

"The sufficiency of the debtor's explanation, if any, is a question of fact. The bankruptcy court has broad discretion in making this determination." *In re Hazelrigg*, 2013 WL 6154102, at *5 (B.A.P. 9th Cir. Nov. 19, 2013) (citing *Retz*, 606 F.3d at 1205).

"Section 727(a)(5) does not require that the explanation itself be meritorious, or that the loss or other disposition of assets be proper; it only requires that the explanation

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

satisfactorily account for the disposition." *In re Chu*, 511 B.R. 681, 687 (Bankr. D. Haw. 2014) (internal quotation omitted). "This definition of 'satisfactory' is consistent with the basic principle that section 727 must be interpreted in favor of the debtor." *Id.*

i. The Transfers from the 2305 Account and the ITM Accounts

Mr. Kessler has not met his burden of proof regarding the transfers from the 2305 Account and the ITM Accounts. As noted above, with the exception of the \$550,000 transferred to the Harrises, Mr. Kessler has not shown that the funds in these accounts belong to *Debtor*, instead of to ITM or 2305 LLC. Moreover, Mr. Kessler has not demonstrated where in Debtor's schedules or statements Debtor was required to provide an explanation of transfers from the accounts of nondebtor entities.

Moreover, even assuming the assets belong to Debtor, and that Debtor had an obligation to disclose the assets in his schedules and statements, Mr. Kessler has not demonstrated that he received an inadequate response from Debtor regarding the transfers. First, Mr. Kessler has not shown that he actually asked for additional information about the transfers. *See In re MacMillan*, 2020 WL 3634255, at *3 (Bankr. C.D. Cal. Apr. 9, 2020) (denying summary judgment under 11 U.S.C. § 727(a)(5) because there was "insufficient evidence that Debtors were ever asked to explain their loss or deficiency of these alleged assets"). Second, the line items from the bank statements related to these accounts include a description of the nature of the transfer.

Even if Debtor did not initially schedule transfers of his property, Mr. Kessler now has the benefit of detailed bank statements. To the extent Mr. Kessler was unclear about where certain funds went, Mr. Kessler has not specified any such line items in the Motion, and there is no indication Mr. Kessler has asked Debtor to clarify the nature of such transfers.

ii. The Insurance Proceeds

Mr. Kessler contends that Debtor transferred approximately \$52,000 of the insurance proceeds without providing a satisfactory explanation about the nature of these transfers. First, Mr. Kessler's calculation of transferred funds appears to include the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

postpetition transfer of \$2,832. Section 727(a)(5) applies only to *prepetition* transfers. *In re Choy*, 569 B.R. 169, 184-185 (Bankr. N.D. Cal. 2017).

As to the remaining transfers, Mr. Kessler has not met his burden of proving that Debtor provided an unsatisfactory explanation. At the Meeting of Creditors, Debtor indicated the insurance proceeds were being used to pay construction workers. In addition, Mr. Kessler has not provided any evidence that he actually requested additional information about these transfers. As such, Mr. Kessler has not met his burden of proof as to the insurance proceeds.

iii. The Harris Transfer

As to the \$550,000 transfer to the Harrises, Mr. Kessler asserts that Debtor only disclosed this transfer after discovery by Mr. Kessler. Courts deny debtors their discharge under § 727(a)(5) only if debtors fail to provide a satisfactory explanation "*before determination of denial of discharge under this paragraph....*" 11 U.S.C. § 727(a)(5) (emphasis added). Here, long before Mr. Kessler moved for a determination regarding denial of Debtor's discharge, Debtor disclosed information in the Amended Schedules.

Mr. Kessler also argues that the disclosures regarding the Harris Transfer are not satisfactory. However, Mr. Kessler has not specified what additional information he needs about this transfer. The evidence submitted by Mr. Kessler indicates that Mr. Kessler already has information about the recipients, the use of the funds for purchase of real property and Debtor's statements that the transfer was meant as a business investment. Mr. Kessler has not met his burden of proving that Debtor failed to satisfactorily explain this transfer.

iv. The Burr Transfer

The same problems are present with the Burr Transfer. Once again, Mr. Kessler's argument that Debtor disclosed the Burr Transfer after discovery by Mr. Kessler is irrelevant to whether Debtor made appropriate disclosure before a determination regarding his discharge.

Moreover, although Mr. Kessler argues that Debtor's disclosures regarding the Burr

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

Transfer are not sufficiently specific, Debtor has filled out the information required by schedule A/B and the SOFA. Mr. Kessler has not specified what information is missing. Further, if Mr. Kessler believes he needs additional information about this transfer, there is no evidence that Mr. Kessler has requested such information.

Finally, Mr. Kessler appears to suggest that Debtor did not respond to questions posed by the UST. However, Mr. Kessler's citations to the transcript of the Meeting of Creditors do not support this conclusion. The transcript reflects that Debtor answered the questions that were posed. Thus, as to all the transfers above, the transcript of the Meeting of Creditors does not reflect that Debtor failed to answer any specific question asked by the UST.

III. CONCLUSION

The Court will grant partial summary adjudication as set forth above. The Court otherwise will deny the Motion.

Mr. Kessler must submit an order within seven (7) days.

Party Information

Debtor(s):

Peter M. Seltzer

Pro Se

Defendant(s):

Peter M. Seltzer

Represented By
Kathleen C Hipps

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies
Noreen A Madoyan

Trustee(s):

Diane C Weil (TR)

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 2, 2020

Hearing Room 301

2:30 PM

CONT...

Peter M. Seltzer

Chapter 7

David Seror
Jorge A Gaitan
Jessica L Bagdanov

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#1.00 Confirmation hearing re debtor's first amended chapter 11 plan

Order appr stip to cont ent 11/17/20

Docket 131

***** VACATED *** REASON: Order approving stip entered 11/17/20.
Hearing continued to 2/11/21 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

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**

Thursday, December 3, 2020

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#2.00 Status conference re: chapter 11 case

fr. 11/21/19; 4/9/20; 7/9/20, 7/16/20; 9/10/20; 10/15/20

Stip to cont filed 11/16/20

Docket 1

***** VACATED *** REASON: Order approving stip entered 11/17/20.
Hearing continued to 2/11/21 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

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**

Thursday, December 3, 2020

Hearing Room 301

1:00 PM

1:19-11902 John Christian Lukes

Chapter 11

#3.00 Hearing on debtor's disclosure statement describing chapter 11 plan

Docket 146

***** VACATED *** REASON: Voluntary dismissal of disclosure statement
filed 11/19/20. [Dkt.182]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Christian Lukes

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, December 3, 2020

Hearing Room 301

1:00 PM

1:19-11902 John Christian Lukes

Chapter 11

#4.00 Status conference re: chapter 11 case

fr. 9/19/19; 2/6/20; 4/30/20; 10/08/20;

Docket 1

Tentative Ruling:

The debtor has not filed his monthly operating report for October 2020.

Given that debtor has withdrawn his chapter 11 plan and proposed related disclosure statement, and he now intends to sell the sole real property of the bankruptcy estate, i.e., a residential rental property located in Altadena, when does debtor expect to file an application to employ a real estate broker and to file an amended chapter 11 plan and disclosure statement?

Party Information

Debtor(s):

John Christian Lukes

Represented By
Matthew D Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#5.00 Order to show cause why this case should not be dismissed
or converted to one under chapter 7

fr. 08/27/20; 9/17/20; 11/12/20

Docket 75

Tentative Ruling:

Because the debtor timely filed a chapter 11 plan and related proposed disclosure statement, based on the continued deadline for her to do so, the Court will discharge the Order to Show Cause.

Appearances on December 3, 2020 are excused.

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 3, 2020

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#6.00 Status conference re: chapter 11 case

fr. 12/19/20; 12/26/19; 6/18/20; 07/23/2020; 8/27/20; 9/17/20;
11/12/20

Docket 1

Tentative Ruling:

The Court will set a hearing on the adequacy of the debtor's proposed disclosure statement [doc. 117] at **1:00 p.m. on January 21, 2021**. The debtor must timely file and serve notice of the hearing and the deadline to file a response no later than 14 days prior thereto, and the ability to request a copy of the debtor's chapter 11 plan and proposed related disclosure statement from debtor's counsel, on all creditors and the United States Trustee.

The Court also will continue this status conference to the same time and date.

The debtor must submit the order setting the hearing on the disclosure statement, and the deadline to file and serve on the debtor and her counsel any response thereto, within seven (7) days.

Appearances on December 3, 2020 are excused.

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 3, 2020

Hearing Room 301

1:30 PM

1:16-13469 Children Are Our Future, Inc.

Chapter 7

#7.00 Motion of chapter 7 trustee for an order approving the sale of certain assets of the debtor's estate free and clear of liens, claims, interests, and encumbrances pursuant to 11 U.S.C. §§ 105 and 363 and related relief

Docket 36

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Children Are Our Future, Inc.

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**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

#8.00 Motion of Fredman Lieberman Pearl LLP for an order authorizing withdrawal of counsel

Docket 379

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta
Larry W Gabriel
Claire K Wu

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

1:18-12932 Martha Beltran

Chapter 7

#9.00 Trustee's motion to extend deadline for chapter 7 trustee to object to debtor's exemptions

Docket 48

***** VACATED *** REASON: Withdrawal of motion filed 11/17/20
[Dkt.50]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martha Beltran

Represented By
M. Wayne Tucker

Trustee(s):

Nancy J Zamora (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

1:19-11482 Kimball West Small

Chapter 7

#10.00 Motion for order authorizing trustee to continue operating real property

Docket 82

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)

Represented By
David Seror
Jessica L Bagdanov
Tamar Terzian

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

1:20-10621 Jasmin DeVillar

Chapter 11

#11.00 Debtor's motion re objection to claim number 17 by
California Dept. of Tax and Fee Administration

Docket 63

Tentative Ruling:

Objection overruled.

Respondent must submit the order within seven (7) days.

Party Information

Debtor(s):

Jasmin DeVillar

Represented By
Nancy Korompis

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

#12.00 Debtor's motion for declaratory relief re: Court's Order of 8/25/20 incorporating tentative ruling of 8/13/20, and motion for chapter 7 discharge, or, in the alternative for dismissal of case with or without prejudice

fr. 11/5/20

Docket 69

Tentative Ruling:

See calendar no. 14.

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

#13.00 Application by Nancy Hoffmeier Zamora, Chapter 7 Trustee, for approval to employ Rodeo Realty, Inc. as Real Estate Broker

fr. 08/06/20 (stip); 8/13/20; 10/15/20; 11/5/20

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

#14.00 Chapter 7 Trustee's Motion Objecting to Debtor's
Claimed Homestead Exemption

fr. 11/5/20

Docket 78

Tentative Ruling:

Overrule.

I. BACKGROUND

On May 14, 2020, Thomas A. Perez ("Debtor") filed a voluntary chapter 7 petition. Nancy J. Zamora was appointed the chapter 7 trustee (the "Trustee").

A. Debtor's Bankruptcy Planning

By early 2019, Debtor was "getting constant, threatening phone calls from various collection agencies." According to Debtor, after exploring the option of getting a reverse mortgage, and being informed that he could not qualify, Debtor decided to seek another solution. Declaration of Thomas A. Perez ("Perez Declaration") [doc. 45], ¶¶ 2-5; *see also* [doc. 70], Exhibit C, ¶¶ 2-5.

Debtor met with a group called "Legal Experts" to discuss what to do. *Id.*, ¶¶ 4-9. According to Debtor, someone at Legal Experts said that he did not "qualify for bankruptcy" because of the equity in Debtor's house. Then, another individual at Legal Experts, *i.e.*, "Moshe," asked Debtor if he knew a "reliable person of confidence" who could help Debtor and his wife "with some paperwork that would make the BK possible." *Id.*, ¶¶ 9-11. Debtor thought of his sister, Maria Perez. *Id.*, ¶ 10.

Debtor allegedly informed Moshe that Ms. Perez had helped Debtor and his spouse financially throughout the years, but that there was no formal agreement of repayment between the two. *Id.*, ¶ 11. Debtor asserts that, at that time, Moshe advised Debtor to create a third mortgage against the Property in favor of Ms. Perez, and to wait one year before filing a bankruptcy case. *Id.*, ¶ 12. Debtor and his spouse then executed a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT...

Thomas A Perez

Chapter 7

promissory note and a deed of trust against their home, for the benefit of Ms. Perez. *Id.*, ¶ 13.

B. Debtor's Schedules and Statements

On May 14, 2020, Debtor filed his original schedules of assets and liabilities with his chapter 7 petition. [FN1]. In his schedule A/B, Debtor identified a joint tenancy interest in real property located at 9251 Woodley Avenue, North Hills, CA 91343 (the "Property"). Debtor valued the Property at \$625,000. In his schedule C, Debtor claimed a \$27,497 exemption in the Property under California Code of Civil Procedure ("CCP") § 703.140(b)(5).

In his schedule D, Debtor identified the following encumbrances against the Property: (A) a first priority deed of trust in favor of PHH Mortgage Services ("PHH") in the amount of \$343,758; (B) a second priority deed of trust in favor of PHH in the amount of \$53,745; and (C) a third priority deed of trust in favor of Maria Rita Perez, Debtor's sister, in the amount of \$200,000 (the "Perez DOT"). In schedule D, Debtor noted that the debt underlying the Perez DOT was incurred in May 2019.

C. The § 341(a) Meeting and Amended Schedules

On June 19, 2020, Debtor attended a § 341(a) meeting of creditors (the "Meeting of Creditors"). During the Meeting of Creditors, the Trustee asked Debtor questions about the Perez DOT and requested copies of pertinent documents. Supplemental Declaration of Trustee [doc. 93], ¶ 2, Exhibit 1. Specifically, the Trustee asked Debtor to provide additional information regarding when Ms. Perez funded the underlying loan, why Debtor recorded the Perez DOT when he did and whether Debtor made any payments to Ms. Perez. *Id.* The Trustee also informed Debtor that a realtor planned to visit and assess the Property. *Id.* [FN2].

On the same day as the Meeting of Creditors, the Trustee filed a Notice of Assets [doc. 11]. [FN3]. On June 26, 2020, the Trustee filed an application to employ a real estate broker (the "Broker Application") [doc. 15].

According to Debtor, after the Meeting of Creditors, Debtor recognized he was in "trouble" over the Perez DOT. Perez Declaration [doc. 45], ¶ 16; *see also* [doc. 70], Exhibit C, ¶ 16. As a result, after the Meeting of Creditors, Debtor again consulted

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT... Thomas A Perez

Chapter 7

Legal Experts for advice. Supplemental Declaration of Thomas Perez (the "Supplemental Declaration") [doc. 94], ¶ 6. According to Debtor, Legal Experts told Debtor to hire another attorney. *Id.*

On June 30, 2020, Debtor hired his current bankruptcy counsel, Stephen Parry. Supplemental Declaration, ¶ 7; Substitution of Attorney [doc. 17]. According to Debtor, at that time, Mr. Parry advised Debtor to call Ms. Perez and ask her to reconvey the Perez DOT immediately. Supplemental Declaration, ¶ 7. That evening, Debtor called his sister to relay this information to her. *Id.*, ¶ 8. At that time, Ms. Perez stated she would unwind the Perez DOT as soon as possible. *Id.*, ¶¶ 8-9.

On June 30, 2020, Debtor also filed amended schedules, including an amended schedule A/B and an amended schedule C [doc. 18]. In his amended schedule C, Debtor claimed a homestead exemption, under CCP § 704.950, in the amount of \$175,000.

In his amended schedule A/B, Debtor set forth a liquidation analysis regarding the Property. Using a value of \$599,000.00, which Debtor attributed to the Trustee's proposed real estate broker, and after deducting costs of sale and amounts payable regarding the first and second deeds of trust, Debtor's liquidation analysis stated:

Debtor (age 65) has corrected and amended his Schedule C and claimed his Homestead Exemption pursuant to CCP 704.950, such that the claim Homestead Exemption amount is \$175,000. Accordingly, there are no net proceeds available to the Bankruptcy Estate from a forced sale of [the Property].

In the amended schedule A/B, Debtor further noted:

Debtor's sister has a Third Trust Deed lien on this property which constitutes an avoidable preference, having been recorded less than 1 year prior to the filing of this case. Accordingly, said lien was not included in the Chapter 7 liquidation analysis.

D. Emails Between Debtor's Counsel and the Trustee

On July 2, 2020, Mr. Parry sent an email to the Trustee: (A) stating that he had substituted into the case; (B) noting that amended schedules had been filed to address

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT...

Thomas A Perez

Chapter 7

mistakes in Debtor's original schedules; (C) asking if the Trustee needed additional documents from Debtor; (D) inquiring if the Trustee agreed to abandon the Property; and (E) agreeing to pay the Trustee's incurred fees and costs. Declaration of Barry Sisselman [doc. 69], ¶ 5, Exhibit D. On the same day, Ms. Perez called the escrow company to begin the process of reconveying the Perez DOT. Supplemental Declaration, ¶ 9. That day, the Trustee responded to Mr. Parry's email, stating, in relevant part—

Further, as the amended schedules note, the third deed of trust is a preferential transfer that I can avoid and preserve for the benefit of the Estate.

Id. To this email, Mr. Parry responded, on July 2, 2020, that he expected "to have the preferential lien voluntarily released, by the recording of a Full Reconveyance, within the next week to 10 days." *Id.*

On July 3, 2020, Debtor's counsel sent another email to the Trustee, stating, in relevant part—

We expect that Mr. Perez's sister will be meeting with a title company today to execute a Declaration of Lost Original Note for the filing of a Full Reconveyance of the 3rd Trust Deed Lien. The title company will record the document and will be requested to provide a Certified Copy [of] the Reconveyance. We will provide that to you as soon as we receive it. She is not fighting the fact that it constitutes an avoidable preference.

Id. The record before the Court does not reflect a response to this email by the Trustee.

On July 3, 2020 and July 6, 2020, Ms. Perez visited the escrow company and the title company, respectively, to continue the reconveyance process. Supplemental Declaration, ¶ 9. On July 8, 2020, Ms. Perez completed the reconveyance by signing and notarizing the reconveyance deed. *Id.* However, according to Debtor, because the County Recorder is closed to the public on account of the pandemic, the recording of the reconveyance deed was delayed until July 15, 2020. *Id.*

E. Other Pertinent Filings

On July 6, 2020, three days after Debtor's counsel informed the Trustee that Ms. Perez

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT...

Thomas A Perez

Chapter 7

would voluntarily reconvey the Perez DOT, the Trustee filed an adversary proceeding against Ms. Perez, requesting avoidance of the Perez DOT as a preferential transfer and a fraudulent transfer (the "Perez Complaint") [1:20-ap-01067-VK]. On July 7, 2020, the Trustee filed an application to employ counsel to represent the Trustee in this adversary proceeding (the "Litigation Application") [doc. 23].

On July 11, 2020, Debtor filed a motion to convert this case to a chapter 13 case (the "Motion to Convert") [doc. 25]. On August 6, 2020, Debtor filed another set of amended schedules A/B, C, D, E/F, G, I and J [doc. 44]. In this amended schedule A/B, Debtor asserted that, on July 8, 2020, the Perez DOT had been voluntarily released by a full reconveyance.

On August 13, 2020, the Court held a hearing on the Motion to Convert. At that time, the Court issued a ruling denying the Motion to Convert (the "Conversion Ruling") [doc. 52]. In the Conversion Ruling, the Court held that, because "Debtor fabricated a deed of trust in favor of his sister to prevent liquidation of the Property by a chapter 7 trustee," "Debtor engaged in the type of bad faith conduct that warrants denial of his request to convert this case." Conversion Ruling, p. 5. In relevant part, the Court also stated—

Nevertheless, because Ms. Perez voluntarily reconveyed her deed of trust, obviating the need for legal action by the Trustee, the Court questions whether there are sufficient grounds to deny Debtor his homestead exemption. To facilitate a resolution to the dispute over Debtor's homestead exemption, the Court will order Debtor and the Trustee to attend mediation in an attempt to resolve this issue without expending significant estate resources.

Conversion Ruling, p. 5. Subsequently, the parties attended mediation; according to the mediator's certificate [doc. 68], the parties did not reach a resolution regarding Debtor's entitlement to a homestead exemption.

F. The Pending Motion and Objection

On October 12, 2020, Debtor filed a motion for declaratory relief or, in the alternative, a motion for dismissal of Debtor's case (the "Declaratory Relief Motion") [doc. 69]. In the Declaratory Relief Motion, Debtor asserts that, based on the Conversion Ruling, the Trustee cannot object to Debtor's claim of a homestead exemption under 11 U.S.C. §

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT...

Thomas A Perez

Chapter 7

522(g). Debtor also asserts that the Perez DOT was voluntarily reconveyed without the need for action by the Trustee. In the alternative, Debtor requests dismissal of this case and/or the filing of a no asset report by the Trustee.

On October 15, 2020, the Trustee filed an objection to Debtor's claim of a homestead objection (the "Objection") [doc. 78] and an opposition to the Declaratory Relief Motion [doc. 77]. On October 19, 2020, Debtor filed a reply to the opposition [doc. 80] and an opposition to the Objection [doc. 81]. On October 20, 2020, the Trustee filed an evidentiary objection to Exhibit E, attached to the Declaratory Relief Motion [doc. 84]. On October 28, 2020, the Trustee filed a reply to Debtor's opposition [doc. 88].

