

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

Wednesday, January 6, 2021

Hearing Room 301

1:30 PM

1:20-10678 John Michael Smith, Jr
Adv#: 1:20-01111 Smith v. Strigari

Chapter 11

#1.00 Status conference re complaint

Docket 1

***** VACATED *** REASON: Hearing rescheduled for 1/13/21 at 1:30 PM.**

Party Information

Debtor(s):

John Michael Smith Jr

Represented By
Louis J Esbin

Defendant(s):

Louis F Strigari

Pro Se

Joint Debtor(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

Plaintiff(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, January 12, 2021

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 12, 2021

Hearing Room 301

10:30 AM

1:15-12261 Jesus Leon and Victoria Cabrales

Chapter 13

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

fr. 10/6/20; 12/8/20

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, January 12, 2021

Hearing Room 301

10:30 AM

1:16-12389 David A Neporent

Chapter 13

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

fr. 10/6/20; 12/8/20

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, January 12, 2021

Hearing Room 301

10:30 AM

1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

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

fr. 11/10/20

Docket 111

***** VACATED *** REASON: voluntary dismissal filed by chapter 13 trustee on 1/11/21 doc [121]**

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, January 12, 2021

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

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

fr. 10/6/20; 11/10/20

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, January 12, 2021

Hearing Room 301

10:30 AM

1:17-13313 Pedro Mejia Lopez

Chapter 13

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

fr. 10/6/20; 12/8/20

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, January 12, 2021

Hearing Room 301

10:30 AM

1:18-11504 Juan Pedro Torres

Chapter 13

#21.00 Trustee's motion to dismiss 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, January 12, 2021

Hearing Room 301

10:30 AM

1:18-12232 Faun Thai

Chapter 13

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

fr. 12/8/20

Docket 46

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Faun Thai

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, January 12, 2021

Hearing Room 301

10:30 AM

1:19-11311 Carrol Sue Finister

Chapter 13

#23.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 12/8/20

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carrol Sue Finister

Represented By
Julie J Villalobos

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, January 12, 2021

Hearing Room 301

10:30 AM

1:19-12523 John Jairo Barrios

Chapter 13

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

Docket 67

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
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Tuesday, January 12, 2021

Hearing Room 301

10:30 AM

1:19-12931 Tiffany Nicole Merlo

Chapter 13

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

Docket 36

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tiffany Nicole Merlo

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 12, 2021

Hearing Room 301

10:30 AM

1:19-12961 Andre Robert Janian

Chapter 13

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

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andre Robert Janian

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 12, 2021

Hearing Room 301

10:30 AM

1:20-10619 Reginald Vergial Liddell

Chapter 13

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

Docket 40

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Reginald Vergial Liddell

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, January 12, 2021

Hearing Room 301

10:30 AM

1:20-10831 Sixto Castillo

Chapter 13

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

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sixto Castillo

Represented By
Arlene M Tokarz

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Tuesday, January 12, 2021

Hearing Room 301

10:30 AM

1:17-10266 Cindy Park

Chapter 13

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

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Tuesday, January 12, 2021

Hearing Room 301

10:30 AM

1:17-10713 Rosalyn Obidos Bernardo

Chapter 13

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

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosalyn Obidos Bernardo

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, January 12, 2021

Hearing Room 301

10:30 AM

1:17-13039 Benjawan Rachapaetayakom

Chapter 13

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

Docket 133

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 12, 2021

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#30.00 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; 09/08/20;

Docket 64

***** VACATED *** REASON: Hearing continued to 2/9/21 at 11:00 AM per Order. [Dkt. No. 273]**

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, January 12, 2021

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#31.00 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; 09/08/20;

Docket 174

***** VACATED *** REASON: Order ent. continuing hrg to 3/3/21 at 2:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, January 12, 2021

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#32.00 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; 09/08/20;

Docket 70

***** VACATED *** REASON: Hearing continued to 2/9/21 at 11:00 AM per Order. [Dkt. No. 273]**

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, January 12, 2021

Hearing Room 301

11:00 AM

1:20-10935 Jose Edmundo Gamez

Chapter 13

#33.00 Debtor's objection to proof of claim filed by Wels Fargo Bank, N.A.

fr. 12/8/20

Docket 30

***** VACATED *****

Tentative Ruling:

- NONE LISTED -

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, January 12, 2021

Hearing Room 301

11:00 AM

1:20-11369 Mitchell S. Cohen

Chapter 13

#34.00 Application of attorney for debtor for additional fees and related expenses in a pending chapter 13 case subject to a rights and responsibilities agreement (Fee: \$765.00, Expenses: \$209.53)

Docket 29

***** VACATED *** REASON: Order entered 1/7/21. [Dkt. 49]**

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, January 12, 2021

Hearing Room 301

11:00 AM

1:20-11369 Mitchell S. Cohen

Chapter 13

#35.00 Application of attorney for debtor for additional fees and related expenses in a pending chapter 13 case subject to a rights and responsibilities agreement (Fee: \$1,715.00, Expenses: \$12.93)

Docket 32

***** VACATED *** REASON: Order entered 1/7/21.[Dkt.50]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mitchell S. Cohen

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, January 13, 2021

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); 12/15/20

Docket 62

*** VACATED *** REASON: continued to 2/10/21 at 9:30 a.m. per order
entered on 1/8/21 doc [88]

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, January 13, 2021

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; 10/21/20(stip); 11/25/20

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, January 13, 2021

Hearing Room 301

9:30 AM

1:20-11992 Igor Vitte

Chapter 13

#3.00 Motion for relief from stay [RP]

HMC ASSETS, LLC
VS
DEBTOR

fr. 12/23/20

Docket 19

Tentative Ruling:

For the reasons discussed below, the Court will grant movant relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (4).

I. BACKGROUND

On November 6, 2020, Igor Vitte ("Debtor") filed a chapter 13 petition, initiating this case. More than a decade ago, on June 5, 2010, Debtor previously had filed a voluntary chapter 13 petition, commencing Case No. 1:10-bk-16772. Debtor subsequently converted that case to one under chapter 7. In that case, in December 2010, Debtor received a discharge.

In the schedules filed in his earlier bankruptcy case, Debtor listed an interest in a condominium located at 16022 Moorpark Street, Unit 204, Encino, California. Debtor did not list an interest in any other real property.

A. The Subject Property and the Related Secured Debt

In his schedule A/B filed in this chapter 13 case, Debtor lists an interest in residential real property located at 4613 Conchita Way, Tarzana, CA 91356 (the "Tarzana Property"). In his chapter 13 petition, although he provides a different *mailing* address, *i.e.*, 360 S. Elm Dr., Apt. 1, Beverly Hills CA 90212 (the "Beverly Hills Property"), Debtor represents that he lives in the Tarzana Property. In his Statement of Financial Affairs, Debtor represents that he lived in the Beverly Hills Property from January 2015 through January 2018.

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9:30 AM

CONT... Igor Vitte

Chapter 13

In Debtor's schedule A/B, Debtor states that the Tarzana Property has a value of \$1.8 million. *Id.* In his schedule D, Debtor represents that there are no creditors with claims secured by his property. In his schedule E/F, Debtor lists aggregate nonpriority unsecured claims in the amount of \$79,041.00.

On February 27, 2020, Vittola RE, LLC ("Vittola") executed a promissory note (the "Note") in the principal sum of \$1,812,800.00, payable to Civic Financial Services, LLC. *Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362* (the "Motion"), doc. 19, Exh. B. Mikayel Astoyan, identified as a member of Vittola, is the signatory on the Note. The Note is secured by a deed of trust, encumbering the Tarzana Property. *Id.*, at p. 18.

On March 18, 2020, Civic Financial Services, LLC recorded an assignment of deed of trust, transferring its interest in the Tarzana Property to Civic Holdings III Trust ("Civic"). Motion, Exh. C. On July 9, 2020, Civic had a notice of default recorded. On October 13, 2020, Civic had a notice of sale recorded, which set a foreclosure sale of the Tarzana Property for November 9, 2020. Real Property Declaration, doc. 19, ¶ 9.

On October 30, 2020, Vittola recorded a grant deed, transferring its interest in the Tarzana Property to Debtor. Motion, Exh. E. Approximately one week later, on November 6, 2020, and three days before the scheduled foreclosure sale, Debtor filed a chapter 13 petition, commencing this case.

B. Debtor's Net Monthly Income and Chapter 13 Plan

In his schedule I, Debtor states that he is not employed. Debtor lists his monthly income as \$4,074.00, as a result of Social Security income and disability insurance. Debtor lists his non-filing spouse's monthly income as \$1,764.00; in his schedule I, Debtor does not provide his non-filing spouse's employment information. Based on his schedule I, Debtor's total household income is \$5,685.45.

In his schedule J, Debtor lists aggregate monthly expenses of \$5,385.00, resulting in net monthly income of \$300.42. *Id.* Debtor's schedule J does not provide for post-petition deed of trust payments for the Tarzana Property, nor any home ownership expenses for his alleged residence, *i.e.*, the Tarzana Property.

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CONT...

Igor Vitte

Chapter 13

In his Statement of Financial Affairs, Debtor represents that he is, or was, a member of two LLCs, including Vittola. In contrast, in his schedule B, Debtor does set forth an interest in any LLCs.

On November 6, 2020, Debtor filed a chapter 13 plan, which proposes to pay \$300.00 per month for sixty months (the "Plan"). The only claims for which the Plan provides payment are nonpriority unsecured claims. The Plan does not provide for any deed of trust payments.

C. The Motion

On December 4, 2020, HMC Assets, LLC ("Movant"), administrator of Civic, filed the Motion. In the Motion, Movant states that Debtor has no equity in the Tarzana Property, given that Debtor has valued the Tarzana Property at \$1.8 million and Civic's prepetition claim exceeds \$2 million. Movant also represents that eight deed of trust payments, in the amount of \$105,746.64, have not been made. Movant requests relief based on 11 U.S.C. § 362(d)(1) and (4).

On December 21, 2020, Debtor filed a response to the Motion (the "Response") [doc. 22]. In the Response, Debtor states that he is the 100% owner and shareholder of Vittola (although Debtor did not set forth his interest in Vittola in his schedule B). Debtor further avers that he filed his chapter 13 case in good faith, and that Debtor intends to market and sell the Tarzana Property. Debtor states that he has consulted with a real estate agent and that he "will be *listing* the [Tarzana Property] for \$2,888,000.00." Declaration of Igor Vitte, doc. 22, ¶ 4 (emphasis added).

II. DISCUSSION

A. 11 U.S.C. § 362(d)(1)

Section 362(d)(1) provides that a "court shall grant relief from stay . . . (1) for cause, including the lack of adequate protection of an interest in property of such party in interest[.]" 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' has no clear definition and is determined on a case-by-case basis." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990).

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Igor Vitte

Chapter 13

"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*, 448 B.R. 325, 331 (Bankr. N.D. Miss. 2013) (citing *Matter of Little Creek Development Co.*, 779 F.2d 1068, 1072 (5th Cir. 1986). "In determining whether there is bad faith sufficient to dismiss the case or lift the stay, the court must analyze whether the debtor and its principal have played by the rules; have met their obligations under the Bankruptcy Code; and have done equity when invoking the equitable protections the Bankruptcy Code provides." *In re Project Orange Associates, LLC*, 432 B.R. 89, 113 (Bankr. S.D.N.Y. 2010) (internal citations and quotation marks omitted).

The Court will grant relief under 11 U.S.C. § 362(d)(1). In the Response, Debtor avers that he will list the Tarzana Property for sale at \$2,888,000.00; however, the propriety of this listing price is not supported by an appraisal report and declaration regarding the fair market value of the Tarzana Property. In his schedule D, Debtor lists the Tarzana Property, his alleged residence, as having a value in the amount of \$1.8 million.

Moreover, in his schedule I, Debtor does not provide for any payment of the debt encumbering the Tarzana Property. Debtor similarly does not provide for any payment of that debt in the Plan.

Given the many missed deed of trust payments for the Tarzana Property, Debtor's failure to provide for post-petition deed of trust payments for the Tarzana Property in his schedule I and the Plan, the transfer of the Tarzana Property from Vittola to Debtor in October 2020, and Debtor's filing of his chapter 13 petition shortly thereafter, and three days before a scheduled foreclosure sale of the Tarzana Property, the Court finds that Debtor did not file his chapter 13 petition in good faith. Debtor's failure to file his chapter 13 petition in good faith constitutes cause to grant Movant relief from the automatic stay.

B. 11 U.S.C. § 362(d)(4)

Section 362(d)(4) provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

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CONT...

Igor Vitte

Chapter 13

...

(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.

Section 362(d)(4) "permits the bankruptcy court to grant in rem relief from the automatic stay in order to address schemes using bankruptcy to thwart legitimate foreclosure efforts through one or more transfers of interest in real property" *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870 (9th Cir. B.A.P. 2012). "[A] creditor seeking relief from the stay in a bankruptcy case pursuant to § 362(d)(4) must prove that (1) the debtor engaged in a scheme, (2) to delay, hinder or defraud the creditor, and (3) which involved either the transfer of property without the creditor's consent or court approve or multiple filings." *In re Alakozai*, 499 B.R. 698, 698 (9th Cir. B.A.P. 2013). For the court to grant relief, "it must affirmatively find that the three elements above are present." *First Yorkshire*, 470 B.R. at 870.

Debtor's filing of a previous bankruptcy case does not support granting the Motion under 11 U.S.C. § 362(d)(4). Debtor's prior bankruptcy case, filed more

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CONT...

Igor Vitte

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than a decade ago, did not impact the Tarzana Property.

However, the Court concludes that Debtor's filing of the petition in this pending chapter 13 case was part of scheme to delay, hinder, or defraud creditors that involved transferring the Tarzana Property without the consent of the secured creditor. On October 30, 2020, Vittola transferred its interest in the Tarzana Property to Debtor. Motion, Exh. E. Shortly thereafter, and three days before the scheduled foreclosure sale of the Tarzana Property, Debtor filed this case, apparently to forestall the foreclosure sale. In the Plan, Debtor has not provided for any payments to be made to Civic, and Debtor disingenuously intends to list the Tarzana Property for sale at a highly inflated value, compared with the value Debtor set forth for his interest in the Tarzana Property in his schedule A/B.

III. CONCLUSION

The Court will grant relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (4).

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

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

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

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

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

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Party Information

Debtor(s):

Igor Vitte

Represented By
Elena Steers

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-11648 Maryam Sheik

Chapter 11

#4.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 10/07/20; 10/21/20; 11/18/20

Docket 123

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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1:20-11850 Mariyan Khosravizadeh

Chapter 7

#5.00 Amended motion for relief from stay [AN]

AMIR SOLEIMANIAN, SOLEIMANIAN PARTNERS,
AND KAM, LP
VS
DEBTOR

Docket 35

Tentative Ruling:

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

Movants 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.

Movants may proceed against the defendants in the nonbankruptcy action.

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

Any other request for relief is denied.

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

Party Information

Debtor(s):

Mariyan Khosravizadeh

Represented By
Stephen L Burton

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CONT... Mariyan Khosravizadeh

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Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:20-11850 Mariyan Khosravizadeh

Chapter 7

#6.00 Amended motion for relief from stay [AN]

KAM, LP
VS
DEBTOR

Docket 36

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 defendants in the nonbankruptcy action.

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

Any other request for relief is denied.

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

Party Information

Debtor(s):

Mariyan Khosravizadeh

Represented By
Stephen L Burton

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:20-11134 Helping Others International, LLC

Chapter 7

#7.00 Motion for relief from stay [AN]

UNITED LENDER, LLC
VS
DEBTOR

Docket 141

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.

Any other request for relief from the automatic stay is denied.

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

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

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Debtor(s):

Helping Others International, LLC

Represented By
Lillian Khosravi

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

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1:20-11944 Adan Jimenez

Chapter 7

#7.10 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):

Adan Jimenez

Represented By
Jaime A Cuevas Jr.

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:20-11134 Helping Others International, LLC

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#8.00 Motion for relief from stay [RP]
(422 N Soto St)

UNITED LENDER, LLC
VS
DEBTOR

Docket 131

Tentative Ruling:

For the reasons discussed below, the Court will grant relief from the automatic stay to the movant under 11 U.S.C. § 362(d)(1) and (2). Additionally, pursuant to § 362(d)(1) and (2), the Court will annul the automatic stay regarding the subject property.

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 one under chapter 7 [doc. 69]. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

A. The Deed of Trust and the Soto Property

Prior to filing its bankruptcy petition, in November 2019, Debtor executed a promissory note in the principal sum of \$994,500.00 (the "Note"), which was made payable to United Lender, LLC ("United Lender") [Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (the "Motion"), doc. 131, Exh. 4]. The Note is secured by a deed of trust (the "Deed of Trust") encumbering residential real property located at 422 North Soto Street, Los Angeles, California 90033 (the "Soto Property"). *Id.*, at Exh. 5. The Soto Property operated as a unit boarding house, with some tenants paying rent. Declaration of David K. Gottlieb, Motion, Exh. 12, ¶ 10. Because of the lack of regular maintenance, the Soto Property became dilapidated and experienced problems with trash service, irregular utility service and safety hazards on the property. *Id.*

On November 25, 2019, the Deed of Trust was recorded in the Los Angeles County

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Recorder's Office. Motion, at Exh. 5. On February 7, 2020, United Lender had a notice of default recorded against the Soto Property. Declaration of Shawn Ahdoot ("Ahdoot Decl."), attached to the Motion, at p. 7. On May 12, 2020, United Lender had a notice of sale recorded against the Soto Property. *Id.* For a significant period of time, Debtor has not made payments due under the Note to United Lender. *Id.*

On October 13, 2020, the Trustee filed a notice of intent to abandon the estate's interest, if any, in the Soto Property (the "Notice") [doc. 85]. The Notice stated that:

If no request for hearing is timely filed and served, the Trustee may take the proposed action and the Trustee will be deemed to have abandoned any interest in the Personal Property, fourteen (14) days from the date of mailing this notice, which date is noted below. *No court order will be required for the abandonment to be effective.*

Id. (emphasis added). No party filed a timely objection or request for a hearing on the Notice.

Pursuant to Local Bankruptcy Rule 6007-1(c) and (d), following the Trustee's service of the Notice, when no party filed a timely response within 14 days thereafter, the Soto Property was deemed abandoned, without further order from the court. *See* LBR 6007-1(d)(1) ("If no timely objection and request for hearing is filed and served, the property is deemed abandoned without further order of the court.").

After the Trustee abandoned the Soto Property, on October 29, 2020, United Lender conducted a foreclosure sale of the Soto Property. United Lender believed that the automatic stay was terminated, because the Soto Property, as a result of the Trustee's abandonment, was no longer property of the bankruptcy estate. Declaration of Lawrence C. Meyerson ("Meyerson Decl."), attached to the Motion, ¶ 3. On November 2, 2020, United Lender had recorded a trustee's deed upon sale. Ahdoot Decl., p. 7.

B. Debtor's Assets and Liabilities

In its schedule A/B, Debtor lists its interest in the Soto Property and states that the Soto Property has a value of \$1.5 million [doc. 1]. As set forth in Debtor's schedule D, the Soto Property is encumbered by two deeds of trusts: (1) a first position deed of trust to United Lender, securing a claim in the principal sum of \$994,500.00; and (2) a second

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position deed of trust to Gallarzo Cartier, securing a claim in the principal sum of \$530,337.00. *Id.* In Debtor's Statement of Financial Affairs, Megan Zucaro is listed as Debtor's sole owner and manager [doc. 1].

C. 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. 131, Exh. 9, p. 263]. The Criminal Action concerns Mr. Zucaro's conduct in a real estate transaction in 2018.

On June 10, 2020, in the Criminal Action, Ms. Zucaro pled guilty to one felony count of diversion of construction funds [doc. 131, Exhs. 10, 11]. On July 8, 2020, Ms. Zucaro was sentenced to 365 days in jail and placed on 60 months of probation, ordered to surrender her real estate license and ordered to pay \$300,255.00 in restitution. *Id.*, at Exh. 11. 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 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 proposed, anticipated, or actual litigation on behalf of a residential loan borrower against lender(s) or servicer(s) of their loans.

D. Motion for Relief from the Automatic Stay

On December 9, 2020, United Lender filed the Motion pursuant to 11 U.S.C. § 362(d) (1), (2) and (4) [doc. 131]. Under 11 U.S.C. § 362(d)(1), United Lender contends that its interest in the Soto Property is not adequately protected because: (1) its interest in the Soto Property is not protected by a sufficient equity cushion; and (2) the fair market value of the Soto Property is declining and payments have not been made to United Lender. Under 11 U.S.C. § 362(d)(2), United Lender argues that Debtor has no equity in the Soto Property, and the Soto Property is not necessary for effective reorganization.

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In the Motion, United Lender contends that the Soto Property has a value of \$1,546,404.00 [Motion, doc. 131, Exh. 6]. United Lender also represents that its secured claim, as of the petition date, is in the amount of \$1,085,159.05, and the other secured claim encumbering the Soto Property is in the amount of \$530,337.00.

Furthermore, United Lender seeks to annul the automatic stay based on its mistaken belief that the automatic stay was lifted when the Trustee abandoned the Soto Property.

On December 23, 2020, Debtor filed an opposition to the Motion (the "Opposition") [doc. 143]. Debtor contends that United Lender knew that the automatic stay remained in effect and violated the stay when it commenced foreclosure proceedings that resulted in the sale of the Soto Property. Debtor also asserts that it did not file its bankruptcy case in bad faith. Debtor requests that the foreclosure sale be set aside and contempt orders be issued against United Lender, Wooshies and their agents for violations of the automatic stay.

On December 24, 2020, United Lender filed a reply to the Opposition (the "Reply") [doc. 144]. United Lender notes that Debtor does not dispute that the Trustee abandoned the Soto Property nor that the value of the Soto Property is less than its total encumbrances.

On January 6, 2021, Debtor filed an untimely supplemental response (the "Supplemental Response") [doc. 146]. In the Supplemental Response, Debtor argues, among other things, that the Soto Property was not abandoned before United Lender's foreclosure sale, because the Court did not hold a hearing on such abandonment.

II. DISCUSSION

A. Abandonment and the Automatic Stay

"'Abandonment' is a term of art with special meaning in the bankruptcy context. It is the formal relinquishment of the property at issue from the bankruptcy estate." *Catalano v. C.I.R.*, 279 F.3d 682, 685 (9th Cir. 2002). After the abandoned property is relinquished, "the debtor's interest in the property is restored nunc pro tunc as of the filing of the bankruptcy petition." *Id.*

Pursuant to 11 U.S.C. § 362(a)(5), the automatic stay precludes "any act to create,

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perfect or enforce against property *of the debtor* any lien to the extent that such lien secures a claim that arose before the commencement of a case under this title." (Emphasis added). Consequently, "abandoned property continues to be protected by the automatic stay to the extent it has reverted back to the debtor, unless and until the case is closed or dismissed, or a discharge is granted or denied." *In re Gasprom, Inc.*, 500 B.R. 598, 605, 607-08 (B.A.P. 9th Cir. 2013) (holding that "bankruptcy court erred as a matter of law when it concluded that, immediately upon abandonment, the automatic stay no longer enjoined" creditors from foreclosing on their collateral).

B. 11 U.S.C. § 362(d)(1) and (2)

Section 362(d)(1) and (2) provide that a "court shall grant relief from stay . . . (1) for cause, including the lack of adequate protection of an interest in property of such party in interest . . . (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[.]"

When a chapter 7 debtor lacks equity in property, that property is deemed to be unnecessary for reorganization, and relief under § 362(d)(2) must be granted. *See In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982) ("Reorganization is not even contemplated in Chapter 7 . . . Under such circumstances, the statute [362(d)(2)] required that relief be granted.").

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' has no clear definition and is determined on a case-by-case basis." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990).

Here, under § 362(d)(1), there is "cause" to lift the automatic stay. Because the Soto Property was encumbered with liens greater than its fair market value and it was burdensome to the bankruptcy estate, the Trustee abandoned the estate's interest in the Soto Property. Moreover, under the terms of her conviction, Debtor's sole owner and manager, Megan Zucaro, cannot participate in any real estate transactions.

Because the Soto Property is encumbered with liens greater than its value, the Court also will grant relief under 11 U.S.C. § 362(d)(2). Debtor listed the value of the Soto Property in the amount of \$1.5 million. When taking into consideration United Lender's

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prepetition claim in the amount of \$1,085,159.05, as well as the second deed of trust held by Gallarzo Cartier in the amount of \$530,337.00, the Soto Property is encumbered in the amount of \$1,615,496.05. Consequently, Debtor has no equity in the Soto Property. In a chapter 7 case, such as Debtor's case, these factors support granting relief from the automatic stay under section 362(d)(2).

C. Annulment of the Automatic Stay

"[A]nnulment [of the automatic stay] . . . if granted, moots any issue as to whether the violating sale was void because, then, there would have been no actionable stay violation." *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 21 (B.A.P. 9th Cir. 2003); see also *In re Cady*, 266 B.R. 172, 178 (B.A.P. 9th Cir. 2001) ("By annulling the automatic stay, a court can validate an otherwise invalid transaction."). In light of the circumstances here, annulment of the automatic stay is warranted.

"Many courts have focused on two factors in determining whether cause exists to grant [retroactive] relief from the stay: (1) whether the creditor was aware of the petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Nat'l Env'tl. Waste Corp. v. City of Riverside (In re Nat'l Env'tl. Waste Corp.)*, 129 F.3d 1052, 1055 (9th Cir. 1997, cert denied, 524 U.S. 952 (1998)). "[T]his court similar to others, balances the equities in order to determine whether retroactive annulment is justified." *Id.* Such a determination involves a "case-by-case analysis." *Id.* (citing *Christensen v. Tucson Estates, Inc. (In Re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990)).

Additional factors courts consider when deciding whether to annul the stay include:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extend of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The debtor's overall good faith (totality of circumstances test): *cf.*

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Fid. & Cas. Co. of N.Y. v. Warren (In re Warren), 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988);

5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted, 293 B.R. at 25. When examining the equities, a single factor may outweigh the consideration of all other factors and that single factor may be dispositive. *Id.*

A review of the *Fjeldsted* factors demonstrates that annulment of the automatic stay is warranted. This is Debtor's first bankruptcy case; however, Debtor's sole owner and manager, Megan Zucaro, is a convicted felon who cannot participate in any real estate transactions, based on the terms of her conviction.

Annulment of the automatic stay will not cause irreparable injury to Debtor; Debtor has no equity in the Soto Property. The Soto Property is encumbered with two deeds of trust totaling \$1,615,496.05, which exceed its value of \$1.5 million.

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When United Lender proceeded with the foreclosure sale, United Lender did so believing that the automatic stay no longer applied to the sale, because the Trustee had abandoned the estate's interest in the Soto Property. Meyerson Decl., ¶ 3. Shortly after the foreclosure sale held on October 29, 2020, United Lender moved for annulment and sought relief from the automatic stay.

Accordingly, after balancing the equities, the Court will annul the automatic stay.

D. 11 U.S.C. § 362(d)(4)

Section 362(d)(4) provides:

(d) On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

...

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

(A) transfers 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.

Section 362(d)(4) "permits the bankruptcy court to grant in rem relief from the automatic stay in order to address schemes using bankruptcy to thwart legitimate foreclosure efforts through one or more transfers of interest in real property" *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870 (9th Cir. B.A.P. 2012).

"[A] creditor seeking relief from the stay in a bankruptcy case pursuant to § 362(d)(4) must prove that (1) the debtor engaged in a scheme, (2) to delay, hinder or defraud the creditor, and (3) which involved either the transfer of property without the creditor's

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consent or court approval or multiple filings." *In re Alakozai*, 499 B.R. 698, 698 (9th Cir. B.A.P. 2013). For the court to grant relief, "it must affirmatively find that the three elements above are present." *First Yorkshire*, 470 B.R. at 870.

Here, relief from the automatic stay under 11 U.S.C. § 362(d)(4) is not warranted; this is Debtor's first bankruptcy case. United Lender has not made a prima facie case that Debtor was engaged in a scheme to hinder, delay or defraud United Lender which involved either the transfer of Soto Property without United Lender's consent or court approval or multiple filings.

III. CONCLUSION

In light of the foregoing, the Court will grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). The Court also will annul the automatic stay pursuant to § 362(d)(1) and (2).

United Lender (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 stay is annulled retroactive to the bankruptcy petition date. Any postpetition actions taken by United Lender to enforce its remedies regarding the property shall not constitute a violation of the stay.

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

Any other request for relief is denied.

United Lender must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

United Lender must submit an order within seven (7) days.

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Debtor(s):

Helping Others International, LLC

Represented By
Lillian Khosravi

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

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#9.00 Motion for relief from stay [RP]
(28340 Locust Ave)

WOOSHIES, INC.
VS
DEBTOR

Docket 132

Tentative Ruling:

For the reasons discussed below, the Court will grant relief from the automatic stay to movant under 11 U.S.C. § 362(d)(1) and (2). Additionally, pursuant to § 362(d)(1) and (2), the Court will annul the automatic stay regarding the subject property.

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 one under chapter 7 [doc. 69]. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

A. The Deed of Trust and the Locust Property

Prior to filing its bankruptcy petition, in December 2018, Debtor executed a promissory note in the principal sum of \$301,275.00 (the "Note"), which was made payable to Wooshies, Inc. ("Wooshies") [Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (the "Motion"), doc. 132, Exh. 4]. The Note is secured by a deed of trust (the "Deed of Trust") encumbering residential real property located at 28340 Locust Avenue, Moreno Valley, California 92555 (the "Locust Property"). *Id.*, at Exh. 5. The Locust Property had tenants and/or squatters who were not paying rent to Debtor. Declaration of David K. Gottlieb, Motion, Exh. 12, ¶ 6.

On December 14, 2018, the Deed of Trust was recorded in the Riverside County Recorder's Office. Motion, at Exh. 5. On September 29, 2019, Wooshies had a notice of default recorded against the Locust Property. Declaration of Shawn Ahdoot ("Ahdoot

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Decl."), attached to the Motion, at p. 7. On December 23, 2019, Wooshies had a notice of sale recorded against the Locust Property. *Id.* For a significant period of time, Debtor has not made payments due under the Note to Wooshies. *Id.*

On October 13, 2020, the Trustee filed a notice of intent to abandon the estate's interest, if any, in the Locust Property (the "Notice") [doc. 83]. The Notice stated that:

If no request for hearing is timely filed and served, the Trustee may take the proposed action and the Trustee will be deemed to have abandoned any interest in the Personal Property, fourteen (14) days from the date of mailing this notice, which date is noted below. *No court order will be required for the abandonment to be effective.*

Id. (emphasis added). No party filed a timely objection or request for a hearing on the Notice.

Pursuant to Local Bankruptcy Rule 6007-1(c) and (d), following the Trustee's service of the Notice, when no party filed a timely response within 14 days thereafter, the Locust Property was deemed abandoned, without further order from the court. *See* LBR 6007-1(d)(1) ("If no timely objection and request for hearing is filed and served, the property is deemed abandoned without further order of the court.").