II. ANALYSIS

A. Declaratory Relief

Debtor contends that he is entitled to declaratory relief based on the Court's Conversion Ruling. However, the Conversion Ruling did not establish that Debtor is entitled to a homestead exemption under 11 U.S.C. § 522(g). In the Conversion Ruling, the Court merely stated that it "*questions* whether there are sufficient grounds to deny Debtor his homestead exemption." Conversion Ruling, p. 5 (emphasis added). The Court did not hold that Debtor is entitled to a homestead exemption, or conduct an analysis under the relevant legal standards.

As discussed below, even if the legal action was unnecessary to avoid the Perez DOT, section 522(g) bars claims of exemptions even where a trustee "recovers" property *without formal legal action*. Thus, the Court will deny Debtor's request for declaratory relief and, in the context of the Trustee's objection to the claimed exemption, address Debtor's arguments regarding his entitlement to a homestead exemption.

B. Request to Dismiss and/or for the Trustee to File a No Asset Report

Debtor has not provided any legal support regarding his requests to dismiss this case or compel the Trustee to file a no asset report. Pursuant to 11 U.S.C. § 707(a), "[t]he Court may dismiss a case under this chapter only after notice and a hearing and *only for cause*...." (emphasis added). Under 11 U.S.C. § 305(a)(1), "[t]he 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... the interests of creditors and the debtor would be better

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT... **Thomas A Perez**

Chapter 7

served by such dismissal or suspension."

Debtor has not articulated why dismissal of this case is in the best interest of creditors. At this time, while the Trustee is investigating Debtor's assets, dismissal of this case is premature.

C. Entitlement to Homestead Exemption

Pursuant to 11 U.S.C. § 522(g)—

Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee *recovers* under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) such transfer was not a voluntary transfer of such property by the debtor;
and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

11 U.S.C. § 522(g) (emphasis added).

A debtor's claim to an exemption under § 522(g) is disallowed where: (A) "a debtor voluntarily transfers property in a manner that triggers the trustee's avoidance powers *or* the debtor knowingly conceals a prepetition transfer or an interest in property;" *and* (B) "such property is returned to the estate as a result of the trustee's actions directed toward either the debtor or the transferee...." *In re Glass*, 164 B.R. 759, 764-65 (B.A.P. 9th Cir. 1994), *aff'd*, 60 F.3d 565 (9th Cir. 1995).

Here, there is no dispute that Debtor voluntarily made the subject transfer, i.e., executed the Perez DOT. Although the parties dispute whether Debtor concealed the transfer, a showing that Debtor voluntarily made the subject transfer is sufficient to satisfy the first

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT...

Thomas A Perez

Chapter 7

prong of the test set forth in *Glass*. As such, the outcome hinges on the second prong of the test: whether the Trustee's actions resulted in recovering equity in the Property.

In *Glass*, prepetition, the debtor had quitclaimed his interest in real property to his son; the debtor did not identify the real property in his schedules and statements. *Glass*, 164 B.R. at 760. At a meeting of creditors, a creditor informed the chapter 7 trustee about the prepetition transfer. *Id.* In response, the debtor filed amended schedules and claimed a homestead exemption in the property. *Id.* The chapter 7 trustee objected under § 522(g). *Id.*, at 760-61.

Three days after the chapter 7 trustee filed the objection to the claimed exemption, the debtor's son reconveyed the property to the debtor. *Id.*, at 761. In light of the reconveyance, the bankruptcy court ruled that the debtor was entitled to a homestead exemption because the chapter 7 trustee did not direct any action, formal or informal, against the son to achieve reconveyance of the property to the estate. *Id.*

The Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") disagreed. The BAP held that "it is not apparent from the word 'recovers' that a formal adversary proceeding against the transferee is needed for a court to deny a debtor's claim of exemption." *Glass*, 164 B.R. at 763. Specifically, the BAP stated—

In the bankruptcy context, a trustee may "recover" fraudulently transferred property in several ways: by initiating a formal adversary proceeding, by obtaining a judgment in his or her favor in that adversary action, or merely by using the threat of the avoidance powers to convince a debtor or third party transferee to return the property to the estate. Thus, it would appear that the word "recovers" does not necessarily require that the trustee regain possession of the property through a formal legal action.

Id. Under this definition of "recovers," the BAP determined that the chapter 7 trustee had recovered the property into the estate—

We further conclude that the Trustee's actions toward the Debtor directly, and the Debtor's son indirectly, were instrumental in the return of the property to the estate. Three days after the Trustee filed his Objection, the Debtor's son reconveyed the property to the Debtor by quitclaim deed.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT...

Thomas A Perez

Chapter 7

Since the Debtor and the transferee are father and son and the transfer occurred on the heels of the Objection, the only reasonable inference to be drawn is that the Trustee's promise of legal action had a coercive effect on father and son, directly resulting in the return of the property to the estate.

Without the Trustee's intervention and discussions with the Debtor as to why the property should be reconveyed to the estate, there would be no residence in which the Debtor could claim an exemption.

Id., at 765. The Ninth Circuit Court of Appeals affirmed the BAP's decision; in relevant part, the Court of Appeals noted that the trustee taken "some action" to recover the subject property—

In this case, following the debtor's failure to properly disclose the property transfer there was not only a "suggestion" by the trustee, but also a filed objection that contained the threat of use of avoidance powers. The trustee is correct that even under *Snyder*, relied upon by both the bankruptcy court and Glass, he should prevail.

...

Although the *Snyder* court indicated it would evaluate whether or not a trustee expended "a significant amount of effort" in a case such as this, *id.* at 154, there is arguably not a lot of difference between filing a complaint and filing an objection threatening to file a complaint. *Snyder* also states that "[t]he language of § 522(g) requires that the trustee, or a creditor acting in a similar capacity, *have taken some action* which has resulted in the recovery of the property." *Id.* (emphasis added). The filing of the objection containing the threat to use avoidance powers which resulted in the reconveyance of the property to the estate was "some action."

In re Glass, 60 F.3d 565, 569 (9th Cir. 1995) (citing *In re Snyder*, 108 B.R. 150, 154 (Bankr. N.D. Ohio 1989)).

At least one court has held that, even where a trustee acts, there should be some relation between the action taken by the trustee and the recovery into the estate. See *In re Leach*, 595 B.R. 841 (Bankr. D. Idaho 2018). In *Leach*, the debtors did not accurately identify

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT...

Thomas A Perez

Chapter 7

a vehicle in their schedules; although they remained on title, the debtors also indicated they had given the vehicle to their daughter. *Id.*, at 843. During a § 341(a) meeting of creditors, the mistake came to light. *Id.* After the meeting of creditors, the debtors did not amend their schedules to correct the mistake in their schedules. *Id.*

Two months after the discovery of the error, the chapter 7 trustee sent a demand letter to the debtors, requesting turnover of the vehicle. *Id.* Shortly thereafter, the debtors amended their schedules to correct the description of the vehicle and claim a \$7,000 exemption in the vehicle. *Id.* The trustee then objected to the exemption, arguing the debtors were not entitled to an exemption under § 522(g). *Id.* After holding that the debtors voluntarily transferred the vehicle to their daughter, thus satisfying the first prong of the *Glass* test, the bankruptcy court decided the trustee did not recover the vehicle for purposes of § 522(g). *Id.*, at 844-47. In relevant part, the court stated—

In this case, Trustee knew that Debtors were the title owners of the Vehicle as of June 28, 2018, and Debtors were similarly aware of their mistake at that time. Trustee waited nearly two months, but when no effort was made to correct the schedules, he wrote a formal demand letter to Debtors informing them of the Vehicle's inclusion in their bankruptcy estate and demanding turnover, and sought their daughter's name and address so Trustee's auctioneer could pick the car up. Under *Glass*, this is very close to constituting a "recovery" under § 522(g).

However, the Vehicle was voluntarily returned to the Debtors shortly after July 8, 2018, not due to any action by Trustee, but because their daughter purchased a new car and no longer needed it, as demonstrated by the text messages in evidence. Moreover, as explained above, the transfer at issue was a transfer of possession only, and Debtors' daughter voluntarily returned possession of the Vehicle to them. Thus, both legal title and possession rested with Debtors by the time Trustee wrote the demand letter. Additionally, under the broad definition of estate property under § 541(a), the Vehicle was already included in Debtors' bankruptcy estate, as they legally owned it by virtue of the certificate of title. The original transfer of possession to Debtors' daughter did not confer legal title to her under Idaho law. As such, the only "recovery" Trustee's demand letter brought about was Debtors' act of formally correcting the model year of the Vehicle on their schedules. ...

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT...

Thomas A Perez

Chapter 7

While it would not require a particularly expansive reading of *Glass* to conclude that the facts presented here constitute a recovery for the purposes of § 522(g), the Court is nevertheless mindful of the well-established standard that exemption statutes are to be liberally construed in favor of debtors. As such, the Court interprets "recovers" within the meaning of § 522(g) to not include this instance, where Trustee's actions did not result in the transferred interest being returned to the estate, and in fact occurred subsequent thereto.

Id., at 845-46 (internal citations omitted). [FN4].

Here, the record does not reflect that the Trustee took the type of action contemplated by the *Glass* decisions. In the BAP's *Glass* decision, the BAP held that the "only reasonable inference to be drawn is that the Trustee's promise of legal action had a coercive effect" on the debtor and the transferee, which "directly result[ed] in the return of the property of the estate." *Glass*, 164 B.R. at 765 (emphasis added). Similarly, the Court of Appeals highlighted that "there was not only a 'suggestion' by the trustee, but... a filed objection that contained the threat of *use of avoidance powers*." *Glass*, 60 F.3d at 569 (emphasis added). In both decisions, the relevant threat was a threat of legal action that was instrumental to return of property of the estate. The *Leach* court, relying in part on the liberal construction afforded to exemption statutes, further stressed the importance of causation; there, even where the chapter 7 trustee wrote a formal demand letter, the court held that the transferee voluntarily reconveyed the property for reasons unrelated to the trustee's letter and, as a result, the trustee did not "recover" the property for purposes of § 522(g).

The timeline in this case indicates that the Trustee's threats were not instrumental in the reconveyance of the Perez DOT. The Trustee references the following as actions that led to the recovery of equity in the Property: (A) stating her intent to take action against Ms. Perez at the Meeting of Creditors; (B) filing the Notice of Assets; (C) requesting a certified copy of Debtor's petition; (D) filing the Broker Application; (E) retaining counsel on June 29, 2020; (F) filing a complaint against Ms. Perez; and (G) filing the Litigation Application.

First, some of these actions do not qualify as the type of threat within the scope of § 522(g). For instance, despite the Trustee's assertion, the transcript from the Meeting of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT... Thomas A Perez

Chapter 7

Creditors shows that the Trustee did not threaten use of her avoidance powers (or any other legal action). Instead, the Trustee merely asked Debtor questions about the Perez DOT.

Likewise, neither the Notice of Assets nor the Broker Application included any mention of the Perez DOT. In addition, the Trustee does not contend that Debtor, Debtor's counsel or Ms. Perez had any knowledge that the Trustee retained counsel on June 29, 2020 or, if so, for what purpose. The Trustee also does not indicate that her request for a certified copy of Debtor's petition included the type of threat contemplated by the *Glass* decisions.

Although the Litigation Application and the Perez Complaint qualify as threats to use (or, in the case of the Perez Complaint, the actual use of) the Trustee's avoidance powers, the record does not demonstrate that these actions resulted in the reconveyance of the Perez DOT. Instead, *prior to* the filing of the Litigation Application and the Perez Complaint, Debtor and Ms. Perez began the process of reconveying the Perez DOT.

In fact, the record before the Court reflects that the first mention of avoidance of the Perez DOT was made by *Debtor* on June 30, 2020, when Debtor filed his amended schedule A/B [doc. 18]. According to Debtor, on the same day, Debtor's new counsel advised Debtor to unwind the transfer to Ms. Perez immediately. As such, Debtor voluntarily acted before the Trustee communicated an intent to avoid the Perez DOT.

On July 2, 2020, *after* Debtor filed his amended schedule A/B and began the process of eliminating the Perez DOT, the Trustee emailed Mr. Parry and referenced Debtor's own schedules to note, for the first time, that the Perez DOT was subject to avoidance as a preferential transfer. The Trustee did not explicitly threaten to file a lawsuit. Nevertheless, assuming this email qualifies as a threat under *Glass*, the threat postdates Debtor's voluntary action. In addition, on July 2, 2020, the date of the Trustee's email, Mr. Parry informed the Trustee that he expected the Perez DOT to be released voluntarily within 10 days. Thus, by the time the Trustee discussed avoidance of the Perez DOT with Mr. Parry, Mr. Parry informed the Trustee the Perez DOT was being reconveyed. There was no further need for the Trustee to act.

Given the "well-established standard that exemption statutes are to be liberally construed in favor of debtors," under these facts, the Trustee's actions did not result in recovery of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT...

Thomas A Perez

Chapter 7

the equity in the Property. *Leach*, 595 B.R. at 846. Because the Perez DOT was in the process of being reconveyed prior to the Trustee taking "some action," as required by *Glass*, the Trustee did not "recover" the equity in the Property for purposes of § 522(g). *Glass*, 60 F.3d at 569.

III. CONCLUSION

The Court will deny the Declaratory Relief Motion and overrule the Objection.

Debtor must submit an order within seven (7) days.

FOOTNOTES

1. Debtor contends he never met or spoke with Steven Kimmel, the attorney whose name was on Debtor's bankruptcy paperwork. *Id.*, ¶ 15. Subsequently, pursuant to a stipulation between Mr. Kimmel and the U.S. Trustee, the Court required Mr. Kimmel to disgorge what Debtor had paid to him in connection with filing this case [docs. 58, 63].
2. The transcript provided by the Trustee does not include Debtor's answers. However, as relevant to the issues herein, the transcript includes the questions and comments made by the Trustee.
3. As of the September 22, 2020 claims bar date, only \$13,124.84 of unsecured claims were filed against Debtor's estate.
4. In *Glass*, the Court of Appeals stated that, notwithstanding the debtor's status as a *pro se* debtor and the liberal construction afforded exemptions, the debtor was not entitled to an exemption based on the debtor's inequitable actions. That debtor had concealed his fraudulent transfer of his residence to his son in two separate bankruptcy cases, one that the debtor filed under chapter 11 and one that he filed under chapter 7. In contrast, in *In re Adeeb*, 787 F.2d 1339 (9th Cir. 1986), where the debtor, on advice of counsel, took action prepetition to recover property that he had improperly transferred, the Court of Appeals stated it was good policy to "encourage[] debtors to reveal transfers and to attempt to recover the property previously transferred," and to afford "bankruptcy attorneys who are retained after the debtor has made some mistakes an incentive to see that those

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

CONT...

Thomas A Perez

Chapter 7

mistakes are corrected." *Adeeb*, 787 F.2d at 1345. In *Adeeb*, the Court of Appeals applied this policy, as well as its interpretation of the statutory language at issue, to reverse the trial court's denial of the debtor's discharge - despite affirming the trial court's holding that the debtor otherwise harbored actual intent to delay, hinder or defraud creditors. *Id.*, 1343-46.

Tentative ruling regarding the Trustee's evidentiary objections to the identified exhibit in the Declaration of Stephen Parry set forth below:

Exhibit E: sustain

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

#15.00 Trustee's application to employ LEA Accountancy, LLP as accountant

fr. 11/12/20

Docket 85

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 3, 2020

Hearing Room 301

1:30 PM

1:20-10924 Tikran Eritsyan

Chapter 11

#16.00 Motion for order authorizing sale of real property free and clear of any interes under 11 U.S.C. sec 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. sec 363(m); and (4) waiving 14 day stay period under FRBP 6004(h)

Docket 61

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Tikran Eritsyan

Represented By
Vahe Khojayan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, December 8, 2020

Hearing Room 301

11:00 AM

1:16-12523 Brent Carpenter

Chapter 13

#47.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w)
to modify plan or suspend plan payments

fr. 11/10/20

Docket 80

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, December 8, 2020

Hearing Room 301

11:00 AM

1:17-11041 Jasmine Bone

Chapter 13

#48.00 Motion for hardship discharge

Docket 49

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 8, 2020

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#49.00 Creditor H. Samuel Hopper's motion to compel further responses to requests for production of documents, set no. 1 to debtor Kenneth C. Scott, and for production of documents and for imposition of monetary sanctions

fr. 11/10/20

Docket 233

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, December 8, 2020

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#50.00 Motion to extend deadlines

fr. 10/27/20; /11/10/20

Docket 241

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, December 8, 2020

Hearing Room 301

11:00 AM

1:20-10475 Maria Luz Cortez

Chapter 13

#51.00 Debtor's motion for disallowing the claim of creditor IRS
(Claim 6-2) with request for compromise

Docket 24

Party Information

Debtor(s):

Maria Luz Cortez

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 8, 2020

Hearing Room 301

11:00 AM

1:20-10935 Jose Edmundo Gamez

Chapter 13

#52.00 Debtor's objection to proof of claim filed by Wels Fargo Bank, N.A.

Docket 30

Party Information

Debtor(s):

Jose Edmundo Gamez

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, December 8, 2020

Hearing Room 301

11:00 AM

1:20-11209 Carlos Alberto Luna and Patricia Andrea Ahumada Luna Chapter 13

#53.00 Motion for an order disallowing claim filed by
Glendale I Mall Associates, Lp (proof of claim no. 8)

fr. 11/10/20 (stip);

Stip resolving matter fld 12/7/20

Docket 26

***** VACATED *** REASON: order approving stipulation entered on
12/8/20 doc #46**

Party Information

Debtor(s):

Carlos Alberto Luna

Represented By
Giovanni Orantes

Joint Debtor(s):

Patricia Andrea Ahumada Luna

Represented By
Giovanni Orantes

Trustee(s):

Elizabeth (SV) 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 8, 2020

Hearing Room 301

11:00 AM

1:20-11545 Tarsicio Chavez Bernal

Chapter 13

#54.00 Motion for sanctions under F.R.B.P. 9011-3 against
Leroy Bishop Austin for filing chapter 13 plan lacking
evidentiary support and for and improper purpose

fr. 11/10/20

Docket 22

Party Information

Debtor(s):

Tarsicio Chavez Bernal

Represented By
Leroy Bishop Austin

Trustee(s):

Elizabeth (SV) 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 8, 2020

Hearing Room 301

11:00 AM

1:20-11600 Florence Estella Johnson

Chapter 13

#55.00 Motion for order disallowing time-barred proof of
claim #3-1 filed by American Express National Bank

Docket 25

Party Information

Debtor(s):

Florence Estella Johnson

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, December 8, 2020

Hearing Room 301

11:00 AM

1:20-11600 Florence Estella Johnson

Chapter 13

#56.00 Motion for order disallowing time-barred proof of claim #4-1 filed by American Express National Bank

Docket 27

Party Information

Debtor(s):

Florence Estella Johnson

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, December 8, 2020

Hearing Room 301

11:00 AM

1:20-11863 Marci Boswell

Chapter 13

#57.00 Order to show cause why this case should not be dismissed with a 1 year bar to refiling for having been filed in bad faith

Docket 9

Party Information

Debtor(s):

Marci Boswell

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, December 8, 2020

Hearing Room 301

11:00 AM

1:20-11863 Marci Boswell

Chapter 13

#58.00 Order to show cause why the court should waive the credit counseling requirement

Docket 19

Party Information

Debtor(s):

Marci Boswell

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, December 8, 2020

Hearing Room 301

11:00 AM

1:18-11560 Elizabeth Roberts

Chapter 13

#59.00 Motion to vacate dismissal

Docket 108

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, December 9, 2020

Hearing Room 301

9:30 AM

1:17-10673 Hermann Muennichow

Chapter 7

#1.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY, FSB
VS
DEBTOR

fr. 8/19/20; 9/9/20

Docket 73

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 9, 2020

Hearing Room 301

9:30 AM

1:15-12329 Rene Dashiell

Chapter 13

#2.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA
VS
DEBTOR

fr. 11/4/20

Stip for adequate protection filed 11/23/20

Docket 74

*** VACATED *** REASON: Order approving stip entered 11/23/20.
[Dkt.78]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rene Dashiell

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

9:30 AM

1:18-12689 Mary Ann Irvine

Chapter 13

#3.00 Motion for relief from stay [RP]

CITIBANK, NA
VS
DEBTOR

fr. 11/6/19; 11/6/19; 12/4/19; 1/8/20; 2/26/20; 4/15/20; 5/20/20;
6/24/20; 7/29/20; 9/9/20

Docket 30

*** VACATED *** REASON: Motion withdrawn 9/10/20 - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Ann Irvine

Represented By
Nathan A Berneman

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 9, 2020

Hearing Room 301

9:30 AM

1:20-11914 Charles Franklin Glass

Chapter 7

#4.00 Motion for relief from stay [UD]

JYARUNG LI
VS
DEBTOR

Docket 12

Tentative Ruling:

On November 13, 2020, this case was dismissed. 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.

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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

9:30 AM

CONT... Charles Franklin Glass

Chapter 7

Party Information

Debtor(s):

Charles Franklin Glass

Pro Se

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

9:30 AM

1:20-11590 Final Level Productions LLC

Chapter 7

#5.00 Motion for relief from stay [AN]

CLAIMANT GREGORY LOEBELL AND
CROSS-RESPONDENT JOSEPH ALVARADO
VS
DEBTOR

Docket 16

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.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Final Level Productions LLC

Represented By
Eric Bates

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 9, 2020

Hearing Room 301

9:30 AM

CONT... Final Level Productions LLC

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

9:30 AM

1:20-11794 Norovsambuu Dorjsuren and Oyunchimeg Biziyajav

Chapter 7

#6.00 Motion for relief from stay [PP]

MERCEDES-BENZ FINANCIAL SERVICES USA LLC
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):

Norovsambuu Dorjsuren

Represented By
Chirnese L Liverpool

Joint Debtor(s):

Oyunchimeg Biziyajav

Represented By
Chirnese L Liverpool

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

9:30 AM

CONT... Norovsambuu Dorjsuren and Oyunchimeg Biziyajav

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, December 9, 2020

Hearing Room 301

9:30 AM

1:20-10631 Jose Edilberto Rios Menjivar and Suyapa M. Molina

Chapter 7

#7.00 Motion for relief from stay [PP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Docket 16

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):

Jose Edilberto Rios Menjivar

Represented By
Stephen Parry

Joint Debtor(s):

Suyapa M. Molina Gutierrez

Represented By
Stephen Parry

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

9:30 AM

CONT... Jose Edilberto Rios Menjivar and Suyapa M. Molina

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

9:30 AM

1:18-11504 Juan Pedro Torres

Chapter 13

#8.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

Docket 61

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):

Juan Pedro Torres

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

9:30 AM

1:20-11134 Helping Others International, LLC

Chapter 7

#9.00 Motion for order setting aside foreclosure, and for for order to show cause re: contempt against United Lender, Wooshies, Inc., Shawn Ahdoot and foreclosing trustee Western Fidelity Trustees

Docket 107

Tentative Ruling:

In light of pending motions for relief from the automatic stay [docs. 117, 118, 119] filed by Wooshies, Inc., the Court will continue this hearing to January 27, 2020 at 9:30 a.m.

Appearances for December 9, 2020 are excused.

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

9:30 AM

1:19-12840 Nathaniel Joseph Ehrlich

Chapter 7

#10.00 Order to show cause why Pentagon Federal Credit Union should not be held in civil contempt for violation of the automatic stay

Stip to continue filed 11/24/20.

Docket 18

***** VACATED *** REASON: Order approving stip to cont entered
11/25/20. Hearing continued to 1/27/21 at 9:30 AM.[Dkt.23]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nathaniel Joseph Ehrlich

Represented By
Anil Bhartia
Benjamin R Heston

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 9, 2020

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

#11.00 Status conference re: first amended complaint: (1) To avoid and recover fraudulent transfers for the benefit of the estate; (2) To Avoid and recover preferential transfers for the benefit of the estate; (3) For breach of contract; (4) Turnover of estate property; and (5) Unjust enrichment

fr. 11/20/19; 6/17/20; 8/19/20; 9/23/20

Stip. to cont. filed 11/18/20

Docket 27

***** VACATED *** REASON: Order approving stip. entered 11/19/20.
Hearing continued to 3/24/21 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

1:30 PM

CONT... Antoine R Chamoun

Chapter 7

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, December 9, 2020

Hearing Room 301

1:30 PM

1:19-12539 Enrique Oscar Rollandi Martinasso

Chapter 7

Adv#: 1:20-01013 Beacon Sales Acquisition, Inc. d/b/a AMS and Allie v. Martinasso

#12.00 Pretrial conference re: complaint to deny discharge of debtor under 11 U.S.C. §§727(a)(2)(A) and 727(a)(4)(A)

fr. 06/03/20

Stip of dismissal filed 10/9/20

Docket 1

***** VACATED *** REASON: Order aproving stipulation of dismissal entered 10/9/20.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Enrique Oscar Rollandi Martinasso

Represented By
Onyinye N Anyama

Defendant(s):

Enrique Martinasso

Represented By
Onyinye N Anyama

Plaintiff(s):

Beacon Sales Acquisition, Inc. d/b/a

Represented By
Ronald Clifford

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

1:30 PM

1:19-12677 John Stephen Travers

Chapter 7

Adv#: 1:20-01010 Ace Industrial Supply, Inc. v. Travers

#13.00 Pre-trial conference re: complaint to determine dischargeability

fr. 3/25/20; 5/6/20; 6/10/20

Stip to continue filed 8/5/20

Docket 1

*** VACATED *** REASON: Cont to 02/10/21 at 1:30 p.m per order (doc # 37)

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Stephen Travers

Represented By
Robert M Aronson

Defendant(s):

John Stephen Travers

Pro Se

Plaintiff(s):

Ace Industrial Supply, Inc.

Represented By
Jeffery J Daar

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 9, 2020

Hearing Room 301

1:30 PM

1:19-13145 Daniel Michael Uzan

Chapter 7

Adv#: 1:20-01035 Mitchell et al v. Uzan

#14.00 Status conference re: second amended complaint for determination of nondischargeability pursuant to 11 U.S.C. sec 523(a)(2)(B), 523(a)(4) and 523(a)(6)
fr. 5/20/20; 6/17/20; 7/29/20; 9/25/20; 10/21/20

Docket 31

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 3/15/21.

Deadline to complete one day of mediation: 3/31/21.

Deadline to file pretrial motions: 4/16/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 5/5/21.

Pretrial: 5/19/21 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), 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):

Daniel Michael Uzan

Represented By
Mark T Jessee

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

1:30 PM

CONT... Daniel Michael Uzan

Chapter 7

Defendant(s):

Daniel Michael Uzan

Pro Se

Plaintiff(s):

Jason Mitchell

Represented By
Stella A Havkin

JHM Ventures, a California

Represented By
Stella A Havkin

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 9, 2020

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#15.00 Status conference re: first amended complaint to determine dischargeability of debt 11 U.S.C. sec 523(a)(2); fraud; fraud or defecation while acting in a fiduciary capacity 11 U.S.C. sec 523(a)(4); and willful and malicious injury 11 U.S.C. sec 523(a)(6)

fr. 5/20/20; 7/8/20; 7/15/20; 8/19/20; 9/23/20

Docket 4

Tentative Ruling:

In light of the parties' request in their joint status report [doc. 38], the Court will continue this status conference to **1:30 p.m. on February 3, 2021**. No later than **January 20, 2021**, the parties must file a joint status report.

Appearances on December 9, 2020 are excused.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

Plaintiff(s):

Philip Alvarez

Represented By
Fritz J Firman

Philip Alvarez as Successor Trustee

Represented By
Fritz J Firman

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

1:30 PM

CONT... Shobert Vartan

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01039 Lewis v. Vartan

#16.00 Status conference re: first amended complaint to determine dischargeability of debt 11 U.S.C. § 523(a)(2)(A); fraud; fraud or defecation while acting in a fudiciary capacity 11 U.S.C. § 523 (a)(4) and wilful and malicious injury 11 U.S.C. §523(a)(6)

fr. 5/20/20(stip); 6/10/20; 7/15/20; 10/7/20

Docket 4

Tentative Ruling:

The Court will set a deadline of **December 23, 2020** for the defendant to file an answer to the complaint. Because the remaining claims are under 11 U.S.C. § 523(a)(2) and (a) (6), it is highly unlikely that the Court will grant a motion for relief from the automatic stay for the parties to pursue this action in state court.

The plaintiff's counsel notes that she intends to file a motion to substitute the plaintiff, who passed away, with the proper party in interest. The plaintiff must file and serve this motion by the applicable deadline set forth in Federal Rule of Civil Procedure 25(a).

The Court will continue this status conference to **1:30 p.m. on January 27, 2021**. No later than **January 13, 2021**, the parties must file a joint status report.

Plaintiff must submit a scheduling order within seven (7) days.

Appearances on December 9, 2020 are excused.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

1:30 PM

CONT... Shobert Vartan

Chapter 7

Plaintiff(s):

Lester L Lewis

Represented By
Elissa Miller

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 9, 2020

Hearing Room 301

1:30 PM

1:20-11166 Lanny Jay Dugar

Chapter 7

Adv#: 1:20-01083 Bjornbak et al v. Dugar

#17.00 Status conference re complaint objecting to discharge
[11 U.S.C.sec 727(a)(2), 727(a)(3), 727(a)(4), 727(a)(5), 727(c)]

Docket 1

Tentative Ruling:

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(a)(1), which applies to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7026, "a party must, without awaiting a discovery request, provide to the other parties," among other things:

- (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
- (ii) a copy--or a description by category and location--of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

Rule 26(a)(1)(A)(i)-(ii). In addition, under Rule 26(f)—

- (1) *Conference Timing.* Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable--and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).
- (2) *Conference Content; Parties' Responsibilities.* In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record *and*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

1:30 PM

CONT...

Lanny Jay Dugar

Chapter 7

all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

Rule 26(f)(1)-(2) (emphasis added).

In accordance with Rule 37(b)(2), which applies to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7037, if a party fails to comply with the Rule 26, a court may sanction the party by, among other things, "prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence," "striking pleadings in whole or in part," "rendering a default judgment against the disobedient party" or "treating as contempt of court the failure to obey any order." Rule 37(b)(2)(A)(ii)-(iii), (vi)-(vii).

The parties have not met and conferred. According to the plaintiffs, the defendant refused to meet and confer prior to this status conference. Under the Rules above, the defendant has an obligation to meet and confer, in good faith, with the plaintiffs and to provide the disclosures outlined above. If the defendant does not comply with the Rules, the Court may sanction the defendant using one or more of the methods set forth in Rule 37(b).

The Court will continue this status conference to **1:30 p.m. on January 13, 2021**. No later than **December 30, 2020**, the parties must file a joint status report indicating whether they met and conferred and whether the parties are in compliance with Rule 26.

Appearances are **not** excused on December 9, 2020, and the parties must appear via CourtCall for the initial status conference set for December 9, 2020 at 1:30 p.m.

Party Information

Debtor(s):

Lanny Jay Dugar

Pro Se

Defendant(s):

Lanny Jay Dugar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

1:30 PM

CONT... Lanny Jay Dugar

Chapter 7

Plaintiff(s):

David Bjornbak

Represented By
Qiang Bjornbak

Qiang Bjornbak

Represented By
Qiang Bjornbak

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

2:30 PM

1:10-17214 Darin Davis

Chapter 7

Adv#: 1:10-01354 Asphalt Professionals Inc v. Davis

#18.00 Defendant Darin Davis' second motion for the court to order disbursement of funds out of the bankruptcy court's registry

Docket 370

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Darin Davis

Represented By
Alan W Forsley
Casey Z Donoyan

Defendant(s):

Darin Davis

Represented By
Alan W Forsley

Plaintiff(s):

Asphalt Professionals Inc

Represented By
Ray B Bowen JR

Trustee(s):

David Seror (TR)

Represented By
Richard K Diamond (TR)
Robert A Hessling

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

2:30 PM

CONT...

Darin Davis

Chapter 7

Robert A Hessling
Michael G D'Alba
Richard K Diamond

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01019 Miller, Chapter 7 Trustee v. Ride on Autos. a California corporation

#19.00 Plaintiffs motion for default judgment under LBR 7055-1

Docket 42

Tentative Ruling:

Grant motion for default judgment.

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT within seven (7) days.

Plaintiff's appearance on December 9, 2020 is excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Ride on Autos. a California

Represented By
M. Jonathan Hayes

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Cathy Ta
Claire K Wu

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta
Larry W Gabriel
Claire K Wu

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

2:30 PM

CONT... Deborah Lois Adri

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01019 Miller, Chapter 7 Trustee v. Ride on Autos. a California corporation

#20.00 Status conference re: complaint for 1. breach of oral contract;
2. money had and received; 3. open book account; 4. accounting;
5. declaratory relief; 6. turnover of property of the estate; 7. avoidance
of postpetition transfers; 8. recovery of postpetition transfers; and
9. preservation of postpetition transfers

fr. 4/15/20(stip), 4/29/20; 6/17/20; 8/12/20; 10/21/20

Docket 1

Tentative Ruling:

See calendar matter #19.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Ride on Autos. a California

Pro Se

Plaintiff(s):

Elissa D Miller, Chapter 7 Trustee

Represented By
Cathy Ta

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, December 9, 2020

Hearing Room 301

2:30 PM

1:18-11125 Marcelo Martinez

Chapter 11

Adv#: 1:20-01080 Martinez v. Saakyan et al

#21.00 Plaintiff's motion for default judgment under LBR 7055-1

Docket 15

Tentative Ruling:

The Court will grant the motion for default judgment.

Movant must submit the Default Judgment, using Local Bankruptcy Form F 7055.1.2.DEFAULT.JMT within seven (7) days.

Plaintiff's appearance on December 9, 2020 is excused.

Party Information

Debtor(s):

Marcelo Martinez

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Defendant(s):

Diana Saakyan

Pro Se

Regional Trustee Services

Pro Se

Does 1 to 10 Inclusive

Pro Se

Plaintiff(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**

Wednesday, December 9, 2020

Hearing Room 301

2:30 PM

1:18-11125 Marcelo Martinez

Chapter 11

Adv#: 1:20-01080 Martinez v. Saakyan et al

- #22.00** Status conference re: complaint for:
- 1) Fraud;
 - 2) Civil conspiracy;
 - 3) Quiet title;
 - 4) Cancellation of instruments;
 - 5) Slander of title;
 - 6) Declaratory relief;
 - 7) Injunctive relief

fr. 11/18/20

Docket 1

Tentative Ruling:

See calendar matter #21.

Party Information

Debtor(s):

Marcelo Martinez

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Defendant(s):

Diana Saakyan

Pro Se

Regional Trustee Services

Pro Se

Does 1 to 10 Inclusive

Pro Se

Plaintiff(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**

Wednesday, December 9, 2020

Hearing Room 301

2:30 PM

1:18-11342 Victory Entertainment Inc

Chapter 7

Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

#23.00 Defendants' motion to dismiss first amended complaint

Docket 20

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on December 23, 2020.**

Appearances on December 9, 2020 are excused.

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By
George J Paukert
Lewis R Landau

Defendant(s):

HALA Enterprises, LLC

Represented By
David L Oberg
Madison B Oberg

Agassi Halajyan, an Individual

Represented By
David L Oberg
Madison B Oberg

Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Elissa Miller
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

2:30 PM

1:18-11342 Victory Entertainment Inc

Chapter 7

Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

- #24.00** Status conference re: complaint for:
- 1) Avoidance and recovery of fraudulent transfers pursuant to Title 11 U.S.C. sec 544(a) and (b), 548 and 550; Title 26 U.S.C. sec 6502(a) and Cal. Civ. Code sec 3439.04 3439.07 and 3439.09;
 - 2) Avoidance and recovery of preferential transfer pursuant to Title 11 U.S.C. sec 547 and 550;
 - 3) Preservation of avoided transfers pursuant to Title 11 U.S.c sec 551;
 - 4) Declaratory relief re alter ego liability; and
 - 5) Turnover of property

fr. 7/29/20; 08/26/20; 11/4/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on December 23, 2020.**

Appearances on December 9, 2020 are excused.

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By
George J Paukert
Lewis R Landau

Defendant(s):

HALA Enterprises, LLC

Pro Se

Agassi Halajyan, an Individual

Pro Se

Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 9, 2020

Hearing Room 301

2:30 PM

CONT... Victory Entertainment Inc

Chapter 7

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Elissa Miller
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 10, 2020

Hearing Room 301

10:30 AM

1:20-10065 Rafael Torres

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

Docket 21

Tentative Ruling:

Diane C. Weil, chapter 7 trustee – approve fees of \$600.00 and reimbursement of expenses of \$33.60, 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 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):

Rafael Torres

Represented By
David H Chung

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, December 10, 2020

Hearing Room 301

1:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#2.00 Confirmation hearing re debtor's second amended chapter 11
plan of reorganization

fr. 10/8/20(stip)

Docket 256

***** VACATED *** REASON: Order approving stip entered 11/19/20.
Hearing continued to 2/18/21 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 10, 2020

Hearing Room 301

1:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#3.00 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);
12/12/19; 1/23/20; 3/26/20(stip); 4/9/20; 6/25/20; 8/13/20; 10/8/20(stip)

Docket 1

***** VACATED *** REASON: Order approving stip entered 11/19/20.
Hearing continued to 2/18/21 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 10, 2020

Hearing Room 301

1:00 PM

1:18-12354 MidiCi Group, LLC

Chapter 11

#4.00 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; 12/19/20; 6/11/20

Docket 1

***** VACATED *** REASON: Order entering final decree and closing case entered 8/4/20 [doc. 397].**

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, December 10, 2020

Hearing Room 301

1:00 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#5.00 Hearing on first amended disclosure statement describing ch 11 plan

Docket 81

***** VACATED *** REASON: Continued to 12/17/20 at 1:30 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

5019 Partners, LLC

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 10, 2020

Hearing Room 301

1:00 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#6.00 Status conference re: chapter 11 case

fr. 3/19/20; 4/2/20, 9/10/20; 9/17/20; 10/22/20;

Docket 1

Tentative Ruling:

The Court will continue the status conference to **1:30 p.m. on December 17, 2020**, to be held in connection with the hearing on the Order to Show Cause Why This Case Should Not Be Dismissed or Converted to One Under Chapter 7 [doc. 98].

Appearances on December 10, 2020 are excused.

Party Information

Debtor(s):

5019 Partners, LLC

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 10, 2020

Hearing Room 301

1:30 PM

1:10-17214 Darin Davis

Chapter 7

#7.00 Darin Davis' Third Motion for the Court to Order Disbursement of Funds Out of the Bankruptcy Court's Registry

Docket 490

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Darin Davis

Represented By
Alan W Forsley
Casey Z Donoyan

Trustee(s):

David Seror (TR)

Represented By
Richard K Diamond (TR)
Robert A Hessling
Robert A Hessling
Michael G D'Alba
Richard K Diamond

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 10, 2020

Hearing Room 301

1:30 PM

1:19-11998 Joseph Lisi and Cynthia Lisi

Chapter 13

#8.00 Motion re: objection to claim number 4 by claimant Heriberto Perez
fr, 12/10/19; 2/11/20; 5/5/20; 8/11/20

Docket 25

Tentative Ruling:

When will the debtors file a motion for voluntary dismissal of this chapter 13 case?

Party Information

Debtor(s):

Joseph Lisi

Represented By
David S Hagen

Joint Debtor(s):

Cynthia Lisi

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**

Thursday, December 10, 2020

Hearing Room 301

1:30 PM

1:20-11134 Helping Others International, LLC

Chapter 7

#9.00 Debtor's Motion To Approve Cash Collateral Stipulation And To Surcharge Collateral To Pay Chapter 7 Administrative Fees And Expenses Of The Trustee And His Professionals Pursuant To 11 U.S.C. § 506(c)

Docket 114

Tentative Ruling:

The Court will approve the stipulation between the chapter 7 trustee (the "Trustee") and United Lender, LLC. In addition, the Court will grant the motion as to the \$15,936.25 in rents collected from the real property located at 422 N. Soto Street, Los Angeles, CA (the "Soto Property"). Anh Thy Song Nguyen, Trustee of Mother Nature Trust (the "Mother Nature Trust"), does not have a security interest in the Soto Property or rents generated from the Soto Property and, as a result, does not have standing to oppose the surcharge of rents collected from the Soto Property.

As to the Trustee's request for surcharge of rents collected from the real property located at 6475 Marigayle Circle, Huntington Beach, CA (the "Marigayle Property"), with respect to the pending Motion, the parties have not submitted the deed of trust in favor of the Mother Nature Trust. As such, it is not evident that the deed of trust in favor of the Mother Nature Trust includes an assignment of rents clause that would give the Mother Nature Trust an interest in rents generated by the Marigayle Property.

In addition, in its opposition, the Mother Nature Trust states that "alternatively, [the Trustee] may be allowed to keep the rents he collected in the amount of \$2,500...." As such, it is unclear if the Mother Nature Trust objects to the Trustee's surcharge of \$2,500 from the Marigayle Property.

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 10, 2020

Hearing Room 301

1:30 PM

CONT... Helping Others International, LLC

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 10, 2020

Hearing Room 301

2:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

#10.00 Creditor Moshe Adri's motion for allowance of administrative expense claim

fr. 7/18/19; 1/23/20(stip); 4/30/20(stip); 8/6/20(stip)

Docket 335

***** VACATED *** REASON: Continued to 6/17/21 at 1:30 pm. (per hearing held 12/3/20) - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub

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**

Thursday, December 10, 2020

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#11.00 Confirmation hearing of debtor's chapter 11, subchapter V plan dated August 28, 2020

Docket 156

Tentative Ruling:

Confirm Chapter 11, Subchapter V Plan dated August 28, 2020 [doc. 156]. No later than **April 8, 2021**, 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, the Subchapter V trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **AND BE SUPPORTED BY EVIDENCE**. A postconfirmation status conference will be held on **April 22, 2021 at 2:30 p.m.**

The debtor must submit the confirmation order within seven (7) days.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 10, 2020

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#12.00 Status conference re chapter 11 case

fr, 7/16/20; 9/17/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, December 15, 2020

Hearing Room 302

8:30 AM

1:

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

You will not be permitted to be physically present in the courtroom.

All appearances for the December 15, 2020 calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Join By Computer

Meeting URL: <https://cacb.zoomgov.com/j/1616474539>

Meeting ID: 161 647 4539

Password: 950400

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 647 4539

Password: 950400

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 302 Calendar**

Tuesday, December 15, 2020

Hearing Room 302

8:30 AM

CONT...