After the Trustee abandoned the Locust Property, on October 29, 2020, Wooshies conducted a foreclosure sale of the Locust Property. Wooshies believed that the automatic stay was terminated, because the Locust Property, as a result of the Trustee's abandonment, was no longer property of the bankruptcy estate. Declaration of Lawrence C. Meyerson ("Meyerson Decl."), attached to the Motion, ¶ 3. On November 2, 2020, Wooshies had recorded a trustee's deed upon sale. Ahdoot Decl., p. 7.

B. Debtor's Assets and Liabilities

In its schedule A/B, Debtor lists its interest in the Locust Property and states that the Locust Property has a value of \$450,000.00 [doc. 1]. As set forth in Debtor's schedule D, the Locust Property is encumbered by two deeds of trusts: (1) a first position deed of trust to Wooshies, securing a claim in the principal sum of \$301,275.00; and (2) a second position deed of trust to Patricai L. Parker-Marcos, securing a claim in the principal sum of \$157,500.00. *Id.* In Debtor's Statement of Financial Affairs, Megan Zucaro is listed as Debtor's sole owner and manager [doc. 1].

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C. 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. 132, Exh. 9, p. 257]. The Criminal Action concerns Mr. Zucaro's conduct in a real estate transaction in 2018.

On June 10, 2020, in the Criminal Action, Ms. Zucaro pled guilty to one felony count of diversion of construction funds [doc. 131, Exhs. 10, 11]. On July 8, 2020, Ms. Zucaro was sentenced to 365 days in jail and placed on 60 months of probation, ordered to surrender her real estate license and ordered to pay \$300,255.00 in restitution. *Id.*, at Exh. 11. 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 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 proposed, anticipated, or actual litigation on behalf of a residential loan borrower against lender(s) or servicer(s) of their loans.

D. Motion for Relief from the Automatic Stay

On December 9, 2020, Wooshies filed the Motion pursuant to 11 U.S.C. § 362(d)(1), (2) and (4) [doc. 132]. Under 11 U.S.C. § 362(d)(1), Wooshies contends that its interest in the Locust Property is not adequately protected because: (1) its interest in the Locust Property is not protected by a sufficient equity cushion; and (2) the fair market value of the Locust Property is declining and payments have not been made to Wooshies. Under 11 U.S.C. § 362(d)(2), Wooshies argues that Debtor has no equity in the Locust Property, and the Locust Property is not necessary for effective reorganization.

In the Motion, Wooshies contends that the Locust Property has a value of \$494,400.00 [Motion, doc. 132, Exh. 6]. Wooshies also represents that its secured claim, as of the petition date, is in the amount of \$363,046.44, and the other secured claim encumbering

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the Locust Property is in the amount of \$157,500.00.

Furthermore, Wooshies seeks to annul the automatic stay based on its mistaken belief that the automatic stay was lifted when the Trustee abandoned the Locust Property.

On December 23, 2020, Debtor filed an opposition to the Motion (the "Opposition") [doc. 143]. Debtor contends that Wooshies knew that the automatic stay remained in effect and violated the stay when it commenced foreclosure proceedings that resulted in the sale of the Locust Property. Debtor also asserts that it did not file its bankruptcy case in bad faith. Debtor requests that the foreclosure sale be set aside and contempt orders be issued against United Lender, Wooshies and their agents for violations of the automatic stay.

On December 24, 2020, Wooshies filed a reply to the Opposition (the "Reply") [doc. 144]. Wooshies notes that Debtor does not dispute that the Trustee abandoned the Locust Property nor that the value of the Locust Property is less than its total encumbrances.

On January 6, 2021, Debtor filed an untimely supplemental response (the "Supplemental Response") [doc. 146]. In the Supplemental Response, Debtor argues, among other things, that the Locust Property was not abandoned before Wooshies' foreclosure sale, because the Court did not hold a hearing on such abandonment.

II. DISCUSSION

A. Abandonment and the Automatic Stay

"'Abandonment' is a term of art with special meaning in the bankruptcy context. It is the formal relinquishment of the property at issue from the bankruptcy estate." *Catalano v. C.I.R.*, 279 F.3d 682, 685 (9th Cir. 2002). After the abandoned property is relinquished, "the debtor's interest in the property is restored nunc pro tunc as of the filing of the bankruptcy petition." *Id.*

Pursuant to 11 U.S.C. § 362(a)(5), the automatic stay precludes "any act to create, perfect or enforce against property *of the debtor* any lien to the extent that such lien secures a claim that arose before the commencement of a case under this title." (Emphasis added). Consequently, "abandoned property continues to be protected by the

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automatic stay to the extent it has reverted back to the debtor, unless and until the case is closed or dismissed, or a discharge is granted or denied." *In re Gasprom, Inc.*, 500 B.R. 598, 605, 607-08 (B.A.P. 9th Cir. 2013) (holding that "bankruptcy court erred as a matter of law when it concluded that, immediately upon abandonment, the automatic stay no longer enjoined" creditors from foreclosing on their collateral).

B. 11 U.S.C. § 362(d)(1) and (2)

Section 362(d)(1) and (2) provide that a "court shall grant relief from stay . . . (1) for cause, including the lack of adequate protection of an interest in property of such party in interest . . . (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[.]"

When a chapter 7 debtor lacks equity in property, that property is deemed to be unnecessary for reorganization, and relief under § 362(d)(2) must be granted. *See In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982) ("Reorganization is not even contemplated in Chapter 7 . . . Under such circumstances, the statute [362(d)(2)] required that relief be granted.").

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' has no clear definition and is determined on a case-by-case basis." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990).

Here, under § 362(d)(1), there is "cause" to lift the automatic stay. Because the Locust Property was encumbered with liens greater than its fair market value and it was burdensome to the bankruptcy estate, the Trustee abandoned the estate's interest in the Locust Property. Moreover, under the terms of her conviction, Debtor's sole owner and manager, Megan Zucaro, cannot participate in any real estate transactions.

Because the Locust Property is encumbered with liens greater than its value, the Court also will grant relief under 11 U.S.C. § 362(d)(2). Debtor listed the value of the Locust Property in the amount of \$450,000.00. When taking into consideration Wooshies' prepetition claim in the amount of \$363,046.44, as well as the second deed of trust held by Patricai L. Parker-Marcos in the amount of \$157,500.00, the Locust Property is encumbered in the amount of \$520,546.44. Consequently, Debtor has no equity in the

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Locust Property. In a chapter 7 case, such as Debtor's case, these factors support granting relief from the automatic stay under section 362(d)(2).

C. Annulment of the Automatic Stay

"[A]nnulment [of the automatic stay] . . . if granted, moots any issue as to whether the violating sale was void because, then, there would have been no actionable stay violation." *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 21 (B.A.P. 9th Cir. 2003); see also *In re Cady*, 266 B.R. 172, 178 (B.A.P. 9th Cir. 2001) ("By annulling the automatic stay, a court can validate an otherwise invalid transaction."). In light of the circumstances here, annulment of the automatic stay is warranted.

"Many courts have focused on two factors in determining whether cause exists to grant [retroactive] relief from the stay: (1) whether the creditor was aware of the petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Nat'l Env't'l. Waste Corp. v. City of Riverside (In re Nat'l Env't'l. Waste Corp.)*, 129 F.3d 1052, 1055 (9th Cir. 1997, cert denied, 524 U.S. 952 (1998)). "[T]his court similar to others, balances the equities in order to determine whether retroactive annulment is justified." *Id.* Such a determination involves a "case-by-case analysis." *Id.* (citing *Christensen v. Tucson Estates, Inc. (In Re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990)).

Additional factors courts consider when deciding whether to annul the stay include:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extend of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The debtor's overall good faith (totality of circumstances test): *cf. Fid. & Cas. Co. of N.Y. v. Warren (In re Warren)*, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988);

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5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted, 293 B.R. at 25. When examining the equities, a single factor may outweigh the consideration of all other factors and that single factor may be dispositive. *Id.*

A review of the *Fjeldsted* factors demonstrates that annulment of the automatic stay is warranted. This is Debtor's first bankruptcy case; however, Debtor's sole owner and manager, Megan Zucaro, is a convicted felon who cannot participate in any real estate transactions, based on the terms of her conviction.

Annulment of the automatic stay will not cause irreparable injury to Debtor; Debtor has no equity in the Locust Property. The Locust Property is encumbered with two deeds of trust totaling \$520,546.44, which exceed its value of \$450,000.00.

When Wooshies proceeded with the foreclosure sale, Wooshies did so believing that the automatic stay no longer applied to the sale, because the Trustee had abandoned the

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estate's interest in the Locust Property. Meyerson Decl., ¶ 3. Shortly after the foreclosure sale held on October 29, 2020, Wooshies moved for annulment and sought relief from the automatic stay.

Accordingly, after balancing the equities, the Court will annul the automatic stay.

D. 11 U.S.C. § 362(d)(4)

Section 362(d)(4) provides:

(d) On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

...

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

(A) transfers 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.

Section 362(d)(4) "permits the bankruptcy court to grant in rem relief from the automatic stay in order to address schemes using bankruptcy to thwart legitimate foreclosure efforts through one or more transfers of interest in real property" *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870 (9th Cir. B.A.P. 2012).

"[A] creditor seeking relief from the stay in a bankruptcy case pursuant to § 362(d)(4) must prove that (1) the debtor engaged in a scheme, (2) to delay, hinder or defraud the creditor, and (3) which involved either the transfer of property without the creditor's consent or court approval or multiple filings." *In re Alakozai*, 499 B.R. 698, 698 (9th Cir. B.A.P. 2013). For the court to grant relief, "it must affirmatively find that the three elements above are present." *First Yorkshire*, 470 B.R. at 870.

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Here, relief from the automatic stay under 11 U.S.C. § 362(d)(4) is not warranted; this is Debtor's first bankruptcy case. Wooshies has not made a prima facie case that Debtor was engaged in a scheme to hinder, delay or defraud Wooshies which involved either the transfer of Locust Property without Wooshies' consent or court approval or multiple filings.

III. CONCLUSION

In light of the foregoing, the Court will grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). The Court also will annul the automatic stay pursuant to § 362(d)(1) and (2).

Wooshies (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 stay is annulled retroactive to the bankruptcy petition date. Any postpetition actions taken by Wooshies to enforce its remedies regarding the property shall not constitute a violation of the stay.

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

Any other request for relief is denied.

Wooshies must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Lillian Khosravi

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Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

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#10.00 Motion for relief from stay [RP]
(4110 Vanetta Place)

WOOSHIES, INC.
VS
DEBTOR

Docket 133

Tentative Ruling:

For the reasons discussed below, the Court will grant relief from the automatic stay to movant under 11 U.S.C. § 362(d)(1) and (2). Additionally, pursuant to § 362(d)(1) and (2), the Court will annul the automatic stay regarding the subject property.

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 one under chapter 7 [doc. 69]. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

A. The Deed of Trust and the Vanetta Property

Prior to filing its bankruptcy petition, in November 2018, Debtor executed a promissory note in the principal sum of \$721,000.00 (the "Note"), which was made payable to Wooshies, Inc. ("Wooshies") [Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (the "Motion"), doc. 133, Exh. 4]. The Note is secured by a deed of trust (the "Deed of Trust") encumbering residential real property located at 4110 Vanetta Place, Los Angeles, California 91604 (the "Vanetta Property"). *Id.*, at Exh. 5. The Vanetta Property had tenants and/or squatters who were not paying rent to Debtor. Declaration of David K. Gottlieb, Motion, Exh. 12, ¶ 6.

On December 4, 2018, the Deed of Trust was recorded in the Los Angeles County Recorder's Office. Motion, at Exh. 5. On September 19, 2019, Wooshies had a notice of default recorded against the Vanetta Property. Declaration of Shawn Ahdoot

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("Ahdoot Decl."), attached to the Motion, at p. 7. On December 24, 2019, Wooshies had a notice of sale recorded against the Vanetta Property. *Id.* For a significant period of time, Debtor has not made payments due under the Note to Wooshies. *Id.*

On October 13, 2020, the Trustee filed a notice of intent to abandon the estate's interest, if any, in the Vanetta Property (the "Notice") [doc. 84]. The Notice stated that:

If no request for hearing is timely filed and served, the Trustee may take the proposed action and the Trustee will be deemed to have abandoned any interest in the Personal Property, fourteen (14) days from the date of mailing this notice, which date is noted below. *No court order will be required for the abandonment to be effective.*

Id. (emphasis added). No party filed a timely objection or request for a hearing on the Notice.

Pursuant to Local Bankruptcy Rule 6007-1(c) and (d), following the Trustee's service of the Notice, when no party filed a timely response within 14 days thereafter, the Vanetta Property was deemed abandoned, without further order from the court. *See* LBR 6007-1(d)(1) ("If no timely objection and request for hearing is filed and served, the property is deemed abandoned without further order of the court.").

After the Trustee abandoned the Vanetta Property, on October 29, 2020, Wooshies conducted a foreclosure sale of the Vanetta Property. Wooshies believed that the automatic stay was terminated, because the Vanetta Property, as a result of the Trustee's abandonment, was no longer property of the bankruptcy estate. Declaration of Lawrence C. Meyerson ("Meyerson Decl."), attached to the Motion, ¶ 3. On November 2, 2020, Wooshies had recorded a trustee's deed upon sale. Ahdoot Decl., p. 7.

B. Debtor's Assets and Liabilities

In its schedule A/B, Debtor lists its interest in the Vanetta Property and states that the Vanetta Property has a value of \$1.3 million [doc. 1]. As set forth in Debtor's schedule D, the Vanetta Property is encumbered by three deeds of trusts: (1) a first position deed of trust to Wooshies, securing a claim in the principal sum of \$721,000.00; (2) a second position deed of trust to Amsterdam Nouveau Trust, securing a claim in the principal sum of \$424,500.00; and (3) a third position deed of trust to Prominence Capital Partners, Ltd., securing a claim in the principal amount of \$17,250.00. *Id.* In Debtor's

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Statement of Financial Affairs, Megan Zucaro is listed as Debtor's sole owner and manager [doc. 1].

C. 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. 133, Exh. 9, p. 268]. The Criminal Action concerns Mr. Zucaro's conduct in a real estate transaction in 2018.

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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 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 proposed, anticipated, or actual litigation on behalf of a residential loan borrower against lender(s) or servicer(s) of their loans.

D. Motion for Relief from the Automatic Stay

On December 9, 2020, Wooshies filed the Motion pursuant to 11 U.S.C. § 362(d)(1), (2) and (4) [doc. 133]. Under 11 U.S.C. § 362(d)(1), Wooshies contends that its interest in the Vanetta Property is not adequately protected because: (1) its interest in the Vanetta Property is not protected by a sufficient equity cushion; and (2) the fair market value of the Vanetta Property is declining and payments have not been made to Wooshies. Under 11 U.S.C. § 362(d)(2), Wooshies argues that Debtor has no equity in the Vanetta Property, and the Vanetta Property is not necessary for effective reorganization.

In the Motion, Wooshies contends that the Vanetta Property has a value of

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\$1,285,500.00 [Motion, doc. 133, Exh. 6]. Wooshies also represents that its secured claim, as of the petition date, is in the amount of \$876,651.11, and the other secured claims encumbering the Vanetta Property are in the amount of \$454,500.00 and \$17,250.00.

Furthermore, Wooshies seeks to annul the automatic stay based on its mistaken belief that the automatic stay was lifted when the Trustee abandoned the Vanetta Property.

On December 23, 2020, Debtor filed an opposition to the Motion (the "Opposition") [doc. 143]. Debtor contends that Wooshies knew that the automatic stay remained in effect and violated the stay when it commenced foreclosure proceedings that resulted in the sale of the Vanetta Property. Debtor also asserts that it did not file its bankruptcy case in bad faith. Debtor requests that the foreclosure sale be set aside and contempt orders be issued against United Lender, Wooshies and their agents for violations of the automatic stay.

On December 24, 2020, Wooshies filed a reply to the Opposition (the "Reply") [doc. 144]. Wooshies notes that Debtor does not dispute that the Trustee abandoned the Vanetta Property nor that the value of the Vanetta Property is less than its total encumbrances.

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II. DISCUSSION

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"'Abandonment' is a term of art with special meaning in the bankruptcy context. It is the formal relinquishment of the property at issue from the bankruptcy estate." *Catalano v. C.I.R.*, 279 F.3d 682, 685 (9th Cir. 2002). After the abandoned property is relinquished, "the debtor's interest in the property is restored nunc pro tunc as of the filing of the bankruptcy petition." *Id.*

Pursuant to 11 U.S.C. § 362(a)(5), the automatic stay precludes "any act to create,

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perfect or enforce against property *of the debtor* any lien to the extent that such lien secures a claim that arose before the commencement of a case under this title." (Emphasis added). Consequently, "abandoned property continues to be protected by the automatic stay to the extent it has reverted back to the debtor, unless and until the case is closed or dismissed, or a discharge is granted or denied." *In re Gasprom, Inc.*, 500 B.R. 598, 605, 607-08 (B.A.P. 9th Cir. 2013) (holding that "bankruptcy court erred as a matter of law when it concluded that, immediately upon abandonment, the automatic stay no longer enjoined" creditors from foreclosing on their collateral).

B. 11 U.S.C. § 362(d)(1) and (2)

Section 362(d)(1) and (2) provide that a "court shall grant relief from stay . . . (1) for cause, including the lack of adequate protection of an interest in property of such party in interest . . . (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[.]"

When a chapter 7 debtor lacks equity in property, that property is deemed to be unnecessary for reorganization, and relief under § 362(d)(2) must be granted. *See In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982) ("Reorganization is not even contemplated in Chapter 7 . . . Under such circumstances, the statute [362(d)(2)] required that relief be granted.").

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' has no clear definition and is determined on a case-by-case basis." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990).

Here, under § 362(d)(1), there is "cause" to lift the automatic stay. Because the Vanetta Property was encumbered with liens greater than its fair market value and it was burdensome to the bankruptcy estate, the Trustee abandoned the estate's interest in the Vanetta Property. Moreover, under the terms of her conviction, Debtor's sole owner and manager, Megan Zucaro, cannot participate in any real estate transactions.

Because the Vanetta Property is encumbered with liens greater than its value, the Court also will grant relief under 11 U.S.C. § 362(d)(2). Debtor listed the value of the Vanetta Property in the amount of \$1.3 million. When taking into consideration Wooshies'

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prepetition claim in the amount of \$876,651.11, as well as the second deed of trust held by Amsterdam Nouveau trust in the amount of \$424,500.00 and the third deed of trust held by Prominence Capital Partners Ltd. in the amount of \$17,250.00, the Vanetta Property is encumbered in the amount of \$1,318,401.11. Consequently, Debtor has no equity in the Vanetta Property. In a chapter 7 case, such as Debtor's case, these factors support granting relief from the automatic stay under section 362(d)(2).

C. Annulment of the Automatic Stay

"[A]nnulment [of the automatic stay] . . . if granted, moots any issue as to whether the violating sale was void because, then, there would have been no actionable stay violation." *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 21 (B.A.P. 9th Cir. 2003); *see also In re Cady*, 266 B.R. 172, 178 (B.A.P. 9th Cir. 2001) ("By annulling the automatic stay, a court can validate an otherwise invalid transaction."). In light of the circumstances here, annulment of the automatic stay is warranted.

"Many courts have focused on two factors in determining whether cause exists to grant [retroactive] relief from the stay: (1) whether the creditor was aware of the petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Nat'l Env't'l. Waste Corp. v. City of Riverside (In re Nat'l Env't'l. Waste Corp.)*, 129 F.3d 1052, 1055 (9th Cir. 1997, *cert denied*, 524 U.S. 952 (1998)). "[T]his court similar to others, balances the equities in order to determine whether retroactive annulment is justified." *Id.* Such a determination involves a "case-by-case analysis." *Id.* (citing *Christensen v. Tucson Estates, Inc. (In Re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990)).

Additional factors courts consider when deciding whether to annul the stay include:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extend of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;

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4. The debtor's overall good faith (totality of circumstances test): *cf. Fid. & Cas. Co. of N.Y. v. Warren (In re Warren)*, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted, 293 B.R. at 25. When examining the equities, a single factor may outweigh the consideration of all other factors and that single factor may be dispositive. *Id.*

A review of the *Fjeldsted* factors demonstrates that annulment of the automatic stay is warranted. This is Debtor's first bankruptcy case; however, Debtor's sole owner and manager, Megan Zucaro, is a convicted felon who cannot participate in any real estate transactions, based on the terms of her conviction.

Annulment of the automatic stay will not cause irreparable injury to Debtor; Debtor has no equity in the Vanetta Property. The Vanetta Property is encumbered with three deeds

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of trust totaling \$1,318,401.11, which exceed its value of \$1.3 million.

When Wooshies proceeded with the foreclosure sale, Wooshies did so believing that the automatic stay no longer applied to the sale, because the Trustee had abandoned the estate's interest in the Vanetta Property. Meyerson Decl., ¶ 3. Shortly after the foreclosure sale held on October 29, 2020, Wooshies moved for annulment and sought relief from the automatic stay.

Accordingly, after balancing the equities, the Court will annul the automatic stay.

D. 11 U.S.C. § 362(d)(4)

Section 362(d)(4) provides:

(d) On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

...

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

(A) transfers 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.

Section 362(d)(4) "permits the bankruptcy court to grant in rem relief from the automatic stay in order to address schemes using bankruptcy to thwart legitimate foreclosure efforts through one or more transfers of interest in real property" *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870 (9th Cir. B.A.P. 2012).

"[A] creditor seeking relief from the stay in a bankruptcy case pursuant to § 362(d)(4) must prove that (1) the debtor engaged in a scheme, (2) to delay, hinder or defraud the

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Chapter 7

creditor, and (3) which involved either the transfer of property without the creditor's consent or court approval or multiple filings." *In re Alakozai*, 499 B.R. 698, 698 (9th Cir. B.A.P. 2013). For the court to grant relief, "it must affirmatively find that the three elements above are present." *First Yorkshire*, 470 B.R. at 870.

Here, relief from the automatic stay under 11 U.S.C. § 362(d)(4) is not warranted; this is Debtor's first bankruptcy case. Wooshies has not made a prima facie case that Debtor was engaged in a scheme to hinder, delay or defraud Wooshies which involved either the transfer of the Vanetta Property without Wooshies' consent or court approval or multiple filings.

III. CONCLUSION

In light of the foregoing, the Court will grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). The Court also will annul the automatic stay pursuant to § 362(d)(1) and (2).

Wooshies (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 stay is annulled retroactive to the bankruptcy petition date. Any postpetition actions taken by Wooshies to enforce its remedies regarding the property shall not constitute a violation of the stay.

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

Any other request for relief is denied.

Wooshies must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Wooshies must submit an order within seven (7) days

Party Information

Debtor(s):

Helping Others International, LLC

Represented By

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CONT... Helping Others International, LLC

Chapter 7

Lillian Khosravi

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

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9:30 AM

1:20-11615 Coachella Vineyard Luxury RV Park LLC

Chapter 11

#11.00 Motion for relief from stay [RP]

LEV INVESTMENTS, LLC
VS
DEBTOR

Docket 42

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(3).

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.

This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.

The 14-day stay prescribed by FRBP 4001(a)(3) is **not** waived.

Any other request for relief is denied.

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

Party Information

Debtor(s):

Coachella Vineyard Luxury RV Park

Represented By
Matthew D. Resnik
M. Jonathan Hayes

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1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

#12.00 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; 7/1/20

Docket 1

Tentative Ruling:

Pursuant to the Court's July 20, 2020 order [doc. 25], this proceeding is stayed until the conclusion of adversary proceedings nos. 1:19-ap-01128-VK and 1:19-ap-01088-VK (the "Proceedings"). The Court will continue this status conference to **1:30 p.m. on June 2, 2021**, to assess the status of the Proceedings.

Appearances on January 13, 2021 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

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CONT... Deborah Lois Adri

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta
Larry W Gabriel

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1:30 PM

1:19-13078 Gerie G Annan

Chapter 7

Adv#: 1:20-01032 Tenggren v. Annan

#13.00 Pretrial conference re: complaint objecting to debtors discharge
to section 727 of the bankruptcy code

fr. 5/13/20; 5/20/20; 11/4/20

Docket 1

Tentative Ruling:

In the notice accompanying the motion to dismiss this adversary proceeding [doc. 16], the plaintiff did not inform creditors that they may intervene as the plaintiff in this action. No later than **January 15, 2021**, the plaintiff must file and serve notice of the motion and include language advising creditors that, **no later than February 3, 2021**, they may elect to substitute in as the plaintiff.

The Court will continue this matter to **1:30 p.m. on February 10, 2021**. If, **no later than February 3, 2021**, a creditor files a notice stating that the creditor immediately will substitute in as the plaintiff, the Court will not dismiss this action.

Appearances on January 13, 2021 are excused.

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

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CONT... Gerie G Annan

Chapter 7

Plaintiff(s):

Nancy S Tenggren

Represented By

Andrew J Spielberger

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:30 PM

1:20-10678 John Michael Smith, Jr
Adv#: 1:20-01111 Smith v. Strigari

Chapter 11

- #14.00** Status conference re complaint for:
1. Declaratory Relief;
 2. Injunctive Relief for Violation of Automatic Stay;
 3. Turnover of Property of the Bankruptcy Estate;
 4. Attorney Fees and Costs Under 11 U.S.C. § 362(k)

fr. 1/6/21

Docket 1

Tentative Ruling:

The Court will set the defendant's motion to dismiss [doc. 6] for hearing at **2:30 p.m. on February 10, 2021**. The defendant must file and serve notice of the hearing **no later than January 20, 2021**. The Court also will continue this status conference to **2:30 p.m. on February 10, 2021**.

Appearances on January 13, 2021 are excused.

Party Information

Debtor(s):

John Michael Smith Jr

Represented By
Louis J Esbin

Defendant(s):

Louis F Strigari

Pro Se

Joint Debtor(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

Plaintiff(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

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CONT... John Michael Smith, Jr

Chapter 11

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

- #15.00** 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); 11/18/20

Docket 11

Tentative Ruling:

On December 21, 2020, the debtor filed a motion to approve a compromise between the debtor and the plaintiff (the "Compromise Motion") [Bankruptcy Docket, doc. 50].

The Court will continue this hearing and the status conference to **1:30 p.m. on March 3, 2021**. If the Court enters an order approving the Compromise Motion, the debtor must lodge an order dismissing this action pursuant to the terms set forth in the parties' proposed settlement agreement. If, prior to March 3, 2021, the Court enters an order dismissing this adversary proceeding, the Court will take this hearing and the continued status conference off calendar.

Appearances on January 13, 2021 are excused.

Party Information

Debtor(s):

Shobert Vartan

Represented By
Michael Jay Berger

Defendant(s):

Shobert Vartan

Represented By
Michael Jay Berger

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CONT... Shobert Vartan

Chapter 7

Plaintiff(s):

Bright Enabulele

Represented By
Levi Reuben Uku

Trustee(s):

David Seror (TR)

Pro Se

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2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

#16.00 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); 11/18/20

Docket 6

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

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Thursday, January 14, 2021

Hearing Room 301

10:30 AM

1:18-10611 Marvin A Medina Medina

Chapter 7

#1.00 Trustee's Amended Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

fr. 12/17/20

Docket 52

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]?

Since the last hearing on December 17, 2020, what progress has been made concerning providing for payment of Modern Finance Company's claim?

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
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Hearing Room 301

1:00 PM

1:20-10924 Tikran Eritsyanyan

Chapter 11

#2.00 Hearing on Debtor's Disclosure Statement

Docket 51

Tentative Ruling:

Pursuant to 11 U.S.C. § 1125, the Court will approve the "Debtor's Disclosure Statement."

Hearing on confirmation of the Plan: **March 18, 2021 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 28, 2021.**

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: **February 25, 2021.**

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 8, 2021.** Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

Party Information

Debtor(s):

Tikran Eritsyanyan

Represented By
Vahe Khojayan

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1:00 PM

1:20-10924 Tikran Eritsyan

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 7/2/20; 11/19/20

Docket 1

Tentative Ruling:

The debtor has not filed his monthly operating report for November 2020.

Party Information

Debtor(s):

Tikran Eritsyan

Represented By
Vahe Khojayan

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Hearing Room 301

1:00 PM

1:20-11528 BurbankHills, LLC

Chapter 11

#4.00 Status conference re chapter 11 case

fr. 9/24/20; 11/12/20; 11/19/20

Docket 1

Tentative Ruling:

See calendar no. 10.

Party Information

Debtor(s):

BurbankHills, LLC

Represented By
Michael R Totaro

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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Hearing Room 301

1:00 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#5.00 Status conference re chapter 11 case

Docket 1

Tentative Ruling:

Contrary to the Court's *Amended Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* [doc. 31], the debtor did not serve the status report on unsecured creditors.

The Court will continue this status conference to **1:00 p.m. on February 4, 2021**. No later than **January 21, 2021**, the debtor must file proof of service of the status report on unsecured creditors.

Appearances on January 14, 2021 are excused.

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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Hearing Room 301

1:30 PM

1:19-11748 Larry Antonio Parada

Chapter 7

#6.00 Motion re: objection to claim number 2-1 by Claimant
U.S. Department of Education c/o NELNET

Docket 66

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 Antonio Parada

Represented By
Stephen L Burton

Trustee(s):

Amy L Goldman (TR)

Represented By
Maria L Garcia

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Hearing Room 301

1:30 PM

1:19-12590 Marine Kasabyan

Chapter 7

#7.00 Objection to debtor's claim of exemption

fr. 11/10/20

Stip to continue filed 1/13/21

Docket 82

***** VACATED *** REASON: continued to 3/4/21 at 1:30 p.m. per order entered on 1/13/21 doc [112]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marine Kasabyan

Represented By
Thomas B Ure
Laila Masud

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Laila Masud
D Edward Hays

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1:30 PM

1:20-10621 Jasmin DelVillar

Chapter 11

#8.00 Status conference re: chapter 11 case

fr. 8/13/20, 9/17/20; 11/12/20

Docket 1

Tentative Ruling:

Regarding the California Department of Tax and Fee Administration's allowed secured claim in the amount of \$150,162.89, other than the debtor's unsuccessful objection to that claim, has the debtor taken action to resolve that claim or negotiate a settlement?

Without a consensual resolution of the California Department of Tax and Fee Administration's allowed secured claim, how will the debtor confirm a chapter 11 plan?

Party Information

Debtor(s):

Jasmin DelVillar

Represented By
Dana M Douglas

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1:30 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#9.00 Motion for interim and final approval of postpetition financing pursuant to 11 U.S.C. §364(d)(1) and approval of priming lien against estate property

STIP TO CONTINUE FILED 1/12/21 - jc

Docket 38

***** VACATED *** REASON: Continued to 1/28/21 at 1:30 p.m. per order entered on 1/13/21 doc [54]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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1:30 PM

1:20-11528 BurbankHills, LLC

Chapter 11

#10.00 Debtor's motion to voluntarily dismiss chapter 11 proceeding pursuant to 11 U.S.C. sec 1112(b) and FRBP sec 1017 and 9014

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):

BurbankHills, LLC

Represented By
Michael R Totaro

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Hearing Room 301

2:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#11.00 Confirmation hearing re Debtor's chapter 11, subchapter V plan of liquidation

Docket 60

Tentative Ruling:

Contrary to the Court's order setting dates and deadlines [doc. 65], the debtor has not filed a confirmation brief regarding the debtor's subchapter V plan of liquidation (the "Plan") [doc. 60] and a reply to the United States Trustee's objection to confirmation of the Plan [doc. 71]. Consequently, at this time, the Court cannot confirm the Plan.