Chapter

Docket 0

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, December 15, 2020

Hearing Room 301

8:30 AM

1:20-11155 Lei-Lani Yung Ran Miller

Chapter 7

#1.00 Reaffirmation agreement between debtor and
American Honda Finance Corporation

fr. 10/20/20

Docket 19

Party Information

Debtor(s):

Lei-Lani Yung Ran Miller

Represented By
R Grace Rodriguez

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, December 15, 2020

Hearing Room 301

8:30 AM

1:20-11549 Rosalia Escobedo

Chapter 7

#2.00 Reaffirmation Agreement with Toyota Motor Credit Corporation

Docket 19

Party Information

Debtor(s):

Rosalia Escobedo

Represented By
Lisa F Collins-Williams

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

9:30 AM

1:17-13028 Hector Garcia and Edelmira Avila Garcia

Chapter 13

#1.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

fr. 8/5/20; 9/16/20(stip) ; 10/14/20(stip);

Docket 62

*** VACATED *** REASON: continued to 1/13/21 per order entered on
12/15/20

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**

Wednesday, December 16, 2020

Hearing Room 301

9:30 AM

1:20-12055 Raymond Tsarukyan

Chapter 7

#2.00 Motion for relief from stay [UD]

M&O PROPERTIES LTD
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 order is binding and effective in any bankruptcy case commenced by or against the debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

9:30 AM

CONT... Raymond Tsarukyan

Chapter 7

Debtor(s):

Raymond Tsarukyan

Represented By
Ruben Salazar

Movant(s):

M&O Properties, Ltd.

Represented By
Joseph Cruz

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 16, 2020

Hearing Room 301

9:30 AM

1:19-11777 Winters-Schram & Associates

Chapter 7

#3.00 Motion for relief from stay [AN]

MILLER WOODWORKING INC
VS
DEBTOR

Docket 73

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 may proceed against the non-debtor defendants in the nonbankruptcy action.

The Court will grant the movant's request to annual the automatic stay. The movant's declaration states that any actions taken prior to October 2, 2019, were done without knowledge of the debtor's 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, December 16, 2020

Hearing Room 301

9:30 AM

CONT... Winters-Schram & Associates

Chapter 7

Movant(s):

Miller Woodworking, Inc.

Represented By
Denetta Scott

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan
Jeremy Faith

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

9:30 AM

1:20-11984 Lindsay Marie Pacifico

Chapter 7

#5.00 Motion for relief from stay [AN]

SANDRA HENSARLING
VS
DEBTOR

Docket 16

*** VACATED *** REASON: Case reassigned to Judge Tighe per order
#21. If

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lindsay Marie Pacifico

Represented By
Navid Kohan

Movant(s):

Sandra Hensarling

Represented By
Alberto J Campain

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 16, 2020

Hearing Room 301

9:30 AM

1:20-11984 Lindsay Marie Pacifico

Chapter 7

#6.00 Motion for relief from stay [AN]

ASHLEY HENSARLING
VS
DEBTOR

Docket 17

*** VACATED *** REASON: Case reassigned to Judge Tighe per order
#21. If

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lindsay Marie Pacifico

Represented By
Navid Kohan

Movant(s):

Ashley Hensarling

Represented By
Alberto J Campain

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 16, 2020

Hearing Room 301

9:30 AM

1:20-11952 Michael A Di Bacco

Chapter 7

#7.00 Motion for relief from stay [PP]

DAIMLER TRUST
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):

Michael A Di Bacco

Represented By
Leon Nazaretian

Movant(s):

Daimler Trust

Represented By
Sheryl K Ith

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

9:30 AM

CONT... Michael A Di Bacco

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

9:30 AM

1:20-11932 Cynthea N Douglas

Chapter 13

#8.00 Motion for relief from stay [UD]

ANZA MANAGEMENT COMPANY
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 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):

Cynthea N Douglas

Pro Se

Movant(s):

Anza Management Company

Represented By
Agop G Arakelian

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

9:30 AM

CONT... Cynthea N Douglas

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 16, 2020

Hearing Room 301

1:30 PM

1:19-12150 Houchik Boyadjian

Chapter 7

Adv#: 1:19-01132 Sridhar Equities, Inc., as assignee v. Boyadjian et al

#9.00 Status conference re: amended complaint for non dischargeability

fr. 1/15/20; 3/18/20; 4/1/20; 9/23/20; 11/18/20

Docket 25

***** VACATED *** REASON: Judgment entered 12/2/20 [doc. 50] &
remaining claims dismissed 12/10/20 [doc. 53].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Houchik Boyadjian	Pro Se
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Defendant(s):

Houchik Boyadjian	Pro Se
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DOES 1 through 100, inclusive	Pro Se
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Plaintiff(s):

Corrdary LLC	Represented By Catherine Schlomann Robertson
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Trustee(s):

David Keith Gottlieb (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, December 16, 2020

Hearing Room 301

1:30 PM

1:20-10384 Amir Zamzelig

Chapter 13

Adv#: 1:20-01052 Peskin et al v. Zamzelig

#10.00 Pretrial conference re: complaint to determine
nondischargeability of debt

fr. 7/15/20

Docket 1

Tentative Ruling:

Contrary to the Court's scheduling order [doc. 8] and Local Bankruptcy Rule 7016-1(b), the parties did not timely file a joint pretrial stipulation, and the plaintiff did not timely file a unilateral pretrial statement. Consequently, the Court will issue an Order to Show Cause why this adversary proceeding should not be dismissed for failure to prosecute.

The Court will prepare the Order to Show Cause.

Party Information

Debtor(s):

Amir Zamzelig

Represented By
David A Tilem

Defendant(s):

Amir Zamzelig

Pro Se

Plaintiff(s):

Brent Peskin

Represented By
James B Devine

Dori Peskin

Represented By
James B Devine

Trustee(s):

Elizabeth (SV) 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 16, 2020

Hearing Room 301

1:30 PM

1:20-10659 Nasrin Nino

Chapter 7

Adv#: 1:20-01061 GOTTLIEB v. Bilal

- #11.00** Status conference re: complaint for
1) Avoidance and recovery of preferential transfer
[11 U.S.C. sec 547(b), 550(a), and 551],
2) Avoidance and recovery of post-petition transfer
[11 U.S.C. sec 549(a), 550(a), and 551] and
3) Disallowance of any claim held by defendant
[11 U.S.C. sec 502(d)]

fr. 8/5/20(stip); 10/7/20; 11/4/20

Stip to dismiss filed 11/18/20

Docket 1

***** VACATED *** REASON: Order approving stipulation for dismissal
entered 11/19/20. [Dkt.16]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Defendant(s):

Kamal Bilal

Pro Se

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Carmela Pagay

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

1:30 PM

CONT... Nasrin Nino

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

Adv#: 1:20-01067 ZAMORA v. Perez

- #12.00** Status conference re: complaint for:
1. Avoidance of fraudulent transfer;
 2. Avoidance of insider preference;
 3. Turnover of estate's property;
 5. Automatic preservation of avoided transfer

fr. 9/16/20; 11/4/20; 11/18/20

Docket 1

Tentative Ruling:

In light of the Court's ruling on the plaintiff's objection to the debtor's claim of a homestead exemption [Bankruptcy Docket, docs. 95, 105], how does the plaintiff intend to proceed with this action?

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Defendant(s):

Maria Rita Perez

Pro Se

Plaintiff(s):

NANCY J ZAMORA

Represented By
Toan B Chung

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 16, 2020

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01060 FR LLC, a California limited liability company v. Lev Investments, LLC et

#13.00 Motion of Defendants Ruvyn Feygenberg, Michael Leizerovitz, and Sensible Consulting and Management, Inc. to Dismiss First Amended Adversary Complaint

Docket 32

Tentative Ruling:

Grant.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11 petition. On June 5, 2020, FR L.L.C. ("Plaintiff") removed a state court action against Debtor, Dmitri Ludkovski, Sensible Consulting and Management, Inc. ("Sensible"), Ruvyn Feygenberg and Michael Leizerovitz (collectively, "Defendants") to this Court.

On October 14, 2020, Plaintiff filed a first amended complaint (the "FAC"). In the FAC, Plaintiff alleges—

The lawsuit concerns the real property located at 13854 Albers Street, Sherman Oaks, CA 91401 (the "Property"). In late December 2018, Defendants approached Plaintiff's assignor for a loan of \$119,000, secured by the Property. Defendants promised Plaintiff's assignor that the terms of the loan were for half a year with interest of 10% per annum and interest in the amount of \$992 due on the first of every month, beginning on February 1, 2019 and continuing to July 1, 2019. On July 1, 2019, the principal and interest would be due in full.

Defendants also promised that, upon the sale of the Property, which would take place no later than half a year from the date of the loan, Plaintiff's assignor would receive a proportional share of the profits from the sale of the Property, minus interest already paid. Based on these promises, Plaintiff's assignor deposited \$119,000 to escrow/title for the benefit of Defendants. To date, Plaintiff has not been provided a note or

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT...

Lev Investments, LLC

Chapter 11

first priority deed of trust, and has not received any interest payments or profits from the Property.

On these allegations, Plaintiff asserts claims for: (A) conversion; (B) negligent bailment; (C) unjust enrichment; and (D) quiet title.

On October 28, 2020, Sensible, Mr. Feygenberg and Mr. Leizerovitz filed a motion to dismiss the FAC (the "Sensible Motion") [doc. 32]. On November 16, 2020, Debtor filed a motion to dismiss the FAC (the "Debtor Motion") [doc. 34]. On December 2, 2020, Plaintiff filed an omnibus opposition to the Sensible Motion and the Debtor Motion (the "Opposition") [doc. 39]. In the Opposition, Plaintiff added several allegations that were not in the FAC, including that a third party arranged the loan from Plaintiff's assignor, now alleged to be Kevin Moda, to Defendants, and that the alleged loan was meant to help Debtor's contribution to an agreement between Defendants to purchase certain secured debt against the Property. On December 9, 2020, Defendants filed replies to the Opposition [docs. 42, 44].

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 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)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

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). Under the "incorporation by reference" doctrine, a court may look beyond the four corners of the complaint to take into account documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012). The court "may treat the referenced 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.*, quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). State court pleadings, orders and judgments are subject to judicial notice under Federal Rule of Evidence 201. *See McVey v. McVey*, 26 F.Supp.3d 980, 983-84 (C.D. Cal. 2014) (aggregating cases); and *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged..." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

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. Sufficiency of General Allegations under Rule 8(a)

A complaint must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 545. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). A complaint does not "suffice if it tenders 'naked assertions' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

"It is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." *Renne v. Geary*, 501 U.S. 312, 316, 111 S. Ct. 2331, 2336, 115 L. Ed. 2d 288 (1991) (internal quotation omitted). In addition, "[i]t is well-settled that where the complaint names a defendant in the caption but contains no allegations indicating how the defendant violated the law or injured the plaintiff, a motion to dismiss the complaint in regard to that defendant should be granted." *Dove v. Fordham Univ.*, 56 F.Supp.2d 330, 335 (S.D.N.Y. 1999) (internal quotations omitted).

The FAC does not satisfy Rule 8(a). As set forth by Defendants, the FAC does not include any allegations regarding the identity of the assignor or the terms of the alleged assignment from the assignor to Plaintiff. This information is vital for Defendants to assess, for example, affirmative defenses to liability. *See Searles Valley Minerals Operations Inc. v. Ralph M. Parsons Serv. Co.*, 191 Cal.App.4th 1394, 1402 (Ct. App. 2011) ("The assignee 'stands in the shoes' of the assignor, taking his rights and remedies, subject to *any defenses* which the *obligor* has against the assignor prior to notice of the assignment.") (emphasis in *Searles Valley*) (internal quotation omitted). In addition, the FAC does not allege the role of each of the Defendants; instead, Plaintiff generally alleges that Defendants participated in the alleged transaction. As such, it is unclear how each Defendant injured Plaintiff.

Although the Court may not "look beyond the complaint to a plaintiff's moving papers,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

such as a memorandum in opposition to a defendant's motion to dismiss," the additional allegations in the Opposition are insufficient to cure the FAC. *Schneider v. California Dep't of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998). Specifically, the FAC and the Opposition present contradictory allegations. For instance, despite alleging in the FAC that "Defendants, and each of them, approached Plaintiff's assignor for a loan," in the Opposition, Plaintiff alleges that a nonparty attorney arranged the alleged loan. Opposition, pp. 3-4.

Moreover, in the FAC, Plaintiff alleges its assignor was promised a "first priority deed of trust," FAC, ¶ 25, but in the Opposition, alleges that the debt purchase agreement between Defendants entitled Mr. Feygenberg and Mr. Leizerovitz to a first position deed of trust. Opposition, p. 3. Further, in the FAC, Plaintiff alleges the assignor loaned Defendants, "and each of them," the funds to be secured by the Property, FAC, ¶¶ 21-24, but in the Opposition, alleges that the nonparty attorney raised funds from the assignor to help pay for *Debtor's* share of the contribution to the alleged debt purchase agreement. Opposition, p. 4.

As such, although the Court may not consider allegations in the Opposition in assessing the adequacy of the FAC, the allegations in the Opposition, if included in the FAC, would not strengthen the FAC from attack under Rule 12(b)(6). The documents attached to Plaintiff's request for judicial notice also do not help Plaintiff overcome the motions to dismiss. First, certain exhibits provided by Plaintiff are not judicially noticeable. Next, the documents that *are* judicially noticeable do not support the FAC. Those documents mostly establish a chain of title to the Property that does not involve Plaintiff and/or its assignor; the documents are not pertinent to the allegations in the FAC, namely, the alleged loan transaction between the assignor and Defendants.

In the Opposition, Plaintiff does not appear to defend the FAC. Instead, Plaintiff asserts it *could* plead sufficient facts. Thus, Plaintiff appears to acknowledge that the FAC itself, the relevant document which the Court must assess, is inadequate. *See Schneider*, 151 F.3d at 1197 n.1 ("The focus of any Rule 12(b)(6) dismissal... is the complaint."). Because the allegations in the FAC are insufficient to meet the requirements of Rule 8(a), the Court will dismiss the FAC in its entirety, with leave to amend. [FN1].

C. The Quiet Title Claim

Although the Court is dismissing the FAC in its entirety based on Plaintiff's failure to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

satisfy Rule 8(a), the Court also will address deficiencies in Plaintiff's quiet title and conversion claims. In the FAC, Plaintiff alleges that the "basis of Plaintiff's title to or interest in the Property is the conversion of Plaintiff's money for the purchase of the Property and its right to have been declared as the title holder of the Property." FAC, ¶ 43. Plaintiff also alleges that its assignor "was to have been given a Note and Deed of Trust evidencing the entrustment of money and interest thereon." FAC, ¶ 49.

In the Opposition, Plaintiff offers no explanation regarding why conversion of funds (which funds allegedly would have entitled Plaintiff to a promissory note and *deed of trust*) would result in Plaintiff holding title to the entire Property. Instead, in the Opposition, Plaintiff contends that it "can allege and prove" that Debtor took title to the Property pursuant to a resulting trust for the benefit of Plaintiff and a third party.

First, the FAC does not contain *any* allegations regarding resulting trusts. As such, if Plaintiff intends to rest its quiet title claim on a resulting trust theory, Plaintiff must amend the FAC to reflect that. In addition, even if Plaintiff included allegations regarding being the beneficiary of a resulting trust, the allegations, as they stand, would not state a viable claim for relief.

Under California law, "[a] resulting trust arises by operation of law from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest. Such a resulting trust carries out and *enforces the inferred intent of the parties.*" *Fid. Nat'l Title Ins. Co. v. Schroeder*, 179 Cal.App.4th 834, 847 (Ct. App. 2009) (internal quotations omitted) (emphasis added). "A resulting trust does not arise unless both parties to the transaction intended that the holder of the property was to hold it in trust for the other." *In re Cedar Funding, Inc.*, 408 B.R. 299, 315 (Bankr. N.D. Cal. 2009).

"Intent to establish a *security interest* rather than a trust, is not a sufficient basis to impose a resulting trust to remedy the failure to perfect the security interest." *Id.*, at 315 (emphasis added) (citing *In re Foam Systems Co.*, 92 B.R. 406, 409 (B.A.P. 9th Cir. 1988), *aff'd*, 893 F.2d 1338 (9th Cir. 1990) (holding that a resulting trust was not imposed against bank account where express intent between debtor and surety company was that surety would have lien against the account). "If... the person who paid the purchase price manifested an intention that the transferee should hold the property beneficially and should be liable merely to repay the purchase price lent to him, no resulting trust arises." Restatement (Second) of Trusts § 445 (1959); *see also In re*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... **Lev Investments, LLC**

Chapter 11

Garcia, 92 F. App'x 486, 486-87 (9th Cir. 2004) ("Both the bankruptcy judge and the BAP correctly concluded that the initial transaction between Garcia and the sellers did not create a resulting trust in favor of [the creditor], because the parties clearly intended that [the debtor] *would* have the beneficial interest in the property and would ultimately repay [the creditor] for the down payment.") (emphasis in *Garcia*) (citing Restatement (Second) of Trusts § 445).

In the FAC, Plaintiff alleges that its assignor loaned money to Defendants in exchange for a promissory note and a deed of trust against the Property. FAC, ¶¶ 21-24. However, in the Opposition, Plaintiff alleges that the assignor contributed funds towards a *debt purchase* agreement, *not* towards the purchase of the Property. Opposition, p. 4. As such, Plaintiff's own allegations reflect that the intention of the parties was *not* to provide Plaintiff's assignor a beneficial interest in the entirety of the Property, even if the assignor allegedly was entitled to a deed of trust against the Property.

Nevertheless, even if Plaintiff alleges that the parties intended to provide Plaintiff's assignor an interest in the Property, as opposed to a deed of trust, Plaintiff would be entitled to a resulting trust proportional to the amount paid—

Part payment of the purchase price, not subsequent monetary contributions, gives rise to a resulting trust to the extent thereof. The rule is that where one person pays part of the purchase price and title is taken in another's name, the payor cannot secure a greater interest in the property by way of a resulting trust than the proportion of the amount he paid bears to the total *purchase price*.

Martin v. Kehl, 145 Cal.App.3d 228, 243 (Ct. App. 1983) (citing, *inter alia*, Restatement (Second) of Trusts § 454).

In the FAC, Plaintiff alleges its assignor paid \$119,000 towards the debt purchase agreement. FAC, ¶ 24. Plaintiff alleges in the Opposition that the debt purchase agreement was worth \$2,037,302.61. Opposition, p. 2. To the extent the assignor's alleged contribution to the debt purchase agreement would produce a resulting trust in the Property, the resulting trust would be worth \$119,000. Consequently, even considering the allegations in the Opposition, Plaintiff has not adequately stated a claim for quiet title. [FN2].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

Additionally, the FAC does not include the information required by California Code of Civil Procedure ("CCP") § 761.020. Pursuant to that statute, a quiet title complaint "shall be verified and shall include all of the following:"

- (a) A description of the property that is the subject of the action. In the case of tangible personal property, the description shall include its usual location. In the case of real property, the description shall include both its legal description and its street address or common designation, if any.
- (b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title. If the title is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession.
- (c) The adverse claims to the title of the plaintiff against which a determination is sought.
- (d) The date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought.
- (e) A prayer for the determination of the title of the plaintiff against the adverse claims.

CCP § 761.020.

Here, although the FAC satisfied CCP § 761.020(a), it does not include sufficient allegations regarding CCP § 761.020(b)-(e). The FAC also is not verified. As such, to adequately assert a claim for quiet title, Plaintiff must amend the FAC to include allegations under CCP § 761.020.

D. The Conversion Claim

"In California, '[t]he elements of a conversion are the creditor's ownership or right to possession of the property at the time of the conversion; the debtor's conversion by a wrongful act or disposition of property rights; and damages.'" *In re Thiara*, 285 B.R. 420, 427 (B.A.P. 9th Cir. 2002) (quoting *Farmers Ins. Exchange v. Zerlin*, 53 Cal.App.4th 445, 451 (Ct. App. 1997)).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

"[A] mere contractual right of payment, without more, will not suffice" to support a claim for conversion. *Zerin*, 53 Cal.App.4th at 452. Although the "existence of a lien... can establish the immediate right to possess needed for conversion," Plaintiff has not alleged that it has a lien against the Property. *Plummer v. Day/Eisenberg, LLP*, 184 Cal.App.4th 38, 45–46 (Ct. App. 2010). In the FAC, Plaintiff alleges that Defendants promised its assignor a deed of trust, but that such a deed of trust was never executed. FAC, ¶ 25. In the Opposition, Plaintiff also contends that "a deed of trust was not provided to Plaintiff (i.e. that a transfer of an interest in real property did not occur[])." Opposition, p. 11. As such, the allegations plead a contractual right of payment, not a property interest.

To the extent Plaintiff asserts that the oral promise of a deed of trust created a lien against the Property, Plaintiff has not offered a legal basis for such a conclusion. As noted by Debtor, an oral deed of trust violates the Statute of Frauds. Cal. Civ. Code §§ 1624, 2922.

The creation of a lien by a deed of trust is a grant of an interest of real property. Such a grant must comply with the statute of frauds as codified by state law. *Miller & Starr, California Real Estate 2d*. § 1:58 (Bancroft–Whitney 1989); Cal. Civ. Code § 2922. California law requires that such a grant be in writing and signed by the grantor. Cal. Civ. Code § 1091. The grant then becomes effective upon delivery by the grantor. Cal. Civ. Code § 1054.

In re Van Ness Assocs., Ltd., 173 B.R. 661, 666 (Bankr. N.D. Cal. 1994).

In the FAC, Plaintiff alleges, at most, an oral promise to create a deed of trust. These allegations do not satisfy the Statute of Frauds. Although, as noted in Footnote 2, certain equitable interests in property (like resulting trusts) do not need to satisfy the Statute of Frauds, Plaintiff has not adequately alleged such a theory. Thus, without a property interest in the Property, Plaintiff's conversion claim is based on a breach of a contractual right to payment, which is not appropriate.