In light of this situation, what are the debtor's intentions with respect to the Plan and this case?

Party Information

Debtor(s):

Monte Verde Ranch, LLC

Represented By
Ian Landsberg

Trustee(s):

Andrew W. Levin (TR)

Pro Se

**United States Bankruptcy Court
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2:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#12.00 Status conference re: chapter 11 subchapter V case

fr.09/10/20; 11/5/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monte Verde Ranch, LLC

Represented By
Ian Landsberg

Trustee(s):

Andrew W. Levin (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, January 19, 2021

Hearing Room 301

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 January 19, 2021 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/1606502678>

Meeting ID: 160 650 2678

Password: 203850

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: 160 650 2678

Password: 203850

**United States Bankruptcy Court
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Chapter

Docket 0

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Hearing Room 301

8:30 AM

1:20-11646 Javier Morales

Chapter 7

#1.00 Reaffirmation agreement between debtor and Wells Fargo Bank N.A.
fr. 11/17/20

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**

Tuesday, January 19, 2021

Hearing Room 301

8:30 AM

1:20-12177 Stephanie Ann Iadevaia-Dolatre

Chapter 7

#2.00 Reaffirmation agreement between Debtor and Ally Bank

Docket 17

Party Information

Debtor(s):

Stephanie Ann Iadevaia-Dolatre

Represented By
Nathan A Berneman

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 20, 2021

Hearing Room 301

9:30 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 January 20, 2021 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: 476281

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Password: 476281

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

Wednesday, January 20, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Wednesday, January 20, 2021

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

fr. 11/18/20; 12/23/20

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, January 20, 2021

Hearing Room 301

9:30 AM

1:20-11918 Lorina Marie Haro

Chapter 7

#2.00 Motion for relief from stay [PP]

LOGIX FEDERAL CREDIT UNION
VS
DEBTOR

Docket 12

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Lorina Marie Haro

Represented By
Steven A Simons

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 20, 2021

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.
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):

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, January 20, 2021

Hearing Room 301

9:30 AM

1:20-12159 Yulmy Y Villacorta

Chapter 7

#4.00 Motion for relief from stay [PP]

TOYOTA 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):

Yulmy Y Villacorta

Represented By
Sydell B Connor

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Wednesday, January 20, 2021

Hearing Room 301

9:30 AM

1:19-12590 Marine Kasabyan

Chapter 7

#5.00 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
VS
DEBTOR

Docket 101

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):

Marine Kasabyan

Represented By
Thomas B Ure
Laila Masud

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

Wednesday, January 20, 2021

Hearing Room 301

9:30 AM

CONT... Marine Kasabyan

Chapter 7

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, January 20, 2021

Hearing Room 301

9:30 AM

1:20-12079 Valentina Balashova

Chapter 7

#6.00 Motion for relief from stay [PP]

VW CREDIT LEASING, LTD.
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):

Valentina Balashova

Represented By
Sanaz Sarah Bereliani

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

Wednesday, January 20, 2021

Hearing Room 301

9:30 AM

CONT... Valentina Balashova

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, January 20, 2021

Hearing Room 301

9:30 AM

1:20-10935 Jose Edmundo Gamez

Chapter 13

#7.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORP.
VS
DEBTOR

Docket 42

Tentative Ruling:

- NONE LISTED -

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**

Wednesday, January 20, 2021

Hearing Room 301

1:30 PM

1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#8.00 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

STIP TO CONTINUE FILED 12/11/20 - jc

fr. 6/12/19; 8/7/19; 4/15/20; 6/17/20(stip); 7/1/20; 7/22/20; 10/21/20(stip)

Docket 7

***** VACATED *** REASON: Order approving stip entered 12/14/20.
Hearing continued to 4/7/21 at 1:30 PM. [Dkt. 81]**

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, January 20, 2021

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, January 20, 2021

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #9.00** 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;
11/4/20

Docket 62

***** VACATED *** REASON: Hearing rescheduled for 3/24/21 at 1:30 PM.
[Dkt. 81]**

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

Wednesday, January 20, 2021

Hearing Room 301

1:30 PM

CONT... Kenneth C. Scott
Tentative Ruling:

Chapter 13

- 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, January 20, 2021

Hearing Room 301

2:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

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

- #10.00** 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); 12/23/20

Stipulation to continue filed 1/4/20

Docket 25

***** VACATED *** REASON: Order approving stip entered 1/6/21.
Hearing continued to 3/10/21 at 2:30PM.**

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, January 20, 2021

Hearing Room 301

2:30 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**

Thursday, January 21, 2021

Hearing Room 301

10:30 AM

1:

Chapter

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

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Dial: US: +1 669 254 5252 or +1 646 828 7666

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

Thursday, January 21, 2021

Hearing Room 301

10:30 AM

CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Thursday, January 21, 2021

Hearing Room 301

10:30 AM

1:18-11318 Marcin Lambirth LLP

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Amy L. Goldman, Chapter 7 Trustee

Dinsmore & Shohl LLP, Attorneys for Trustee

SLBiggs, A Division of SingerLewak, Accountants for Trustee

Docket 77

Tentative Ruling:

The Court will continue this hearing to **10:30 a.m. on January 28, 2021.**

Appearances on January 21, 2021 are excused.

Party Information

Debtor(s):

Marcin Lambirth LLP

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By
Christopher Celentino
Peter J Mastan

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

Thursday, January 21, 2021

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#2.00 Disclosure statement hearing

Docket 117

Tentative Ruling:

Deny.

The debtor indicated she will amend the disclosure statement to address the U.S. Trustee's concerns. However, the debtor has not responded to the objection filed by Wells Fargo Bank, N.A. ("Wells Fargo") [doc. 123]. In that objection, Wells Fargo states that the proposed plan payments to Wells Fargo are less than the contractual amount of \$4,310.65. Wells Fargo also notes that the proposed amount depends on the debtor prevailing in state court litigation, but that the plan does not propose alternative treatment in the event the debtor does not prevail. The debtor should include a discussion of these issues in her amended disclosure statement.

In addition, the debtor has not included plan payments in the financial projections attached to the disclosure statement. The debtor must attach projects that include her anticipated income and expenses, *including all proposed plan payments*, to demonstrate that the plan is feasible.

Moreover, neither the debtor's schedules I and J nor the financial statements attached to the disclosure statement account for taxes owed by the debtor. The debtor also did not attach a Declaration of Current/Postpetition Income and Expenses.

Further, the debtor indicates that the claim of Comenity Bank is disputed, and proposes paying \$0 towards that claim. However, the debtor has not filed an objection to Comenity Bank's claim, and has not indicated whether she intends to file such an objection. Finally, the debtor does not account for any deficiency claim held by the secured lenders in the attached list of unsecured claims.

The debtor must cure these deficiencies in her amended disclosure statement and amended chapter 11 plan. The debtor must file and serve an amended disclosure statement and amended chapter 11 plan **no later than February 11, 2021**. If the debtor timely files and serves these documents, the Court will set a hearing on the adequacy of

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

Thursday, January 21, 2021

Hearing Room 301

1:00 PM

CONT...

Blanca Mohd

Chapter 11

the amended disclosure statement at **1:00 p.m. on March 25, 2021**. No later than **February 11, 2021**, the debtor must file and serve on all creditors notice of: (1) this hearing and (2) the deadline for parties in interest to file an objection no later than March 11, 2021.

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, January 21, 2021

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; 8/27/20; 9/17/20;
11/12/20; 12/3/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blanca Mohd

Represented By
Dana M Douglas

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

Thursday, January 21, 2021

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

fr. 7/16/20; 11/5/20

Docket 36

Tentative Ruling:

The debtors' monthly operating report for December 2020 indicates that they have not been making automobile loan payments. Is that accurate? If yes, why are they not making those payments?

The debtors have not filed an application to employ a professional to assist them to prepare income tax returns. Have the debtors selected an accountant for that purpose?

On October 19, 2020, the Court entered an order extending the debtors' deadline to file an objection to the proof of claim filed by the Internal Revenue Service to November 16, 2020 [doc. 73]. On January 11, 2021, the Internal Revenue Service filed an amended proof of claim [Claim 1-3]. To date, the debtors have not filed any such objection to claim.

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, January 21, 2021

Hearing Room 301

1:00 PM

1:20-11615 Coachella Vineyard Luxury RV Park LLC

Chapter 11

#5.00 Disclosure statement hearing describing chapter 11 plan of reorganization

Docket 36

***** VACATED *** REASON: Withdrawal of disclosure statement filed
1/14/21 [doc. 54].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coachella Vineyard Luxury RV Park

Represented By
Matthew D. Resnik
M. Jonathan Hayes

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

Thursday, January 21, 2021

Hearing Room 301

1:30 PM

1:11-11603 Kevan Harry Gilman

Chapter 7

#6.00 Application of chapter 7 trustee to employ Levene, Neale, Bender, Yoo & Brill L.L.P. as general bankruptcy counsel

Docket 765

Tentative Ruling:

The Court will approve employment effective January 21, 2021.

I. BACKGROUND

On June 13, 2017, February 20, 2018 and August 17, 2018, the Court entered orders awarding Tammy R. Phillips and Tammy R. Phillips, a Prof. Law Corp. ("Creditors") attorneys' fees and costs [doc. 548; 1:11-ap-01389-VK, docs. 748, 797]. Creditors recorded abstracts of judgment related to these orders (the "Abstracts"). Declaration of Anthony A. Friedman [doc. 771], ¶¶ 15-16.

On November 26, 2020, Creditors filed the *Motion to Direct Administration and Re-Investigation or, in Alternative, Replace Trustee* (the "Motion to Direct Administration") [doc. 761]. In the Motion to Direct Administration, Creditors requested an order compelling the chapter 7 trustee (the "Trustee") to administer the debtor's estate, including by selling the debtor's assets and "addressing the malpractice claims against Ellis Law Group." Motion to Direct Administration, p. 10 [FN1].

On December 10, 2020, the Trustee filed an application to employ Levene, Neale, Bender, Yoo & Brill L.L.P. ("LNBYB") as general bankruptcy counsel (the "Application") [doc. 765]. The Application requests approval of LNBYB's employment *effective December 1, 2020*. In the Application, the Trustee stated she requires counsel because: (A) Creditors informed the Trustee that the debtor's assets may be liquidated for the benefit of creditors; and (B) despite requests by the Trustee, Creditors have not provided the amount of their secured claim against the debtor's assets. As such, the Trustee notes she needs assistance of counsel to conduct discovery and provide legal analysis regarding the extent, validity and priority of any liens encumbering the debtor's assets.

On December 24, 2020, Creditors filed a response to the Application (the "Creditors'

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

Thursday, January 21, 2021

Hearing Room 301

1:30 PM

CONT... **Kevan Harry Gilman**

Chapter 7

Response") [doc. 767]. In the Creditors' Response, Creditors argue that: (A) the Application improperly seeks *nunc pro tunc* relief; (B) the Trustee has not stated a need for counsel; and (C) the Application does not include reasons why the Trustee selected LNBYB. On January 14, 2021, the Trustee filed a reply to the Creditors' Response [doc. 771], asserting, among other things, that the Application does not seek *nunc pro tunc* relief because it is timely under Local Bankruptcy Rule ("LBR") 2014-1(b)(1)(E).

II. ANALYSIS

A. Whether the Application Complies with Fed. R. Bankr. P. 2014

Federal Rule of Bankruptcy Procedure ("FRBP") 2014(a) provides, in relevant part—

The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of 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. The application 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.

Here, contrary to Creditors' assertions, the Application includes sufficient information in accordance with FRBP 2014. Creditors assert that the Trustee has not included specific facts showing the necessity for employment and the reason for selecting LNBYB.

First, the Trustee has adequately articulated a need for counsel. As set forth in the Application, Creditors assert secured claims against assets of the estate. As such, the Trustee requires assistance of counsel to assess the amounts and validity of these claims. For instance, the Trustee notes that counsel will analyze Creditors' Abstracts and the disposition of the pending appeal regarding the Court's order allowing the debtor's claim of a general homestead exemption. In addition, the Trustee stated she requires assistance in conducting discovery regarding Creditors' asserted claims. These legal assessments,

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Thursday, January 21, 2021

Hearing Room 301

1:30 PM

CONT... **Kevan Harry Gilman**

Chapter 7

coupled with the apparent need for discovery against Creditors, "require special expertise beyond that expected" of the Trustee. *In re Garcia*, 335 B.R. 717, 727 (B.A.P. 9th Cir. 2005).

Moreover, the Motion to Direct Administration also triggered a need for counsel. In that motion, Creditors asserted that the Trustee did not properly investigate alleged malpractice claims the debtor may have against Ellis Law Group. Although Creditors now note that the Motion to Direct Administration is "unnecessary," Creditors continue to assert, in the Creditors' Response, that the Trustee did not properly investigate the alleged malpractice claims. As such, the Trustee requires counsel to defend herself from Creditors' allegations.

The Trustee also has adequately explained why she chose LNBYB to represent her in this case. Both the Application and the attached Declaration of Anthony A. Friedman include discussions about LNBYB's particular qualifications. Such qualifications include the following: (A) LNBYB specializes in bankruptcy practice; (B) three attorneys employed by LNBYB are chapter 7 trustees; and (C) LNBYB's attorneys have considerable experience in similar matters. Declaration of Anthony A. Friedman, ¶ 3. FRBP 2014(a) does not require applicants to compare their selected attorneys to every other comparable attorney available for hire; instead, the plain language of FRBP 2014 requires only that the applicant provide reasons for selecting the professionals they apply to hire. In light of the above, the Trustee has provided such reasons. As such, the Court will not deny the Application based on a lack of compliance with FRBP 2014(a). [FN2].

B. Nunc Pro Tunc Relief

Creditors, referencing the Trustee's request to approve LNBYB's employment effective December 1, 2020, assert that the Application improperly seeks *nunc pro tunc* relief. Creditors cite *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 140 S.Ct. 696, 206 L.Ed.2d 1 (2020). In *Acevedo*, on February 6, 2018, the Roman Catholic Archdiocese of San Juan, Puerto Rico (the "Archdiocese") removed the case from a Puerto Rico court to a federal district court. *Acevedo*, 140 S.Ct. at 699-700. On March 16, March 26 and March 27, 2018, while the case was before the federal district court, the Puerto Rico court entered certain payment and seizure orders against the Archdiocese (the "Puerto Rico Orders"). *Id.*, at 700. Approximately five months later, the federal district court remanded the case to the Puerto Rico court. *Id.* However, the remand was by way of a *nunc pro tunc* judgment, which stated that the remand was

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CONT... Kevan Harry Gilman

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effective March 13, 2018. *Id.*, at 700.

One of the issues before the Supreme Court of the United States was whether the Puerto Rico Orders were effective despite the fact that, at the time the Puerto Rico Orders were entered, the federal district court had jurisdiction over the case. The Supreme Court held that the Puerto Rico court lacked jurisdiction to enter the Puerto Rico Orders, and that the federal district court could not provide *nunc pro tunc* relief—

Federal courts may issue *nunc pro tunc* orders, or "now for then" orders, Black's Law Dictionary, at 1287, to "reflect the reality" of what has already occurred, *Missouri v. Jenkins*, 495 U.S. 33, 49, 110 S.Ct. 1651, 109 L.Ed.2d 31 (1990). "Such a decree presupposes a decree allowed, or ordered, but not entered, through inadvertence of the court." *Cuebas y Arredondo v. Cuebas y Arredondo*, 223 U.S. 376, 390, 32 S.Ct. 277, 56 L.Ed. 476 (1912).

Put colorfully, "[n]unc pro tunc orders are not some Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact." *United States v. Gillespie*, 666 F.Supp. 1137, 1139 (N.D. Ill. 1987). Put plainly, the court "cannot make the record what it is not." *Jenkins*, 495 U.S. at 49, 110 S.Ct. 1651.

Nothing occurred in the District Court case on March 13, 2018. See Order Granting Motion to Remand in No. 3:18-cv-01060 (noting, on August 20, 2018, that the motion is "hereby" granted and ordering judgment "accordingly").... [T]he case remained in federal court until that court, on August 20, reached a decision about the motion to remand that was pending before it. The [Puerto Rico court's] actions in the interim, including the payment and seizure orders, are void.

Id., at 700-01.

After *Acevedo*, certain bankruptcy courts have held that *Acevedo* prohibits bankruptcy courts from retroactively approving employment of professionals. See, e.g. *In re Miller*, 620 B.R. 637 (Bankr. E.D. Cal. 2020); and *In re Benitez*, 2020 WL 1272258 (Bankr. E.D.N.Y. Mar. 13, 2020). In *Miller*, on July 14, 2020, the chapter 7 trustee moved to employ special litigation counsel effective March 3, 2013. *Miller*, 620 B.R. at 639. The

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CONT... **Kevan Harry Gilman**

Chapter 7

Miller court held that *Acevedo* barred such *nunc pro tunc* relief—

[*Acevedo*'s] significant limit on the use by federal courts of *nunc pro tunc* orders has necessitated a change in bankruptcy practice. *Nunc pro tunc* orders have been common, particularly with respect to employment under § 327. Bankruptcy courts have recognized that practice must now stop.

Id., at 641 (citing *In re Roberts*, 618 B.R. 213, 217 (Bankr. S.D. Ohio 2020); and *Benitez*, 2020 WL 1272258 at *2). Nevertheless, the court held that *Acevedo* is not "a *per se* prohibition of all retroactive relief in all instances." *Id.* Noting that "[s]tatutes may... serve as a basis, express or implied, for orders that have retroactive effect" without the need to employ a court's inherent power to provide *nunc pro tunc* relief, the court held that 11 U.S.C. §§ 327 and 330 and FRBP 6003(a) empower courts to compensate professionals "for services provided before employment is formally approved...." *Id.*, at 641-42.

As support for this proposition, the court cited, *inter alia*, the Ninth Circuit Court of Appeals' decision in *In re Harbin*, 486 F.3d 510 (9th Cir. 2007). In *Harbin*, one of the issues before the Court of Appeals was whether the Court could approve a financing agreement *after* the debt was incurred. *Harbin*, 486 F.3d at 521-22. As explained by *Miller*, the *Harbin* court held that courts had the power to approve such agreements—

The salient point is that retroactive approval of the postpetition debt did not depend on the fact of prior authorization by the bankruptcy court to enter into the financing transaction. In other words, there was no need to create facts or rewrite history with a *nunc pro tunc* order in order support the retroactive relief granted.

Miller, 620 B.R. at 641. The *Miller* court also referenced *In re Atkins*, 69 F.3d 970 (9th Cir. 1995), in which case the Ninth Circuit Court of Appeals "reaffirmed the long-recognized principle that 'the bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services.'" *Miller*, 620 B.R. at 642 (quoting *Atkins*, 69 F.3d at 973). As such, the *Miller* court approved the employment of special litigation counsel effective the date of approval of the application to employ, but allowed compensation for the "reasonable, necessary, and beneficial services" that counsel provided to the chapter 7 trustee and the estate prior to

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CONT... **Kevan Harry Gilman**

Chapter 7

approval of employment. *Id.*, at 643-44.

Similarly, in *Benitez*, the trustee moved to employ general bankruptcy counsel approximately 11 months after counsel performed services for the estate. *Benitez*, 2020 WL 1272258 at *3. The trustee requested *nunc pro tunc* approval of employment. *Id.* The court held that, in light of *Acevedo*, "utilizing *nunc pro tunc* orders to approve the retention of estate professionals retroactive to some date prior to the actual date of court approval is inappropriate." *Id.*, at *1. However, as in *Miller*, the *Benitez* court held that—

[N]either the Code nor the Rules preclude an award of "reasonable compensation" or reimbursement for "actual, necessary expenses" pursuant to section 330 for services rendered prior to an order approving retention of the professional. The only temporal requirement in the Code and Rules is that a professional must have been retained pursuant to section 327 to successfully obtain a court award of compensation. Simply stated, a professional must be retained as required by the statute, but once having been retained, the bankruptcy court is free to compensate him for services rendered to the estate at any time, pre and post-court approval, in accordance with section 330 of the Code.

Id., at *2.

In response to Creditors' reference to *Acevedo*, the Trustee cites LBR 2014-1(b)(1)(E), which provides that "an application for employment of [a] professional person should be filed as promptly as possible after such person has been engaged." According to the Trustee, because the Trustee "promptly" filed the Application pursuant to LBR 2014-1(b)(1)(E), the Application does not request *nunc pro tunc* relief. However, the Local Bankruptcy Rules do not override the Supreme Court's *Acevedo* decision. Even if the Application is "prompt" under LBR 2014-1, the Application requests approval of employment as of a date preceding the filing of the Application.

In light of the authorities above, the Court will approve the Application effective the date of the hearing, i.e., "the actual date of court approval." *Benitez*, 2020 WL 1272258 at *1. Although the Court will not approve employment of LNBYB as of December 1, 2020, LNBYB may request compensation for fees arising from the "reasonable, necessary, and beneficial services" that LNBYB provided to the Trustee and the estate

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Chapter 7

prior to the Court's approval of its employment. *Miller*, 620 B.R. at 643-44. If and after LNBYB files an application for compensation, the Court will assess whether such fees are "reasonable, necessary, and beneficial."

III. CONCLUSION

The Court will approve LNBYB's employment effective January 21, 2021.

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

FOOTNOTES

1. The Clerk of the Court issued a notice to Creditors to refile the Motion to Direct Administration without a hearing date. Creditors have not refiled the Motion to Direct Administration, and it is unclear whether or not Creditors intend to litigate the Motion to Direct Administration.
2. Creditors also discuss the hourly rates of attorneys at LNBYB. However, an assessment of the reasonableness of LNBYB's hourly rates is premature. The Court will analyze these issues in connection with any application for compensation filed by LNBYB. In addition, as noted by the Trustee, if the Trustee determines that there is no justification to administer assets in this case, LNBYB will not be compensated.

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Trustee(s):

Amy L Goldman (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
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Thursday, January 21, 2021

Hearing Room 301

2:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#7.00 Confirmation hearing re Debtor's chapter 11, subchapter V plan of liquidation
fr. 1/14/21

Docket 60

Tentative Ruling:

Contrary to the Court's order setting dates and deadlines [doc. 65], the debtor has not filed a confirmation brief regarding the debtor's subchapter V plan of liquidation (the "Plan") [doc. 60] and a reply to the United States Trustee's objection to confirmation of the Plan [doc. 71]. Consequently, at this time, the Court cannot confirm the Plan.

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
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Hearing Room 301

2:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#8.00 Status conference re: chapter 11 subchapter V case

fr.09/10/20; 11/5/20; 1/14/21

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monte Verde Ranch, LLC

Represented By
Ian Landsberg

Trustee(s):

Andrew W. Levin (TR)

Pro Se

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San Fernando Valley
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9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the January 27, 2021 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 0

Tentative Ruling:

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Wednesday, January 27, 2021

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9:30 AM

CONT...

- NONE LISTED -

Chapter

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Hearing Room 301

9:30 AM

1:19-12840 Nathaniel Joseph Ehrlich

Chapter 7

#1.00 Order to show cause why Pentagon Federal Credit Union should not be held in civil contempt for violation of the automatic stay

fr. 12/9/20 (stip)

Docket 18

***** VACATED *** REASON: Withdrawal filed 1/14/21. [Dkt.25]**

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
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Hearing Room 301

9:30 AM

1:20-11134 Helping Others International, LLC

Chapter 7

#2.00 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

fr. 12/09/20;

Docket 107

Tentative Ruling:

In light of the Court's decisions, following hearings held on January 13, 2021, to terminate and annul the automatic stay as concerns these real properties [docs. 150, 151 and 152, regarding which decisions properly formatted orders have not yet been lodged], the Court will deny this motion.

Party Information

Debtor(s):

Helping Others International, LLC

Represented By
Todd J Cleary

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim

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1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01039 Lewis v. Vartan

#3.00 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; 12/09/20;

Docket 4

***** VACATED *** REASON: Order dismissing adversary entered
12/21/20 - jc**

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
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1:30 PM

1:20-10384 Amir Zamzelig

Chapter 13

Adv#: 1:20-01052 Peskin et al v. Zamzelig

#4.00 Order to show cause why this adversary proceeding should not be dismissed for failure to prosecute

Docket 1

Tentative Ruling:

In their response to the Order to Show Cause [doc. 16], the plaintiffs consent to dismissal of this action. As such, the Court will dismiss this adversary proceeding.

The Court will prepare the Order.

Appearances on January 27, 2021 are excused.

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
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Hearing Room 301

2:30 PM

1:20-10384 Amir Zamzelig

Chapter 13

Adv#: 1:20-01052 Peskin et al v. Zamzelig

#5.00 Status conference re: complaint to determine
nondischargeability of debt

fr. 7/15/20; 12/16/20

Docket 1

Tentative Ruling:

In their response to the Order to Show Cause [doc. 16], the plaintiffs consent to dismissal of this action. As such, the Court will dismiss this adversary proceeding.

The Court will prepare the Order.

Appearances on January 27, 2021 are excused.

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
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Thursday, January 28, 2021

Hearing Room 301

10:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the January 28, 2021 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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Join By Computer

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Meeting ID: 161 292 9907

Password: 897649

Join by Telephone

Dial: US: +1 669 254 5252 or +1 646 828 7666

Meeting ID: 161 292 9907

Password: 897649

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Hearing Room 301

10:30 AM

1:18-10285 Tarte Catering, Inc.

Chapter 7

#1.00 Trustee's final report and hearing on applications for compensation

Diane Weil, Chapter 7 Trustee

Docket 31

Tentative Ruling:

Diane C. Weil, chapter 7 trustee – approve fees of \$662.50 and reimbursement of expenses of \$13.70, 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):

Tarte Catering, Inc.

Represented By
Keith S Dobbins

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Hearing Room 301

10:30 AM

1:18-11318 Marcin Lambirth LLP

Chapter 7

#1.10 Trustee's Final Report and Applications for Compensation

Amy L. Goldman, Chapter 7 Trustee

Dinsmore & Shohl LLP, Attorneys for Trustee

SLBiggs, A Division of SingerLewak, Accountants for Trustee

fr. 1/21/21

Docket 77

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee – approve fees of \$7,793.58 and reimbursement of expenses of \$31.95, pursuant to 11 U.S.C. § 330, on a final basis.

Dinsmore & Shohl, LLP, counsel to chapter 7 trustee – approve fees of \$16,507.50 and reimbursement of expenses of \$389.96, pursuant to 11 U.S.C. § 330, on a final basis.

SLBiggs, accountant to chapter 7 trustee – approve fees of \$11,425.00 and reimbursement of expenses of \$134.09, 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):

Marcin Lambirth LLP

Pro Se

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10:30 AM

CONT... Marcin Lambirth LLP

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Represented By
Christopher Celentino
Peter J Mastan

**United States Bankruptcy Court
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1:00 PM

1:19-11902 John Christian Lukes

Chapter 11

#2.00 Status conference re: chapter 11 case

fr. 9/19/19; 2/6/20; 4/30/20; 10/08/20; 12/3/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Christian Lukes

Represented By
Matthew D Resnik

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Thursday, January 28, 2021

Hearing Room 301

1:30 PM

1:19-11998 Joseph Lisi and Cynthia Lisi

Chapter 13

#3.00 Motion re: objection to claim number 4 by claimant Heriberto Perez

fr, 12/10/19; 2/11/20; 5/5/20; 8/11/20; 12/10/20

Docket 25

*** VACATED *** REASON: Order of dismissal entered 12/14/20 [Dkt.59]

Tentative Ruling:

- NONE LISTED -

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
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1:30 PM

1:20-11653 Altra Mortgage Capital LLC

Chapter 11

#4.00 Motion for order authorizing rejection of executory contract with
Salesforce pursuant to 11 U.S.C. § 365(A) and 11 U.S.C. § 1107(A)

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):

Altra Mortgage Capital LLC

Represented By
Michael Jay Berger

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Thursday, January 28, 2021

Hearing Room 301

1:30 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#5.00 Motion for interim and final approval of postpetition financing pursuant to 11 U.S.C. §364(d)(1) and approval of priming lien against estate property

fr. 1/14/21

Stip to continue filed 1/27/21

Docket 38

***** VACATED *** REASON: Continued to 2/11/21 at 1:30 p.m. per order entered on 1/27/21 [dkt 62]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, February 3, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the February 3, 2021 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 URL: <https://cacb.zoomgov.com/j/1615581497>

Meeting ID: 161 558 1497

Password: 352091

Join by Telephone

Dial: US: 1- 669-254-5252 or 1-669-216-1590

Meeting ID: 161 558 1497

Password: 352091

Docket 0

Tentative Ruling:

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Wednesday, February 3, 2021

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CONT...

- NONE LISTED -

Chapter

**United States Bankruptcy Court
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Wednesday, February 3, 2021

Hearing Room 301

9:30 AM

1:18-11504 Juan Pedro Torres

Chapter 13

#1.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 12/9/20

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):

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, February 3, 2021

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9:30 AM

CONT... **Juan Pedro Torres**
Elizabeth (SV) F Rojas (TR)

Pro Se

Chapter 13

**United States Bankruptcy Court
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Wednesday, February 3, 2021

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; 11/18/20; 1/13/21

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, February 3, 2021

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

#3.00 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);
11/4/20(stip)

Docket 1

*** VACATED *** REASON: Continued by stip to 3/24/21 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

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

Wednesday, February 3, 2021

Hearing Room 301

1:30 PM

CONT...

Remon Ramzy Hanna

Chapter 7

Randy B Soref

Mark Ross, Jr.

Represented By
Randy B Soref

Raied Francis

Represented By
Randy B Soref

Trustee(s):

David Seror (TR)

Pro Se

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

Wednesday, February 3, 2021

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#4.00 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; 12/09/20

Docket 4

Tentative Ruling:

In the joint status report [doc. 39], the parties indicate that the defendant is waiting for the plaintiff to provide comments regarding the parties' settlement agreement.

Why is there a delay in finalizing the settlement agreement?

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, February 3, 2021

Hearing Room 301

1:30 PM

CONT... Shobert Vartan

Chapter 7

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

Thursday, February 4, 2021

Hearing Room 301

10:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the February 4 , 2021 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/1607425306>

Meeting ID: 160 742 5306

Password: 570853

Join by Telephone

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 160 742 5306

Password: 570853

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Thursday, February 4, 2021

Hearing Room 301

10:30 AM

1:18-10762 Jaime R Lara

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

SulmeyerKupetz, A Professional Corp., Attorneys for Trustee

Grobstein Teeple, LLP, Accountants for Trustee

Docket 91

Tentative Ruling:

Diane C. Weil, chapter 7 trustee – approve fees of \$21,495.59 and reimbursement of expenses of \$144.00, pursuant to 11 U.S.C. § 330, on a final basis.