E. Plaintiff's Request for Attorneys' Fees

Plaintiff has not alleged a basis for its request for attorneys' fees, such as a statute or

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

contractual agreement between Plaintiff and/or its assignor, on the one hand, and Defendants, on the other hand. As such, if Plaintiff elects to amend the FAC, Plaintiff should elaborate on its basis for its request for attorneys' fees.

F. The Negligent Bailment Claim

In the Opposition, Plaintiff agreed to voluntarily dismiss its negligent bailment claim. As such, the Court need not address the parties' arguments regarding this claim.

III. CONCLUSION

The Court will dismiss the FAC with leave to amend, and to serve the amended complaint, no later than **December 30, 2020**.

Defendants must submit an order on each of their motions within seven (7) days.

FOOTNOTES

1. Because the FAC does not meet the more lenient standard under Rule 8(a), the Court need not address whether the FAC is sufficient under Rule 9(b). In the FAC, Plaintiff bases its conversion claim, in part, on the allegation that Defendants acted "with the intent to defraud..." FAC, ¶ 31. In any amended complaint, if Plaintiff intends to base any claim on fraudulent conduct, Plaintiff must meet the more stringent standard under Rule 9(b). *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) (holding that even if fraud is not an element of a claim, if a plaintiff alleges fraudulent conduct, the pleading must still satisfy Rule 9(b)).
2. Debtor asserts that the Statute of Frauds bars Plaintiff's allegations. However, if Plaintiff intends to base its claim of quiet title on its resulting trust theory, the Statute of Frauds does not apply. *See Matter of Torrez*, 63 B.R. 751, 754 (B.A.P. 9th Cir. 1986) ("The Statute of Frauds has no applicability to an action for a resulting trust.") (citing *Jones v. Gore*, 141 Cal.App.2d 667, 673 (Ct. App. 1956)).

Tentative ruling regarding the evidentiary objections to Plaintiff's request for judicial notice set forth below:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

exs. 8, 9, 12: sustain

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh
Richard P Steelman Jr

DMITRI LUDKOVSKI

Pro Se

RUVIN FEYGENBERG

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

SENSIBLE CONSULTING AND

Represented By
John Burgee

DOES 1 through 100, inclusive

Pro Se

Movant(s):

RUVIN FEYGENBERG

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

SENSIBLE CONSULTING AND

Represented By
John Burgee

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

Plaintiff(s):

FR LLC, a California limited

Represented By
Donald W Reid

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01060 FR LLC, a California limited liability company v. Lev Investments, LLC et

#14.00 Defendant Lev Investments, LLC's Motion To Dismiss Plaintiff's First Amended Complaint or, Alternatively, Motion For A More Definite Statement

Docket 34

Tentative Ruling:

See calendar no. 13.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh
Richard P Steelman Jr

DMITRI LUDKOVSKI

Pro Se

RUVIN FEYGENBERG

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

SENSIBLE CONSULTING AND

Represented By
John Burgee

DOES 1 through 100, inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

Movant(s):

Lev Investments, LLC

Represented By

David B Golubchik

Juliet Y Oh

Richard P Steelman Jr

Plaintiff(s):

FR LLC, a California limited

Represented By

Donald W Reid

Trustee(s):

Caroline Renee Djang

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01060 FR LLC v. Lev Investments, LLC et al

#15.00 Status conference of removed proceeding

fr. 7/15/20; 8/19/20; 8/26/20; 10/7/20; 11/25/20

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

DMITRI LUDKOVSKI

Pro Se

RUVIN FEYGENBERG

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

SENSIBLE CONSULTING AND

Represented By
John Burgee

DOES 1 through 100, inclusive

Pro Se

Plaintiff(s):

FR LLC

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Michael Shemtoub

Chapter 11

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

1:20-11236 Lindsay Hemric

Chapter 13

Adv#: 1:20-01078 Hemric v. TOTAL LENDER SOLUTIONS, INC et al

#16.00 Motion to Dismiss Adversary Proceeding Complaint

Docket 9

Tentative Ruling:

Grant.

I. BACKGROUND

On July 15, 2020, Lindsay Hemric ("Debtor") filed a chapter 13 petition. On September 7, 2020, Debtor filed a complaint against Total Lender Solutions, Inc. ("TLS"), Joseph Bunton, as Trustee of the Joseph Bunton Trust U/T/A, Joseph Bunton and Ryan Alexander (collectively, "Defendants"). On the same day, Debtor filed a first amended complaint (the "FAC") [doc. 2]. In the FAC, Debtor alleges—

On January 8, 2015, Debtor entered into a loan transaction under the corporation The Heart Lodge LLC ("Heart Lodge") with Defendants to purchase five parcel properties at 2034 North Topanga Canyon Blvd., Topanga, CA 90290 (the "Property"). In connection with this transaction, Defendants took a security interest in the Property. On February 26, 2020, TLS recorded a Notice of Default regarding the loan. On July 16, 2020, one day after the petition date, Defendants foreclosed on the Property.

On these allegations, Debtor asserts claims for: (A) violation of the automatic stay; (B) declaration of invalidity of the foreclosure sale as violative of the automatic stay; and (C) intentional infliction of emotional distress.

On November 13, 2020, the Court entered an order dismissing Debtor's bankruptcy case [Bankruptcy Docket, doc. 28].

On November 16, 2020, Defendants filed a motion to dismiss the FAC (the "Motion") [doc. 9], arguing that: (A) the Court lacks subject matter jurisdiction over this matter because the Property is not property of the estate; (B) Debtor did not properly serve

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT...

Lindsay Hemric

Chapter 13

Defendants; and (C) Debtor failed to state a claim because the automatic stay did not bar foreclosure of property that is not property of the estate. On December 2, 2020, Debtor filed an opposition to the Motion (the "Opposition") [doc. 18]. In the Opposition, Debtor argues that, as the sole member of Heart Lodge, she had an equitable interest in Heart Lodge and all of Heart Lodge's assets.

On December 8, 2020, Defendants filed a reply to the Opposition [doc. 19], noting that, after the filing of the Motion, Debtor served Another Summons on Defendants. As such, it appears the issue of proper service of process is moot.

II. ANALYSIS

A. Subject Matter Jurisdiction

28 U.S.C. § 1334(b), with regard to bankruptcy cases and proceedings, provides that:

Except as provided by subsection (e)(2) and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

1. Arising Under Jurisdiction

"A matter arises under the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

2. Arising In Jurisdiction

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

Matters that "arise under or in Title 11 are deemed to be 'core' proceedings" *In re*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... **Lindsay Hemric**

Chapter 13

Harris Pine Mills, 44 F.3d 1431, 1435 (9th Cir. 1995). Title 28, United States Code, section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11" 28 U.S.C. [§ 157\(b\)\(1\)](#); *Stern v. Marshall*, 564 U.S. 462, 475-76, 131 S.Ct. 2594, 2604, 180 L.Ed.2d 475 (2011).

3. Related to Jurisdiction

Bankruptcy courts also have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pegasus Gold Corp., 394 F.3d at 1193 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis omitted)).

A bankruptcy court's "related to" jurisdiction "cannot be limitless." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, 115 S.Ct. 1493, 1499, 131 L.Ed. 2d 403 (1995). "'[R]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.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lindsay Hemric

Chapter 13

Idaho May 5, 2015) (quoting 1 Collier on Bankruptcy, ¶ 3.01[3][e][v] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014)).

Here, the Court does not have subject matter jurisdiction over Debtor's claim for intentional infliction of emotional distress. This claim does not arise under the Bankruptcy Code. In addition, because this claim exists independent of Debtor's bankruptcy case, there also is no "arising in" jurisdiction. To the extent the Court had "related to" jurisdiction over this claim, Debtor's bankruptcy case has been dismissed, and, as a result, any subject matter jurisdiction over this claim has been extinguished.

With respect to Debtor's claims regarding a violation of the automatic stay, such claims arise under the Bankruptcy Code. However, for the reasons stated below, the Property is not property of the estate and, as a result, the automatic stay does not protect the Property.

B. 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)).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lindsay Hemric

Chapter 13

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). Under the "incorporation by reference" doctrine, a court may look beyond the four corners of the complaint to take into account documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012). The court "may treat the referenced 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.*, quoting *United States v. Richie*, 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).

C. Violation of the Automatic Stay

Pursuant to 11 U.S.C. § 362(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—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT...

Lindsay Hemric

Chapter 13

- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secured a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or a recover a claim against the Debtor that arose before the commencement of the case;

Here, the allegations in the FAC and the judicially noticeable documents provided by Defendants reflect that *Heart Lodge*, and not Debtor, had legal title to the Property. In the Opposition, Debtor does not dispute this point. Instead, Debtor asserts she maintained an equitable interest in the Property because of her membership interest in Heart Lodge.

As legal support, Debtor references *In re MCEG Prods., Inc.*, 133 B.R. 232 (Bankr. C.D. Cal. 1991). However, *MCEG* is inapposite. There, *MCEG, Inc.* and 35 subsidiaries (the "Debtor Entities") filed a voluntary chapter 11 petition. *MCEG*, 133 B.R. at 233. Subsequently, the bankruptcy court approved a compromise and sale transaction between the Debtor Entities and certain creditors (the "Compromising Creditors"). *Id.* In relevant part, the agreement provided that the Debtor Entities would transfer the stock of one of the Debtor Entities to one of the Compromising Creditors in exchange for a reduction of the creditors' claims and certain releases. *Id.* Another entity, Pheasantry Films, Inc. ("Pheasantry"), objected to the approval of this compromise and sale, arguing that the agreement negatively impacted Pheasantry's claim against one of the Debtor Entities. *Id.* The bankruptcy court overruled these objections. *Id.*, at 234.

After the bankruptcy court approved the compromise and sale, and overruled Pheasantry's objections, Pheasantry filed a petition for damages and injunctive relief against the Compromising Creditors in a different forum. *Id.* Pheasantry did not name any of the Debtor Entities as defendants. *Id.* The injunction relief action sought to enjoin the Compromising Creditors from participating in the compromise and sale. *Id.* In response to the filing of the injunctive relief action, the Debtor Entities and Compromising Creditors sought a temporary restraining order from the bankruptcy

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lindsay Hemric

Chapter 13

court, arguing that the filing of the injunctive relief action violated the automatic stay. *Id.*

The bankruptcy court agreed, noting that, under 11 U.S.C. § 541(a)(7), property of the estate includes "any interest in property that the estate acquires after the commencement of the case." *Id.* Relying on § 541(a)(7) and a Ninth Circuit Court of Appeals decision, the bankruptcy court held that the compromise and sale agreement was property of the estate and "created specific contract rights subject to the automatic stay." *Id.* (citing *In re Carroll*, 903 F.2d 1266 (9th Cir. 1990)). As such, the court stated that the injunctive relief action violated the automatic stay because it interfered with the *contract and sale agreement*, which was property of the estate. *Id.*, at 235.

Thus, although Debtor focuses on the transfer of stock that was part of the compromise and sale agreement, the transfer of stock was not a dispositive issue in the bankruptcy court's holding. Instead, the bankruptcy court focused on the estate's interest in the contract and sale agreement.

Moreover, neither a transfer of stock nor an action to enjoin such transfer is comparable to the facts alleged in the FAC. The allegations do not establish that Defendants' actions (i.e., foreclosure of the Property) violated the automatic stay's protection of *Debtor's membership interest in Heart Lodge*, the only property of the estate relevant to the FAC.

"A limited liability company is an entity distinct from its members." Cal. Corp. Code § 17701.04(a). The debts, obligations or other liabilities of a limited liability company "are solely the debts, obligations, or other liabilities of the limited liability company" and "do not become the debts, obligations, or other liabilities of a member... solely by reason of the member acting as a member... for the limited liability company." Cal. Corp. Code § 17703.04(a)(1)-(2). In addition, "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 (Ct. App. 2009). "Instead, a member possesses a personal property interest in its limited liability company interest." *Id.*; see also *Swart Enterprises, Inc. v. Franchise Tax Bd.*, 7 Cal.App.5th 497, 510 (Ct. App. 2017) ("members hold no direct ownership interest in the company's specific property"). "Because members of [a limited liability company] hold no direct ownership interest in the company's assets, the members cannot be directly injured when the company is improperly deprived of those assets." *PacLink Commc'ns Int'l, Inc. v. Superior Court*, 90 CalApp.4th 958, 964 (Ct. App. 2001) (internal citation omitted).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lindsay Hemric

Chapter 13

Federal courts that have addressed the issue of whether the automatic stay applies to assets of a nondebtor entity have decided that it does not. "Though the automatic stay in the personal bankruptcy estate was still effective, we agree with the bankruptcy court that an automatic stay does not extend to the assets of a corporation in which the debtor has an interest, even if the interest is 100% of the corporate stock." *In re Furlong*, 660 F.3d 81, 89–90 (1st Cir. 2011) (internal quotation omitted). The First Circuit Court of Appeals noted that "[t]his proposition is well-settled." *Id.*, at 90 n.9 (collecting cases from multiple circuits).

Although there is sparse in-circuit authority on the specific issue presented here, it appears courts within the Ninth Circuit would not deviate from this "well-settled" proposition. For instance, in *In re Calvert*, 135 B.R. 398 (Bankr. S.D. Cal. 1991), the debtor was a shareholder in a nondebtor corporation. *Calvert*, 135 B.R. at 399. Postpetition, the nondebtor corporation gave notice of a special meeting of the board, at which time the board authorized the corporation to issue additional shares of stock in satisfaction of a debt owed by the corporation. *Id.* The impact of the issuance of additional shares of stock was to reduce the percent of ownership represented by the number of shares held by the bankruptcy estate. *Id.*

The chapter 11 trustee asserted that the dilution of the estate's shares violated the automatic stay. *Id.*, at 400. In response, and despite disagreeing that the automatic stay was implicated, the corporation filed a motion for *nunc pro tunc* relief from the automatic stay. *Id.* The bankruptcy court framed the issue as follows: "the basic issue is whether the intangible rights and obligations of stock ownership, which are property of a debtor's estate, are sufficiently broad to preclude a non-debtor corporation from taking actions which may have an effect on the value of that stock." *Id.* After reviewing several out-of-circuit authorities, the court reached the following conclusion—

This Court agrees with the rationale of the foregoing cases. [The nondebtor corporation] is a separate legal entity and there has been no suggestion that it is a sham corporation or that it is the alter ego of the debtor. Indeed, the few facts before the Court suggest the contrary. While the trustee's argument has appeal in circumstances like the present, this Court has not found any satisfactory way to draw a meaningful line separating the circumstances and incidences of stock ownership which would implicate the automatic stay from those that would not. In this

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT...

Lindsay Hemric

Chapter 13

Court's view, the better rule is that [the nondebtor corporation] is a separate legal entity entitled to act through its duly constituted board and officers, even though those actions may have an effect on the value of shares of stock held by the estates of debtors. Accordingly, this Court concludes that the *automatic stay does not apply* to actions of the board of the corporation in determining to exchange debt for equity with another shareholder, thereby giving that shareholder a majority interest in the corporation.

Id., at 402 (emphasis added). [FN1]. As such, even where a debtor's personal property interest in an entity is devalued by actions taken against a nondebtor entity, the automatic stay is not implicated. Approximately two weeks ago, in a different context, the Bankruptcy Appellate Panel of the Ninth Circuit held that an individual debtor may not claim a homestead exemption in real property owned by the debtor's limited liability company—

[The debtor] has never identified any beneficial or equitable interest in the Property to support his homestead exemption claim and concedes that he has no legal interest in it. Instead, he listed his interest in the LLC as exempt under California's residential exemption, C.C.P. § 704.730. But under California law a limited liability company is a separate and distinct legal entity from its owners or members. Consequently, limited liability company members have no interest in the company's assets. California's residential exemption is inapplicable to [the debtor's] interest in the LLC, which constitutes a personal property interest outside the statutory definition of a homestead under C.C.P. § 704.710(c).

In re Schaefers, 2020 WL 7043564, at *4 (B.A.P. 9th Cir. Dec. 1, 2020).

Although outside of the Ninth Circuit, *Kreiser v. Goldberg*, 478 F.3d 209 (4th Cir. 2007), is directly on point. There, one of the debtors' wholly owned subsidiaries, a limited liability company (the "Subsidiary LLC"), was a party to a ground rent lease on real property. *Kreiser*, 478 F.3d at 211. The property was titled in the Subsidiary LLC's name, and this interest in the property was the Subsidiary LLC's sole asset and the reason for the company's organization. *Id.*, at 211-12. Prepetition, the owner of the ground rent filed a complaint for ejectment in state court and obtained a default judgment against the Subsidiary LLC. *Id.*, at 212.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lindsay Hemric

Chapter 13

Postpetition, the owner of the ground rent moved for relief from the automatic stay. *Id.* The bankruptcy court provided such relief and, as a result, the property was sold at auction. *Id.* The debtors then filed a motion for violation of the automatic stay, seeking to void the ejectment action and to compel turnover of the property to the estate. *Id.* The bankruptcy court denied the motion and a district court affirmed the order. *Id.* On appeal, the Fourth Circuit Court of Appeals agreed with the bankruptcy court, holding—

The fact that a parent corporation has an ownership interest in a subsidiary, however, does not give the parent any direct interest in the *assets* of the subsidiary. Although [one of the debtors] could have established an ownership interest in the property, it chose not to do so. Instead, it created an LLC for the purpose of holding title to the property. Having assumed whatever benefits flowed from that decision, it cannot now ignore the existence of the LLC in order to escape its disadvantages. *See Terry v. Yancey*, 344 F.2d 789 (4th Cir. 1965) (explaining that "where an individual creates a corporation as a means of carrying out his business purposes he may not ignore the existence of the corporation in order to avoid its disadvantages"). The district court therefore correctly distinguished between [the debtor's] interest in [the Subsidiary LLC] and [the Subsidiary LLC's] direct interest in the [property]. The assets of [the Subsidiary LLC] belonged to [the Subsidiary LLC] and did not form part of [the debtors'] bankruptcy estate. Consequently, an action to obtain possession or exercise control over [the Subsidiary LLC's] property was not an action to obtain possession or exercise control over property of [the] bankruptcy estate.

Id., at 214 (emphasis in *Kreisler*). Moreover, in response to the debtors' argument that disposal of the property would cause the estate's interest in the Subsidiary LLC to lose value, the court stated—

[The Subsidiary LLC] existed for the sole purpose of holding title to the property and had no other assets. [The debtor] contends that, as a result, [the debtor's] ownership interest in [the Subsidiary LLC] would lose all value if [the Subsidiary LLC] were ejected from the property. The fact that [the debtor's] interest in [the Subsidiary LLC] may lose value, however, is not dispositive. The nature and extent of [the debtor's]

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT...

Lindsay Hemric

Chapter 13

interest in [the Subsidiary LLC] remains unchanged by [the Subsidiary LLC's] loss of the property.

Id.; see also *In re HSM Kennewick, L.P.*, 347 B.R. 569, 572 (Bankr. N.D. Tex. 2006) ("[The debtor] does not possess an interest to specific assets or property of [the LLC], as it is only a member of the LLC; thus the automatic stay does not apply to protect it.").

In light of these authorities, Debtor cannot state a claim for violation of the automatic stay for the alleged foreclosure sale of property owned by Debtor's limited liability company. Debtor's allegations that she is the sole member of Heart Lodge, or that her interest in Heart Lodge will be devalued by the foreclosure, does not change the analysis. Because the FAC cannot be cured by an amendment, the Court will dismiss the FAC without leave to amend. See *Jackson*, 353 F.3d at 758.

III. CONCLUSION

The Court will dismiss the FAC without leave to amend.

Defendants must submit an order within seven (7) days.

FOOTNOTES

1. *Calvert* involved a corporation instead of a limited liability company. However, for purposes of this discussion, the result is the same whether the nondebtor entity is a limited liability company or a corporation. See, e.g. *Denevi v. LGCC, LLC*, 121 Cal.App.4th 1211, 1214 n.1 (Ct. App. 2004) ("Like corporate shareholders, members of a limited liability company hold no direct ownership interest in the company's assets").

Party Information

Debtor(s):

Lindsay Hemric

Represented By

Ronda Baldwin-Kennedy

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 16, 2020

Hearing Room 301

2:30 PM

CONT... Lindsay Hemric

Chapter 13

Defendant(s):

TOTAL LENDER SOLUTIONS,	Represented By Marisol A Nagata
JOSEPH BUNTON	Pro Se
Ryan Alexander	Pro Se
Joseph Bunton, as Trustee of the	Pro Se

Movant(s):

TOTAL LENDER SOLUTIONS,	Represented By Marisol A Nagata
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Plaintiff(s):

Lindsay Hemric	Represented By Ronda Baldwin-Kennedy
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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**

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

1:15-12563 Reza Fateh Manesh

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Brutzkus Gubner, Attorneys for Chapter 7 Trustee

SLBiggs, A Division of Singer Lewak, Accountant's for Trustee

Docket 200

Tentative Ruling:

David Seror, chapter 7 trustee – approve fees of \$67,151.82 and reimbursement of expenses of \$208.50.

Brutzkus Gubner, counsel to chapter 7 trustee – approve fees of \$345,205.00 and reimbursement of expenses of \$11,080.79, pursuant to 11 U.S.C. § 330, on a final basis. The Court will not approve \$1,728.50 in fees for the reasons below.

SLBiggs, accountant to chapter 7 trustee – approve fees of \$10,240.00 and reimbursement of expenses of \$129.61, 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 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

CONT... Reza Fateh Manesh

Chapter 7

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 Brutzkus Gubner while general counsel to the chapter 7 trustee for the services identified below. It appears that these fees are for services that are duplicative of those that could and should have been performed by the chapter 7 trustee, as a trustee.