SulmeyerKupetz, counsel to chapter 7 trustee – as stipulated between the United States Trustee and SulmeyerKupetz [doc. 94], approve fees of \$67,580.50 and reimbursement of expenses of \$4,201.11, pursuant to 11 U.S.C. § 330, on a final basis.

Grobstein Teeple LLP, accountant to chapter 7 trustee – approve fees of \$5,313.00 and reimbursement of expenses of \$92.37, 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):

Jaime R Lara

Pro Se

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**

Thursday, February 4, 2021

Hearing Room 301

10:30 AM

CONT... Jaime R Lara

Chapter 7

Elissa Miller
Claire K Wu

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

Thursday, February 4, 2021

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#2.00 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); 12/17/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on March 25, 2021**. No later than **March 18, 2021**, the debtor must file and serve a status report, supported by evidence, updating the Court on the status of her progress toward confirming a chapter 11 plan in this case, including the status of the debtor's pending loan modification application.

Appearances on February 4, 2021 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, February 4, 2021

Hearing Room 301

1:00 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#3.00 Status conference re: chapter 11 case

fr. 8/13/20; 9/10/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on April 22, 2021**. No later than **April 15, 2021**, the debtor must file and serve a status report, supported by evidence, updating the Court on the status of its progress toward confirming a chapter 11 plan in this case.

Appearances on February 4, 2021 are excused.

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, February 4, 2021

Hearing Room 301

1:00 PM

1:20-11286 Transpine, Inc.

Chapter 11

#4.00 Status conference re chapter 11 case

fr. 10/15/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to take place at **1:30 p.m. on February 11, 2021**, in connection with the hearing to consider the debtor's proposed disclosure statement.

Appearances on February 4, 2021 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**

Thursday, February 4, 2021

Hearing Room 301

1:00 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#5.00 Status conference re chapter 11 case

fr. 1/14/21

Docket 1

Tentative Ruling:

Contrary to the representation in the status report, the debtor has not filed a motion to approve new construction financing. What steps has and is the debtor taking to obtain such financing?

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **April 16, 2021.**

Deadline to mail notice of Bar Date: **February 12, 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: **June 1, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on June 17, 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

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

Thursday, February 4, 2021

Hearing Room 301

1:00 PM

CONT... Buena Park Drive LLC

Chapter 11

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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

Thursday, February 4, 2021

Hearing Room 301

1:30 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#6.00 Motion of Debtor to approve stipulation including relief from stay
with 5AIF Sycamore 2 LLC

Docket 101

Tentative Ruling:

Grant.

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

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

Party Information

Debtor(s):

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, February 4, 2021

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#7.00 Motion For Entry Of An Order: (A) Allowing An Administrative Expense Priority Claim Pursuant To 11 U.S.C. § 503(b)(1) For Post-Petition Expenses Advanced By LDI Ventures, LLC; And (B) Directing Immediate Payment Of Such Administrative Expense Claim

Docket 283

Tentative Ruling:

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11 petition. On August 28, 2020, Debtor filed a chapter 11, subchapter V plan of reorganization (the "Plan") [doc. 156]. The Plan provides, in relevant part—

Administrative expenses are claims for costs or expenses of administering the Debtor's Bankruptcy Case that are allowed under Bankruptcy Code Section 507(a)(2). Although Bankruptcy Code Section 1129(a)(9)(A) requires that all administrative claims be paid on the Plan Effective Date unless a particular claimant agrees to a different treatment, Bankruptcy Code Section 1191(e) provides an exception by permitting confirmation of a subchapter V plan that provides for the payment of administrative claims "through the plan[.]"

The following chart lists all of the Debtor's § 507(a)(2) administrative claims and their treatment under the Plan.

Plan, p. 10 (emphasis in Plan). The chart identified administrative claims arising from: (A) Clerk's Office Fees; (B) fees payable to Levene, Neale, Bender, Yoo & Brill, L.L.P. ("LNBYB"), Debtor's general bankruptcy counsel; (C) fees payable to Caroline R. Djang, the subchapter V trustee; and (D) fees payable to Debtor's accountant. *Id.* The Plan also provided for treatment of a nonpriority unsecured claim held by LDI Ventures, LLC ("LDI"). LDI voted to accept the Plan [doc. 254]. On January 20, 2021, the Court entered an order confirming the Plan [doc. 286].

On January 14, 2021, Debtor filed a motion requesting entry of an order allowing an

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Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

administrative expense priority claim in favor of LDI and directing the immediate payment of the claim (the "Motion") [doc. 283]. In the Motion, Debtor contends that, postpetition, LDI paid for certain critical repair, maintenance and marketing/sale expenses totaling \$21,542.01. Debtor also states that it mistakenly believed that it could not use its cash on hand to pay such expenses, and that, based on that mistaken belief, LDI advanced funds that otherwise would have been paid by the estate. The spreadsheet of funds advanced by LDI, attached to the Motion, reflects that LDI began paying Debtor's expenses on June 5, 2020.

On January 21, 2021, F.R., LLC ("F.R.") filed an opposition to the Motion (the "Opposition") [doc. 288]. In the Opposition, F.R. asserts that: (A) Debtor and LDI are bound by the terms of the Plan, which did not include LDI as an administrative claimant; and (B) the Motion presents a conflict of interest because Debtor is seeking allowance of a claim on behalf of an insider. On January 28, 2021, Debtor filed a reply to the Opposition [doc. 291].

II. ANALYSIS

Even if LDI's claim meets the prerequisites for allowance as an administrative claim, Debtor has not adequately addressed whether the Plan bars Debtor from paying LDI's administrative claim. 11 U.S.C. § 1141 provides:

Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

"[A]ll creditors are bound by the provisions of the plan, regardless of whether the creditor filed a claim." *In re W.F. Monroe Cigar Co.*, 166 B.R. 110, 112 (N.D. Ill. 1994).

"Once a bankruptcy plan is confirmed, it is binding on all parties and all questions that could have been raised pertaining to the plan are entitled to *res judicata* effect." *Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995). "Confirmation of a plan of reorganization constitutes a final judgment in bankruptcy proceedings." *In re Heritage Hotel P'ship I*,

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Thursday, February 4, 2021

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2:30 PM

CONT... Lev Investments, LLC

Chapter 11

160 B.R. 374, 377 (B.A.P. 9th Cir. 1993) (citing *Stoll v. Gottlieb*, 305 U.S. 165, 59 S.Ct. 134, 83 L.Ed. 104 (1938)). "[A] confirmed Plan comprises all matters pertaining to the debtor-creditor relationship that the debtor or any creditor might raise to advance their interests in the proceedings." *In re California Litfunding, a Nevada Corp.*, 360 B.R. 310, 322 (Bankr. C.D. Cal. 2007) (citing *In re Kelley*, 199 B.R. 698, 702 (B.A.P. 9th Cir. 1996)).

In the Plan, Debtor stated that amounts owed to the Clerk's Office, LNBYB, the subchapter V trustee and Debtor's accountant constituted "all" of the administrative claims against Debtor. Because LDI began paying the subject expenses in June 2020, part of LDI's asserted administrative claim existed before Debtor filed the Plan (in August 2020). Although the Plan provides for LDI's general unsecured claim, Debtor did not mention LDI's requested administrative claim in the Plan or the motion for an order confirming the Plan, and neither Debtor nor LDI raised the issue during the confirmation hearing, which was held in December 2020.

Under the authorities above, the Plan is binding on Debtor and all creditors, including LDI. The Plan provides for payment being made to four holders of administrative claims only, which are particularly identified in the Plan.

In the Reply, Debtor does not meaningfully address this issue. Debtor asserts that it filed the Motion in accordance with the Court's ruling on a motion to approve a sale filed by Debtor [doc. 226]. In that ruling, the Court denied Debtor's request to pay LDI through escrow, instead stating that "Debtor may hold the subject funds until there is a Court order allowing the payment of the funds under the appropriate standards." This language is not pertinent to whether the Plan forecloses Debtor's ability to pay LDI's asserted administrative claim; the Court merely instructed the parties that LDI would need a court order before recovering any administrative claim. The Court did not rule that it would allow payment of LDI's claim, notwithstanding any conflicting provisions in the Plan.

Debtor also asserts that LDI should not be penalized for waiting until it incurred all expenses to file the Motion. However, the issue is not that the Motion was not timely filed. The issue is that the Plan, which specifically identifies the administrative claims to be paid, does not provide for LDI's asserted administrative claim, at least part of which claim existed at the time Debtor filed the Plan, and a vast majority of which existed by the confirmation hearing date. As such, the Court will set a briefing deadline for the parties to file supplemental briefs, **supported by law**, to address the impact of the Plan on

**United States Bankruptcy Court
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Thursday, February 4, 2021

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

Chapter 11

Debtor's payment of LDI's asserted administrative claim.

III. CONCLUSION

The Court will continue this hearing for the parties to file supplemental briefs regarding whether the Plan, which apparently precludes payment of an administrative claim in favor of LDI, bars the Debtor from doing so. The Court will continue this hearing to **2:30 p.m. on March 18, 2021**. No later than **February 25, 2021**, the parties must file and serve their supplemental briefs. No later than **March 4, 2021**, the parties may file and serve briefs responding to the other party's supplemental brief.

Appearances on February 4, 2021 are **not** excused.

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, February 9, 2021

Hearing Room 301

9:30 AM

1:

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the February 9, 2021 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: 160 911 1460 **New: 161 232 9884**

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Join by Telephone

Dial: US: 1- 669-254-5252 or 1-669-216-1590

Meeting ID: 160 911 1460

Password: 749169

Docket 0

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

Tuesday, February 9, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Tuesday, February 9, 2021

Hearing Room 301

9:30 AM

1:

Chapter

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

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, February 9, 2021

Hearing Room 301

10:30 AM

1:15-12261 Jesus Leon and Victoria Cabrales

Chapter 13

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

fr. 10/6/20; 12/8/20; 1/12/21

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, February 9, 2021

Hearing Room 301

10:30 AM

1:15-12329 Rene Dashiell

Chapter 13

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

fr. 3/10/20; 6/9/20; 09/08/20; 12/8/20

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, February 9, 2021

Hearing Room 301

10:30 AM

1:15-13062 Hector Flores and Martha Flores

Chapter 13

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

Docket 104

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 9, 2021

Hearing Room 301

10:30 AM

1:16-12523 Brent Carpenter

Chapter 13

#19.00 Trustee's motion to dsmiss case for failure to make plan payments

fr. 10/6/20; 11/10/20; 12/8/20

Docket 77

*** VACATED *** REASON: Withdrawal of motion filed 1/15/21. [Dkt. 95]

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
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Tuesday, February 9, 2021

Hearing Room 301

10:30 AM

1:17-12481 Daniel Schreiber

Chapter 13

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

Docket 35

***** VACATED *** REASON: Withdrawal of motion filed 2/1/21. [Dkt.20]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Schreiber

Represented By
William G Cort

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, February 9, 2021

Hearing Room 301

10:30 AM

1:17-13190 Seferino Carlin

Chapter 13

#21.00 Trustee's motion to dsmiss case for failure to make plan payments
fr. 10/6/20; 12/8/20

Docket 48

***** VACATED *** REASON: Withdrawal of motion filed 1/15/21. [Dkt.
57]**

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 9, 2021

Hearing Room 301

10:30 AM

1:17-13313 Pedro Mejia Lopez

Chapter 13

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

fr. 10/6/20; 12/8/20; 1/12/21

Docket 63

***** VACATED *** REASON: Motion withdrawn 1/27/21 - jc**

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, February 9, 2021

Hearing Room 301

10:30 AM

1:18-10983 Daniele C Kenney

Chapter 13

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

Docket 62

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniele C Kenney

Represented By
David S Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, February 9, 2021

Hearing Room 301

10:30 AM

1:18-11288 Neli Maria Negrea

Chapter 13

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

Docket 121

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, February 9, 2021

Hearing Room 301

10:30 AM

1:19-10969 Peter Keith Wright

Chapter 13

#25.00 Trustee's motion to dsmiss case for failure to make plan payments
fr. 12/8/20

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter Keith Wright

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 9, 2021

Hearing Room 301

10:30 AM

1:19-12523 John Jairo Barrios

Chapter 13

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

fr. 1/12/21

Docket 67

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**

Tuesday, February 9, 2021

Hearing Room 301

10:30 AM

1:20-10269 John Goulter

Chapter 13

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

Docket 48

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**

Tuesday, February 9, 2021

Hearing Room 301

10:30 AM

1:19-11745 Iva Kostov

Chapter 13

#27.10 Trustee's Motion to dismiss case for failure to make plan payments

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Iva Kostov

Represented By
Arsen Pogosov

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, February 9, 2021

Hearing Room 301

11:00 AM

1:15-12261 Jesus Leon and Victoria Cabrales

Chapter 13

#28.00 Debtors' Motion for entry of discharge

Docket 55

Tentative Ruling:

Grant.

Debtors 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):

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, February 9, 2021

Hearing Room 301

11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#29.00 Motion for attorney's fees after appeal against Daniel Jett in the amount of \$48,215.25

Docket 261

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On December 18, 2018, Kenneth C. Scott ("Debtor") filed a chapter 13 petition. On April 12, 2019, the Court entered an Order to Show Cause why Samuel Hopper, a creditor, and Daniel Parker Jett, Mr. Hopper's attorney, should not be held in civil contempt for violating the automatic stay (the "OSC") [doc. 64]. On May 15, 2019, the Court held a hearing on the OSC. On May 29, 2019, the Court entered an order holding Mr. Jett in contempt of Court for a willful violation of the automatic stay (the "Stay Violation Order") [doc. 124]. In order to assess the amount of damages, the Court continued the hearing on the OSC to July 17, 2019 and ordered Arash Shirdel, Debtor's counsel, to serve on Mr. Jett a declaration with a breakdown of the attorneys' fees and costs associated with remedying the violation of stay.

On June 10, 2019, Mr. Jett appealed the Stay Violation Order to the United States District Court (the "Appeal") [doc. 129]. On December 4, 2020, the District Court affirmed the Stay Violation Order (the "District Court Decision") [doc. 262]. Mr. Jett appealed the District Court Decision to the Ninth Circuit Court of Appeals (the "Ninth Circuit Appeal") [doc. 266].

On December 9, 2020, Debtor filed a motion requesting fees and costs incurred prosecuting the violation of the automatic stay and defending the Appeal (the "Fees Motion") [doc. 261]. On January 5, 2021, Mr. Jett filed a motion requesting a stay of the OSC proceedings and the Fees Motion pending the Ninth Circuit Appeal (the "Stay Motion") [doc. 269].

On January 26, 2021, Mr. Jett filed an opposition to the Fees Motion (the "Opposition") [doc. 280]. In the Opposition, Mr. Jett asserts that: (A) he did not violate the automatic

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CONT... Kenneth C. Scott

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stay; and (B) the attorneys' fees and costs requested by Debtor are excessive and unreasonable. On February 2, 2021, Debtor filed a reply to the Opposition (the "Reply") [doc. 284], asserting, among other things, that the reasonableness standard does not apply to an award of attorneys' fees under § 362(k).

II. ANALYSIS

As a preliminary matter, the Court does not have jurisdiction to assess Mr. Jett's arguments regarding the subject matter of the Ninth Circuit Appeal, i.e., whether Mr. Jett violated the automatic stay. "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 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.'" *In re Sherman*, 491 F.3d 948, 967 (9th Cir. 2007) (quoting *In re Padilla*, 222 F.3d 1184, 1190 (9th Cir. 2000)).

Here, Mr. Jett's arguments related to *Taggart v. Lorenzen*, 139 S.Ct. 1795, 204 L.Ed.2d 129 (2019), are before the Ninth Circuit Court of Appeals. As such, this Court is divested of jurisdiction over this issue. The sole issue before the Court is the amount of damages to award Debtor under 11 U.S.C. § 362(k).

In the Reply, Debtor asserts that, because § 362(k) provides for an award of "actual" damages, the Court may not engage in a reasonableness analysis of Debtor's incurred fees and costs. However, binding authority from the Ninth Circuit Court of Appeals, including a case cited by Debtor, stands contrary to Debtor's position. *See In re Schwartz-Tallard*, 803 F.3d 1095 (9th Cir. 2015). The issue in *Schwartz-Tallard* was: "Did Congress intend to authorize recovery of attorney's fees incurred in litigation for one purpose (ending the stay violation) but not for another (recovering damages)?" *Id.*, at 1099.

The Court of Appeals held that the language of 11 U.S.C. § 362(k), which allows for recovery of "actual damages, including costs and attorneys' fees," did not include a "limitation on the remedy for which the fees were incurred" and, as a result, allowed recovery of attorneys' fees and costs incurred litigating a stay violation. *Id.*, at 1099. Although the Court of Appeals held that attorneys' fees and costs incurred litigating a

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Kenneth C. Scott

Chapter 13

stay violation, including on appeal, qualified as "actual damages" recoverable under § 362(k), the Court of Appeals did *not* hold that "actual damages" meant recovery of every penny billed by an attorney. In fact, the Court of Appeals explicitly stated—

Although § 362(k) makes such fee awards mandatory rather than discretionary, we do not think that feature of the statute will result in unnecessary litigation brought solely to drive up the award. *Only an award of fees reasonably incurred is mandated by the statute; courts awarding fees under § 362(k) thus retain the discretion to eliminate unnecessary or plainly excessive fees.* Sound exercise of this discretion will provide a sufficient check on any abuses that might otherwise arise.

Id., at 1101 (emphasis added) (internal citation omitted). As such, contrary to Debtor's argument, the Court of Appeals' interpretation of § 362(k) calls for courts to assess fee requests under § 362(k) for reasonableness.

Moreover, the Bankruptcy Appellate Panel of the Ninth Circuit has "endorse[d] the use of the principles used in § 330 as a guide for awarding attorneys' fees under" § 362(k). *In re Roman*, 283 B.R. 1, 11 (B.A.P. 9th Cir. 2002). [FN1]. Section 330(a)(1)(A) allows for "reasonable compensation for actual, necessary services." 11 U.S.C. § 330(a)(1)(A). Under § 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,

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Kenneth C. Scott
or task addressed;

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- (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.

11 U.S.C.A. § 330(a)(3)(A)-(F).

As explained in *Roman*, "fee shifting statutes... have given debtors an opportunity to use the statute as a sword rather than a shield, to courts' dismay." *Roman*, 283 B.R. at 11. "[T]he bankruptcy court must examine whether the debtor could have mitigated the damages." *Id.*, at 12. "[I]n determining the appropriate amount of attorneys' fees to award as a sanction, the court looks to two factors: (1) what expenses or costs resulted from the violation and (2) what portion of those costs was reasonable, as opposed to costs that could have been mitigated." *Id.*, at *12 (internal quotation omitted).

In support of his request for attorneys' fees and costs, Debtor provides: (A) a current declaration setting forth the hours billed drafting the Fees Motion and estimated hours in connection with this Fees Motion (the "Current Declaration") [doc. 261]; (B) a declaration from May 2019 regarding fees incurred through May 25, 2019 (the "May Declaration") [doc. 261, Exhibit 2]; (C) invoices identifying fees and costs incurred since the May 2019 declaration (the "Billing Statements") [doc. 261, Exhibit 5]; and (D) a declaration filed in support of Debtor's opposition to Mr. Jett's motion for a stay pending appeal, in which Debtor requests an additional \$2,065 (the "Stay Opposition Declaration") [doc. 283].

A. *The Current Declaration*

In the Current Declaration, Debtor estimated that he would incur \$35 in CourtCall expenses. However, because the hearing will be held via ZoomGov, a free service, the Court will not allow recovery of the estimated \$35. Otherwise, the Court will allow the fees and estimated fees set forth in paragraphs 3c-3e of the Current Declaration, for a total of \$2,660.

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CONT... **Kenneth C. Scott**
B. *The May Declaration*

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In the May Declaration, Debtor estimated that he would incur the following attending a continued hearing on the OSC, which hearing did not happen in light of the Court granting Mr. Jett's request for a stay pending the Appeal: (A) 3.1 hours driving to the courthouse; (B) 1 hour attending the hearing; (C) 2.1 hours driving back from the courthouse; and (D) 0.5 hours in drafting an order. The Court will disallow Debtor's request for these estimated fees because Debtor did not actually incur these fees.

The Court also will reduce the 5.4 hours billed to travel to and from the courthouse on May 15, 2019 to 4.5 hours. The Court will allow recovery of the remaining fees requested in the May Declaration as reasonably incurred, for a total of \$7,560.

The Court also will allow Debtor to recover the \$55 spent hiring a process server to personally serve Mr. Jett with the OSC. In the OSC, the Court stated that "Debtor must serve this Order to Show Cause on Mr. Hopper and Mr. Jett either personally or by U.S. mail, postage prepaid, in accordance with Federal Rule of Bankruptcy Procedure 7004...." OSC, p. 4. Because the Court instructed Debtor to serve Mr. Jett, and gave Debtor the option of serving Mr. Jett personally, the Court will allow recovery of this expense.

C. *The Billing Statements*

In the Opposition, Mr. Jett references 28 U.S.C. § 1920 as a basis for disallowing some of Debtor's requested costs. However, "[c]osts under § 362(k) are awarded as damages, and the limitations of 28 U.S.C. § 1920 do not apply." *In re Parker*, 2019 WL 1579758, at *3 (Bankr. N.D. Cal. Apr. 11, 2019); *see also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 914, 926 (9th Cir. 2015) ("[Section 1920] defines the full extent of a federal court's power to shift litigation costs *absent express statutory authority to go further.*") (emphasis added) (internal quotation omitted). Thus, Mr. Jett's arguments related to 28 U.S.C. § 1920 are inapposite. The Court will assess the reasonableness of costs under the legal standard set forth above.

In the Billing Statements, Debtor requests expenses incurred copying and scanning documents, at \$1.00 per copy. However, Debtor has not articulated why such expenses were reasonable or necessary. It appears Debtor's counsel used the copies and/or scans for his own internal records. The Court will not allow recovery of these charges as

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unreasonable and excessive, for a total deduction of \$113 from Debtor's requested costs.

The Court also will disallow a total of 5 hours billed for driving to and from the courthouse on July 2, 2019, on the basis that Debtor's counsel traveled to appear for a confirmation hearing on the same day. Moreover, the Court will reduce the following amounts as excessive and unreasonable:

- A. From September 3, 2019 through September 4, 2019, counsel billed a total of 5.8 hours to review Mr. Jett's opening appellate brief. The Court will allow a total of 3 hours for review of the appellate brief.
- B. From September 11, 2019 through September 27, 2019, counsel billed a total of 34.9 hours to draft Debtor's appellate brief. The Court will allow a total of 25 hours for this work.
- C. From October 17, 2020 through October 22, 2020, counsel billed a total of 6.7 hours to draft an outline of oral arguments. The Court will allow a total of 4 hours for this work.

In addition, the Court will disallow all fees related to the motion to dismiss the appeal. The motion to dismiss was neither necessary nor beneficial to defending the Stay Violation Order. As discussed above, the Court must assess whether Debtor could have mitigated damages. *Roman*, 283 B.R. at 12. The motion to dismiss lacked adequate legal or factual support; in fact, the District Court noted that Debtor's arguments were "unpersuasive" and "unconvincing," and that the motion was "not a model of clarity." Fees Motion, Exhibit 4. Given that Debtor defended the Stay Violation Order by filing an appellate brief (and billed a total of 34.9 hours for that work), billing an additional 8.6 hours for a motion to dismiss was excessive, unreasonable and contrary to Debtor's duty to mitigate damages. As such, the Court will disallow the 8.6 hours billed in connection with the motion to dismiss. After taking into account the total reductions, the Court will allow counsel to bill for 71.2 hours of work, or \$24,920. The Court also will allow a total of \$187.25 in costs.

D. The Stay Opposition Declaration

In the Stay Opposition Declaration, Debtor estimates billing 1 hour for appearing at the hearing on the Stay Motion. However, because Debtor also billed an estimated 1 hour

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for appearing at the hearing on the Fees Motion, which is set for the same time and date as the Stay Motion, the Court will not allow the additional 1 hour requested in the Stay Opposition Declaration. The remaining amounts requested in the Stay Opposition Declaration, totaling \$1,715, are reasonable.

III. CONCLUSION

The Court will award Debtor a total of \$36,855 in attorneys' fees (\$2,660 from the Current Declaration + \$7,560 from the May Declaration + \$24,920 from the Billing Statements + \$1,715 from the Stay Opposition Declaration) and a total of \$242.25 in costs (\$55 from the May Declaration + \$187.25 from the Billing Statements), for a total of \$37,097.25.

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

FOOTNOTES

1. *Roman*, a case from 2002, references § 362(h). After enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, § 362(h) became § 362(k)(1). See *In re Bertuccio*, 414 B.R. 604, 611 n.39 (Bankr. N.D. Cal. 2008).

Ruling regarding Mr. Jett's evidentiary objections to the identified paragraphs in the Declarations of Arash Shirdel set forth below:

The Court will overrule all the evidentiary objections, with the exception of the evidentiary objection to paragraph 23 of doc. 261.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel
Daniel Parker Jett

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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1:18-13024 Kenneth C. Scott

Chapter 13

#30.00 Appellant Daniel Parker Jett's motion to stay order to show cause proceedings pending appeal and motion for attorney's fees after appeal

Docket 269

Tentative Ruling:

Deny.

I. BACKGROUND

On December 18, 2018, Kenneth C. Scott ("Debtor") filed a chapter 13 petition. On April 12, 2019, the Court entered an Order to Show Cause why Samuel Hopper and Daniel Parker Jett should not be held in civil contempt for violating the automatic stay (the "OSC") [doc. 64]. On May 15, 2019, the Court held a hearing on the OSC. On May 29, 2019, the Court entered an order holding Mr. Jett in contempt of Court for a willful violation of the automatic stay (the "Stay Violation Order") [doc. 124]. In order to assess the amount of damages, the Court continued the hearing on the OSC to July 17, 2019 and ordered Arash Shirdel, Debtor's counsel, to serve on Mr. Jett a declaration with a breakdown of the attorneys' fees and costs associated with remedying the violation of stay.

On June 10, 2019, Mr. Jett appealed the Stay Violation Order to the United States District Court (the "Appeal") [doc. 129]. On June 24, 2019, Mr. Jett filed a motion to stay the continued hearing on the OSC pending the Appeal (the "First Motion") [doc. 140]. On July 2, 2019, the Court held a hearing on the First Motion. At that time, the Court issued a ruling (the "Stay Ruling") [doc. 151]. In the Stay Ruling, the Court held that Mr. Jett had not demonstrated that he was entitled to a stay pending the Appeal under Federal Rule of Bankruptcy Procedure ("FRBP") 8007(a)(1)(A) because Mr. Jett did not show that: (A) he was likely to succeed on the merits; (B) he would be irreparably harmed without a stay; or (C) the public interest weighed in favor of a stay. Nevertheless, the Court stayed the continued hearing on the OSC under FRBP 8007(e), on the basis that Debtor continued to incur attorneys' fees and costs, and judicial economy would be served by deciding Debtor's damages after conclusion of the Appeal.

On December 4, 2020, the District Court affirmed the Stay Violation Order (the "District

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Court Decision") [doc. 262]. Mr. Jett appealed the District Court Decision to the Ninth Circuit Court of Appeals (the "Ninth Circuit Appeal") [doc. 266]. On December 9, 2020, Debtor filed a motion requesting attorneys' fees and costs incurred prosecuting the violation of the automatic stay and defending the Appeal (the "Fees Motion") [doc. 261].

On January 5, 2021, Mr. Jett filed a motion for a stay pending the Ninth Circuit Appeal (the "Motion") [doc. 269]. In the Motion, Mr. Jett asserts that: (A) he is entitled to a stay until the conclusion of the Ninth Circuit Appeal; (B) a stay is necessary to avoid wasting judicial resources; and (C) Debtor prematurely filed the Fees Motion before expiration of the 30-day period for Mr. Jett to file the Ninth Circuit Appeal.

On January 26, 2021, Debtor filed an opposition to the Motion (the "Opposition") [doc. 283]. Among other things, Debtor asserts that Mr. Jett failed to discuss the relevant standard for a stay pending appeal, and that the Court should not grant the Motion unless Mr. Jett posts a supersedeas bond. Moreover, Debtor contends he incurred \$2,065 in attorneys' fees opposing the Motion, and that the Court should add \$2,065 to Debtor's total request for attorneys' fees and costs, set forth in the Fees Motion. This request for fees is discussed in the ruling related to the Fees Motion. Mr. Jett did not timely file a reply to the Opposition.

II. ANALYSIS

Although Mr. Jett references FRBP 8007(a)(1)(A), Mr. Jett does not discuss the relevant law or facts related to a determination under that Rule. "A court has considerable discretion when determining whether to issue a stay pending appeal." *In re GGW Brands, LLC*, 2013 WL 6906375, at *10 (Bankr. C.D. Cal Nov. 15, 2013) (citing *Nken v. Holder*, 556 U.S. 418, 433-34, 129 S.Ct. 1749, 1761, 173 L.Ed.2d 550 (2009)). "Although the decision whether to stay proceedings is dependent on the circumstances of the particular case, '[a] discretionary stay should be sparingly employed and reserved for the exceptional situation.'" *GGW Brands*, at * 10 (citing *In re O'Kelley*, 2010 WL 3984666, at *4 (D. Haw. 2010)).

The party requesting a stay bears the burden of "showing that the circumstances justify an exercise of that discretion." *Nken*, at 556 U.S. at 433-34. The court considers four factors when determining whether to issue a stay pending appeal:

1. Whether the stay applicant has made a strong showing that he is likely to

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succeed on the merits

2. Whether the applicant will be irreparably harmed
3. Whether the issuance of the stay will substantially injure the other parties interested in the proceeding; and
4. Where the public interest lies

Id., at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *see also In re N. Plaza, LLC*, 395 B.R. 113, 119 (S.D. Cal. 2008). The four factors may be weighed in a sliding scale, "where a stronger showing of one element may offset a weaker showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

Here, Mr. Jett does not discuss *any* of these factors and, as a result, has not met his burden of showing that he is entitled to a stay pending appeal. In connection with the First Motion, the Court provided a detailed discussion regarding these factors. Specifically, the Court held that Mr. Jett had not demonstrated that: (A) he was likely to succeed on the merits; (B) he would be irreparably harmed without a stay; or (C) the public interest weighed in favor of a stay. The Court's assessment of these factors remains the same.

At this time, the fourth factor also weighs against granting the Motion. As noted by Debtor, the stay has prevented Debtor from recovering damages resulting from Mr. Jett's violation of the automatic stay, and from accruing interest on an award of damages. Further extending the stay until the conclusion of the Ninth Circuit Appeal would significantly delay the cure of the stay violation (i.e., payment of damages under § 362(k) to Debtor). The factors strongly militate against granting the Motion.

Mr. Jett's arguments do not compel a different result. First, Mr. Jett has not cited any authority in support of his position that he is entitled to a discretionary stay until conclusion of the Ninth Circuit Appeal. In fact, the opposite is true. *See Nken*, 556 U.S. at 433 ("A stay is not a matter of right, even if irreparable injury might otherwise result.") (internal quotation omitted). Mr. Jett also does not provide legal support for his contention that Debtor prematurely filed the Fees Motion. Neither the Federal Rules of Civil Procedure nor the Federal Rules of Bankruptcy Procedure require a party to wait for an appeal deadline to expire before requesting an award of attorneys' fees and costs.

Finally, Mr. Jett notes that a stay would help preserve judicial resources. After the First Motion, the Court, using the discretion available to it pursuant to FRBP 8007(e),

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decided to stay the OSC proceedings in an effort to reduce the number of hearings on Debtor's request for damages under § 362(k). However, at this time and in the Court's discretion, the prejudice to Debtor outweighs the interest in preserving judicial resources.

Pursuant to FRBP 7062, Federal Rule of Civil Procedure ("FRCP") 62 applies in adversary proceedings. Pursuant to FRCP 62(d), "[i]f an appeal is taken, the appellant may obtain a stay by supersedeas bond.... The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond." "The posting of a supersedeas bond under Rule 7062(d) in an amount approved by the court gives the [appellant] an absolute right to a stay pending appeal." *In re Byrd*, 172 B.R. 970, 974 (Bankr. W.D. Wash. 1994) (citing *In re Swift Aire Lines, Inc.*, 21 B.R. 12 (B.A.P. 9th Cir. 1982)).

"Generally, the amount of the bond should be sufficient to pay the judgment *plus* interest, costs and any other relief (e.g. attorney fees) the appellate court may award." *Cotton ex rel. McClure v. City of Eureka, Cal.*, 860 F.Supp.2d 999, 1027 (N.D. Cal. 2012) (emphasis in *Cotton*) (internal quotations omitted). "Although practices vary among judges, a bond of 1.25 to 1.5 times the judgment is typically required." *Id.* (citing Christopher A. Goelz & Meredith J. Watts, California Practice Guide: Ninth Circuit Civil Appellate Practice ¶ 1:168 (TRG 2011)); *see also Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 2017 WL 2311249, at *3 (N.D. Cal. May 26, 2017) ("In some cases... courts have set the amount of the bond at an amount equal to 125% to 150% of the amount of the judgment in order to cover additional costs, primarily attorneys' fees and post-judgment interest."); *Ketab Corp. v. Mesriani Law Grp.*, 2016 WL 5921932, at *3 (C.D. Cal. Feb. 1, 2016) (holding that 125% of the award provided adequate security for interest and costs incurred on appeal).

Mr. Jett may obtain a stay, as a matter of right, if he posts a bond in the amount of \$55,645, or 150% of the amount of the award of attorneys' fees and costs. Otherwise, the Court will deny the Motion.

III. CONCLUSION

The Court will deny the Motion.

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

Party Information

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CONT... Kenneth C. Scott

Chapter 13

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel
Daniel Parker Jett

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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11:00 AM

1:18-13024 Kenneth C. Scott

Chapter 13

#31.00 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; 09/08/20; 1/12/21

Docket 64

Tentative Ruling:

See calendar no. 29.

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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#32.00 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; 09/08/20; 1/12/21

Docket 70

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on March 3, 2021**, to be held with the hearing on the motion for summary judgment.

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
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Wednesday, February 10, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the February 10, 2021 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/1615594450>

Meeting ID: 161 559 4450

Password: 852868

Join by Telephone

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 161 559 4450

Password: 852868

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Wednesday, February 10, 2021

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); 12/15/20; 1/13/21

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

Movant(s):

Deutsche Bank National Trust

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, February 10, 2021

Hearing Room 301

9:30 AM

1:20-10924 Tikran Eritsyanyan

Chapter 11

#2.00 Motion for relief from stay [RP]

RED DRAGON INVESTMENT AND
PLATINUM BUSINESS MANAGEMENT
VS
DEBTOR

fr. 11/18/20; 12/23/20; 1/20/21

Stip to continue filed 2/8/21

Docket 49

***** VACATED *** REASON: Order approving stip entered 2/8/21.
Hearing continued to 3/3/21 at 9:30 AM. [Dkt. 89]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tikran Eritsyanyan

Represented By
Vahe Khojayan

Movant(s):

Red Dragon Investment and

Represented By
Martin W. Phillips

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

Wednesday, February 10, 2021

Hearing Room 301

9:30 AM

1:20-10384 Amir Zamzelig

Chapter 13

#3.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC
VS.
DEBTOR

Docket 42

Tentative Ruling:

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

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

Party Information

Debtor(s):

Amir Zamzelig

Represented By
David A Tilem

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Sheryl K Ith

Trustee(s):

Elizabeth (SV) 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 10, 2021

Hearing Room 301

9:30 AM

1:20-10614 Jonathan Duco DelRosario and Charleen Sheryl Untaran

Chapter 13

#4.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS.
DEBTOR

Docket 31

*** VACATED *** REASON: Motion withdrawn 2/4/21 - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jonathan Duco DelRosario

Represented By
David H Chung

Joint Debtor(s):

Charleen Sheryl Untaran DelRosario

Represented By
David H Chung

Movant(s):

TOYOTA MOTOR CREDIT

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, February 10, 2021

Hearing Room 301

9:30 AM

1:18-12196 Margarita Fernandez Farrell

Chapter 13

#4.10 Motion for relief from stay [PP}

BMW BANK OF NORTH AMERICA
VS
DEBTOR

Stip for adequate protection filed 2/5/21

Docket 36

*** VACATED *** REASON: Order approving stip entered 2/8/21.[Dkt.
43]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Margarita Fernandez Farrell

Represented By
Barry E Borowitz

Movant(s):

BMW Bank of North America

Represented By
Marjorie M 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, February 10, 2021

Hearing Room 301

9:30 AM

1:18-10831 Jose Reynaldo Juarez

Chapter 13

**#5.00 Debtor's Objection to Notice of Default Letter dated
December 10, 2020**

Docket 83

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**

Wednesday, February 10, 2021

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

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

#6.00 Pretrial conference re: complaint for breach of fiduciary duty

fr. 1/8/20; 3/4/20; 3/25/20; 5/6/20; 5/20/20

Docket 1

***** VACATED *** REASON: hrg continued to 6/9/21 at 1:30 per order**

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, February 10, 2021

Hearing Room 301

1:30 PM

1:19-12677 John Stephen Travers

Chapter 7

Adv#: 1:20-01010 Ace Industrial Supply, Inc. v. Travers

#7.00 Pre-trial conference re: complaint to determine dischargeability

fr. 3/25/20; 5/6/20; 6/10/20; 12/9/20

Stip to continue filed 10/15/20.

Docket 1

*** VACATED *** REASON: Order approving stip entered 10/19/20.
[Dkt.45] Hearing continued to 5/5/21 at 1:30 PM.

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, February 10, 2021

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01117 Lev Investments, LLC v. Lisitsa et al

#8.00 Status Conference re: Complaint by Lev Investments, LLC against Yevgeniya Lisitsa, Lisitsa Law, Inc..for (1) Damages for Legal Malpractice and (2) Objection to Proof of Claim No. 7

Docket 1

***** VACATED *** REASON: Continued by stip to 3/24/21 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Yevgeniya Lisitsa

Pro Se

Lisitsa Law, Inc.

Pro Se

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik
Richard P Steelman Jr
Beth Ann R Young

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, February 10, 2021

Hearing Room 301

1:30 PM

1:20-11166 Lanny Jay Dugar

Chapter 7

Adv#: 1:20-01083 Bjornbak et al v. Dugar

#9.00 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)]

fr. 12/9/20

Docket 1

Tentative Ruling:

The Court will not tolerate repeated hostility between the parties. Courts have inherent authority to sanction bad faith conduct. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46, 111 S.Ct. 2123, 2133, 115 L.Ed.2d 27 (1991); *see also In re Lehtinen*, 564 F.3d 1052, 1058 (9th Cir. 2009) (recognizing that *Chambers* extends to bankruptcy courts). "The inherent sanction authority allows a bankruptcy court to deter and provide compensation for a broad range of improper litigation tactics." *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003); *see also Colida v. Panasonic Corp. of N. Am.*, 2011 WL 1743383, at *7 (N.D. Ill. 2011) (sanctioning party for "vile statements," including "racist and abusive" comments, and holding that the party "does not get a free pass simply because he is a *pro se* litigant or simply because his statements... were not made in filings with the court").

The Court cautions the parties that any hostile statements made to the opposing party, during the course of this adversary proceeding, may subject the party making such statements to sanctions pursuant to the authorities above.

In the complaint, the plaintiffs assert claims under several subsections of 11 U.S.C. § 727(a). If the plaintiffs are successful on *any* of their claims under 11 U.S.C. § 727(a), the defendant will not receive a discharge.

As noted below, the Court is setting July 30, 2021 as the deadline to file pretrial motions, including motions for summary judgment. If the plaintiffs elect to move for summary judgment, the plaintiffs may bifurcate their requests for summary judgment. In other words, if the plaintiffs contend that there is sufficient legal and evidentiary support to enter judgment under any one of their claims based on a subsection of 11 U.S.C. § 727(a), they may file a motion requesting summary judgment under that subsection, without concurrently moving for judgment on other subsections of § 727(a).

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

Wednesday, February 10, 2021

Hearing Room 301

1:30 PM

CONT... Lanny Jay Dugar

Chapter 7

If the plaintiffs are successful, they may dismiss their remaining § 727(a) claims against defendant and preserve the parties' resources by avoiding litigating other § 727(a) claims.

Parties should be prepared to discuss the following:

Deadline to complete discovery: 6/30/21.

Deadline to file pretrial motions: 7/30/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 8/11/21.

Pretrial: 8/25/21 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):

Lanny Jay Dugar

Pro Se

Defendant(s):

Lanny Jay Dugar

Pro Se

Plaintiff(s):

David Bjornbak

Represented By
Qiang Bjornbak

Qiang Bjornbak

Represented By
Qiang Bjornbak

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

Wednesday, February 10, 2021

Hearing Room 301

1:30 PM

CONT... Lanny Jay Dugar

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 10, 2021

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

- #10.00** 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

fr. 11/18/20

Docket 2

***** VACATED *** REASON: Order entered dismissing amended
complaint 12/17/20 - jc**

Tentative Ruling:

- NONE LISTED -

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

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

Wednesday, February 10, 2021

Hearing Room 301

1:30 PM

CONT... Lindsay Hemric

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 10, 2021

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

#11.00 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); 8/12/20(stip)

Docket 31

***** VACATED *** REASON: Order dismissing Bank of America [doc. 84].**

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, February 10, 2021

Hearing Room 301

2:30 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, February 10, 2021

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

- #12.00** 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); 8/12/20 (stip)

Stip to continue filed 2/2/21

Docket 1

***** VACATED *** REASON: Order entered 2/3/21 continuing hearing to
2/17/21 at 1:30 PM. [Doc. 96]**

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, February 10, 2021

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, February 10, 2021

Hearing Room 301

2:30 PM

1:20-10678 John Michael Smith, Jr
Adv#: 1:20-01111 Smith v. Strigari

Chapter 11

#13.00 Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted

Docket 6

Tentative Ruling:

In light of the parties' consent to having this motion decided as a motion for summary judgment, and pursuant to Federal Rule of Civil Procedure ("Rule") 12(d), the Court will convert this motion to a motion for summary judgment. Under Rule 12(d), "[a] parties must be given a reasonable opportunity to present all the material that is pertinent to the motion."

The Court will continue this hearing to **2:30 p.m. on April 7, 2021**. No later than **February 24, 2021**, the defendant must file and serve a supplemental brief and declaration authenticating any evidence he submits in support of the motion for summary judgment. No later than **March 10, 2021**, the plaintiff must file and serve a supplemental brief and declaration authenticating any evidence she submits in support of her opposition to the motion for summary judgment. By the same date, the plaintiff also may file and serve any evidentiary objections to the defendant's evidence. No later than **March 24, 2021**, the defendant may file and serve a reply brief and any evidentiary objections to the plaintiff's evidence.

Party Information

Debtor(s):

John Michael Smith Jr

Represented By
Louis J Esbin

Defendant(s):

Louis F Strigari

Represented By
William E. Winfield

Joint Debtor(s):

Rebecca Phelps Smith

Represented By

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

Wednesday, February 10, 2021

Hearing Room 301

2:30 PM

CONT... John Michael Smith, Jr

Chapter 11

Louis J Esbin

Movant(s):

Louis F Strigari

Represented By
William E. Winfield

Plaintiff(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**

Wednesday, February 10, 2021

Hearing Room 301

2:30 PM

1:20-10678 John Michael Smith, Jr

Chapter 11

Adv#: 1:20-01111 Smith v. Strigari

- #14.00** Status conference re complaint for:
1. Declaratory Relief;
 2. Injunctive Relief for Violation of Automatic Stay;
 3. Turnover of Property of the Bankruptcy Estate;
 4. Attorney Fees and Costs Under 11 U.S.C. § 362(k)

fr. 1/6/21; 1/13/21

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on April 7, 2021.**

Party Information

Debtor(s):

John Michael Smith Jr

Represented By
Louis J Esbin

Defendant(s):

Louis F Strigari

Pro Se

Joint Debtor(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

Plaintiff(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

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

Wednesday, February 10, 2021

Hearing Room 301

2:30 PM

CONT... John Michael Smith, Jr

Chapter 11

Trustee(s):

Elizabeth (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 11, 2021

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

#3.00 Disclosure statement hearing describing debtor's chapter 11 plan

Docket 83

Judge:

- NONE LISTED -

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**

Tuesday, February 16, 2021

Hearing Room 301

8:30 AM
1:00-00000

Chapter

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

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: **<https://cacb.zoomgov.com/j/1609404078>**

ZoomGov meeting number: **160 940 4078**

Password: **465028**

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

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at:

<https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

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

Tuesday, February 16, 2021

Hearing Room 301

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, February 16, 2021

Hearing Room 301

8:30 AM

1:20-11646 Javier Morales

Chapter 7

#1.00 Reaffirmation agreement between debtor and Wells Fargo Bank N.A.

fr. 11/17/20; 1/19/21

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**

Tuesday, February 16, 2021

Hearing Room 301

8:30 AM

1:20-11891 Michael Villalobos

Chapter 7

#2.00 Reaffirmation agreement between debtor and California Credit Union

Docket 9

Party Information

Debtor(s):

Michael Villalobos

Represented By
Daniel F Jimenez

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 17, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the February 17, 2021 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/1603125658>

Meeting ID: 160 312 5658

Password: 320763

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 160 312 5658

Password: 320763

Docket 0

Tentative Ruling:

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

Wednesday, February 17, 2021

Hearing Room 301

9:30 AM

CONT...

- NONE LISTED -

Chapter

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

Wednesday, February 17, 2021

Hearing Room 301

9:30 AM

1:20-10935 Jose Edmundo Gamez

Chapter 13

#1.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORP.
VS
DEBTOR

fr. 1/20/21

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Edmundo Gamez

Represented By
Rabin J Pournazarian

Movant(s):

TOYOTA MOTOR CREDIT

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, February 17, 2021

Hearing Room 301

9:30 AM

1:20-10384 Amir Zamzelig

Chapter 13

#1.10 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC
VS.
DEBTOR

fr. 2/10/21

Docket 42

*** VACATED *** REASON: Motion withdrawn 2/12/21 - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amir Zamzelig

Represented By
David A Tilem

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Sheryl K Ith

Trustee(s):

Elizabeth (SV) 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 17, 2021

Hearing Room 301

9:30 AM

1:20-12280 Paolo Tabuloc Leano and Magnolia Ragas Leano

Chapter 7

#2.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 8

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Paolo Tabuloc Leano

Represented By
Raymond J Bulaon

Joint Debtor(s):

Magnolia Ragas Leano

Represented By
Raymond J Bulaon

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

Wednesday, February 17, 2021

Hearing Room 301

9:30 AM

CONT... Paolo Tabuloc Leano and Magnolia Ragas Leano

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, February 17, 2021

Hearing Room 301

9:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

#3.00 Motion for relief from t stay [PP]

SANTANDER CONSUMER USA INC
VS
DEBTOR

Docket 107

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**

Wednesday, February 17, 2021

Hearing Room 301

9:30 AM

1:20-11739 Mario Alberto Cerritos

Chapter 13

#4.00 Motion for relief from stay [RP]

WELLS FARGO BANK NA
VS
DEBTOR

Docket 32

***** VACATED *** REASON: Order and Notice of Dismissal Arising from Debtor's Request for Voluntary Dismissal [doc. 36].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mario Alberto Cerritos

Represented By
Jaime A Cuevas Jr.

Movant(s):

Wells Fargo Bank, 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, February 17, 2021

Hearing Room 301

9:30 AM

1:21-10094 Mary Ann Noto

Chapter 13

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

Docket 6

Tentative Ruling:

The Court will grant the motion on an interim basis up to date of the continued hearing. The Court will continue this hearing to **March 24, 2021 at 9:30 a.m.**

Prior to the continued hearing, the debtor must pay: (1) her February 2021 and March 2021 deed of trust payments in the amount of \$2,282.18 (as stated in her current schedule J) as to the real property located at 9402 1/2 Noble Avenue, North Hills, California 91343; and (2) her February 2021 plan payment in the amount of \$3,785.00 as stated in the debtor's proposed chapter 13 plan [doc. 17].

No later than March 19, 2021, the debtor must file and serve on the objecting creditor: (1) a completed and substantiated Declaration Setting Forth Postpetition, Preconfirmation Deed of Trust Payments Official Form F 3015-1.4 to demonstrate that she made her required post-petition deed of trust payments; and (2) a separate declaration with evidence that she made her February 2021 chapter 13 plan payment.

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

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**

Wednesday, February 17, 2021

Hearing Room 301

1:30 PM

1:19-13078 Gerie G Annan

Chapter 7

Adv#: 1:20-01032 Tenggren v. Annan

#6.00 Pretrial conference re: complaint objecting to debtors discharge to section 727 of the bankruptcy code

fr. 5/13/20; 5/20/20; 11/4/20; 1/13/21

Docket 1

Tentative Ruling:

In light of the plaintiff's motion to dismiss, and because a party in interest did not timely move to intervene in this action, the Court will dismiss this adversary proceeding.

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

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, February 17, 2021

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

#7.00 Pre-Trial conference re: removed proceeding

fr. 8/12/20; 9/16/20; 10/7/20

Docket 1

Tentative Ruling:

Contrary to the Court's ruling from the October 7, 2020 status conference, the plaintiff did not timely submit a scheduling order. In addition, the parties have not timely submitted a joint pretrial stipulation; alternatively, the plaintiff has not timely filed a 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):

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, February 17, 2021

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, February 17, 2021

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

fr. 1/9/2019; 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); 8/12/20 (stip); 2/10/21(stip)

Docket 1

Tentative Ruling:

The Court will set a deadline of **March 24, 2021** for the parties to submit a joint pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1. The Court will set a pretrial conference at **1:30 p.m. on April 7, 2021**.

No further extension of the pretrial stipulation deadline and pretrial conference will be granted, absent extraordinary circumstances that could not have been anticipated by the parties, regarding which the parties must submit evidence to the Court.

The Court will prepare the scheduling order.

Party Information

Debtor(s):

Christopher Sabin Nassif

Represented By

M. Jonathan Hayes

Roksana D. Moradi-Brovvia

Defendant(s):

THE BANK OF NEW YORK

Pro Se

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

Wednesday, February 17, 2021

Hearing Room 301

1:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

Nationstar Mortgage LLC, A Pro Se

Bank of America, N.A, a National Pro Se

Aztec Foreclosure Corporation., a Pro Se

Plaintiff(s):

Christopher Sabin Nassif Represented By
Matthew D. Resnik

Robin Nassif Represented By
Matthew D. Resnik

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

Thursday, February 18, 2021

Hearing Room 301

10:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the February 18, 2021 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/1613414339>

Meeting ID: 161 341 4339

Password: 743278

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 161 341 4339

Password: 743278

Docket 0

Tentative Ruling:

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

Thursday, February 18, 2021

Hearing Room 301

10:30 AM

CONT...

- NONE LISTED -

Chapter

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

Thursday, February 18, 2021

Hearing Room 301

10:30 AM

1:18-10611 Marvin A Medina Medina

Chapter 7

#1.00 Trustee's Amended Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

fr. 12/17/20; 1/14/21

Docket 52

Tentative Ruling:

Diane C. Weil, chapter 7 trustee – approve fees of \$2,114.53 and reimbursement of expenses of \$123.30, on a final basis.

Appearances on February 18, 2021 are excused.

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

January 14, 2021 Tentative

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]?

Since the last hearing on December 17, 2020, what progress has been made concerning providing for payment of Modern Finance Company's claim?

Party Information

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

Thursday, February 18, 2021

Hearing Room 301

10:30 AM

CONT... Marvin A Medina Medina

Chapter 7

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, February 18, 2021

Hearing Room 301

10:30 AM

1:20-10126 Carlos Rene Herrera

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

David Keith Gottlieb, Chapter 7 Trustee

Docket 36

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$486.00 and reimbursement of expenses of \$50.00, 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):

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**

Thursday, February 18, 2021

Hearing Room 301

1:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#3.00 Third stipulation to continue hearing on confirmation of Debtor's second amended chapter 11 plan of reorganization, chapter 11 status conference and related deadlines

Docket 296

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, February 18, 2021

Hearing Room 301

1:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#4.00 Confirmation hearing re debtor's second amended chapter 11
plan of reorganization

fr. 10/8/20(stip); 12/10/20(stip)

Stip to continue filed 1/26/21

Docket 256

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, February 18, 2021

Hearing Room 301

1:00 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

#5.00 Status conference re chapter 11 case

fr. 1/26/17; 4/20/17; 6/8/17; 7/13/17; 9/21/17; 10/5/17;
12/7/17; 1/25/18; 3/8/18; 5/3/18(stip); 6/7/18(stip); 7/19/18(stip);
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);
12/10/20(stip)

Stip to continue filed 1/26/21

Docket 1

Tentative Ruling:

On November 29, 2016, the debtor filed a voluntary chapter 11 petition. On August 8, 2017, the Internal Revenue Service ("IRS") filed a second amended proof of claim, no.1-3, comprised of: (1) \$268,351.67 in secured tax debt; (2) \$55,115.28 in priority tax debt; and (3) \$19,988.58 in unsecured tax debt.

Pursuant to 11 U.S.C. § 1129(a)(9)(C)(ii) and (D), absent the consent of the tax claimant(s), the debtor must, among other things, pay allowed priority tax claims and applicable secured tax claims **in full** by November 29, 2021.

In light of this statutory deadline, and the amount of time that this chapter 11 case has been pending, the Court will set a deadline of **November 1, 2021** for the debtor to confirm a chapter 11 plan. If the debtor does not do so, in accordance with 11 U.S.C. § 1112(b)(1) and (4)(J), the Court will convert or dismiss this case.

This deadline will not preclude parties in interest or the United States Trustee from, among other things, filing a motion for the Court to convert or dismiss this case prior to that time.

Based on the debtor's monthly operating report for January 2021, the debtor has not made any post-petition deed of trust payments for more than one year. To demonstrate plan feasibility, **in March 2021**, the debtor must commence making post-petition deed of trust payments regarding the first deed of trust encumbering his residence.

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

Thursday, February 18, 2021

Hearing Room 301

1:00 PM

CONT... Christopher Sabin Nassif

Chapter 11

Given that the value of debtor's residence, as set forth in the debtor's second amended disclosure statement, is based on an appraised value as of *January 11, 2017* [doc. 47] and the Court approved the adequacy of the debtor's second amended disclosure statement in August 2020 [doc. 273], no later than **September 17, 2021**, the debtor must file: (1) a properly authenticated, current fair market value appraisal of his residence; (2) a cash flow statement **for the prior six months** showing the monthly income of the debtor and his spouse and their monthly expenses, which information must be consistent with the debtor's filed monthly operating reports; (3) projections for the period of time that any chapter 11 plan payments will be made, which set forth the projected monthly income of the debtor and his spouse, all monetary contributions to be made by the debtor's brother, projected monthly living expenses of the debtor and his spouse (including ongoing deed of trust payments) and proposed plan payments; and (4) sufficient documentary evidence that supports the debtor's ability to make the proposed plan payments, including his brother's declaration (to be signed in September 2021), paystubs and bank account statements.

The plan payment projections must reflect payment in full of the allowed priority and applicable secured tax claims filed by the IRS (and any other priority and applicable secured tax claims) by November 29, 2021, in accordance with the provisions of 11 U.S.C. § 1129(a)(9)(C)(ii) and (D).

The Court will prepare the order.

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, February 18, 2021

Hearing Room 301

1:00 PM

1:19-11902 John Christian Lukes

Chapter 11

#6.00 U.S. Trustee Motion to dismiss or convert Case Under 11 U.S.C. § 1112(b)

Stip to dismiss case filed 2/1/21

Docket 193

*** VACATED *** REASON: Order dismissing case entered 2/2/21. [Dkt. 204]

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, February 18, 2021

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; 2/6/20; 4/30/20; 10/08/20; 12/3/20; 1/28/21

Docket 1

***** VACATED *** REASON: Order dismissing case entered 2/2/21. [Dkt. 204]**

Tentative Ruling:

- NONE LISTED -

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, February 18, 2021

Hearing Room 301

1:00 PM

1:20-11615 Coachella Vineyard Luxury RV Park LLC

Chapter 11

#8.00 Status conference re: chapter 11 case

fr. 11/12/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coachella Vineyard Luxury RV Park

Represented By
Matthew D. Resnik
M. Jonathan Hayes

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

Thursday, February 18, 2021

Hearing Room 301

1:00 PM

1:21-10005 JANA, LLC

Chapter 11

#9.00 Status conference re: chapter 11 petition

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **April 30, 2021.**

Deadline to mail notice of Bar Date: **February 26, 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: **June 1, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on June 17, 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 regarding the debtor's progress toward formulating and confirming a chapter 11 plan. 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):

JANA, LLC

Represented By
Matthew Abbasi

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

Thursday, February 18, 2021

Hearing Room 301

1:30 PM

1:19-11748 Larry Antonio Parada

Chapter 7

#10.00 Motion re: objection to claim number 2-1 by Claimant
U.S. Department of Education c/o NELNET

fr. 1/14/21

Docket 66

Tentative Ruling:

In light of the amended proof of service, which reflects that the debtor served an officer or agent of the claimant at the address identified in the claimant's proof of claim, the debtor adequately served notice of the objection on the claimant.

The Court will sustain the objection.

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

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**

Thursday, February 18, 2021

Hearing Room 301

1:30 PM

1:19-11902 John Christian Lukes

Chapter 11

#11.00 Motion of Salisbury Lee & Tsuda, LLP and Kathryn A. Lukes for dismissal of chapter 11 case

Docket 190

***** VACATED *** REASON: Order dismissing case entered 2/2/21. [Dkt. 204]**

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, February 18, 2021

Hearing Room 301

1:30 PM

1:20-10092 Orlando Ray Garcia

Chapter 7

#12.00 Trustee's Motion for dismissal of chapter 7 case pursuant to 11 U.S.C. §305 or §707 for failure to comply with the trustee's request for the debtor to produce documents and/or file amendments to schedules

Docket 20

***** VACATED *** REASON: Withdrawal of motion filed 1/22/21 [Dkt. 23]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Orlando Ray Garcia

Represented By
Stephen Parry

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Thursday, February 18, 2021

Hearing Room 301

1:30 PM

1:20-11615 Coachella Vineyard Luxury RV Park LLC

Chapter 11

#13.00 Debtor's Motion to dismiss chapter 11 case

Docket 58

Tentative Ruling:

Grant, with a 30-day bar to filing another bankruptcy petition.

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):

Coachella Vineyard Luxury RV Park

Represented By
Matthew D. Resnik
M. Jonathan Hayes

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

Thursday, February 18, 2021

Hearing Room 301

1:30 PM

1:20-11653 Altra Mortgage Capital LLC

Chapter 11

#14.00 Debtor's Motion for order approving the bidding procedures and the sale of debtor's assets free and clear of liens, claims, encumbrances, and interests pursuant to 11 U.S.C. § 363(f)

Docket 32

Tentative Ruling:

Grant.

Movant must submit the order 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

Wednesday, February 24, 2021

Hearing Room 301

1:30 PM

1:19-10448 Linda Moraga

Chapter 7

Adv#: 1:20-01122 Zamora v. Smith et al

#1.00 Status conference re: Complaint

Docket 1

*** VACATED *** REASON: Continued to 3/3/21 at 1:30 p.m. - jc

Party Information

Debtor(s):

Linda Moraga

Represented By
Daniel King

Defendant(s):

Jason Robert Smith

Pro Se

Jeong Min Lee

Pro Se

Plaintiff(s):

Nancy H Zamora

Represented By
Anthony A Friedman

Trustee(s):

Nancy J Zamora (TR)

Represented By
Anthony A Friedman

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

Wednesday, March 3, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

- #0.00 You will not be permitted to be physically present in the courtroom. All appearances for the March 3, 2021 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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Join By Computer

Meeting URL: <https://cacb.zoomgov.com/j/1610412907>

Meeting ID: 161 041 2907

Password: 343033

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 161 041 2907

Password: 343033

Docket 0

Tentative Ruling:

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

Wednesday, March 3, 2021

Hearing Room 301

9:30 AM

CONT...

- NONE LISTED -

Chapter

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

Wednesday, March 3, 2021

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; 12/9/20

Stip to continue filed 3/1/21.

Docket 73

***** VACATED *** REASON: Order approving stip entered 3/2/21.
Hearing continued to 4/21/21 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Movant(s):

Wilmington Savings Fund Society,

Represented By
Jenelle C Arnold

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov

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

Wednesday, March 3, 2021

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; 10/21/20(stip); 11/25/20; 1/13/21

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, March 3, 2021

Hearing Room 301

9:30 AM

1:20-10924 Tikran Eritsyan

Chapter 11

#3.00 Motion for relief from stay [RP]

RED DRAGON INVESTMENT AND
PLATINUM BUSINESS MANAGEMENT
VS
DEBTOR

fr. 11/18/20; 12/23/20; 1/20/21; 2/10/21

Docket 49

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tikran Eritsyan

Represented By
Vahe Khojayan

Movant(s):

Red Dragon Investment and

Represented By
Martin W. Phillips

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

Wednesday, March 3, 2021

Hearing Room 301

9:30 AM

1:20-12257 Galih Nayoan

Chapter 7

#4.00 Motion for relief from stay [PP]

YAMAHA MOTOR FINANCE CORP.
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):

Galih Nayoan

Represented By
Susan Jill Wolf

Movant(s):

Yamaha Motor Finance Corp.