Category	Date	Timekeeper	Description	Time	Fee	Reason
Asset Analysis and Recovery	1/25/16	RHB	Phone call with broker for Delano property re employment application	0.10	\$40	Trustee Duty
Asset Analysis and Recovery	1/26/16	RHB	Revisions to application to employ broker	0.30	\$120	Trustee Duty

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

CONT...

Reza Fateh Manesh

Chapter 7

Asset Analysis and Recovery	1/29/16	RHB	Analysis of broker employment and memo re R. Burstein re same	0.20	\$80	Trustee Duty
Asset Analysis and Recovery	1/29/16	RHB	Email broker regarding employment application	0.10	\$40	Trustee Duty
Asset Analysis and Recovery	2/3/16	RHB	Analysis of issues regarding prior engagement of Broker by Hossein and update employment application	0.30	\$120	Trustee Duty
Asset Analysis and Recovery	2/8/16	RHB	Correspond with broker re status of Delano property and employment application	0.30	\$120	Trustee Duty
Asst Analysis and Recovery	2/24/16	RHB	Conversation with broker regarding status of motion to employ and prospects for sale of property	0.20	\$80	Trustee Duty
Asset Analysis and Recovery	3/7/16	RHB	Review order approving employment of broker	0.10	\$40	Trustee Duty
Fee/Employment Application	12/18/15	RHB	Revisions to application to employ broker to sell Delano property	0.30	\$120	Trustee Duty
Fee/Employment Application	1/26/16	RDB	Review and reply with comment to R. Bernet memo re application to employ re Delano property	0.30	\$187.50	Trustee Duty
Fee/Employment Application	1/29/16	RDB	Review and reply to R. Bernet memo on application to employ M. Pearlman, review M. Pearlman response	0.30	\$187.50	Trustee Duty
Fee/Employment Application	2/9/16	RDB	Review and reply to R. Bernet memo to M. Pearlman re marketing status, application to employ broker	0.20	\$125	Trustee Duty
Fee/Employment Application	2/22/16	RDB	Review broker inquiry on status of employment application and marketing, prepare memo to R. Bernet re same, review and reply to R. Bernet comments, review and reply to M. Tzeng memo on preparation of non-opposition papers and order re employment application	0.30	\$187.50	Trustee Duty
Fee/Employment Application	2/22/16	MTZ	Prepare Order approving employment of real estate brokers	0.40	\$96	Trustee Duty
Fee/Employment Application	2/22/16	MTZ	Prepare declaration of non-opposition re employment of re brokers	0.40	\$96	Trustee Duty
Fee/Employment Application	2/24/16	RDB	Review and reply to multiple R.Bernet, M. Tzeng and M. Pearlman memos on status of application to employ M. Pearlman	0.20	\$125	Trustee Duty

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

CONT... Reza Fateh Manesh Chapter 7

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):

Reza Fateh Manesh

Represented By
Lee W Harwell

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Reed Bernet
Jessica L Bagdanov
Steven T Gubner

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

1:18-10611 Marvin A Medina Medina

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

Docket 48

Tentative Ruling:

Pursuant to 11 U.S.C. § 726(a)(3), the chapter 7 trustee may distribute property of the estate "in payment of any allowed unsecured claim proof of which is tardily filed."

In light of the surplus over the amount required to pay timely filed allowed unsecured claims, what are the chapter 7 trustee's intentions regarding payment of the nonpriority unsecured claim asserted by Modern Finance Company [doc. 51]?

Party Information

Debtor(s):

Marvin A Medina Medina

Represented By
Sergio A White

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, December 17, 2020

Hearing Room 301

10:30 AM

1:20-11006 Lev Investments, LLC

Chapter 11

#3.00 First Interim Application Of Levene, Neale, Bender, Yoo & Brill L.L.P. for approval of fees and reimbursement of expenses
Period: 6/1/2020 to 11/20/2020, Fee: \$218,002.00, Expenses: \$8,434.20.

Docket 259

Tentative Ruling:

Levene, Neale, Bender, Yoo & Brill LLP (“LNBYB”), counsel to debtor – approve fees of \$205,669.50 and reimbursement of expenses of \$8,434.20 for the period covering June 1, 2020 through November 20, 2020, pursuant to 11 U.S.C. § 331, on an interim basis. The Court will allow LNBYB to apply the remaining pre-petition retainer balance in the amount of \$37,547.64. For the reasons set forth below, the Court will not approve \$134.50 in fees.

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, *11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, *1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) (“Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant’s firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.”).

Accordingly, the Court will disallow the following fees as noncompensable secretarial work:

Category	Date	Timekeeper	Description	Time	Fee
Case Administration	6/2/20	SR	Obtain certified copy of petition	0.1	\$25.00
Case Administration	6/2/20	SR	Record certified petition with LA County recorder’s office	0.2	\$50.00
Case Administration	10/29/20	JYO	Filed notice of stay in Coachella lawsuit against debtor	0.1	\$59.50

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

CONT... Lev Investments, LLC

Chapter 11

LNBYB must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by LNBYB is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and LNBYB will be so notified.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

1:20-11006 Lev Investments, LLC

Chapter 11

#4.00 First Interim Application of Caroline R. Djang, Subchapter V Trustee, for approval of compensation and reimbursement of expenses

Docket 261

Tentative Ruling:

Caroline R. Djang, Subchapter V trustee – approve fees of \$18,551.00 and reimbursement of expenses of \$221.98 for the period covering June 3, 2020 through November 24, 2020, pursuant to 11 U.S.C. § 331, on an interim basis. Because the Subchapter V trustee included blocked-out entries in her interim fee application, the Court will not approve \$555.50 in fees, as set forth below.

Category	Date	Timekeeper	Description	Time	Fee	Reason
Total Asset Disposition	7/27/20	CRD	Blocked out	0.50	\$505.00	No description
Total Asset Disposition	7/27/20	CRD	Blocked out	0.20	\$101.00	No description
Contested matters/ adversary	7/24/20	CRD	Blocked out	0.40	\$202.00	No description

The chapter 11 Subchapter V trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the Subchapter V 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 Subchapter V trustee will be so notified.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:17-12969 Roger Ronald Steinbeck and Stannis Veronica Steinbeck

Chapter 11

#5.00 Post confirmation status conference

fr. 9/12/19; 10/3/19; 04/16/20;

Docket 1

Tentative Ruling:

Continue to **1:00 p.m. on April 22, 2021**. On or before **April 8, 2021**, 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 December 17, 2020 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, December 17, 2020

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#6.00 Hearing on adequacy of debtor's disclosure statement describing chapter 11 plan of reorganization

fr. 10/8/20; 11/5/20(stip)

voluntary dismissal filed on 12/10/20 doc #150

Docket 108

***** VACATED *** REASON: Voluntary dismissal on 12/10/20 [docs. 149, 150].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

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, December 17, 2020

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#7.00 Status conference re: chapter 11 case

fr. 8/29/19/ 1/23/20; 3/26/20; 8/13/20; 10/8/20; 11/5/20(stip)

Docket 1

Tentative Ruling:

The Court will continue this chapter 11 case status conference to **1:00 p.m. on February 4, 2021.**

The debtor in possession or any appointed chapter 11 trustee must file a status report regarding the debtor's progress toward confirming a chapter 11 plan, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

Appearances on December 17, 2020 are excused.

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D Resnik

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#8.00 Mayallpostan LLC's Motion to Dismiss Involuntary
Bankruptcy Petition; Request for Fees and Costs in
an Amount of No Less Than \$7250.00

fr. 11/19/20

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mayallpostan LLC

Represented By
Carley Lee

Movant(s):

Mayallpostan LLC

Represented By
Carley Lee

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#9.00 Order to show cause re: dismissal with a 180-day bar,
annulment of the automatic stay, and disgorgement

fr. 9/10/20; 10/22/20; 11/19/20

Docket 3

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mayallpostan LLC

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#10.00 Status conference re: chapter 11 case
fr. 10/22/20; 11/19/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mayallpostan LLC

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:20-11541 Lauren Monique Johnson

Chapter 7

#11.00 U.S. Trustee's Motion to Dismiss Case Pursuant to 11 U.S.C. § 707(b)(3)(B)

Docket 8

***** VACATED *** REASON: Motion withdrawn 12/4/20 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lauren Monique Johnson

Represented By
Steven A Alpert

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, December 17, 2020

Hearing Room 301

1:00 PM

1:20-11986 Erika Monzon

Chapter 7

#12.00 U.S. Trustee's Motion to (1) Dismiss Case Pursuant to 11 U.S.C. §§ 707(a) and 727(a)(8); and (2) Refund Compensation Pursuant to 11 U.S.C. § 329

Stipulation for dismissal filed 11/24/20

Docket 11

*** VACATED *** REASON: Order approving stipution to entered
11/24/20 [Dkt.16]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Erika Monzon

Represented By
Karine Karadjian

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, December 17, 2020

Hearing Room 301

1:30 PM

1:11-11603 Kevan Harry Gilman

Chapter 7

#13.00 Motion to direct administration and re-investigation or, in alternative,
replace trustee

Docket 761

***** VACATED *** REASON: Hearing set in error.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#14.00 Order to show cause why this case should not be dismissed or converted to one under chapter 7

Docket 98

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1), based on this case not having been filed in good faith, and the debtor lacking the necessary privity to modify claims secured by deeds of trust which encumber the debtor's residential real property (as discussed in the Order to Show Cause and calendar no. 15), the Court will dismiss this case.

The Court will prepare the order.

Party Information

Debtor(s):

5019 Partners, LLC

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 17, 2020

Hearing Room 301

1:30 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#15.00 Motion to determine value of real property; to stay
post petition payments

fr. 11/19/20

Docket 76

Tentative Ruling:

Deny.

I. BACKGROUND

A. The Deed of Trust and the Genesta Property

On April 6, 2006, America's Wholesale Lender made a \$1 million loan (the "Loan") to Delia Webster [doc. 76, Exh. A, Deed of Trust, p. 6–7]. The Loan is secured by a deed of trust which encumbers residential real property located at 5019 Genesta Avenue, Encino, CA 91316 (the "Genesta Property"). *Id.*

On April 17, 2006, Delia Webster recorded a grant deed in the Los Angeles County Recorder's Office, transferring her interest in the Genesta Property to 5019 Partners, LLC ("Debtor") for less than \$100.00 [1:08-bk-13370-GM, doc. 33, Exh. 7, Grant Deed].

On July 1, 2010, the deed of trust encumbering the Genesta Property was transferred via an assignment deed of trust and mortgage to the Bank of New York Mellon FKA the Bank of New York, as Trustee for the Certificateholders CWALT, Inc., Alternative Loan Trust 2006-OA9 Mortgage E Pass-Through Certificates, Series 2006-OA9 ("BNYM") [doc. 76, Exh. A, p. 23].

B. The First Chapter 11 Case

On May 22, 2008, Debtor filed a voluntary chapter 11 petition, initiating case no. 1:08-bk-13370-GM (the "First Case"). In its schedule A, Debtor identified an interest in the Genesta Property. First Case, doc. 11. In its schedule B, Debtor listed no cash, accounts

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

or personal property. *Id.* In its schedule D, Debtor represented that the Genesta Property was encumbered by a deed of trust for the benefit of Countrywide, securing a claim in the amount of \$1.5 million. *Id.* In its Statement of Financial Affairs, Debtor identified two equity holders, Gary Pitts and Tyler Murphy, and represented that it had no income. *Id.*

On August 5, 2010, pursuant to 11 U.S.C. §§ 362(d)(1), (d)(2) and (d)(4), the Court entered an order granting relief from the automatic stay against the Genesta Property. *Id.*, doc. 87. The Court determined that Debtor's petition was part of a scheme to delay, hinder and defraud creditors based on: (1) the transfer of all or part ownership of, or other interest, in the Genesta Property without consent of the secured creditor or court approval; and (2) multiple bankruptcy filings affecting that property. *Id.*

On January 14, 2013, the Court entered an order granting Debtor's motion for voluntary dismissal of its chapter 11 case. *Id.*, doc. 148. On November 15, 2012, the First Case was closed. *Id.*, doc. 152.

C. The Second Chapter 11 Case

On December 4, 2019, Debtor filed a voluntary chapter 11 petition, initiating case no. 1:19-bk-13011-VK (the "Second Case"). In its schedule A/B, Debtor identified an interest in the Genesta Property and listed no cash, accounts or personal property. Second Case, doc. 1. In its schedule D, Debtor represented that the Genesta Property was encumbered by: (1) a deed of trust for the benefit of BNYM, securing a claim in the amount of \$1 million; and (2) a judicial lien, securing the claim of Koll/Per Calabasas, LLC in the amount of \$21,736.11. *Id.* In its schedule E/F, Debtor lists only two nonpriority unsecured creditors, one of which has a disputed claim, in the aggregated amount of \$13,500.00. *Id.* In its Statement of Financial Affairs, Debtor identified two equity holders, Gary Pitts and Tyler Murphy. *Id.*, doc. 8.

On January 24, 2020, the Court entered an order dismissing the Second Case based on Debtor's failure to file a case status conference report and monthly operating reports on a timely basis, in violation of the Court's previously issued order. *Id.*, docs. 19, 20. On June 23, 2020, the Second Case was closed. *Id.*, doc. 26.

D. The Third Chapter 11 Case

On February 11, 2020, Debtor filed a voluntary chapter 11 petition, initiating the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

pending bankruptcy case. In its schedule A/B, Debtor listed an interest in the Genesta Property and \$900 in cash [doc. 1]. Debtor valued its interest in the Genesta Property at \$800,000.00, based on an appraisal conducted on October 15, 2020 [doc. 76, Exh. B, Appraisal].

In its amended schedule D, Debtor states that the Genesta Property is encumbered by: (1) a deed of trust for the benefit of BNYM, securing a claim in the principal amount of \$1 million; (2) a deed of trust for the benefit of BAC Home Loan Servicing, securing a claim in the amount of \$350,000.00; and (3) a judicial lien, securing the claim of Koll/Per Calabasas, LLC in the amount of \$21,736.11 [doc. 75]. In its schedule E/F, Debtor lists only two nonpriority unsecured creditors, one of which has a disputed claim, in the aggregated amount of \$13,500.00 [doc. 1].

Regarding filed proofs of claim, the Internal Revenue Service has filed a proof of claim in the amount of \$4,400.00 [Proof of Claim 1-1]. The California Franchise Tax Board has filed a proof of claim, asserting a secured claim in the amount of \$5,467.17 and an unsecured claim in the amount of \$18,023.14.

In April 2020, BNYM filed proof of claim 2-1 in the amount of \$1,859,629.46 [doc. 76, Exh. A, p. 3]. Based on the proof of claim, as of the date this case was filed: (1) the interest due is \$495,255.69; (2) the escrow deficiency for funds advanced is \$212,216.03; (3) the total prepetition arrearage is \$853,618.46; and (4) since March 2009, no payments have been made on the Loan.

In its Statement of Financial Affairs, Gary Pitts and Tyler Murphy are identified as Debtor's sole equity holders. *Id.*

Based on its monthly operating reports for the months of May 2020 through October 2020, Debtor is not generating any income [docs. 55, 56, 57, 58, 66, 74, 95]. In its October 2020 monthly operating report, Debtor lists only \$134.38 in cash [doc. 95]. As reflected in Debtor's monthly operating reports from February 2020 through November 2020, during this case, Debtor has not made any payments to BNYM [docs. 30, 50, 55, 56, 57, 58, 66, 74, 95, 108].

On October 19, 2020, Debtor filed a *Motion to Determine Secured Value of Real Property; to Stay Post Petition Payments* (the "Motion to Value") [doc. 76]. In the Motion to Value, Debtor's principal, Tyler Murphy, states that Debtor filed for

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

bankruptcy "to reorganize and manage secured claims on the residential property at 5019 Genesta Avenue in Encino (the "REAL PROPERTY"). Debtor 5019 succeeded to the REAL PROPERTY in April 2006, settlement of a business transaction between 5019 and the prior owner who is the original borrower on the mortgage on the REAL PROPERTY." Declaration of Tyler Murphy, ¶ 2–3, doc. 76 (formatting and errors in original).

Debtor seeks an order valuing the Genesta Property at \$800,000.00, based on an appraisal report conducted on October 15, 2020 [doc. 76, Exh. B, Appraisal]. After valuation, Debtor proposes to bifurcate and treat the secured claims as follows:

Lienholders (order of priority)	Secured Portion of Claim	Unsecured Portion of Claim
BNYM	\$800,000.00	\$1,059,629.46
BAC Home Loan Servicing	\$0.00	\$350,000.00
Koll / Per Calabasas, LLC	\$0.00	\$21,736.11

On November 5, 2020, BNYM filed an opposition to the Motion to Value (the "Opposition") [doc. 93]. In the Opposition, BNYM asserts that Delia Webster, not Debtor, is the borrower under the deed of trust encumbering the Genesta Property. BNYM asserts that it "has not engaged in any conduct to accept the transfer or Debtor as a replacement mortgagor." *Id.*, p. 6, line 6–15. BNYM represents that it filed its proof of claim in case the Court finds that BNYM is a creditor, after the deadline to file claims passed. *Id.* BNYM argues that, because Debtor is not the original borrower, and there is no creditor-debtor relationship, Debtor cannot bifurcate BNYM's secured claim pursuant to 11 U.S.C. § 506(a), nor modify BNYM's rights as a secured creditor pursuant to 11 U.S.C. § 1123(b)(5).

On November 13, 2020, Debtor filed a reply to the Opposition (the "Reply") [doc. 94]. In the Reply, Mr. Murphy avers that:

[T]he original borrower never tendered a payment on the loan to which BNYM has succeeded. Debtor tendered the first payment after the transaction closed along with subsequent payments and, during its prior bankruptcy in 2008–2013, Debtor tendered adequate protection payments to BNYM's predecessor.

Declaration of Tyler Murphy, ¶ 2, doc. 94. On December 8, 2020, BNYM filed a supplemental opposition [doc. 103].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

II. DISCUSSION

11 U.S.C. § 101, in pertinent part, provides:

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. . . .

...

(10) The term "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h), or 502(i) of this title;
or

(C) entity that has a community claim.

...

(12) the term "debt" means liability on a claim.

11 U.S.C. § 1123(b)(5) provides:

(b) Subject to subsection (a) of this section, a plan may—

(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims[.]

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

When determining whether a party is a "creditor" under the Bankruptcy Code, the terms "debt" and "claim" are interrelated. *In re Davis*, 778 F.3d 809, 812 (9th Cir. 2015) ("[T]he meanings of 'debt' and 'claim' were intended by Congress to be coextensive") (quoting *Pa. Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 558, 110 S. Ct. 2126, 109 L. Ed. 2d 588 (1990); see also *In re Enron.*, 357 B.R. 32, 47 (S.D.N.Y. 2006) ("It is well settled that 'claim' and 'debt' are synonymous, such that whenever a 'claim' arises, a 'debt' necessarily arises as well; the only distinction between the two terms is the party to which it applies") (citing *Davenport*, 495 U.S. at 558).

In connection with evaluating the bifurcation and treatment of a secured claim in a chapter 11 case, a court may refer to case law regarding chapter 13. See *In re Lievsay*, 199 B.R. 705, 708 (B.A.P. 9th Cir. 1996). In connection with chapter 13 cases, several courts have held that, when a debtor is not the original borrower, there is no creditor-debtor relationship with the mortgagee. As noted in *In re Jones*, 98 B.R. 757, 758 (Bankr. N.D. Ohio 1989): "Because Debtor is not liable on the mortgage, there exists no debt owing to the Bank; the Bank has no claim against Debtor; and there exists no creditor-debtor relationship."

As a result, these courts also have held that the debtor could not modify the mortgagee's rights to payment, in accordance with the terms of the pertinent loan. See *In re Parks*, 227 B.R. 20, 21 (Bankr. W.D.N.Y. 1998) (The Bankruptcy Code "may not be used to force a mortgagee to accept installment payments . . . where, as here, the debtor and mortgagee are not in privity of contract."); *In re Kizelnik*, 190 B.R. 171, 179 (Bankr. S.D.N.Y. 1995)(rights and remedies of a secured creditor cannot "be blocked by the voluntary intervention of a new obligor . . . who undertakes no liability whatever for that indebtedness or any deficiency"); and *Perscillo v. HSBC Bank U.S.A., Nat. Ass'n*, 2015 WL 417659, at *2 (W.D.N.Y. Jan. 30, 2015) ("[A] debtor has no right to restructure mortgages in bankruptcy when the debtor is not in privity with the mortgagee").

Here, BNYM and Debtor do not have a creditor-debtor relationship. A creditor is defined as an "entity that has a claim against the debtor. . . ." 11 U.S.C. § 101(10)(A). As the original borrower, Delia Webster is the party who is liable to pay BNYM's secured claim, and BNYM neither consented to Ms. Webster's transfer of her interest in the Genesta Property to Debtor, nor did BNYM (or any predecessor in interest) consent to Debtor's assumption of the Loan. Consequently, between BNYM and Debtor, there is no creditor-debtor relationship.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... **5019 Partners, LLC**

Chapter 11

Under California Law, an assumption of debt must be in writing, or included in the conveyance of the property. *See* Cal. Civ. Code § 1624(a)(6) ("The following contracts are invalid, unless . . . in writing . . . An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of the indebtedness by the purchaser is specifically provided for in the conveyance of the property"); Cal. Civ. Code § 2922 ("A mortgage can be created, renewed, or extended, only by writing, executed with the formalities in the case of a grant of real property."). "A mere grant of the property subject to the mortgage debt is not sufficient to impose any personal liability on the grantee to pay the debt or perform any of the obligations thereof. To effect such obligation there must be a distinct assumption of the debt or of the contractual obligations thereunder." *See Snidow v. Hill*, 87 Cal. App. 2d 803, 807 (1948).

Debtor has not demonstrated that it assumed Ms. Webster's debt to BNYM or that Debtor has any personal liability to BNYM. Furthermore, BNYM has not consented to Debtor's assumption of the Loan. Likewise, Debtor's monthly operating reports and BNYM's proof of claim reveal that Debtor has not made any post-petition payments on the Loan. Given that there is no contractual relationship between Debtor and BNYM, Debtor has not properly assumed any obligation to repay the Loan, and BNYM has not consented to Debtor's assumption of the Loan, Debtor cannot modify BNYM's secured claim.

III. CONCLUSION

The Court will deny the Motion to Value.

BNYM must submit an order within seven (7) days.

Party Information

Debtor(s):

5019 Partners, LLC

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 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#16.00 Hearing on first amended disclosure statement describing ch 11 plan
fr. 12/10/20

Docket 81

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

5019 Partners, LLC

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 17, 2020

Hearing Room 301

1:30 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#17.00 Status conference re: chapter 11 case

fr. 3/19/20; 4/2/20, 9/10/20; 9/17/20; 10/22/20; 12/10/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

9:30 AM

1:20-10924 Tikran Eritsyan

Chapter 11

#1.00 Motion for relief from stay [RP]

RED DRAGON INVESTMENT AND
PLATINUM BUSINESS MANAGEMENT
VS
DEBTOR

STIP TO CONTINUE FILED 12/18/20

fr. 11/18/20

Docket 49

***** VACATED *** REASON: Order approving stip entered 12/21/20.
Hearing continued to 1/20/21 at 9:30 AM. [Dkt. 76]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tikran Eritsyan

Represented By
Vahe Khojayan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

9:30 AM

1:20-12004 Airsharp, Inc.

Chapter 7

#2.00 Motion for relief from stay [AN]

RTA CARNEROS VILLAGE-PHASE II, LLC
VS
DEBTOR

Docket 5

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 must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Airsharp, Inc.

Represented By
Eric Bensamochan

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 23, 2020

Hearing Room 301

9:30 AM

1:20-11948 Luis Manuel Pizarro

Chapter 7

#3.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC DBA CHRYSLER CAPITAL
VS
DEBTOR

Docket 16

***** VACATED *** REASON: No chambers copy of motion provided.
Motion is not on calendar.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luis Manuel Pizarro

Represented By
Ricardo Nicol

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 23, 2020

Hearing Room 301

9:30 AM

1:20-12063 Esther Mejia

Chapter 7

#4.00 Motion for relief from stay [PP]

BANK OF THE WEST
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):

Esther Mejia

Represented By
Daniel F Jimenez

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 23, 2020

Hearing Room 301

9:30 AM

1:20-11134 Helping Others International, LLC

Chapter 7

#5.00 Motion for relief from stay [RP]

WOOSHIES, INC.
VS
DEBTOR

Re: 4110 Vanetta Place, Studio City CA 91604

Docket 117

*** VACATED *** REASON: Voluntary dismissal of motion fld 12/9/20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

Movant(s):

WOOSHIES, INC.

Represented By
Maurice Wainer

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 23, 2020

Hearing Room 301

9:30 AM

1:20-11134 Helping Others International, LLC

Chapter 7

#6.00 Motion for relief from stay [RP]

WOOSHIES, INC.
VS
DEBTOR

Re: 28340 Locust Ave. Moreno Valley CA 92555

Docket 118

*** VACATED *** REASON: Voluntary dismissal of motion fld 12/9/20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

Movant(s):

WOOSHIES, INC.

Represented By
Maurice Wainer

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, December 23, 2020

Hearing Room 301

9:30 AM

1:20-11134 Helping Others International, LLC

Chapter 7

#7.00 Motion for relief from stay [RP]

UNITED LENDER, LLC
VS
DEBTOR

Docket 119

*** VACATED *** REASON: Voluntary dismissal of motion fld 12/9/20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

9:30 AM

1:20-11992 Igor Vitte

Chapter 13

#8.00 Motion for relief from stay [RP]

HMC ASSETS, LLC
VS
DEBTOR

Docket 19

***** VACATED *** REASON: No chambers copy of motion provided.
Motion is not on calendar.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Igor Vitte

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, December 23, 2020

Hearing Room 301

9:30 AM

1:20-12133 Aviva Rachel Harris

Chapter 13

#9.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

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):

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, December 23, 2020

Hearing Room 301

1:30 PM

1:18-12660 Mohsen Loghmani

Chapter 7

Adv#: 1:20-01086 United States Trustee (SV) v. Loghmani

#10.00 Status conference re: complaint for revocation of discharge pursuant to 11 U.S.C. sec 727)d)(1)

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 10, 2021.**

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 1, 2021.**

The plaintiff's appearance on December 23, 2020 is excused.

Party Information

Debtor(s):

Mohsen Loghmani	Pro Se
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Defendant(s):

Mohsen Loghmani	Pro Se
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Plaintiff(s):

United States Trustee (SV)	Represented By Katherine Bunker
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Trustee(s):

David Keith Gottlieb (TR)	Represented By Richard A Marshack Laila Masud D Edward Hays
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

1:30 PM

1:19-11569 Guadalupe Villegas

Chapter 7

Adv#: 1:20-01072 Zamora, Chapter 7 Trustee v. Villegas et al

- #11.00** Status conference re: complaint for:
(1) Avoidance of Actual Fraudulent Transfer [11 U.S.C. § 544(b)(1);
Cal. Civ. Code §§ 3439.04, 3439.07, 3439.09];
(2) Avoidance of Constructive Fraudulent Transfer [11 U.S.C. § 544(b)(1);
Cal. Civ. Code §§ 3439.05, 3439.07, 3439.09]; and
(3) Recovery of Avoided Transfer [11 U.S.C. § 550]

fr. 11/4/20; 11/25/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on March 10, 2021**. No later than **February 24, 2021**, the parties must file a joint status report.

Appearances on December 23, 2020 are excused.

Party Information

Debtor(s):

Guadalupe Villegas	Pro Se
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Defendant(s):

Antonio Villegas	Pro Se
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Gabriella Zapata	Pro Se
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Fabian Villegas	Pro Se
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Plaintiff(s):

Nancy J. Zamora, Chapter 7 Trustee	Represented By Jeremy Faith Anna Landa
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

1:30 PM

CONT... Guadalupe Villegas

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Represented By
Noreen A Madoyan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mor et al

- #12.00** Status conference re: amended complaint for:
1. Fraud and Intentional Deceit;
 2. Breach of the Covenant of Good Faith and Fair Dealing;
 3. Agency by Estoppel; and
 4. Financial Elder Abuse

fr. 10/2/19; 11/6/19(stip); 12/4/19; 03/18/20 (stip); 4/15/20(stip);
5/27/20 (stip); 6/24/20; 08/19/20 (stip); 10/21/20 (stip)

Docket 25

Tentative Ruling:

The Court will set the debtor's motion to dismiss the amended complaint [doc. 75] for hearing at **2:30 p.m. on January 20, 2021**. The debtor must file and serve notice of the hearing no later than **December 30, 2020**. The Court also will continue this status conference to the same time and date.

Appearances on December 23, 2020 are excused.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

1:30 PM

CONT... Sharon Mizrahi Chapter 13

GHR Divine Remodeling Pro Se

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
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

1:30 PM

1:19-11748 Larry Antonio Parada

Chapter 7

#13.00 Chapter 7 Trustee's Application to Employ General Bankruptcy Counsel

Docket 56

Tentative Ruling:

Grant.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the chapter 7 trustee will be so notified.

Party Information

Debtor(s):

Larry Antonio Parada

Represented By
Stephen L Burton

Trustee(s):

Amy L Goldman (TR)

Represented By
Maria L Garcia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

1:18-11342 Victory Entertainment Inc

Chapter 7

Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

#14.00 Defendants' motion to dismiss first amended complaint

fr. 12/9/20

Docket 20

Tentative Ruling:

Grant, with leave to amend.

I. BACKGROUND

On May 25, 2018, Victory Entertainment, Inc. ("Debtor") filed a voluntary chapter 11 petition. On September 27, 2018, the Court entered an order converting Debtor's case to a chapter 7 case [Bankruptcy Docket, doc. 108]. Howard M. Ehrenberg was appointed the chapter 7 trustee (the "Trustee").

On May 24, 2020, the Trustee filed a complaint against Hala Enterprises, LLC ("Hala") and Agassi Halajyan (together, "Defendants"). On September 11, 2020, the Trustee filed a first amended complaint (the "FAC") [doc. 16]. In relevant part, the Trustee alleges—

Mr. Halajyan is the cousin of Debtor's former principal, Arshavir Khachikian. Mr. Halajyan also was a corporate officer of Debtor. In 2007, Mr. Halajyan sold, transferred and conveyed Debtor to Mr. Khachikian on terms not publicly disclosed. After the transfer, Mr. Halajyan testified as the "Person Most Knowledgeable" on behalf of Debtor and supplied written discovery responses on behalf of Debtor.

On December 28, 2007, Debtor and Hala entered into a long-term triple net commercial lease (the "Lease") of the real property located at 12147 Victory Boulevard, North Hollywood, CA 91606 (the "Property"). Mr. Halajyan is the registered agent and principal of Hala. The monthly rental payment and annual rent increase provisions in the Lease were in excess of the prevailing market rate for the time and location. The Lease

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT...

Victory Entertainment Inc

Chapter 7

did not contain a "percentage rent" provision that is common in similar industries and businesses. As such, the rent paid to Hala was approximately 27.1% of Debtor's operating venue, equating to \$3.58 per square foot, which is at least two times higher than market rate for other similar businesses. Through the Lease, Debtor also was required to pay property tax, insurance and other costs associated with the Property. The Trustee believes that Mr. Halajyan and Mr. Khachikian agreed that consideration for the acquisition of Debtor would be paid, in part, by utilizing the over market payments from Debtor to Hala.

At the time payments were made to Defendants, Debtor had multiple creditors. The payments made to Defendants could have been used to satisfy these creditors. From 2008 through 2018, Hala received, directly or indirectly, over \$2.4 million from Debtor. In addition, within the year preceding the petition date, Defendants received over \$250,000 from Debtor.

In addition, Hala and Mr. Halajyan are alter egos, such that their creditors dealt with them as one entity and a single economic unit. Hala and Mr. Halajyan operated from the same address, and Hala often paid debts and revenue on behalf of Mr. Halajyan, and vice versa. Hala and Mr. Halajyan also regularly commingled funds.

On these allegations, the Trustee asserts claims for: (A) avoidance of intentional fraudulent transfers under 11 U.S.C. § 548 and California Civil Code ("CCC") § 3439.04(a)(1); (B) avoidance of constructive fraudulent transfer under § 548 and CCC § 3439.04(a)(2); (C) avoidance of preferential transfers under 11 U.S.C. § 547(b); and (D) turnover. The Trustee also alleges alter ego liability.

On October 16, 2020, Defendants filed a motion to dismiss the FAC (the "Motion") [doc. 20]. On November 25, 2020, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 24]. On December 2, 2020, Defendants filed a reply to the Opposition [doc. 26].

II. ANALYSIS

A. General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT...

Victory Entertainment Inc

Chapter 7

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). Under the "incorporation by reference" doctrine, a court may look beyond the four corners of the complaint to take into account documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... **Victory Entertainment Inc**

Chapter 7

2012). The court "may treat the referenced 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.*, quoting *United States v. Richie*, 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. The Trustee's Fifth Claim for Relief for Avoidance of Preferential Transfers

i. Sufficiency of Allegations Related to this Claim

Defendants raise the following issues regarding the adequacy of the Trustee's allegations: (A) first, that the FAC does not include adequate allegations regarding the date or amount of each transfer; (B) second, that the Trustee does not sufficiently allege whether Debtor was insolvent at the time of each transfer; and (C) third, that the Trustee fails to include allegations regarding whether the Trustee brought this action "based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c)." 11 U.S.C. § 547(b).

As to the first issue, the Trustee has made sufficient allegations to meet the plausibility standard of Rule 12(b)(6). Defendants, referencing *In re Caremerica, Inc.*, 409 B.R. 346, 351 (Bankr. E.D.N.C. 2009), assert that the Trustee must specifically allege the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... **Victory Entertainment Inc**

Chapter 7

date and amount of each transfer. In *Caremerica*, the chapter 7 trustee alleged that the debtors made preferential transfers of at least \$7,438.39 within 90 days before the petition date. *Caremerica*, 409 B.R. at 349. The subject complaint did not include additional allegations about the alleged transfers. *Id.*

On those facts, the court held that, under the standard set forth in *Iqbal*, the "pleading standard for claims for relief requires more than a conclusory assertion that transfers occurred within 90 days." *Id.*, at 352. "[T]he trustee must provide factual assertions showing that it is plausible the transfers were made during the 90-day preference period." *Id.* In *Caremerica*, the court suggested that the trustee "can accomplish this by including in his complaint specific dates and amounts of each alleged transfer." *Id.*

The court did not hold that *only* allegations regarding the specific dates and amounts could satisfy the plausibility standard with respect to preferential transfer claims. Instead, the court stated that, in that case, pleading specific dates and amounts would be one way to satisfy Rule 12(b)(6)'s requirements. Here, the Trustee does not plead, in a conclusory fashion, that transfers were made within the 90-day and/or one-year period preceding the petition date. Rather, the Trustee alleges the specific terms of the Lease, which obligated Debtor to pay monthly base rent set at \$32,578 and monthly common area maintenance charges of \$1,100. FAC, ¶ 20. The Trustee further alleges that, by the petition date, Debtor was delinquent in the payment of rent by \$6,000. *Id.* In addition, Defendants themselves request judicial notice of their relief from stay motion, which sets forth a prepetition payment schedule. Request for Judicial Notice [doc. 20], Exhibit 1. These allegations, if accepted "as true and construe[d]...in the light most favorable to the Trustee," indicate that it is plausible Debtor made transfers, within the preferential period, pursuant to the terms of the Lease. *Fayer*, 649 F.3d at 1064.

Nevertheless, the Trustee fails to adequately allege whether Debtor was insolvent during the period between 90 days before the petition date and one year before the petition date. Under 11 U.S.C. § 547(f), "[f]or the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition." Because the presumption only applies to the 90 days preceding the petition date, the Trustee must include allegations regarding Debtor's insolvency for any transfers the Trustee seeks to avoid before this presumptive period. In the FAC, the Trustee alleges that Debtor scheduled certain creditors and faced liability from a prepetition class action lawsuit. FAC, ¶ 37. However, there are no allegations as to whether Debtor was insolvent at the time it faced these liabilities, i.e., whether Debtor did

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... **Victory Entertainment Inc**

Chapter 7

not have sufficient assets to satisfy these debts.

Another issue raised by Defendants is that the Trustee does not include any allegations regarding whether he filed this action "based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c)." 11 U.S.C. § 547(b). The Trustee asserts that this language, which was added to § 547(b) via the Small Business Reorganization Act, only applies to Chapter 11, Subchapter V cases. However, the plain language of § 547(b) does not limit application of this new amendment only to Subchapter V cases. In addition, the July 23, 2019 House Report clarifies Congressional intent—

The bill also includes two provisions, *not limited to small business chapter 11 cases*, pertaining to preferential transfers. In sum, it specifies an additional criterion that a trustee must consider before commencing an action to recover a preferential transfer (i.e., a transfer of property by the debtor made before the filing of the bankruptcy case preferential to a creditor and to the detriment of similarly situated creditors). The first provision would require the trustee to determine whether to exercise such authority based on reasonable due diligence in the circumstances of the case and take into account a party's known or reasonably knowable affirmative defenses.

H.R. REP. 116-171 (emphasis added). The FAC does not include any allegations regarding reasonable due diligence or whether the Trustee considered Defendants' known or reasonably knowable affirmative defenses. Without such allegations, the FAC is deficient as to these new provisions of § 547(b).

With respect to the "known or reasonably knowable affirmative defenses," Defendants assert that their administrative claim serves as a defense pursuant to 11 U.S.C. § 547(c)(4).¹ "To establish a new-value defense under § 547(c)(4) in the Ninth Circuit, [defendants] must show that: (1) it advanced new value to the debtor after the preferential transfer; (2) that the advance of new value was unsecured; and (3) that the advance of new value remains unpaid or, if paid, the payment must also be avoidable." *In re Modtech Holdings, Inc.*, 503 B.R. 737, 745 (Bankr. C.D. Cal. 2013). Pursuant to 11 U.S.C. § 547(a)(2), "new value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... **Victory Entertainment Inc**

Chapter 7

transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation." "Most courts addressing the issue have held that where a debtor is a lessee on an unexpired real property lease, 'new value' is created by the debtor's right to continue a leasehold estate in exchange for the rental payment." *In re PMC Mktg. Corp.*, 518 B.R. 150, 158 (B.A.P. 1st Cir. 2014) (collecting cases) (internal quotation omitted); *see also In re Workboats Nw., Inc.*, 201 B.R. 563, 567 (Bankr. W.D. Wash. 1996) ("[B]y permitting the debtor to remain in possession without paying rent, the landlord extends value that did not exist at the time the lease was executed.").

At this time, a determination by the Court regarding whether the affirmative defense bars or reduces the Trustee's potential recovery is premature. Although the Court may take judicial notice that Defendants filed an administrative claim against the estate, and that Defendants filed a motion for relief from the automatic stay, the Court may not take judicial notice of the facts that would establish the elements of the new value defense. Nevertheless, to plead a claim under § 547(b) properly, the Trustee must include allegations that he filed this action exercising reasonable due diligence and taking into account the known or reasonably knowable affirmative defenses under § 547(c), including, for example, the asserted defense under § 547(c)(4).

ii. *Whether Mr. Halajyan is an "Insider"*

The parties also dispute whether Mr. Halajyan is deemed an "insider" under the Bankruptcy Code. Pursuant to 11 U.S.C. § 101(31)(B), the term "insider" includes, if the debtor is a corporation—

- (i) director of the debtor;
- (ii) officer of the debtor;
- (iii) person in control of the debtor;
- (iv) partnership in which the debtor is a general partner;
- (v) general partner of the debtor; or
- (vi) relative of a general partner, director, officer, or person in control of the debtor....

Under 11 U.S.C. § 101(45), "[t]he term 'relative' means individual related by affinity or consanguinity within the third degree as determined by the common law...."

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... Victory Entertainment Inc

Chapter 7

In the FAC, the Trustee alleges that Mr. Halajyan is Mr. Khachikian's first cousin. Whether a first cousin qualifies as a relative "within the third degree as determined by the common law" appears to be a matter of first impression in the Ninth Circuit.

The Court will take this portion of the parties' dispute under submission. Nevertheless, construing the FAC in the light most favorable to the Trustee, the FAC includes sufficient allegations that Mr. Halajyan is an "insider," even if he is not a "relative." "The use of the word 'includes' [in § 101(31)] is indicative of Congress' intent not to limit the classification of insiders to the statutory definition." *In re Enter. Acquisition Partners, Inc.*, 319 B.R. 626, 631 (B.A.P. 9th Cir. 2004) (internal quotation omitted); see also 11 U.S.C. § 102(3) ("'includes' and 'including' are not limiting"). Courts recognize two types of insiders: "entities specifically mentioned in the statute... i.e., per se insiders;" or "those not listed in the statutory definition, but who have a... sufficiently close relationship with the debtor that... conduct is made subject to closer scrutiny than those dealing at arm's length with the debtor." *Enter. Acquisition*, 319 B.R. at 631 (citing *In re Anderson*, 165 B.R. 482, 485 (Bankr. D. Or. 1994)).

As to the latter type of insider, "[t]he determination is a fact-intensive one, and must be decided on a case-by-case basis." *In re Farson*, 387 B.R.784, 792 (Bankr. D. Idaho 2008). For instance, in *In re Standard Stores, Inc.*, 124 B.R. 318, 325 (Bankr. C.D. Cal. 1991), the court held that the debtor's principal's former brother-in-law was an insider, despite not qualifying as a per se insider under § 101(31)—

It cannot be reasonably disputed that [the insider] had a close relationship with Debtor at the time of Transfer. [The insider] had been Debtor's general manager for years; [the insider] considered [the principal], the president of Debtor, to be "family" although [the principal] was no longer related by affinity; [the insider] had made an unsecured loan of \$25,000 relying strictly upon [the principal's] word, and [the insider] was in the midst of arranging the purchase of a significant portion of Debtor's operations, with the services of Debtor's attorney and several high-ranking employees. [The insider] even borrowed Debtor's dba, "All Automotive Products," in naming the New Corporation. When all these facts are considered, I am impelled to find that [the insider] had the kind of close relationship with Debtor contemplated by Congress.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... **Victory Entertainment Inc**
Standard Stores, 124 B.R. at 325.

Chapter 7

The allegations in the FAC present a similar fact pattern. Like in *Standard Stores*, Mr. Halajyan is alleged to be a former principal of Debtor; in fact, the Trustee alleges Mr. Halajyan previously was Debtor's sole shareholder and officer. FAC, ¶ 16. In addition, the Trustee alleges that, after the transfer of Debtor to Mr. Khachikian, Mr. Halajyan continued to maintain a close relationship with Debtor, such as by testifying as Debtor's "Person Most Knowledgeable" "in a deposition taken in the pre-petition Salazar Class Action against [Debtor], on August 10, 2012" and supplying "all of the information that was provided on behalf of [Debtor] in its written discovery responses in the Salazar Class Action against" Debtor. *Id.* At this pleading stage, the Court must "construe the pleadings in the light most favorable to the" Trustee. *Fayer*, 649 F.3d at 1064. As such, these allegations, paired with the allegation that Mr. Halajyan is Mr. Khachikian's first cousin, are sufficient for purposes of Rule 12(b)(6).