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, March 3, 2021

Hearing Room 301

9:30 AM

1:20-12287 Humberto E Juarez and Pilar Rufina Juarez

Chapter 7

#5.00 Motion for relief from stay [PP]

AMERICAN HONDA FINANCE CORPORATION
VS
DEBTOR(S)

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):

Humberto E Juarez

Represented By
Michael H Colmenares

Joint Debtor(s):

Pilar Rufina Juarez

Represented By
Michael H Colmenares

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

Wednesday, March 3, 2021

Hearing Room 301

9:30 AM

CONT... Humberto E Juarez and Pilar Rufina Juarez

Chapter 7

Movant(s):

American Honda Finance

Represented By
Vincent V Frounjian

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 3, 2021

Hearing Room 301

9:30 AM

1:21-10083 Manuel Eloy Tataje

Chapter 7

#6.00 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):

Manuel Eloy Tataje

Represented By
Sydell B Connor

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

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

Wednesday, March 3, 2021

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9:30 AM

CONT... Manuel Eloy Tataje

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 3, 2021

Hearing Room 301

9:30 AM

1:18-11456 David Andrew Fremont and Carol Ann Majewski

Chapter 13

#7.00 Motion for relief from stay [PP]

JPMORGAN CHASE BANK, N.A.
VS
DEBTORS

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 repossess and sell the property.

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

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

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

Party Information

Debtor(s):

David Andrew Fremont

Represented By
Allan S Williams

Joint Debtor(s):

Carol Ann Majewski

Represented By
Allan S Williams

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

Wednesday, March 3, 2021

Hearing Room 301

9:30 AM

CONT... David Andrew Fremont and Carol Ann Majewski

Chapter 13

Movant(s):

JPMorgan Chase Bank, N.A.

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) 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 3, 2021

Hearing Room 301

9:30 AM

1:20-10526 Chinweike Okonkwo

Chapter 13

#8.00 Motion for relief from stay [RP]

LAKEVIEW LOAN SERVICING, LLC.
VS
DEBTOR

Stipulation resolving motion filed 3/2/21

Docket 54

*** VACATED *** REASON: The Court has approved entry of the stipulated APO.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chinweike Okonkwo

Represented By
Laleh Ensafi

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 3, 2021

Hearing Room 301

9:30 AM

1:20-12087 Harry D Cleeland, III

Chapter 13

#9.00 Motion for relief from stay [RP]

PS FUNDING, INC.
VS
DEBTOR

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harry D Cleeland III

Represented By
Edmond Richard McGuire

Movant(s):

PS Funding, Inc., master servicing

Represented By
Andrew Still

Trustee(s):

Elizabeth (SV) 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 3, 2021

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

- #10.00** Status conference re: second amended complaint for:
- 1) Avoidance and recovery of fraudulent transfers pursuant to Title 11 U.S.C. sec 544(a) and (b), 548 and 550; and Cal. Civ. Code §§ 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) Breach of contract;
 - 5) Breach of covenant of good faith and fair dealing; and
 - 6) Turnover of property

fr. 7/29/20; 08/26/20; 11/4/20; 12/9/20; 12/23/20

Docket 36

Tentative Ruling:

The Court will set the defendants' motion to dismiss [doc. 37] for hearing at **2:30 p.m. on April 7, 2021**. The defendant must file and serve notice of the hearing no later than **March 17, 2021**. The Court also will continue this status conference to **2:30 p.m. on April 7, 2021**.

Appearances on March 3, 2021 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
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Wednesday, March 3, 2021

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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, March 3, 2021

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01033 Enabulele v. Vartan

#11.00 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); 11/18/20; 1/13/21

Docket 6

***** VACATED *** REASON: Order dismissing complaint entered 2/16/21
[Dkt. 33]**

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, March 3, 2021

Hearing Room 301

1:30 PM

1:19-10448 Linda Moraga

Chapter 7

Adv#: 1:20-01122 Zamora v. Smith et al

#12.00 Status Conference re: Complaint for:
(1) Avoidance of Fraudulent Transfers; and
(2) Recovery of Avoided Transfer

fr. 2/24/21

Docket 1

***** VACATED *** REASON: Order approving stip entered 2/18/21.
Hearing continued to 4/21/21 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Linda Moraga

Represented By
Daniel King

Defendant(s):

Jason Robert Smith

Pro Se

Jeong Min Lee

Pro Se

Plaintiff(s):

Nancy H Zamora

Represented By
Anthony A Friedman

Trustee(s):

Nancy J Zamora (TR)

Represented By
Anthony A Friedman

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

Wednesday, March 3, 2021

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#13.00 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; 12/09/20; 2/3/21

Docket 4

Tentative Ruling:

Given that the parties still have not signed a written settlement agreement, after having had a substantial amount of time to do so, the Court will set the following dates and deadlines.

Unless the parties submit a fully executed settlement agreement, the Court will not extend these dates and deadlines, based on their alleged settlement.

Deadline for the debtor to file an answer: 3/31/21.

Deadline to complete discovery: 6/1/21.

Deadline to file dispositive pretrial motions: 6/14/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 6/30/21.

Pretrial: 7/14/21 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

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CONT... Shobert Vartan

Chapter 7

against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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, March 3, 2021

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

#14.00 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; 09/08/20; 1/12/21

Docket 174

Tentative Ruling:

The Court will enter judgment in favor of the debtor.

I. BACKGROUND

A. Prepetition Events

Prepetition, Samuel H. Hopper ("Creditor") retained an attorney to contact Kenneth C. Scott ("Debtor") regarding claims Creditor asserted for unpaid wages, unreimbursed business expenses, unlawful deductions to wages and related penalties. Declaration of Daniel Parker Jett (the "Jett Declaration") [doc. 191], ¶¶ 2, 4. [FN1]. Between October 4, 2018 and November 6, 2018, Creditor, via counsel, communicated with attorneys representing Debtor in an attempt to negotiate a settlement of Creditor's claims. Jett Declaration, ¶ 5. According to Daniel Parker Jett, Creditor's counsel, Mr. Jett informed Debtor's attorney that Debtor's settlement offers were unsatisfactory. Jett Declaration, ¶ 7.

On November 7, 2018, Creditor filed a complaint in state court against My Private Practice, Inc. ("MPPI") and Debtor (the "State Court Complaint"), asserting 14 causes of action against Debtor. Jett Declaration, ¶ 9, Exhibit 8. Through the State Court Complaint, Creditor requested the following damages:

1. For money damages representing Plaintiff's back wages from June 18, 2017 through the date of trial, at the rate of approximately \$1,030.71 per month, in an amount to be proven at the trial herein.
2. For money damages representing future lost earnings in an amount to be proven at the trial herein.

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CONT...

Kenneth C. Scott

Chapter 13

3. For money damages representing compensation for the emotional distress caused to Plaintiff by Defendants' tortious conduct in an amount to be proven at the trial herein.
4. For reimbursement of Plaintiff's medical or psychological expenses incurred in treating the emotional distress caused by Defendants' tortious conduct, in an amount to be proven at trial herein.
5. For reimbursement of Plaintiffs reasonable business expenses incurred in the course and scope of his employment with Defendants, in the amount of \$15,321.13, or in other amounts to be proven at trial herein.
6. For unpaid wages in the amount of \$51,106.72, which were unlawfully deducted from Plaintiffs paychecks, or in other amounts according to proof at the trial herein.
7. For "waiting time" penalties pursuant to Labor Code section 203 in the amount of \$37,080.83.
8. For statutory penalties under Labor Code section 226, subdivision (e), in the amount of \$4,000.00, or according to proof at the time of trial herein.
9. For a civil penalty in the amount of \$750.00 for Defendants' failure to timely produce copies of Plaintiffs complete personnel files, per Labor Code section 1198.5.
10. For a civil penalty in the amount of \$750.00 for Defendants' failure to timely produce copies of Plaintiffs complete payroll and time records, per Labor Code section 226.
11. For a civil penalty in the amount of \$10,000.00 for Defendants' intentional retaliation against Plaintiff for engaging in protected activities under Labor Code section 98.6, subdivision (c).
12. For a civil penalty in the amount of \$10,000.00 for Defendants' intentional retaliation against Plaintiff for engaging in protected activities under Labor Code section 1102.5, subdivision (f).
13. For a civil penalty in the amount of \$25,000.00 per violation for Defendants' pattern and practice of misclassifying employees as independent contractors or for making unlawful deductions from payroll pursuant to Labor Code section 226.8, subdivision (c); or in the alternative, for a civil penalty in the amount of \$15,000.00 per violation....
14. For punitive or exemplary damages pursuant to Civil Code section 3294 in an amount to be proven at trial.
- ...
19. For pre-judgment interest on the principal amount of back wages and unpaid

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CONT...

Kenneth C. Scott

Chapter 13

- wages calculated to be owed in amounts according to law.
- 20. For Plaintiff's attorneys' fees in an amount according to proof...
- 21. For Plaintiff's costs of suit in an amount according to proof.

Id. On December 12, 2018, Creditor served Debtor with the State Court Complaint. Jett Declaration, ¶ 10. [FN2].

B. Debtor's Bankruptcy Filing

On December 18, 2018, Debtor filed a chapter 13 petition. In his schedule A/B, Debtor identified a 100% ownership interest in MPPI. Debtor valued MPPI at \$0. Debtor also indicated that he had a legal or equitable interest in business-related property; specifically, in response to item 44 of schedule A/B, Debtor stated he had an interest in \$17,274 in MPPI's business account (the "Funds"). In his schedule C, 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 scheduled Creditor as an unsecured creditor. Debtor also identified three other unsecured claims: (A) \$9,069 in favor of Bank of America; (B) \$35,600 in favor of JoAnn Scott ("Debtor's Mother"); and (C) \$49,172.73 in favor of Johanna Scott ("Johanna"). In his schedule I, Debtor indicated he received \$4,255.87 in monthly income. In his schedule J, Debtor calculated \$3,983.05 in monthly expenses, leaving \$272.82 in monthly net income.

On May 17, 2019, Debtor filed amended schedules I and J [docs. 95, 96]. In the amended schedule I, Debtor indicated he received \$5,733.58 in gross wages, with \$5,005.30 after deductions set forth in schedule I. In the amended schedule J, Debtor calculated \$4,511.69 in monthly expenses, leaving \$493,61 in monthly net income. Concurrently, Debtor also filed a chapter 13 statement of current monthly income and calculation of commitment period (the "Chapter 13 Statement") [doc. 98]. In the Chapter 13 Statement, Debtor stated that he received \$5,733.58 in gross wages and \$26,288.76 in gross receipts from operation of his business, for a total average monthly income of \$32,022.34.

Concurrently with the amended schedules I and J and the Chapter 13 Statement, Debtor filed a declaration regarding, among other things, the amended schedules and statements (the "Amendment Declaration") [doc. 100]. In the Amendment Declaration, Debtor

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CONT...

Kenneth C. Scott

Chapter 13

stated that, while he initially estimated his 2018 income, after his accountant calculated Debtor's actual income, Debtor amended his schedules and statements to mirror the numbers provided by his accountant. Amendment Declaration, ¶¶ 12-15. ■

C. The Exemption Dispute

On March 18, 2019, Creditor objected to Debtor's claim of an exemption in the Funds (the "Objection to Exemption") [doc. 42], arguing, among other things, that Debtor could not claim an exemption in MPPI's assets and that Debtor acted in bad faith to manipulate the Bankruptcy Code by claiming an exemption in the Funds.

On July 2, 2019, the Court held a hearing on the Objection to Exemption. At that time, the Court issued a ruling overruling the Objection to Exemption [doc. 150]. Specifically, the Court held that: (A) Debtor properly claimed an exemption under the wildcard provision of CCP § 703.140(b)(5); (B) because Debtor was the 100% shareholder of MPPI, all of MPPI's shares became property of the estate; and (C) even if Debtor could not claim an exemption in the Funds directly, Debtor could exempt \$17,274 of the value of MPPI's shares, which would effectively exempt the Funds.

D. Relevant Proofs of Claim

On February 26, 2019, Creditor filed a proof of claim no. 3-1 in the amount of \$1,510,976.25. After Debtor objected to Creditor's proof of claim, Creditor filed a third amended proof of claim in the amount of \$169,432.60.

On May 7, 2019, Debtor's Mother filed proof of claim no. 4-1, asserting an unsecured claim in the amount of \$35,600. On the same day, Johanna filed proof of claim no. 5-1, asserting an unsecured claim in the amount of \$49,172 based on a marital separation agreement ("MSA"). No party in interest has objected to Debtor's Mother's or Johanna's proofs of claim.

E. Kenneth Scott, Psy.D., a Psychological Corporation

Postpetition, on January 14, 2019, Debtor incorporated Kenneth Scott, Psy.D., Inc. ("KSPD"). Jett Declaration, ¶ 14, Exhibit 15. [FN3]. Subsequently, on July 20, 2020, Debtor dissolved MPPI. Debtor's Deposition [doc. 301], 64:5-25. According to Debtor, KSPD purchased MPPI's furniture and decor for approximately \$5,000-\$10,000.

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CONT... **Kenneth C. Scott**
Debtor's Deposition, 142:14-19.

Chapter 13

F. The Accusation by the California Board of Psychology

On August 9, 2019, the California Board of Psychology (the "CBOP") filed an accusation against Debtor, accusing Debtor of certain payroll and supervision violations against Creditor (the "Accusation"). Jett Declaration, ¶ 18, Exhibit 17; Debtor's Deposition, 52:22-25. On February 3, 2021, the CBOP entered a decision and order incorporating a stipulated settlement between Debtor and the CBOP (the "Stipulated Settlement"). Supplemental Declaration of Daniel Parker Jett [doc. 287], ¶ 10, Exhibit 73.

Through the Stipulated Settlement, Debtor agreed that his psychology license would be revoked, but that the revocation would be stayed and Debtor placed on probation for three years, subject to, among other requirements, paying \$38,046 in restitution to Creditor, subject to final approval of this Court. Stipulated Settlement, pp. 4-5. As relevant to this action, the Stipulated Settlement also provides—

The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Psychology or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

Stipulated Settlement, p. 3.

G. The Motion to Dismiss and Motion for Summary Judgment

On April 19, 2019, Creditor filed a motion to dismiss Debtor's case (the "Motion to Dismiss") [doc. 70], asserting that Debtor filed this case in bad faith. Debtor opposed the Motion to Dismiss [doc. 73]. On May 14, 2019, the Court held a hearing on the Motion to Dismiss. 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 Creditor's oral argument at that hearing, the Court the continued the hearing on the Motion to Dismiss for Creditor to take discovery regarding the issue of bad faith.

On November 20, 2019, Debtor filed a motion for summary judgment (the "MSJ") [doc. 174], requesting that the Court enter a judgment that Debtor did not file this bankruptcy

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CONT... Kenneth C. Scott

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case in bad faith. The MSJ was set for hearing on February 5, 2020.

On December 10, 2019, the Court held a continued status conference on the Motion to Dismiss. 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].

On January 15, 2020, Creditor filed an opposition to the MSJ (the "Original Opposition") [doc. 189]. Among other arguments, Creditor asserted he was entitled to a continuance of the hearing on the MSJ to obtain additional discovery pursuant to Federal Rule of Civil Procedure ("Rule") 56(d). The Court granted Creditor's request for an extension.

As a result, the Court continued the hearing on the MSJ. On April 10, 2020, after the parties agreed to mediate their disputes, the Court entered an order appointing the Honorable Gregg W. Zive as a mediator. The Court further continued the hearing on the MSJ during the parties' attempt at mediation. The parties failed to settle.

After several discovery disputes and extensions of the discovery cutoff date, the Court set a continued hearing on the MSJ for March 3, 2021 [doc. 263]. In light of the discovery taken by Creditor, the Court allowed Creditor to file a supplemental opposition to the MSJ by February 3, 2021. On February 3, 2021, Creditor filed a supplemental opposition to the MSJ (the "Supplemental Opposition") [doc. 285]. In the Supplemental Opposition, Creditor once again requests an extension of time, pursuant to Rule 56(d), to obtain additional discovery. Creditor also argues that several factors warrant dismissal of this case on the basis of bad faith, as discussed below. [FN4]. On February 17, 2021, Debtor filed a supplemental reply to the Supplemental Opposition (the "Supplemental Reply") [doc. 299].

II. ANALYSIS

A. Creditor's Request for Additional Time to Conduct Discovery

As in the Original Opposition, Creditor again requests an extension of time to complete discovery and "better assemble evidence." Supplemental Opposition, p. 23. Creditor references Rule 56(d), which provides—

If a nonmovant shows by affidavit or declaration that, for specified

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Kenneth C. Scott

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reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

"A party requesting a continuance pursuant to Rule [56(d)] must identify by affidavit the specific facts that further discovery would reveal, and explain why those facts would preclude summary judgment." *Tatum v. City & Cty. of San Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006). [FN5]. For instance, in *Tatum*, the Court of Appeals affirmed a denial of a Rule 56(d) request based on the following—

Tatum's request for a continuance did not identify the specific facts that further discovery would have revealed or explain why those facts would have precluded summary judgment. In a declaration supporting Tatum's opposition, her counsel stated that he had not yet received transcripts of several witness' depositions.... The declaration does not, however, refer to any specific fact in these depositions or explain why the information contained in them was "essential to justify [Tatum's] opposition." Fed. R. Civ. P. 56(f). The declaration does not indicate that deferring the resolution of the defendants' motion for summary judgment until the depositions had been transcribed and filed would have allowed Tatum to produce evidence creating a genuine issue of material fact.... The declaration does not explain how a continuance would have allowed Tatum to produce evidence creating a factual issue regarding probable cause. Absent a showing by Tatum that additional discovery would have revealed specific facts precluding summary judgment, the district court did not abuse its discretion by denying Tatum's request for a continuance under Rule 56(f).

Id., at 1100–01.

Here, Creditor has not submitted an affidavit identifying specific facts that additional discovery would reveal, or why such facts would preclude summary judgment as to the issue of bad faith. The absence of an affidavit is enough to deny Creditor's Rule 56(d) request.

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CONT... Kenneth C. Scott

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Although Creditor did not submit an affidavit related to this Rule 56(d) request, in the Supplemental Opposition, Creditor provides the following bases for an additional extension: (A) first, that "Debtor's mindset and intent at the time of his engagement of bankruptcy counsel and at the time of the filing of his Petition" are in Debtor's "exclusive possession and control;" and (B) second, that Creditor needs additional discovery regarding transfers of assets from MPPI to KSPD, Debtor's control over assets of MPPI and KSPD and Debtor's intent in creating KSPD.

As to the first basis, Creditor has not articulated how he intends to obtain possession and control of Debtor's intent. During discovery related to this MSJ, Creditor deposed Debtor. Creditor has not articulated any specific additional evidence that would preclude summary judgment on the issue of Debtor's intent. As to the second basis, and as discussed more fully below, the additional issues Creditor wants to explore would not have an effect on the Court's ruling on the issue of bad faith.

In the Supplemental Opposition, Creditor references *Burlington N. Santa Fe R. Co. v. Assiniboine & Sioux Tribes of Fort Peck Reservation*, 323 F.3d 767 (9th Cir. 2003), in support of his request. *Burlington* supports denial of Creditor's request; there, the Court of Appeals stated that "[w]here... a summary judgment motion is filed *so early in the litigation*, before a party has had any realistic opportunity to pursue discovery relating to its theory of the case, district courts should grant any [Rule 56(d)] motion fairly freely." *Burlington*, 323 F.3d at 773 (emphasis added).

Here, the Court *already* granted Creditor's request under Rule 56(d). Debtor initially filed the MSJ in November 2019, i.e., approximately one year and three months before the current hearing date. Although the MSJ was set for hearing on February 5, 2020, the Court granted Creditor's Rule 56(d) request to allow Creditor to obtain additional discovery related to the MSJ.

Notably, the Court granted Creditor's Rule 56(d) request approximately nine months after granting Creditor's request to continue the hearing on the Motion to Dismiss to allow Creditor to conduct discovery. As such, overall, Creditor has had almost *two years* to conduct discovery related to the Motion to Dismiss. The Court will not allow an additional extension of time for discovery under Rule 56(d).

B. General Motion for Summary Judgment Standard

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Pursuant to 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 materials" listed in Rule 56, such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, and interrogatory

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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).

C. Dismissal for Bad Faith

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, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed

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- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);
- (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
- (11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1307(c). In deciding whether a chapter 13 case should be dismissed or converted, courts apply a two-step analysis. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *In re Nelson*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 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

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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. *Leavitt*, 171 F.3d at 1224.

As a preliminary matter, in the MSJ, Debtor asserts that he did not violate the enumerated subsections of § 1307(c). The Motion to Dismiss, the Original Opposition and the Supplemental Opposition did not include any arguments related to § 1307(c)(1)-(11). In Creditor's first statement of disputed facts [doc. 188], Creditor disputes Debtor's facts regarding Debtor's compliance with § 1307(c). Although the dispute is mostly based on Creditor's evidentiary objections to Debtor's declaration (discussed below), Creditor also notes that whether Debtor violated § 1307(c)(1)-(11) does not have any bearing on the issue of bad faith. As such, Creditor, the movant requesting dismissal of Debtor's case, acknowledges that he is not requesting dismissal based on a violation of § 1307(c)(1)-(11). Consequently, this issue is not before the Court.

The sole issue before the Court is whether this case should be dismissed on the basis of bad faith. As to this issue, the record does not reflect the presence of any of the *Leavitt* factors, and Creditor has not set forth alternative grounds for dismissing this petition for bad faith. Neither party disputes that Debtor does not have a history of bankruptcy filings and/or dismissals. However, Creditor asserts the remaining factors, as well as alternative bases for a finding of bad faith, are present. Each of Creditor's arguments is discussed separately below.

1. Disclosure of MPPI's Assets and Liabilities

Creditor asserts that Debtor has not disclosed MPPI's assets and liabilities, and that the lack of disclosure is a factor demonstrating bad faith in the filing of this case. However, Creditor has not identified any obligation, beyond filling out schedule A/B, for Debtor to disclose MPPI's assets and liabilities. *See In re Young*, 409 B.R. 508, 513 (Bankr. D. Idaho 2009) ("It is well accepted that a filing by an individual who is an owner of a corporation brings into the estate only his ownership interest and not the assets of the corporation."). Schedule A/B prompts debtors to disclose if they have any legal or equitable interest in business-related property. To this prompt, Debtor responded in the affirmative, and disclosed an interest in \$17,274 in MPPI's business account. Creditor has not identified an inaccuracy in Debtor's schedule A/B. Rather, Creditor asserts that Debtor is required to list all of MPPI's separate assets and liabilities.

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Creditor's theory is that Debtor was required to identify MPPI's assets and liabilities because, according to Creditor, MPPI is an alter ego of Debtor. To the extent Creditor is seeking an alter ego determination from this Court, Creditor has not provided sufficient evidence in support of his theory.

"In determining whether alter ego liability applies, [courts] apply the law of the forum state." *In re Schwarzkopf*, 626 F. 3d 1032, 1037 (9th Cir. 2010). "The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests. In certain circumstances the court will disregard the corporate entity and will hold the individual shareholders liable for the actions of the corporation." *Mesler v. Bragg Management Co.*, 39 Cal.3d 290, 300 (1985) (internal citations omitted). "[T]he corporate form will be disregarded only in narrowly defined circumstances and only when the ends of justice so require." *Neilson v. Union Bank*, 290 F.Supp.2d 1101, 1115 (C.D. Cal. 2003) (internal quotations omitted); see also *Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523, 539 (Ct. App. 2000) ("Alter ego is an extreme remedy, sparingly used.").

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

Sonora Diamond, 83 Cal.App.4th at 526. In determining whether there is sufficient unity of interest and ownership to support alter ego liability, courts consider the following factors—

- (1) Commingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses;
- (2) the treatment by an individual of the assets of the corporation as his own;
- (3) the failure to obtain authority to issue stock or to subscribe to or issue the same;
- (4) the holding out by an individual that he is personally liable for the debts of the corporation;
- (5) the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities;

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- (6) the identical equitable ownership in the two entities;
- (7) the identification of the equitable owners thereof with the domination and control of the two entities;
- (8) identification of the directors and officers of the two entities in the responsible supervision and management;
- (9) sole ownership of all of the stock in a corporation by one individual or the members of a family;
- (10) the use of the same office or business location;
- (11) the employment of the same employees and/or attorney;
- (12) the failure to adequately capitalize a corporation;
- (13) the total absence of corporate assets, and undercapitalization;
- (14) the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation;
- (15) the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities;
- (16) the disregard of legal formalities and the failure to maintain arm's length relationships among related entities;
- (17) the use of the corporate entity to procure labor, services or merchandise for another person or entity;
- (18) the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another;
- (19) the contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions; and
- (20) the formation and use of a corporation to transfer to it the existing liability of another person or entity.

Zoran Corp. v. Chen, 185 Cal.App.4th 799, 811–12 (Ct. App. 2010). This list is not exhaustive, and no single factor is determinative. *Id.*

Creditor devotes a significant portion of his alter ego analysis to whether the factors above exist as between MPPI and *KSPD*. This analysis is irrelevant to whether *Debtor* was required to disclose MPPI's assets and liabilities as an alter ego of MPPI. Creditor's discussion regarding any unity of interest between MPPI and *KSPD* is not relevant to the

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bad faith issue before the Court.

As concerns Debtor and MPPI, Creditor has not demonstrated the presence of the *Zoran* factors. First, Creditor has not shown that Debtor and MPPI commingled funds or failed to segregate their funds; in fact, Creditor asserts that Debtor's personal account and MPPI's business account were "linked," implicitly acknowledging that the entities maintained separate accounts. Moreover, Creditor has not shown the *unauthorized* diversion of corporate funds to Debtor's personal use. As to this factor, Creditor notes that MPPI paid Debtor's personal expenses, such as medical, telephone, legal and vehicle expenses. However, the evidence in support of this contention is unauthenticated and inadmissible; in addition, contrary to Local Bankruptcy Rule 7056-1(b)(2)(B), Creditor does not cite the specific portions of the bank statements to which he refers. As such, the Court need not consider the bank statements.

Nevertheless, even if the Court admitted the bank statements as competent evidence and pored through the extensive record to note each expense that might qualify as Debtor's personal expense, Creditor has not shown that these expenditures were unauthorized. [FN6]. In his deposition, Debtor testified that the expenses were included in MPPI's accounting as Debtor's benefit-based income. Debtor's Deposition [doc. 301], 151:8-13; 156-21-25. [FN7].

Next, although Debtor testified that he did not keep minutes during meetings of the Board of Directors, there is no evidence that Debtor otherwise did not maintain adequate corporate records. Debtor's Deposition, 73:15-17. Debtor's testimony that his accountants maintained the records, as opposed to Debtor himself, does not translate to a failure to maintain records. Debtor's Deposition, 73:8-11,21-24;74:9-12. Creditor offers no evidence as to the remaining *Zoran* factors. [FN8]. As such, Creditor has not demonstrated that MPPI is Debtor's alter ego, or that Debtor was required to schedule all of MPPI's assets and liabilities in his bankruptcy papers.

Finally, even if Creditor could demonstrate that MPPI is Debtor's alter ego, Creditor has not shown that Debtor, at the time he filed his schedules and statements, regarded MPPI as an alter ego. There is no indication in the record that Debtor did not believe MPPI to be a separate legal entity. Because the pertinent issue is whether Debtor filed the petition in bad faith, Creditor would have to show not only that MPPI is an alter ego of Debtor, but that Debtor intentionally treated MPPI as a sham entity that shielded Debtor's assets. The record does not support this conclusion. In fact, in his schedule A/B, Debtor disclosed MPPI's assets in which Debtor claimed an interest, i.e., the Funds. Creditor has not identified any other assets that Debtor was obligated to disclose. As such, even if MPPI was Debtor's alter ego, Creditor has not demonstrated that Debtor intentionally

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omitted MPPI's assets from his schedules in an effort to hide assets.

2. *The Exempt Funds*

Creditor asserts that Debtor improperly claimed the Funds as exempt in an effort to thwart Creditor's effort to collect from MPPI. The Court already issued a ruling overruling Creditor's Objection to Exemption and detailing why Debtor properly claimed the Funds as exempt. Because the Court entered an order allowing Debtor's claim of an exemption, Creditor's arguments related to the exemption are precluded by the law of the case doctrine. *See Hall v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012) (holding that the law of the case doctrine precludes "a court from reconsidering an issue decided previously by the same court or by a higher court in the identical case"). The Court will not revisit these issues.

3. *Debtor's License, the Accusation and the Stipulated Settlement*

Creditor argues that Debtor did not disclose the potential suspension of his license. However, Creditor has not articulated why Debtor had an obligation to disclose the *possibility* of a license suspension, or why a potential *postpetition* suspension of a professional license requires dismissal of a chapter 13 case for bad faith.

Although Creditor does not reference an obligation for Debtor to disclose a possible suspension of his license, Creditor appears to argue that Debtor should have disclosed the Accusation because it impacted Debtor's ability to perform under his proposed chapter 13 plan. First, Creditor's complaint to the CBOP triggered the Accusation; thus, Creditor, the only creditor to object to Debtor's proposed plan, knew about the Accusation. Moreover, the Accusation impacts, at best, the feasibility of Debtor's proposed plan; the postpetition Accusation is not determinative of Debtor's intent in filing this bankruptcy case.

Next, Creditor asserts that, in the Stipulated Settlement, Debtor admitted to wrongdoing. However, the Stipulated Settlement explicitly provides that the admissions made therein "shall not be admissible in any other criminal or civil proceeding." Stipulated Settlement, p. 3. As such, any admissions in the Stipulated Settlement do not have an impact on this case.

Finally, Creditor notes that Debtor has refused to pay the restitution award set forth in the Stipulated Settlement. However, in the Stipulated Settlement, satisfaction of the restitution award is explicitly subject to this Court's approval. Neither Debtor nor any other party in interest has sought approval of payment of the restitution award. [FN9]. Consequently, the issues related to Debtor's license are not cause for dismissal for bad

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4. Debtor's Representations Regarding Income

Creditor asserts that Debtor made the following misrepresentations regarding his income: (A) Debtor did not reconcile the information in his schedule I with the information in the Chapter 13 Statement; (B) Debtor personally received checks from tenants to which MPPI leased office space; (C) Debtor did not account for a shareholder loan owed to Debtor by MPPI, and did not disclose this loan in his schedules or statements; (D) Debtor falsely certified that he received no income from MPPI for the 60 days preceding the petition date; and (E) Debtor must have made more income than reported based on MPPI's profits.

a. Schedule I Compared to the Chapter 13 Statement

Creditor contends there is a discrepancy between Debtor's schedule I, which disclosed \$5,733.58 in gross wages, and the Chapter 13 Statement, which disclosed a total of \$32,022.34 in monthly income. In the Supplemental Reply, Debtor explained that he completed the Chapter 13 Statement pursuant to *In re Wiegand*, 386 B.R. 238 (B.A.P. 9th Cir. 2008), by reporting \$5,733.58 in gross wages (as he did in his schedule I) and an additional \$26,288.76 in MPPI's gross receipts, without deducting MPPI's business expenses. In *Wiegand*, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") held that Form 22C (modern day Form 122C-1, identified herein as the Chapter 13 Statement) conflicted with 11 U.S.C. § 1325(b)(2). *Wiegand*, 386 B.R. at 239. The BAP concluded that, although business expenses should not be deducted for the purpose of calculating current monthly income (which, in turn, determines the applicable commitment period of a chapter 13 plan), the expenses could be deducted to calculate a debtor's *disposable* income (to determine the amount a debtor should pay into a chapter 13 plan). *Id.*

Here, the Chapter 13 Statement, as completed by Debtor, calls for the higher five-year commitment period. Deducting business expenses from the Chapter 13 Statement may have resulted in a shorter commitment period. On the other hand, Debtor's schedules I and J set forth Debtor's disposable income. As further discussed below, Creditor has not shown any evidence that Debtor's income calculations are inaccurate.