C. The Trustee's First, Second, Third and Fourth Claims for Avoidance of Fraudulent Transfers

i. The Statute of Limitations

The parties dispute whether the statute of limitations is calculated from the date of execution of the Lease, or if each payment under the Lease qualifies as a separate transfer triggering its own limitations period. In discussing this issue, the parties primarily reference *In re Upstairs Gallery, Inc.*, 167 B.R. 915 (B.A.P. 9th Cir. 1994), and *In re Pan Trading Corp.*, 125 B.R. 869 (Bankr. S.D.N.Y. 1991). While these cases are relevant to a determination regarding when an obligation was incurred, they do not provide a complete picture for purposes of 11 U.S.C. § 548 or California's Uniform Fraudulent Transfer Act ("CUFTA"). Both *Upstairs Gallery* and *Pan Trading* involve a determination regarding when an antecedent debt was incurred for purposes of § 547(b), the preferential transfer statute. *See Upstairs Gallery*, 167 B.R. at 917 ("Only the second element, whether the transfer was for or on account of an antecedent debt under subsection (b)(2), is at issue in the instant appeal."); *and Pan Trading*, 125 B.R. at 875 ("HPD contends only that the Trustee failed to prove that the transfer satisfied Code § 547(b)(2), which requires that the transfer be 'for or on account of an antecedent debt owed by the debtor before such transfer was made.'). However, 11 U.S.C. § 548(a) and CUFTA allow for avoidance of transfers *as well as* incurred obligations. [FN2].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... Victory Entertainment Inc

Chapter 7

Under 11 U.S.C. § 548(a)(1), a "trustee may avoid any transfer... of an interest of the debtor in property, *or* any obligation... incurred by the debtor..." (emphasis added). Similarly, under CCC § 3439.04(a), a plaintiff may avoid a "transfer made *or* obligation incurred by a debtor..." (emphasis added). Thus, both statutes draw a distinction between "transfers" and "incurred obligations." In addition, both the Bankruptcy Code and CUFTA broadly define "transfer." Under 11 U.S.C. § 101(54), the term "transfer" means, among other things, "each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with... property or... an interest in property." Likewise, under CCC § 3439.01(m), "transfer" means "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance."

A similar argument was addressed by the court in *In re Omega Door Co., Inc.*, 399 B.R. 295, 303 (B.A.P. 6th Cir. 2009). There, a trustee sought to recover, as fraudulent transfers, payments on a note made by the debtor to the transferees during the four years preceding the debtor's bankruptcy case. *Omega Door*, 399 B.R. at 297. After evaluating cross-motions for summary judgment, the bankruptcy court held that the trustee could not recover any payments made under the note because the note was executed over four years before the petition date. *Id.* Specifically, the court concluded that the "installment payments represent an obligation 'incurred' by the... debtor on the [execution of the original agreement], and, therefore, the respective statutes of limitations bar the state and federal fraudulent transfer actions." *Id.*, at 300. On appeal, the Bankruptcy Appellate Panel for the Sixth Circuit (the "6th Cir. BAP") disagreed. *Id.*, at 298.

It is a "settled rule that a statute must, if possible, be construed in such fashion that every word has some operative effect." *United States v. Nordic Village, Inc.*, 503 U.S. 30, 36, 112 S.Ct. 1011, 1015, 117 L.Ed.2d 181 (1992). The Panel must therefore give "operative effect" to the word "or" in the applicable statutes. The bankruptcy court focused on the *obligation* that [the debtor] incurred in 1999. However, Ohio Revised Code § 1336.04 states that "[a] transfer made *or* an obligation incurred by a debtor is fraudulent..." (Emphasis added.) The Ohio statute is not restricted only to an obligation incurred. Likewise, 11 U.S.C. § 548(a)(1) is not restricted to an obligation incurred; it also allows the trustee to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT...

Victory Entertainment Inc

Chapter 7

avoid transfers *or* obligations. "Although sections 544 and 548 of the Bankruptcy Code authorize the trustee to avoid a transfer or an obligation, section 102(5) negates any implication that the trustee may not avoid both a transfer that secures or is otherwise related to an obligation and the obligation itself." Gerald K. Smith & Frank R. Kennedy, *Symposium on Bankruptcy: The Trustee's Avoiding Powers: Fraudulent Transfers and Obligations: Issues of Current Interest*, 43 S.C. L.Rev. 709, 717 (1992). The word "or" is not exclusive when used in the Bankruptcy Code. 11 U.S.C. § 102(5).

Id., at 303. The 6th Cir. BAP also assessed the definition of "transfer" under Ohio law and the Bankruptcy Code, holding that the definitions are "very broad" and "not limited to incurring an obligation." *Id.* [FN3]. Under these definitions, the 6th Cir. BAP held that "without question, 'transfer' includes both incurring an obligation and any payments on any obligation." *Id.*, at 304.

The Eleventh Circuit Court of Appeals, in assessing New Jersey law, reached the same conclusion where the plaintiff had asserted two separate claims for avoidance of fraudulent transfer: one to avoid the obligation incurred by the debtor, and another to avoid the transfers made pursuant to that obligation—

Moreover, even if ATN's obligation arose on December 23, 1998, its claims still would not be barred by the statute of limitations. As the bankruptcy court recognized, an "odd quirk" of New Jersey law "allows a party to allege constructive fraud to avoid *both* a 'transfer' and an 'obligation.' Because of this duality, ATN has alleged two counts for each type of fraudulent transfer claim. One count asserts that the 'transfer' is avoidable. The second count asserts the 'obligation' is avoidable." Bankr.Ct. Order at 2, 321 B.R. 308, 316; *see N.J. Stat. Ann.* § 25:2–27(b). The bankruptcy court erred, however, by dismissing *all* of ATN's claims—half of which seek to avoid the *transfer*—based on the incorrect calculation of the date when ATN's *obligation* to pay the Allens arose.

In re Advanced Telecomm. Network, Inc., 490 F.3d 1325, 1332 (11th Cir. 2007).

Because both § 548(a)(1) and California law provide for avoidance of incurred

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... **Victory Entertainment Inc**

Chapter 7

obligations *or* transfers, the allegation that the Lease was executed outside the limitations period does not prevent the Trustee from avoiding transfers made under the Lease, if such transfers were made within the applicable period. In addition, although there are no cases analyzing this particular issue under California law, California law strengthens the conclusion that the Trustee may avoid individual transfers under the Lease that are not time barred, even if the Trustee is barred from avoiding the Lease altogether.

"It is settled in California that periodic monthly rental payments called for by a lease agreement create severable contractual obligations where the duty to make each rental payment arises independently and the statute begins to run on such severable obligations from the time performance of *each* is due." *Tsemetzin v. Coast Fed. Sav. & Loan Assn.*, 57 Cal.App.4th 1334, 1344 (Ct. App. 1997) (emphasis in original). As explained by the Supreme Court of California—

Generally speaking, continuous accrual applies whenever there is a continuing or recurring obligation: "When an obligation or liability arises on a recurring basis, a cause of action accrues each time a wrongful act occurs, triggering a new limitations period." (*Hogar Dulce Hogar v. Community Development Commission* (2003) 110 Cal.App.4th 1288, 1295, 2 Cal.Rptr.3d 497.) Because each new breach of such an obligation provides all the elements of a claim—wrongdoing, harm, and causation (*Poosh v. Philip Morris USA, Inc.*, *supra*, 51 Cal.4th at p. 797, 123 Cal.Rptr.3d 578, 250 P.3d 181)—each may be treated as an independently actionable wrong with its own time limit for recovery.

Aryeh v. Canon Bus. Sols., Inc., 55 Cal.4th 1185, 1199 (2013). "The theory is a response to the inequities that would arise if the expiration of the limitations period following a first breach of duty or instance of misconduct were treated as sufficient to bar suit for any subsequent breach or misconduct; parties engaged in long-standing misfeasance would thereby obtain immunity in perpetuity from suit even for recent and ongoing misfeasance.... To address these concerns, we have long settled that separate, recurring invasions of the same right can each trigger their own statute of limitations." *Id.*, at 1198.

Although these cases are not in the context of fraudulent transfer litigation, California courts have clarified that the continuous accrual doctrine has broad application—

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT...

Victory Entertainment Inc

Chapter 7

Based upon our review of legal precedent and our understanding of the principles and policies of the continuous accrual theory, we conclude that the theory is not limited in its application to cases in which a payor has acted "wrongfully" in the sense of failing or refusing to make a periodic payment to a payee. There is no logical reason, founded in law or policy, to hold, for example, that a payor who has made excessive periodic payments—or other periodic payments to which the payee is not legally entitled—over an extended time may not bring an action as to specific periodic payments for which the statute of limitations has not run. (Cf. *Aryeh*, *supra*, 55 Cal.4th at p. 1200, 151 Cal.Rptr.3d 827, 292 P.3d 871 [payor-lessee challenging allegedly fraudulent practice of lessor-payee in excessive periodic billings in equipment lease]; *Howard Jarvis Taxpayers*, *supra*, 25 Cal.4th 809, 107 Cal.Rptr.2d 369, 23 P.3d 601 [payor-taxpayer challenging legality of monthly imposition of municipal taxes not time-barred as to periodic payments for which statute of limitations has not run].)

Blaser v. State Teachers' Ret. Sys., 37 Cal.App.5th 349, 372 (Ct. App. 2019); *see also Aryeh*, 55 Cal.4th at 1200 ("To determine whether the continuous accrual doctrine applies... we look not to the claim's label... but to the nature of the obligation allegedly breached.").

In light of these authorities, California law provides additional support for the conclusion that each payment under the Lease triggers a new statute of limitations period. As such, even if the Court assesses the payments as incurred obligations instead of transfers, California law views each payment as a separate obligation that arises each time a monthly payment comes due.

Thus, the Trustee is not barred from recovering transfers that are within the limitations period. As with the federal authorities above, such as *Omega Door*, this California law "supports recovery only for damages arising from those breaches falling within the limitations period." *Aryeh*, 55 Cal.4th at 1199. Although the Trustee may not recover transfers outside the limitations period, the Trustee's fraudulent transfer claims are not otherwise time barred.

ii. Whether the Trustee May Step into the Shoes of the Internal Revenue Service

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... Victory Entertainment Inc

Chapter 7

The Trustee asserts that he may step into the shoes of the Internal Revenue Service (the "IRS") to take advantage of the ten year statute of limitations set forth in 26 U.S.C. § 6502(a). In *In re CVAH, Inc.*, 570 B.R. 816, 834 (Bankr. D. Idaho 2017), the court collected cases regarding whether a bankruptcy trustee may step into the shoes of the IRS to avoid transfers, finding that a vast majority of cases held that a trustee may do so—

There are no case decisions that bind the Court on this issue. But a clear majority of courts that have considered the question have held that when a bankruptcy trustee steps into the shoes of IRS under § 544(b)(1), the trustee is likewise immune to the time limits in state statutes, just as IRS would be. Notably, it appears only one court has come to a different conclusion: *Vaughan Co. v. Ultima Homes, Inc. (In re Vaughan Co.)*, 498 B.R. 297 (Bankr. D. N.M. 2013). And since that decision was made, at least two other courts have disagreed with its reasoning, and have joined the majority. *In re Kaiser*, 525 B.R. at 709–14; *In re Kipnis*, 555 B.R. at 881–83. Having considered this case law, for the reasons that follow, this Court declines to follow *Vaughan*, and holds that Trustee, standing in the shoes of IRS, is immune from the Idaho four-year extinguishment period for fraudulent transfers in this case.

CVAH, 570 B.R. at 834. Although the Court agrees with the majority regarding the notion that, under 11 U.S.C. § 544(b)(1), a bankruptcy trustee may step into the shoes of the IRS, the Trustee misconstrues § 544(b)(1).

Under § 544(b)(1), 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 that is allowable under section 502 of this title...." (emphasis added).

By its terms, Section 544(b)(1) *requires the existence of an actual creditor who could avoid the transfer*. In other words, the effect of this section is to clothe the trustee with no new or additional right in the premises over that possessed by a creditor, but simply puts him in the shoes of the latter. If the actual creditor could not succeed for any reason—whether due to the statute of limitations, estoppel, *res judicata*, waiver, or any other defense—then the trustee is similarly barred and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... **Victory Entertainment Inc**
cannot avoid the transfer.

Chapter 7

In re DBSI, Inc., 869 F.3d 1004, 1009 (9th Cir. 2017) (internal quotations omitted) (emphasis added); *see also In re Acequia, Inc.*, 34 F.3d 800, 809 (9th Cir. 1994) ("[T]he trustee is chained to the rights of creditors when invoking section 544(b)."). "[T]he existence of a section 544(b) cause of action depends upon whether a creditor existing at the time the transfers were made still had a viable claim against the debtor *at the time the bankruptcy petition was filed.*" *Acequia*, 34 F.3d at 807 (emphasis in original) (internal quotations omitted).

In *In re Kipnis*, 555 B.R. 877, 881 (Bankr. S.D. Fla. 2016), the case relied on by the Trustee, the court allowed the trustee to step into the shoes of the IRS because the IRS was an actual unsecured creditor of that estate—

The IRS is a creditor holding an unsecured claim allowable under § 502 and, on the filing date of this bankruptcy case, the IRS could have timely filed a complaint to avoid the Bank Account Transfer and the Condominium Transfer under applicable Florida fraudulent transfer law. Therefore, the Trustee, pursuant to § 544(b), can now step into the shoes of the IRS to avoid these transfers.

Kipnis, 555 B.R. at 881.

Here, the FAC is devoid of allegations that the IRS is an actual creditor of Debtor's estate. In addition, the Court may take judicial notice of the fact that the IRS has not filed a proof of claim and that the IRS is not a creditor identified in Debtor's schedules. In the Opposition, the Trustee asserts that "Debtor's counsel represented in the U.S. Trustee Reporting Compliance Cover Sheets that the Debtor's last filed tax return was for the year 2016" and that "there is no evidence that the Debtor ever filed its 2017 or 2018 tax return...." Opposition, p. 23. However, in connection with a motion under Rule 12(b)(6), the Court may not consider evidence, and such facts are not subject to judicial notice. There being no allegations regarding the IRS in the FAC, and the Court taking judicial notice of the facts that the IRS has not filed a proof of claim and is not a scheduled creditor, the Trustee cannot currently rely on 26 U.S.C. § 6502.

iii. Sufficiency of Allegations

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... **Victory Entertainment Inc**

Chapter 7

For the same reasons discussed above, the Trustee has not included sufficient allegations regarding whether Debtor was insolvent at the time of the relevant transfers. Although the Trustee must amend to include this information, Defendants' remaining arguments under *In re Blast Fitness Grp., LLC*, 2020 WL 584100, at *5 (Bankr. D. Mass. Feb. 5, 2020), are unpersuasive. There, the plaintiff asserted a similar theory, arguing that inflated rent paid to a landlord constituted a fraudulent transfer. *Blast Fitness*, 2020 WL 584100 at *5. The court found the complaint lacking, stating—

Other than the amount of the monthly rental payment made by BFG to Cape Jewel at some point in time (\$45,000), the complaint contains no allegations concerning why the rental rate should be considered inflated, market rates for comparable space, the dates or total amounts of rent payments made by BFG, the date or terms of any lease between the BFG affiliate and Cape Jewel, the number of other tenants in the building or the monthly rent they were charged, or the amount of space leased by the BFG affiliate or any other tenants. The trustee alleges only that the monthly rent of \$45,000 was "inflated." I am unable to draw a reasonable inference that BFG did not receive reasonably equivalent value in exchange for lease payments. The allegations concerning inflated rent are conclusory and do not rise above the level of speculation for purposes of fraudulent transfer claims in counts III and IV.

Id.

The FAC does not present the same concerns. Here, the Trustee makes detailed allegations regarding his contention that the amounts paid to Defendants were excessive. *See* FAC, ¶¶ 17-28. The FAC includes several allegations regarding industry standards related to similar leases for adult clubs, such as paying percentage rent, market values based on the nature of the property and rates based on similar clubs in comparable locations. Unlike *Blast Fitness*, the Trustee also makes numerous allegations about the terms of the Lease. Defendants' argument that the Trustee's identified comparable locations are not similar to Debtor's business or location veers into the realm of an evidentiary dispute. These contentions may be raised when evidence is properly before the Court.

D. The Trustee's Sixth and Eighth Claims

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... **Victory Entertainment Inc**

Chapter 7

The Trustee's Sixth and Eighth Claims are dependent on whether the Trustee may avoid transfers as preferential or fraudulent. Assuming the Trustee successfully amends the FAC, the Trustee also may proceed on his claims for preservation of transfers and turnover.

E. The Trustee's Seventh Claim

To invoke alter ego liability "two elements must be alleged: '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 the shareholder 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.'" *Gerritsen v. Warner Bros. Entm't Inc.*, 116 F.Supp.3d 1104, 1136 (C.D. Cal. 2015) (quoting *Sonora Diamond Corp. v. Superior Court*, 83 Cal.App.4th 523, 526 (Ct. App. 2000)). As noted by Defendants, "[c]onclusory allegations of 'alter ego' status are insufficient to state a claim. Rather, a plaintiff must allege specific facts supporting both of the necessary elements." *Gerritsen*, 116 F.Supp.3d at 1136.

Defendants contend that the Trustee's allegations are conclusory. However, the Trustee alleges facts beyond the two elements of alter ego liability. Aside from allegations repeating the two elements above, the Trustee alleges: (A) creditors dealt with Defendants as a single economic unit; (B) Defendants operated from the same address; (C) Hala often paid debts and received revenue on behalf of Mr. Halajyan; (D) Defendants regularly commingled funds; (E) Mr. Halajyan received payments owed to Hala; (F) Mr. Halajyan is the sole officer, managing principal and managing member of Hala; and (G) Defendants' assets are intertwined. FAC, ¶¶ 99-101, 104-05. These allegations are not merely conclusory, and sufficiently allege alter ego liability.

Defendants are correct that "there is no such thing as a substantive alter ego claim...." *Ahcom, Ltd. v. Smeding*, 623 F.3d 1248, 1251 (9th Cir. 2010). However, the Trustee is not seeking a standalone claim of alter ego. Instead, through his alter ego allegations, the Trustee seeks to impose liability on both Defendants as to the Trustee's other, substantive claims. Although the Trustee identifies alter ego as a separate claim, this defect may be cured with an amendment moving the alter ego allegations to the general allegations portion of the FAC, instead of alleging the facts as a separate claim.

III. CONCLUSION

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... Victory Entertainment Inc

Chapter 7

The Court will take the following issue under submission: whether, under 11 U.S.C. § 101(45), first cousins are "related by... consanguinity within the third degree as determined by the common law." Otherwise, the Court will dismiss the FAC with leave to amend. If the Trustee elects to amend the FAC, the Trustee must file an amended complaint no later than **January 15, 2021**.

Defendants must submit an order within seven (7) days.

FOOTNOTES

1. 11 U.S.C. § 101(34) is now 11 U.S.C. § 101(45).
2. Similarly, Defendants' citations to *In re Markair, Inc.*, 240 B.R. 581 (Bankr. D. Alaska 1999), and *In re Futoran*, 76 F.3d 265 (9th Cir. 1996), involve an analysis of when an antecedent debt is incurred for purposes of § 547(b), not whether recurring payments qualify as "transfers" for purposes of § 548(a). In addition, *Upstairs Gallery*, *Pan Trading*, *Markair* and *Futoran* do not include a discussion of CUFTA or California law.
3. The definition of "transfer" under Ohio law largely mirrors the definition of "transfer" under California law. Pursuant to Ohio law, a "transfer" is "every direct or indirect, absolute or conditional, and voluntary or involuntary method of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance." Ohio Rev. Code § 1336.01(L); *see also* CCC § 3439.01(m).

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By
George J Paukert
Lewis R Landau

Defendant(s):

HALA Enterprises, LLC

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT... Victory Entertainment Inc

Chapter 7

David L Oberg
Madison B Oberg

Agassi Halajyan, an Individual

Represented By
David L Oberg
Madison B Oberg

Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Elissa Miller
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

1:18-11342 Victory Entertainment Inc

Chapter 7

Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

- #15.00** Status conference re: complaint for:
- 1) Avoidance and recovery of fraudulent transfers pursuant to Title 11 U.S.C. sec 544(a) and (b), 548 and 550; Title 26 U.S.C. sec 6502(a) and Cal. Civ. Code sec 3439.04 3439.07 and 3439.09;
 - 2) Avoidance and recovery of preferential transfer pursuant to Title 11 U.S.C. sec 547 and 550;
 - 3) Preservation of avoided transfers pursuant to Title 11 U.S.c sec 551;
 - 4) Declaratory relief re alter ego liability; and
 - 5) Turnover of property

fr. 7/29/20; 08/26/20; 11/4/20; 12/9/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By
George J Paukert
Lewis R Landau

Defendant(s):

HALA Enterprises, LLC

Pro Se

Agassi Halajyan, an Individual

Pro Se

Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, December 23, 2020

Hearing Room 301

2:30 PM

CONT...

Victory Entertainment Inc

Elissa Miller
Paul A Beck

Chapter 7