Even if there was no case law in support of Debtor's position, the discrepancy between the forms would not be cause to dismiss for bad faith. Debtor did not conceal his business income; Debtor disclosed MPPI's income in the Chapter 13 Statement. Thus, even if the additional business income was not in Debtor's schedule I, the information

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was available for creditors, the chapter 13 trustee and the Court via the Chapter 13 Statement. As such, Creditor has not explained why the discrepancy amounts to bad faith concealment of income or assets. Without additional evidence regarding intent, the discrepancy alone is insufficient to hold that Debtor acted in bad faith.

b. MPPI's Rental Income

In the Supplemental Opposition, Creditor mentions that Debtor received checks made out to him, personally, for rental income owed to MPPI. Once again, Creditor cites bank statements as evidence. As discussed above, the bank statements are not authenticated, and Creditor did not cite specific portions of the record. Nevertheless, the parties do not dispute that the checks were deposited into *MPPI's* account. Undisputed Facts [doc. 304], ¶ 47. The parties also do not dispute that MPPI collected rental income, or the total amount of rental income collected by MPPI. Undisputed Facts, ¶ 41, 43. MPPI's receipt of rental income does not demonstrate that Debtor acted in bad faith in filing a bankruptcy petition.

c. The Alleged Shareholder Loan

Creditor also mentions an alleged loan from Debtor to MPPI. In support, Creditor references MPPI's 2017 and 2018 balance sheets. Compendium of Evidence [doc. 288], Exhibits 12, 14. The balance sheets are not authenticated by a party with personal knowledge. However, even if the Court considered the balance sheets, the balance sheets, standing alone, do not demonstrate that Debtor inaccurately scheduled his personal assets or income. Creditor refers to line items in the 2017 and 2018 balance sheets that show MPPI owed \$98,182.55 and \$66,057, respectively, on a shareholder loan. Creditor interprets these line items as evidence that Debtor received income he did not report in his disclosures. However, even if this information qualified as admissible evidence that Debtor received \$32,125.55 from MPPI (the difference between \$98,182.55 and \$66,057), Debtor reported a total of \$68,802.96 in income (\$5,733.58 per month) in his amended schedule I and Chapter 13 Statement. Given that Debtor reported receipt of income in an amount much greater than \$32,125.55, Creditor has not shown that Debtor underreported his income on account of the alleged repayment of a loan.

Creditor also argues that Debtor did not schedule the alleged shareholder loan as an asset of the estate. Again, there is no admissible evidence of a loan from Debtor to MPPI, and no evidence that any such loan, if it exists, remains outstanding.

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d. Certification Regarding Income

In the Supplemental Opposition, Creditor states that, in his declarations as to whether income was received by an employer within 60 days of the petition date ("Employer Declarations") [docs. 14, 22], Debtor "falsely" certified that he received no income from MPPI. However, the Employer Declarations prompt debtors to check one of two boxes: (A) the first box is checked if, during the 60-day period before the filing of a petition, a debtor was paid by an employer; and (B) the second box is checked if a debtor was not paid by an employer "*because [the debtor] was either self-employed only, or not employed.*" (emphasis added). Debtor checked the second box. Creditor has not shown that Debtor intended to represent that he was unemployed, as opposed to self-employed by his wholly owned corporation. As such, this is not a basis for a finding of bad faith.

e. Miscellaneous Comments Regarding Debtor's Income

Finally, throughout the Supplemental Opposition, Creditor refers to MPPI's profits and speculates that, based on such profit, Debtor must have received more income than reported in his bankruptcy schedules and statements. Creditor also asserts that Debtor did not include expenses paid by MPPI in his calculation of income. Once again, Creditor has not offered authenticated and admissible evidence in support of these arguments. However, even if the Court considers all of Creditor's evidence, Creditor did not provide actual calculations showing a discrepancy between the evidence submitted by Creditor and Debtor's bankruptcy filings. In addition, as discussed above, Debtor testified that his accountants included Debtor's benefit-based income in their calculation of Debtor's total income, and that Debtor relied on the accountants' numbers in reporting his income. Debtor's Deposition, 151:6-13; Debtor's Declaration [doc. 100], ¶¶ 12-15; Debtor's Declaration [doc. 302], ¶¶ 9-11.

Creditor also mentions that Debtor amended his schedules and statements to increase his reported income. Yet, Debtor has testified that, after his accountants finalized work on Debtor's 2018 taxes, Debtor amended his schedules and statements to mirror the numbers provided by his accountants. Debtor's Declaration [doc. 100], ¶¶ 12-15; Debtor's Declaration [doc. 302], ¶¶ 9-11. Debtors may amend their schedules "as a matter of course at any time before the case is closed." Fed. R. Bankr. P. 1009(a). Such amendments are "liberally allowed." *In re Michael*, 163 F.3d 526, 529 (9th Cir. 1998). Creditor has not articulated why Debtor's amendment of his schedules to correspond to his tax records was done in bad faith.

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5. *The Proofs of Claim*

Creditor argues that the proofs of claim filed by Debtor's Mother and Johanna are untimely and fraudulent. As to the issue of timeliness, Creditor has not explained why untimely proofs of claim, whether filed by creditors or debtors on behalf of creditors, lead to an inference that Debtor filed a chapter 13 case in bad faith.

As to Creditor's argument that the claims are "fraudulent," Creditor has not provided sound evidentiary or legal support for this contention. Creditor does not offer any argument regarding why Debtor's Mother's claim is fraudulent. As to Johanna, Creditor argues that the MSA, which is the basis of Johanna's claim, is illusory because Johanna testified that she did not have any expectation that Debtor would repay the loan. Creditor misrepresents Johanna's testimony. In her deposition, when asked if Johanna had any expectation as to *how* the amounts in the MSA would be paid back, Johanna responded that she did not. Deposition of Johanna Scott [doc. 301], 24:1-3. As such, the referenced testimony only shows that Johanna did not establish a method of repayment; she did *not* testify that she did not expect any payment under the MSA. In fact, the balance of Johanna's testimony showed that Debtor and Johanna abided by the terms of the MSA. *See, e.g.*, Deposition of Johanna Scott, 27:18-28:7; 30:11-31:2.

Creditor also argues that the MSA was not filed with a court. However, Creditor has not shown that the lack of an official dissolution invalidates an otherwise enforceable agreement between Debtor and Johanna. With the exception of Creditor's argument that the MSA is illusory, which is not supported by evidence for the reasons discussed above, Creditor has not set forth any reason why the MSA is not an enforceable contract.

Even if there are technical issues that would lead to the disallowance of these proofs of claim, there is no evidence that Debtor fabricated the claims for the purpose of creating debt in preparation for his bankruptcy case. At most, Creditor refers to Johanna's testimony that, around the time Debtor filed for bankruptcy, Johanna backdated the MSA to reflect the date Debtor and Johanna entered into the agreement. Deposition of Johanna Scott, 16:1-17:11;18:19-21. However, Johanna also testified that the parties drafted the MSA at the time of their separation, in 2014, with the help of a mediator, and abided by the terms of the MSA since that time. *Id.* [FN10]. As such, there is no evidence that the parties backdated the MSA in an attempt to defraud creditors or fabricate a nonexistent debt.

Further, Creditor initially asserted a claim for \$1,510,975.25. In light of Creditor's substantial claim, Creditor has not shown why Debtor would need to fabricate claims to pursue bankruptcy relief. The amount of Creditor's demand, as well as the parties'

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prepetition failure to reach a settlement agreement, shows that Debtor faced potentially significant liability, with or without the inclusion of other debts. Moreover, that Creditor reduced his claim, postpetition and following objection by Debtor, to \$169,432.60, demonstrates a legitimate dispute regarding Creditor's claim. As such, even if Creditor was the *only* claimant against the estate, Creditor has not demonstrated that Debtor filed this case for an improper reason, as opposed to pursuing the reorganization and adjudication of Creditor's considerable claim.

6. *The Wage and Hour Dispute Between the Parties*

Throughout the Original Opposition and the Supplemental Opposition, Creditor refers to Debtor's alleged violation of California labor laws, which is the subject of the State Court Complaint and the pending adversary proceeding. The prepetition wage dispute between the parties does not signify that Debtor filed this bankruptcy case in bad faith. Even if Debtor's prepetition conduct towards Creditor was fraudulent or egregious, such conduct would not automatically amount to bad faith in filing a petition.

In fact, the Bankruptcy Code contemplates that debtors who owe prepetition debt stemming from fraud may file for bankruptcy protection; in accordance with 11 U.S.C. § 523, creditors are allowed to except their debt from discharge, as Creditor is attempting to do through the pending adversary proceeding.

7. *The Valuation of MPPI*

Creditor also asserts that Debtor undervalued his interest in MPPI. As support, Creditor cites the MSA between Debtor and Johanna, which includes a provision that KSPD (in whatever form it existed in 2014) was valued at \$101,000. Compendium of Evidence [doc. 288], Exhibit 4. Creditor also references Johanna's testimony regarding the MSA's 2014 valuation of KSPD. Deposition of Johanna Scott, 24:9-11. The MSA is not authenticated and, as a result, inadmissible. However, both the MSA and Johanna's testimony relate to the valuation of *KSPD* at the time Debtor and Johana entered into the MSA, in 2014. [FN11]. As such, this information is irrelevant to Debtor's scheduled valuation of *MPPI* as of the petition date.

Creditor also refers to MPPI's revenue and/or assets as evidence of MPPI's value. The evidence submitted by Creditor is neither authenticated nor admissible. However, even if the Court considers Creditor's evidence, Creditor does not account for MPPI's expenses or liabilities. The amount of MPPI's revenue or the value of its assets, without accounting for expenses or liabilities, does not present a complete picture. In addition, Debtor testified that the value of MPPI based on its book of business is different from MPPI's *liquidation* value, because, according to Debtor, psychology practices are not

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sold. Debtor's Declaration [doc. 302], ¶¶ 2, 4. Given Creditor's failure to account for MPPI's expenses and liabilities, and Debtor's testimony regarding MPPI's liquidation value, Creditor has not shown that Debtor's scheduled valuation of MPPI was done in bad faith.

8. *The Dissolution of MPPI/Incorporation of KSPD*

Creditor also refers to the postpetition dissolution of MPPI and incorporation of KSPD as a factor demonstrating bad faith. However, Creditor has not articulated why this postpetition conduct signals bad faith with respect to the filing of a bankruptcy petition. Creditor appears to argue that Debtor incorporated KSPD to hinder Creditor's collection efforts from MPPI. This argument is neither supported by evidence nor relevant to a finding of bad faith.

As evidentiary support for his contention, Creditor references Debtor's tax returns and notes that, in 2018, MPPI had assets worth \$135,983; Creditor also cites Debtor's testimony that MPPI sold certain assets, such as furniture and décor, to KSPD for approximately \$5,000 to \$10,000. Compendium of Evidence, Exhibit 10; Debtor's Deposition, 142:7-22. The tax records are not authenticated by a party with personal knowledge. Nevertheless, even if the Court considers the tax records, Debtor testified that this valuation was based on MPPI's book of business, not the value of MPPI's furniture or décor. Debtor's Declaration [doc. 302], ¶¶ 2, 4.

In any event, neither MPPI nor KSPD are debtors before the Court, and, as discussed above, Creditor has not demonstrated that either entity is an alter ego of Debtor. If MPPI transferred assets belonging to MPPI to a different entity, this does not signify that Debtor filed his petition in bad faith.

9. *The Timing of Debtor's Bankruptcy Filing*

Creditor asserts that, because Debtor filed this case shortly after Creditor filed the State Court Complaint, Debtor filed this case solely to thwart Creditor's pursuit of the state court litigation. In support of his contention, Creditor cites *In re Eisen*, 14 F.3d 469 (9th Cir. 1994), and *In re Chinichian*, 784 F.2d 1440 (9th Cir. 1986). However, both cases are factually distinguishable from Debtor's case. In *Eisen*, the debtor entered into a contract to sell a duplex to a buyer; subsequently, the buyer filed a state court action to enforce the contract. *Eisen*, 14 F.3d at 470. On the eve of trial, the debtor filed a chapter 13 petition. *Id.* The debtor: (A) in his chapter 13 plan, did not list an interest in the duplex; (B) rejected the contract with the buyer; (C) claimed the duplex had been sold at a foreclosure sale; and (D) filed the chapter 13 petition shortly after dismissal of his prior

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chapter 13 petition, which was dismissed for bad faith. *Id.*, at 470-71. On these facts, the Ninth Circuit Court of Appeals affirmed the decision to dismiss the chapter 13 petition. *Id.*, at 471.

In *Chinichian*, the Court of Appeals affirmed a ruling that a chapter 13 plan was not filed in good faith. *Chinichian*, 784 F.2d at 1445. In affirming, the Court of Appeals held that the following facts supported the trial court's ruling—

The findings of the bankruptcy court are amply supported by the record. The record reveals: (1) the listing of only two unsecured creditors; (2) the unlikelihood that the brother who was listed as one of the unsecured creditors was even a creditor in light of the lack of payments to the brother in over two years and the absence of any fiduciary duty under which the brother could recover; (3) the failure of the brother to file a claim and the possibility that he was never noticed properly of the bankruptcy proceeding; (4) the lack of a meaningful provision in the plan to sell the desert properties; (5) the speculative nature of [the creditors'] unsecured claim for damages in light of the bankruptcy court's finding that [the creditor] was primarily interested in specific performance on the executory contract, not damages; and (6) the filing of Chapter 13 for the purpose of defeating the [the creditor's] specific performance action.

...

The district court took notice of further factors indicating bad faith: the strategic timing of the [debtors'] bankruptcy petitions, which effectively frustrated enforcement of the contract in state court and the [debtors'] change of their bankruptcy petition to Chapter 13 when their motion to reject the contract was denied in the Chapter 11 proceeding.

Id. The Court of Appeals also referred to the bankruptcy court's finding that the debtors had significant unencumbered assets with which to meet their financial obligations. *Id.*

Unlike *Eisen* and *Chinichian*, here, Creditor has not provided any evidence of conduct, beyond the timing of the bankruptcy filing, that establishes that Debtor filed this petition in bad faith or for the sole purpose of evading the state court action. In *Eisen* and *Chinichian*, the timing of the debtors' bankruptcy petition was one factor of many, such as concealing assets, failing to attempt a meaningful reorganization and the absence of legitimate debt to reorganize.

In addition, in *Eisen* and *Chinichian*, the timing of the petition was suspect because of

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the nature and status of the state court litigation in those cases. In *Eisen*, the debtor filed the petition on the eve of trial. *Eisen*, 14 F.3d at 470. In *Chinichian*, the debtors filed a petition despite the fact that the state court litigation would have given rise to a specific performance judgment, not monetary damages; the debtor had virtually no other unsecured debt. *Chinichian*, 784 F.2d at 1445. Here, Creditor has not shown that Debtor filed this bankruptcy case to avoid trial. In fact, Debtor filed this case shortly after Creditor filed the state court action. As such, the record does not show that Debtor faced an imminent ruling by the state court, or that such ruling would be unfavorable to Debtor. Further, unlike *Chinichian*, Creditor is requesting monetary damages from Debtor. In fact, Creditor's original proof of claim was for over \$1 million.

Even if Debtor filed the petition to "avoid the costs and consequences of the state court litigation," the existence of this factor "must be balanced against all of the circumstances reflected in the record." *In re Gilton*, 2006 WL 6810991, at *6 (B.A.P. 9th Cir. Sep. 29, 2006). Here, the timing of Debtor's petition, when considered in the context of Debtor's prepetition circumstances, does not establish bad faith. For approximately three months before Creditor filed the state court action, Debtor and Creditor engaged in settlement discussions. Debtor also testified that he was unable to fund litigation because of his poor health and limited income. Debtor's Declaration [doc. 302], ¶ 3. Moreover, as discussed above, Johanna testified that she and Debtor abided by the terms of the MSA, such that Debtor made monthly support payments. Deposition of Johanna Scott, 27:18-28:7; 30:11-31:2.

In light of Creditor's large claim, the numerous causes of action asserted in the State Court Complaint and the other factors noted above, it is not evident that Debtor filed this petition solely to evade the state court litigation, instead of attempting to reorganize a potentially significant debt. *See, e.g. In re Ho*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002) ("*Eisen* states that bad faith exists where the debtor's *only* purpose is to defeat state court litigation."); and *In re Chisum*, 68 B.R. 471, 473 (B.A.P. 9th Cir. 1986), *aff'd*, 847 F.2d 597 (9th Cir. 1988) ("Filing a bankruptcy petition to prevent foreclosure if undertaken pursuant to a legitimate effort at reorganization is not reprehensible and is in accord with the aim of the Bankruptcy Code.").

In sum, with the exception of the timing of Debtor's petition, which, for the reasons discussed above, does not evidence bad faith, the record does not reflect the presence of any other factor warranting dismissal for bad faith. There being no genuine issue of material fact over these issues, the Court will enter judgment in favor of Debtor and deny the Motion to Dismiss.

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III. CONCLUSION

The Court will enter judgment in favor of Debtor and deny the Motion to Dismiss.

The Court will prepare the order.

FOOTNOTES

1. The Court is admitting Creditor's or Creditor's counsel's statements for the impact of the statements on Debtor's mind, and not for truth of the matter stated.
2. Once again, in light of Debtor's hearsay objection, the Court is admitting the proof of service for the impact of the statements on Debtor's mind, and not for truth of the matter stated.
3. "Information from government websites is self-authenticating." *Lucent Trans Elec. Co. v. Foreign Trade Corp.*, 2019 WL 2620726, at *8 (C.D. Cal. May 21, 2019) (citing Fed. R. Evid. 901).
4. Creditor also requests that the Court compel Debtor to revise his schedules and statements to include MPPI's and KSPD's assets and liabilities. Creditor has not set forth a legal basis supporting such a request. In addition, the request is beyond the scope of the Motion to Dismiss and the MSJ. Creditor also requests denial of confirmation of Debtor's chapter 13 plan. Once again, this issue is not properly before the Court.
5. *Tatum* refers to former Rule 56(f), which is now Rule 56(d).
6. "A party opposing summary judgment must direct [the court's] attention to specific, triable facts." *Southern Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003). The Court is "not required to comb the record to find some reason to deny a motion for summary judgment." *Forsberg v. Pac. Northwest Bell Tel. Co.*, 840 F.2d 1409, 1418 (9th Cir. 1988).
7. In his "Compendium of Evidence," Creditor includes only portions of deposition transcripts. Pursuant to Local Bankruptcy Rule 7030-1(b), Creditor was required to lodge the complete deposition transcript with the Court. Although

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Creditor did not comply with this Rule, Debtor lodged complete transcripts of Debtor's and Johanna's depositions [doc. 301]. The Court does not have a complete transcript of the deposition of Edmund Yen.

8. Throughout the Supplemental Opposition, Creditor repeatedly notes that Debtor *and* MPPI had sufficient combined resources to satisfy Creditor's settlement demand. First, this contention is not supported by the record; although Creditor asserts the combined assets could have paid \$169,432.60 (the current amount of Creditor's asserted claim), Creditor did not reduce his claim to this amount until December 16, 2019, i.e., postpetition. Creditor has not shown that MPPI and Debtor had the collective resources to pay Creditor's prepetition demands. Next, even if MPPI could have paid Creditor's demand, the information would not impact *Debtor's* decision to file bankruptcy if Debtor believed he would be liable on the debt and could not *himself* afford it. Finally, the settlement demand by Creditor did not qualify as an actual obligation by Debtor; the parties had not litigated the dispute and neither Debtor nor MPPI were required to settle without defending the claims in court.
9. At this time, the Court is not evaluating the impact of the restitution award on confirmation of Debtor's proposed plan or the adversary proceeding.
10. In fact, if the Court admitted the unauthenticated bank records submitted by Creditor, the bank records would show that Debtor was making monthly payments to Johanna. Compendium of Evidence, Exhibits 29-32.
11. The record shows that KSPD was incorporated postpetition, in 2019. However, both Johanna's testimony and the (unauthenticated) MSA reference a business named "Kenneth Scott, Psy.D.," which apparently existed in some form in 2014. Either way, the testimony regarding valuation of this business, *in 2014*, does not indicate that Debtor inaccurately valued his interest in MPPI, as of the petition date.

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

Creditor's Evidentiary Objections to the Declaration of Kenneth C. Scott [doc. 174]
paras. 2, 4, 5, 6, 7, 10: overrule

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para. 3: sustain as to "All of my bankruptcy documents were timely filed, including but not limited to my petition, my schedules, and my plan on that date;" overrule as to the rest

paras. 8, 9: sustain

Creditor's Evidentiary Objections to the Declaration of Arash Shirdel [doc. 174]

para. 3: overrule

Debtor's Evidentiary Objections to the Declaration of Daniel Parker Jett [doc. 191]

paras. 2, 3, 18, 19, 22, 25: sustain

paras. 4, 5, 6, 7, 8, 13, 14, 20, 27, 28, 29, 30: overrule

exs. 1, 2, 3, 4, 7: sustain

exs. 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25: overrule

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-13024 Kenneth C. Scott

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#15.00 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; 09/08/20; 1/12/21; 2/9/21

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

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Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the March 4 , 2021 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/1606234875>

Meeting ID: 160 623 4875

Password: 575602

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 160 623 4875

Password: 575602

Docket 0

Tentative Ruling:

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- NONE LISTED -

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1:20-10840 Jess Richard Carmona, Jr and Jayleen Carmona

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Diane Weil, Chapter 7 Trustee

Docket 41

Tentative Ruling:

Diane C. Weil, chapter 7 trustee – approve fees of \$1,250.00 and reimbursement of expenses of \$82.10, 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):

Jess Richard Carmona Jr

Represented By
Sanaz Sarah Bereliani

Joint Debtor(s):

Jayleen Carmona

Represented By
Sanaz Sarah Bereliani

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:20-11653 Altra Mortgage Capital LLC

Chapter 11

#2.00 First interim application for compensation and reimbursement of expenses of Michael Jay Berger, Debtor's Attorney
Period: 9/11/2020 to 1/31/2021

Docket 43

Tentative Ruling:

Law Offices of Michael Jay Berger ("Applicant"), counsel to the debtor and debtor in possession – approve fees in the amount of \$18,029.50 and reimbursement of expenses in the amount of \$754.91, pursuant to 11 U.S.C. § 331, for the period between September 11, 2020 through January 31, 2021, on an interim basis. Applicant may collect 80% of the approved fees and 100% of the approved expenses at this time. The Court will not approve \$158.00 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 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;

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CONT... **Altra Mortgage Capital LLC**

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

Category	Date	Timekeeper	Description	Rate	Time	Fee
Asset Disposition	1/11/21 1	DR	Email Client re PRH Capital – Wyoming Corporation Information	\$395	0.10	\$39.50
Asset Disposition	1/15/21 1	DR	Call Blake for signatures on the asset sale and amended assets to schedules AB	\$395	0.10	\$39.50
Asset Disposition	1/20/21 1	DR	Send Mr. Gross / Bidder checklist, wire instructions, contract for sale, and bidding procedures	\$395	0.10	\$39.50
Asset Disposition	1/27/21 1	DR	Email Client re asset sale Consumer Data privacy of information contained in database re personally identifiable information	\$395	0.10	\$39.50

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):

Altra Mortgage Capital LLC

Represented By

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CONT... Altra Mortgage Capital LLC

Michael Jay Berger

Chapter 11

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1:00 PM

1:20-11769 Dashing Properties Management, Inc.

Chapter 11

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

Docket 48

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):

Dashing Properties Management,

Represented By
Raymond H. Aver

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1:18-10417 Deborah Lois Adri

Chapter 7

#4.00 Objection to Trustee's intention to abandon real property of the estate pursuant to 11 U.S.C. § 554(a), Fed. R. Bankr. P. 2002(c) & Local Bankruptcy Rule 6007-1

Docket 390

Tentative Ruling:

Allow abandonment of property.

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 Debtor's case to a chapter 7 case [doc. 305]. Elissa Miller was appointed the chapter 7 trustee (the "Trustee").

On January 28, 2021, the Trustee filed a notice of intention to abandon real property (the "Notice") [doc. 394], located at 4023 Woodman Canyon, Sherman Oaks, CA 91423 (the "Property"). On February 8, 2021, Moshe Adri filed an opposition to the Notice (the "Opposition") [doc. 394]. In the Opposition, Mr. Adri states that Debtor "was not qualified to [file] for bankruptcy" and that Debtor "lie[d] under oath about her financial situation." Opposition, p. 2. Mr. Adri did not provide an analysis of 11 U.S.C. § 554, and did not provide a declaration or authenticated evidence in support of the Opposition.

On February 25, 2021, the Trustee filed a reply to the Opposition (the "Trustee's Reply") [doc. 400]. In a declaration attached to the Trustee's Reply, the Trustee explained that she personally visited the property and noted "visible deferred maintenance" on site. Declaration of Elissa D. Miller (the "Miller Declaration"), ¶ 14. The Trustee also received, from her accountants, an analysis of the capital gains tax for the Property. Miller Declaration, ¶ 15. Based on the Trustee's investigation and her broker's opinion of value, the Trustee believes the Property is worth between \$1.05 million and \$1.1 million. Miller Declaration, ¶ 14. Using the higher valuation, the Trustee deducted the following liens, costs and exemptions: (A) \$71,500 towards an estimated 6.5% cost of sale; (B) \$605,000 towards a deed of trust against the Property;

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CONT... Deborah Lois Adri

Chapter 7

(C) \$175,000 towards Debtor's homestead exemption; (D) \$258,055 towards an income tax lien; and (E) \$35,180 towards federal and state taxes. Miller Declaration, ¶ 16. On these facts, the Trustee stated that the Property is of no value and benefit to the estate. Miller Declaration, ¶ 17. On February 25, 2021, Debtor also filed a reply to the Opposition [doc. 399].

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." To approve a request to abandon property, the court must find that "(1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate" by a preponderance of the evidence. *In re Viet Vu*, 245 B.R. 644, 647, 650 (B.A.P. 9th Cir. 2000).

Here, the Trustee has provided a declaration evidencing that the Property is of inconsequential value and benefit to the estate. In the Opposition, Mr. Adri does not discuss the relevant standard for abandonment. Instead, Mr. Adri states, without any evidence, that Debtor was not qualified to file a bankruptcy case and that Debtor lied under oath about her finances. Even if Mr. Adri provided a declaration and/or admissible evidence in support of these contentions, these arguments are irrelevant to whether the Property is of any value or benefit to the estate. The Trustee having demonstrated that the Property is of inconsequential value and benefit to the estate, the Court will allow abandonment of the Property.

III. CONCLUSION

The Court will approve abandonment of the Property.

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

Party Information

Debtor(s):

Deborah Lois Adri

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By

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Deborah Lois Adri

Chapter 7

Cathy Ta
Larry W Gabriel
Claire K Wu

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1:19-12590 Marine Kasabyan

Chapter 7

#5.00 Objection to debtor's claim of exemption

fr. 11/10/20, 1/14/21

Stip to continue filed 3/1/21.

Docket 82

***** VACATED *** REASON: Order approving stip entered 3/2/21.**

Hearing continued to 3/4/21 at 1:30 PM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marine Kasabyan

Represented By
Thomas B Ure
Laila Masud

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**

Thursday, March 4, 2021

Hearing Room 301

1:30 PM

1:20-10621 Jasmin DeVillar

Chapter 11

#6.00 Debtor's motion to dismiss chapter 11 bankruptcy case

Docket 80

Tentative Ruling:

Grant, for the reasons discussed below.

I. BACKGROUND

On March 14, 2020, Jasmin DeVillar ("Debtor") filed a voluntary chapter 11 petition. Based on Debtor's schedules, Debtor has assets in the amount of \$413,696.00 and liabilities in the amount of \$520,751.00. In her schedule A/B, Debtor identified interests in: (A) residential real property located at 18410 Lull Street #2, Reseda, California 91335 (the "Lull Property"), valued at \$380,000.00; (B) a 2015 Toyota Rav4, valued at \$11,500.00; and (C) various personal items and financial assets, valued in the aggregate at \$22,196.00 [doc. 14]. In her schedule D, Debtor identified the following secured claims: (A) a claim of LoanCare LLC in the amount of \$334,620.00, secured by a deed of trust against the Lull Property; and (B) a claim of Toyota Financial Services in the amount of \$8,391.00, secured by the 2015 Toyota Rav4.

In her schedule E/F, Debtor scheduled a priority unsecured claim in the amount of \$154,000.00, held by the California Department of Tax and Fee Administration ("CDTFA"). Debtor indicated that this claim is disputed. Debtor scheduled an additional \$23,740.00 in nonpriority unsecured claims.

On June 10, 2020, the CDTFA filed proof of claim no. 17-1, asserting a secured claim in the amount of \$150,162.89, based on liens recorded against the Lull Property (the "Tax Claim"). On December 11, 2020, the Court entered an order overruling Debtor's objection to the Tax Claim [doc. 72].

On February 9, 2021, Debtor filed a motion to dismiss her bankruptcy case pursuant to 11 U.S.C. § 1112(b) (the "Motion") [doc. 80]. Debtor contends that, because her objection to the Tax Claim was overruled, Debtor cannot confirm a chapter 11 plan, and she seeks to resolve the Tax Claim outside of bankruptcy. To date, no party in interest has filed a response or opposition to the Motion.

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

Thursday, March 4, 2021

Hearing Room 301

1:30 PM

CONT...

Jasmin DeVillar

Chapter 11

II. DISCUSSION

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 interest 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 party in interests establishes that—
 - (A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time;

11 U.S.C. § 1112(b)(1) and (2).

"'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 (9th Cir. B.A.P. 2006).

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

Thursday, March 4, 2021

Hearing Room 301

1:30 PM

CONT... Jasmin DeVillar

Chapter 11

"[A] Debtor's request [for voluntary dismissal] should ordinarily be granted unless some 'plain legal prejudice' will result to the creditors." *In re Kimble*, 96 B.R. 305, 308 (Bankr. D. Mont. 1988) (citing *In re Hall*, 15 B.R. 913, 915-16 (B.A.P. 9th Cir. 1981)). "If dismissal will prejudice interested parties, a court may refuse to allow a debtor to dismiss the petition." *In re Sanders*, 417 B.R. 596, 602 (Bankr. D. Ariz. 2009) (citing *In re Leach*, 130 B.R. 855, 858 (B.A.P. 9th Cir. 1991)). The bankruptcy court has discretion to dismiss or convert a chapter 11 case pursuant to section 1112(b). *See In re Consolidated Pioneer Mortg. Entities*, 264 F.3d 803, 806 (9th Cir. 2001) ("The decision to convert the [chapter 11] case to Chapter 7 is within the bankruptcy court's discretion."); *In re Silberkraus*, 253 B.R. 890, 903 (Bankr. C.D. Cal. 2000) ("A bankruptcy court has broad discretion to convert or dismiss a chapter 11 petition for 'cause' under 11 U.S.C. § 1112(b).").

Here, there is cause to dismiss Debtor's chapter 11 case. The Lull Property is encumbered with liens greater than its fair market value, and Debtor represents that she cannot confirm a chapter 11 plan without resolving the Tax Claim. Because Debtor has no other significant nonexempt property which could generate a distribution to unsecured creditors, conversion of the case to chapter 7 would yield no dividend to such creditors.

III. CONCLUSION

The Court will grant the Motion.

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):

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, March 4, 2021

Hearing Room 301

1:30 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#7.00 Motion for interim and final approval of postpetition financing pursuant to 11 U.S.C. §364(d)(1) and approval of priming lien against estate property

fr. 1/14/21, 1/28/21; 2/11/21

Docket 38

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BGS WORKS, INC.

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, March 9, 2021

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

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

Tuesday, March 9, 2021

Hearing Room 301

9:30 AM

1:

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the March 9, 2021 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

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Meeting ID: 161 025 2674

Password: 352413

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For higher quality, dial a number based on your current location.

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 161 025 2674

Password: 352413

Docket 0

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

Tuesday, March 9, 2021

Hearing Room 301

10:30 AM

1:15-13062 Hector Flores and Martha Flores

Chapter 13

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

fr. 2/9/21

Docket 104

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, March 9, 2021

Hearing Room 301

10:30 AM

1:16-10925 Josue Soncuya Villanueva

Chapter 13

#16.00 Trustee's motion to dismiss case due to material default of plan: failure to submit all tax refunds

Docket 127

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, March 9, 2021

Hearing Room 301

10:30 AM

1:17-11962 Ruth Ann Brown

Chapter 13

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

Docket 54

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**

Tuesday, March 9, 2021

Hearing Room 301

10:30 AM

1:17-12875 Mady Lysse and Robert Lysse

Chapter 13

#18.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 12/8/20

Docket 38

Party Information

Debtor(s):

Mady Lysse

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Robert Lysse

Represented By
Jeffrey J Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, March 9, 2021

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

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

fr. 10/6/20; 11/10/20; 1/12/21

Docket 56

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, March 9, 2021

Hearing Room 301

10:30 AM

1:18-10983 Daniele C Kenney

Chapter 13

#20.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 2/9/21

Docket 62

Party Information

Debtor(s):

Daniele C Kenney

Represented By
David S Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, March 9, 2021

Hearing Room 301

10:30 AM

1:18-11941 Nathan Cohen

Chapter 13

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

Docket 99

Party Information

Debtor(s):

Nathan Cohen

Represented By
Sanaz Sarah Bereliani

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, March 9, 2021

Hearing Room 301

10:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

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

Docket 110

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 9, 2021

Hearing Room 301

10:30 AM

1:19-10499 Michael Gary Vickery and Elise Rose Vickery

Chapter 13

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

Docket 46

Party Information

Debtor(s):

Michael Gary Vickery

Represented By
David S Hagen

Joint Debtor(s):

Elise Rose Vickery

Represented By
David S Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, March 9, 2021

Hearing Room 301

10:30 AM

1:19-10806 Abrahan Moran

Chapter 13

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

Docket 64

Party Information

Debtor(s):

Abrahan Moran

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 9, 2021

Hearing Room 301

10:30 AM

1:19-10969 Peter Keith Wright

Chapter 13

#25.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 12/8/20; 2/9/21

Docket 32

*** VACATED *** REASON: Withdrawal of motion filed 2/17/21. [Dkt.
42]

Party Information

Debtor(s):

Peter Keith Wright

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, March 9, 2021

Hearing Room 301

10:30 AM

1:19-11180 Robert Phillip Pressler

Chapter 13

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

Docket 27

Party Information

Debtor(s):

Robert Phillip Pressler

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 9, 2021

Hearing Room 301

10:30 AM

1:19-11963 Lana Petrosyan

Chapter 13

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

Docket 61

Party Information

Debtor(s):

Lana Petrosyan

Represented By
Rebecca Tomilowitz

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, March 9, 2021

Hearing Room 301

10:30 AM

1:19-12931 Tiffany Nicole Merlo

Chapter 13

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

fr. 1/12/21

Docket 36

Party Information

Debtor(s):

Tiffany Nicole Merlo

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 9, 2021

Hearing Room 301

10:30 AM

1:19-12961 Andre Robert Janian

Chapter 13

#29.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 1/12/21

Docket 31

Party Information

Debtor(s):

Andre Robert Janian

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 9, 2021

Hearing Room 301

10:30 AM

1:20-10046 Emmanuel Dumada-Ug Sitaca

Chapter 13

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

Docket 30

Party Information

Debtor(s):

Emmanuel Dumada-Ug Sitaca

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, March 9, 2021

Hearing Room 301

10:30 AM

1:20-10124 Madeleine Hovsepian Brockway

Chapter 13

#31.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 12/8/20

Docket 43

Party Information

Debtor(s):

Madeleine Hovsepian Brockway

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 9, 2021

Hearing Room 301

10:30 AM

1:20-10460 Veronica E Pledger

Chapter 13

#32.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 12/8/20

Docket 45

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, March 9, 2021

Hearing Room 301

11:00 AM

1:17-12875 Mady Lysse and Robert Lysse

Chapter 13

#33.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to
modify plan or suspend plan payments

Docket 41

Party Information

Debtor(s):

Mady Lysse

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Robert Lysse

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, March 10, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the March 10, 2021 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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Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 161 643 6632

Password: 537931

Docket 0

Tentative Ruling:

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

Wednesday, March 10, 2021

Hearing Room 301

9:30 AM

CONT...

- NONE LISTED -

Chapter

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

Wednesday, March 10, 2021

Hearing Room 301

9:30 AM

1:18-10831 Jose Reynaldo Juarez

Chapter 13

**#1.00 Debtor's Objection to Notice of Default Letter dated
December 10, 2020**

fr. 2/10/21

Docket 83

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**

Wednesday, March 10, 2021

Hearing Room 301

9:30 AM

1:16-10925 Josue Soncuya Villanueva

Chapter 13

#2.00 Amended Motion for relief from stay [RP]

SERENATA, INC.
VS
DEBTOR

Docket 135

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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Party Information

Debtor(s):

Josue Soncuya Villanueva

Represented By
Michael F Chekian

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

Wednesday, March 10, 2021

Hearing Room 301

9:30 AM

CONT... Josue Soncuya Villanueva

Chapter 13

Movant(s):

Serenata, Inc.

Represented By
Austin P Nagel
Elsa M Horowitz

Trustee(s):

Elizabeth (SV) 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 10, 2021

Hearing Room 301

9:30 AM

1:16-12985 Tanya Monge

Chapter 13

#3.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

Docket 104

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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a 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, March 10, 2021

Hearing Room 301

9:30 AM

CONT... Tanya Monge

Chapter 13

Debtor(s):

Tanya Monge

Represented By
Kevin T Simon

Movant(s):

U.S. BANK TRUST NATIONAL

Represented By
Erica T Loftis Pacheco

Trustee(s):

Elizabeth (SV) 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 10, 2021

Hearing Room 301

9:30 AM

1:19-11917 Brenda Medina

Chapter 13

#4.00 Motion for relief from stay [RP]

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

Docket 79

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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party 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 10, 2021

Hearing Room 301

9:30 AM

CONT... Brenda Medina

Chapter 13

Party Information

Debtor(s):

Brenda Medina

Represented By
Kevin T Simon

Movant(s):

U.S. Bank Trust, N.A., as Trustee for

Represented By
Jennifer C Wong
Darlene C Vigil
Cassandra J Richey
Kelly M Kaufmann

Trustee(s):

Elizabeth (SV) 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 10, 2021

Hearing Room 301

9:30 AM

1:20-10521 Marisol V. Perez

Chapter 13

#5.00 Motion for relief from stay [RP]

DEUTSCHE BANK TRUST COMPANY AMERICAS
VS
DEBTOR

Docket 49

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marisol V. Perez

Represented By
Donald E Iwuchuku

Movant(s):

DEUTSCHE BANK TRUST

Represented By
Jenelle C Arnold
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 10, 2021

Hearing Room 301

9:30 AM

1:20-11501 Gorden Eugene Campbell, Jr.

Chapter 13

#6.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC.
VS
DEBTOR

Stip for adequate protection filed 2/11/21

Docket 38

***** VACATED *** REASON: Order approving stipulation entered
2/16/21. [Dkt. 43]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(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**

Wednesday, March 10, 2021

Hearing Room 301

1:30 PM

1:18-12660 Mohsen Loghmani

Chapter 7

Adv#: 1:20-01086 United States Trustee (SV) v. Loghmani

#7.00 Status conference re: complaint for revocation of discharge pursuant to 11 U.S.C. sec 727)d)(1)

fr. 12/23/20

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on March 17, 2021**, to be held with the hearing on the plaintiff's motion for default judgment.

Appearances on March 10, 2021 are excused.

Party Information

Debtor(s):

Mohsen Loghmani Pro Se

Defendant(s):

Mohsen Loghmani Pro Se

Plaintiff(s):

United States Trustee (SV) Represented By
Katherine Bunker

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**

Wednesday, March 10, 2021

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]

fr. 11/4/20; 11/25/20; 12/23/20

Docket 1

Tentative Ruling:

In light of the status report filed by the plaintiff requesting a continuance of the status conference to finalize the settlement agreement between the parties [doc. 29], the Court will continue this status conference to **1:30 p.m. on May 19, 2021**. No later than **May 5, 2021**, the parties must file a joint status report regarding the status of their settlement.

Appearances on March 10, 2021 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
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San Fernando Valley
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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
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Wednesday, March 10, 2021

Hearing Room 301

1:30 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#9.00 Pretrial 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:

Does the defendant object to the plaintiff's request to extend the pretrial motion deadline [doc. 39]?

If the defendant does not object to the extension, the Court will set the plaintiff's motion for summary judgment for hearing at **2:30 p.m. on May 5, 2021**. If the defendant intends to object to the plaintiff's motion to extend the deadline, the Court will set the motion to extend for hearing at **2:30 p.m. on April 7, 2021** and require the defendant to file a written opposition by **March 24, 2021**.

In their joint pretrial stipulation [doc. 42], the parties note that they need Russian-language interpreters. The Court does not provide interpreters. As such, if the parties require the assistance of an interpreter, the parties must make arrangements to have an interpreter available.

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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CONT... Husnutkin K Zairov

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 10, 2021

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

#10.00 Pretrial conference re complaint to determine the dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)

fr. 7/29/20

Docket 1

***** VACATED *** REASON: Continued by Stip to 3/24/21 at 2:30 p.m. -
jc**

Tentative Ruling:

- NONE LISTED -

Party Information

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):

Russell Prior

Represented By
Alana B Anaya

Cheryl Prior

Represented By
Alana B Anaya

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, March 10, 2021

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CONT... Alan Gene Lau

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 10, 2021

Hearing Room 301

1:30 PM

1:20-11786 Rosa V Martinez

Chapter 7

Adv#: 1:21-01002 Yanez v. Martinez

#11.00 Status conference re: complaint to determine dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(6)

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 7/30/21.

Deadline to complete one day of mediation: 8/20/21.

Deadline to file pretrial motions: 9/1/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 9/29/21.

Pretrial: 10/13/21 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).

Party Information

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CONT... Rosa V Martinez

Chapter 7

Debtor(s):

Rosa V Martinez

Represented By
Sevag Nigoghosian

Defendant(s):

Rosa V. Martinez

Pro Se

Plaintiff(s):

Irma Yanez

Represented By
Bradley Jerrod Yourist

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 10, 2021

Hearing Room 301

2:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mizrahi, an Individual et al

#12.00 Defendant's motion to dismiss first amended adversary complaint for failure to state a claim

Docket 75

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On July 2, 2019, Sharon Mizrahi ("Debtor") filed a chapter 13 petition. On August 1, 2019, Michael Frias and Patricia Bartlett ("Plaintiffs") filed a complaint against Debtor and other defendants, initiating this adversary proceeding. On December 16, 2019, Plaintiffs filed the operative first amended complaint (the "FAC") [doc. 25], requesting nondischargeability of the debt owed to them under 11 U.S.C. § 523(a)(2) and (a)(4). In relevant part, Plaintiffs allege:

In April 2017, Mr. Frias contacted a remodeling company to improve his home. Mr. Frias met with Ido Mor and another man. At that time, Mr. Mor suggested that Mr. Frias do business with Divine Builders (Debtor's business) instead of the remodeling company Mr. Frias contacted. Mr. Mor also recommended that Mr. Frias obtain financing through Renew Financial. Mr. Mor introduced himself as a representative of Divine Builders.

During the meeting, Mr. Mor placed Mr. Frias on a call with Debtor. At that time, Mr. Frias requested verification of Mr. Mor's relationship with Divine Builders. In response, Debtor identified Mr. Mor as an employee and sales agent for Divine Builders. Mr. Frias agreed to move forward with Divine Builders; as such, Mr. Mor gave Mr. Frias estimates of \$17,000 to replace windows, \$2,500 to replace doors and \$29,500 for exterior coating. Renew Financial approved a loan for the total amount. In addition, Mr. Frias paid \$500 to obtain a building permit and \$2,000 for a cement patio. Divine Builders then installed replacement windows, replacement doors and the cement patio.

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CONT...

Sharon Mizrahi

Chapter 13

The doors leak, peel and are largely inoperable. Moreover, Divine Builders coated the exterior of Mr. Frias's home with a sticky substance that attracts bugs. After Mr. Frias complained, Divine Builders painted over the external coating in an unsuccessful effort to cure the issue. However, Divine Builders did not take corrective action as to the windows, and Mr. Frias did not receive a warranty for the windows, door or external coating, as promised. In addition, Mr. Frias learned from the City of Pasadena that neither Debtor nor Divine Builders applied for or received a mandatory home improvement permit, despite Mr. Frias having paid for the permit.

Regarding Ms. Bartlett, who is elderly, Divine Builders' agent crafted similar misrepresentations regarding home improvement projects. Ms. Bartlett received shoddy work, causing financial abuse from fraudulent acts by Debtor and/or Divine Builders. Debtor and/or Divine Builders never intended to obtain permits, install quality products or provide a warranty.

On these allegations, Plaintiffs request nondischargeability of the debt allegedly owed to them pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(4). In connection with their request for nondischargeability, Plaintiffs also assert that Debtor breached the covenant of good faith and fair dealing and committed financial elder abuse against Ms. Bartlett.

On November 30, 2020, Debtor filed a motion to dismiss the FAC (the "Motion") [doc. 75], asserting that Plaintiffs failed to state a claim for relief. On February 8, 2021, Plaintiffs filed an opposition to the Motion (the "Opposition") [doc. 83]. On March 2, 2021, Debtor filed a reply to the Opposition [doc. 87].

II. ANALYSIS

A. General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks

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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 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.

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Chapter 13

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)

As a preliminary matter, although Plaintiffs assert four claims for fraud, breach of the covenant of good faith and fair dealing, agency and elder abuse, Plaintiffs allege, under each claim, that the debt resulting from the claim is nondischargeable under 11 U.S.C. § 523(a)(2)(A) and (a)(4). Plaintiffs do not assert separate claims under § 523(a)(2) and (a)(4). Nevertheless, because it appears Plaintiffs are using their stated claims as a basis for nondischargeability, as opposed to standalone claims for damages that may be subject to discharge, the Court will analyze the FAC alleging claims for nondischargeability under § 523(a)(2)(A) and (a)(4). [FN1].

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

To prevail on a § 523(a)(2)(A) claim, Plaintiffs must allege:

- (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)).

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Chapter 13

1. The Allegations Regarding Mr. Frias

With the exception of the allegations regarding the \$500 building permit, Plaintiffs have not adequately alleged that Debtor or Mr. Mor made misrepresentations or omissions, or engaged in other deceptive conduct, that resulted in Plaintiffs' stated damages. As to Mr. Frias, Plaintiffs allege that Debtor never intended to install quality products "commensurate with the cost charged." FAC, ¶ 29. However, the FAC does not include any allegations regarding misrepresentations, omissions or other conduct, by Debtor or agents of Debtor, regarding the quality of goods and/or services. For instance, it is unclear what, if anything, Debtor or Debtor's agents said (or failed to say) about the quality of work or goods Divine Builders offers that induced Plaintiffs to enter into the home improvement agreement. As such, Plaintiffs have not satisfied the specificity requirement of Rule 9(b).

Plaintiffs also allege that Mr. Frias did not receive a warranty, "as promised" FAC, ¶ 24. Again, Plaintiffs have not offered any specific allegations regarding misrepresentations, omissions or other fraudulent conduct related to the warranties. For instance, what exactly did Debtor and/or Debtor's agents promise with respect to warranties? How were Plaintiffs induced into the agreement by such promises, and what were the damages suffered by Plaintiffs as a result of any promises related to warranties? The lack of specificity does not satisfy Rule 9(b).

In the Opposition, Plaintiffs reference *Husky Int'l Elecs., Inc. v. Ritz*, 136 S.Ct. 1581, 1586, 194 L.Ed.2d 655 (2016), for the notion that § 523(a)(2)(A) encompasses conduct beyond fraud based on misrepresentations. In *Husky*, the Supreme Court held that a recipient of a fraudulent conveyance may be liable under § 523(a)(2)(A), despite never having made any representations to the plaintiff, because fraudulent conveyances qualify as "actual fraud" under the common law and for purposes of nondischargeability. *Husky*, 136 S.Ct. at 1587-88. *Husky* does *not* stand for the proposition that any conduct, such as a breach of contract or performing substandard work, may serve as the basis for a § 523(a)(2)(A) claim. As such, while Plaintiffs are correct that fraudulent conduct beyond false representations is within the purview of § 523(a)(2)(A), Plaintiffs have not alleged any such fraudulent conduct that led to the damages asserted by Plaintiffs. To adequately state a claim for relief under § 523(a)(2)(A), Plaintiffs must include allegations regarding each element of § 523(a)(2)(A), as outlined above. See *Weinberg*, 410 B.R. at 35.

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In the Opposition, Plaintiffs also assert that they were informed by an insurance agency that Mr. Mor is not an agent of Divine Builders. These allegations are not in the FAC. In the FAC, Plaintiffs allege that Debtor represented to Mr. Frias that Mr. Mor was an employee and agent of Divine Builders. To the extent Plaintiffs intend to rely on Debtor's alleged misrepresentation regarding Mr. Mor's status as an agent as the basis for a § 523(a)(2)(A) claim, Plaintiffs must include the additional allegations regarding the information they received from the insurance company in an amended complaint. Plaintiffs also must adequately allege the remaining elements of § 523(a)(2)(A), such as Debtor's intent at the time of the representation, Plaintiffs' reliance and specific damages arising from the alleged misrepresentation.

Nevertheless, Plaintiffs adequately allege a claim for relief as to the \$500 building permit. In the FAC, Plaintiffs allege that: (A) Divine Builders' agent requested, and Mr. Frias paid, \$500 to obtain a building permit from the City of Pasadena [FAC, ¶ 20]; (B) that Debtor and/or Divine Builders never applied for or received such a permit [FAC, ¶ 25]; (C) that Debtor never intended to obtain the permit [FAC, ¶ 29]; (D) that Mr. Frias relied on the representations [FAC, ¶ 31]; and (E) that Mr. Frias has not been reimbursed the funds he paid to Debtor [FAC, ¶ 32]. As such, Plaintiffs have alleged a specific misrepresentation, made without intent to perform, on which Plaintiffs justifiably relied and which led to Plaintiffs being damaged in the amount of \$500.

2. The Allegations Regarding Ms. Bartlett

As to Ms. Bartlett, Plaintiffs allege only that: (A) "Divine's Agent crafted similar misrepresentations regarding a host of home improvement projects;" (B) Ms. Bartlett "heard unfulfilled promises and received shoddy work;" (C) Ms. Bartlett is "an elderly woman who on June 7, 2017 was fraudulently induced by Divine's agent to pay \$29,500.00 of her retirement money for substandard home improvements...." FAC, ¶¶ 27-28, 47. These allegations do not meet the particularity or specificity requirements of Rules 8(a) and 9(b). Plaintiffs do not provide specific allegations regarding, for example, Ms. Bartlett's interactions with Debtor or Debtor's agents, the nature of the agreement, if any, between the parties and the home improvements provided to Ms. Bartlett, and how they differed from what Debtor or Debtor's agents represented to her that she would receive, etc. [FN2]. Consequently, the Court will dismiss the FAC as to Ms. Bartlett.

C. 11 U.S.C. § 523(a)(4)

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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 FAC, Plaintiffs do not assert that Debtor engaged in embezzlement or larceny. As such, it appears Plaintiffs request nondischargeability on the basis that Debtor engaged in fraud or defalcation while acting in a fiduciary capacity.

A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997). Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir. 1986); *see also In re Cantrell*, 269 B.R. 413, 420 (B.A.P. 9th Cir. 2001) ("The definition of 'fiduciary capacity' under § 523(a)(4) is governed by federal law."). In the context of dischargeability, the fiduciary relationship must arise from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Ragsdale*, 780 F.2d at 796; *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

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756, 759 (9th Cir. 1981)).

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Here, Plaintiffs have not alleged that Debtor owed Plaintiffs a fiduciary duty *arising from an express, statutory or technical trust*, as defined above. In the Opposition, Plaintiffs generally reference fiduciary relationships under California law. Opposition, p. 9. However, the existence of a fiduciary relationship under California law does not necessarily meet the definition of a fiduciary relationship for purposes of § 523(a)(4). Plaintiffs have not alleged the existence of a trust that would give rise to the type of fiduciary relationship contemplated by § 523(a)(4). Consequently, Plaintiffs have not sufficiently stated a claim for relief under § 523(a)(4).

D. Agency by Estoppel Claim

"[A] debt may be excepted from discharge either when (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 (B.A.P. 9th Cir. 2002). Here, the FAC contains several allegations regarding Mr. Mor's agency relationship with Debtor. *See* FAC, ¶¶ 8, 42-45. As such, with respect to the allegations regarding the building permit, Plaintiffs' agency allegations adequately establish a claim under § 523(a)(2)(A). Because the Court is dismissing the remainder of the FAC, at this time, the agency analysis is pertinent only to the surviving claim regarding the building permit.

III. CONCLUSION

With the exception of Mr. Frias's claim related to the \$500 building permit, the Court will dismiss the FAC, with leave to amend. If Plaintiffs elect to amend the FAC, Plaintiffs must file and serve an amended complaint **no later than March 24, 2021**. If Plaintiffs elect to proceed with the FAC, Plaintiffs must file and serve a notice that they will not amend the FAC **no later than March 24, 2021**. Debtor must file and serve a response to any amended complaint, or an answer to the FAC if Plaintiffs elect to proceed with the FAC, **no later than April 7, 2021**.

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

FOOTNOTES

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Sharon Mizrahi

Chapter 13

1. Even if Plaintiffs adequately allege a claim for breach of the implied covenant of good faith and fair dealing, establishing such a breach does not result in nondischargeability of any debt owed to Plaintiffs. If Plaintiffs seek nondischargeability of a debt under 11 U.S.C. § 523, rather than assert state law claims, Plaintiffs should assert claims under the relevant portions of § 523, such as § 523(a)(2)(A) and (a)(4).

Plaintiffs filed both the initial complaint and the FAC before expiration of the deadline to file a proof of claim in Debtor's bankruptcy case. At this time, based on the chapter 13 trustee's accounting report [Bankruptcy Docket, doc. 31], Plaintiffs are not being paid through Debtor's confirmed chapter 13 plan. Because Plaintiffs' claim for breach of the covenant of good faith and fair dealing, separate and apart from meeting the standard for § 523(a)(2)(A), is subject to discharge, the Court will not liquidate that claim through this adversary proceeding. Instead, if Plaintiffs seek to have any dischargeable claim paid through Debtor's chapter 13 plan, Plaintiffs may file a motion to deem their complaint and/or the FAC an informal proof of claim.

2. Moreover, in the FAC, Plaintiffs do not specify Ms. Bartlett's age at the time Ms. Bartlett entered into the alleged agreement with Debtor. *See* Cal. Welf. & Inst. Code § 15610.27 (defining "elder" as "any person... 65 years of age or older").

Party Information

Debtor(s):

Sharon Mizrahi

Represented By
Shai S Oved

Defendant(s):

Sharon Mizrahi dba Divine Builders

Represented By
Shai S Oved

Does 1 Through 10, Inclusive

Pro Se

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Wednesday, March 10, 2021

Hearing Room 301

2:30 PM

CONT... Sharon Mizrahi

Chapter 13

Sharon Mizrahi, an Individual

Pro Se

Plaintiff(s):

Michael Frias

Represented By

Ezedrick S Johnson III

E. Samuel Johnson

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, March 10, 2021

Hearing Room 301

2:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

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

- #13.00** 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); 12/23/20;
1/21/20

Docket 25

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharon Mizrahi

Represented By
Shai S Oved

Defendant(s):

Ido Mor

Pro Se

Sharon Mizrahi, an Individual

Pro Se

Sharon Mizrahi dba Divine Builders

Pro Se

Divine Builders

Pro Se

GHR Divine Remodeling

Pro Se

Does 1 Through 10, Inclusive

Pro Se

Plaintiff(s):

Michael Frias

Represented By

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

Wednesday, March 10, 2021

Hearing Room 301

2:30 PM

CONT...

Sharon Mizrahi

Chapter 13

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**

Tuesday, March 16, 2021

Hearing Room 301

8:30 AM
1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the March 16, 2021 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).

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Video/audio web address: <https://cacb.zoomgov.com/j/1614537835>

Meeting ID: 161 453 7835

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Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 453 7835

Password: 853639

For more information on appearing before Judge Barash by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

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

Tuesday, March 16, 2021

Hearing Room 301

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, March 16, 2021

Hearing Room 301

8:30 AM

1:20-11646 Javier Morales

Chapter 7

#1.00 Reaffirmation agreement between debtor and Wells Fargo Bank N.A.

fr. 11/17/20; 1/19/21; 2/16/21

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**

Tuesday, March 16, 2021

Hearing Room 301

8:30 AM

1:20-12140 Grouver Cunanan Tolentino and Jenand Nuqui Manansala

Chapter 7

#2.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation

Docket 12

Party Information

Debtor(s):

Grouver Cunanan Tolentino

Represented By
Elena Steers

Joint Debtor(s):

Jenand Nuqui Manansala Tolentino

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 16, 2021

Hearing Room 301

8:30 AM

1:21-10242 Maria M Escamilla

Chapter 7

#3.00 Reaffirmation Agreement with 21st Mortgage Corporation

Docket 10

Party Information

Debtor(s):

Maria M Escamilla

Represented By
R Grace Rodriguez

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Wednesday, March 17, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

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Join By Computer

Meeting URL: <https://cacb.zoomgov.com/j/1604701691>

Meeting ID: 160 470 1691

Password: 485452

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 160 470 1691

Password: 485452

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Wednesday, March 17, 2021

Hearing Room 301

9:30 AM
CONT...

Chapter

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

Wednesday, March 17, 2021

Hearing Room 301

9:30 AM

1:18-11504 Juan Pedro Torres

Chapter 13

#1.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 12/9/20; 2/3/21

Docket 61

*** VACATED *** REASON: Order approving stipulation entered 3/15/21
[doc. 77].

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**

Wednesday, March 17, 2021

Hearing Room 301

9:30 AM

1:20-12087 Harry D Cleeland, III

Chapter 13

#2.00 Motion for relief from stay [RP]

PS FUNDING, INC.
VS
DEBTOR

fr. 3/3/21

Stipulation filed 3/8/21

Docket 27

*** VACATED *** REASON: Order approving stipulation entered 3/9/21.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harry D Cleeland III

Represented By
Edmond Richard McGuire

Movant(s):

PS Funding, Inc., master servicing

Represented By
Andrew Still

Trustee(s):

Elizabeth (SV) 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 17, 2021

Hearing Room 301

9:30 AM

1:20-10577 Rooter Hero Plumbing, Inc.

Chapter 7

#3.00 Amended Motion for relief from stay [AN]

CATHY MARTINEZ, FRANK MARTINEZ AND ISAIAH MARTINEZ
VS
DEBTOR

Docket 40

*** VACATED *** REASON: Order reassigning case to Judge Tighe
entered 3/9/21. [Dkt.#42]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rooter Hero Plumbing, Inc.

Represented By
David S Hagen

Movant(s):

Frank Martinez

Represented By
Sam N Simantob

Isaiah Martinez

Represented By
Sam N Simantob

Cathy Martinez

Represented By
Sam N Simantob

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, March 17, 2021

Hearing Room 301

9:30 AM

1:20-12004 Airsharp, Inc.

Chapter 7

#4.00 Motion for relief from stay [AN]

L.A. BUILD CORP
VS
DEBTOR

Docket 12

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 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):

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, March 17, 2021

Hearing Room 301

9:30 AM

1:18-11799 Farahnaz Alvand

Chapter 13

#5.00 Motion for relief from stay [RP]

LAS VIRGENES VILLAGE COMMUNITY ASSOCIATION
VS
DEBTOR

Docket 107

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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Party Information

Debtor(s):

Farahnaz Alvand

Represented By
Armen Shaghzo
Edmond Richard McGuire

Movant(s):

Las Virgenes Village Community

Represented By
Debra L Sheppard

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

Wednesday, March 17, 2021

Hearing Room 301

9:30 AM

CONT... Farahnaz Alvand

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 17, 2021

Hearing Room 301

9:30 AM

1:19-11471 Melissa Roberta Ramirez

Chapter 13

#6.00 Motion for relief from stay [RP]

ROYAL PACIFIC FUNDING CORP
VS
DEBTOR

Docket 53

***** VACATED *** REASON: Motion is not in compliance with Local
Bankruptcy Rule 5005-2(d)(1). Motion is OFF CALENDAR.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melissa Roberta Ramirez

Represented By
Hasmik Jasmine Papian

Movant(s):

Royal Pacific Funding Corp

Represented By
Raymond Jereza
Jenelle C Arnold
Eric P Enciso
Sean C Ferry

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, March 17, 2021

Hearing Room 301

9:30 AM

1:21-10005 JANA, LLC

Chapter 11

#7.00 Motion for relief from stay [RP]

PS FUNDING, INC.
VS
DEBTOR

Docket 39

Tentative Ruling:

At this time, the Court will not grant relief pursuant to 11 U.S.C. § 362(d)(1) or (d)(2).

On January 5, 2021, the debtor filed its chapter 11 petition. The debtor's primary asset is real property located at 10 Stagecoach Road, Bell Canyon, California 91307 (the "Stagecoach Property"). In October 2018, the debtor purchased the Stagecoach Property at a public auction [Declaration of Shahram Hashemizadeh, doc. 50, ¶ 4].

Prepetition, the debtor obtained an appraisal of the Stagecoach Property's fair market value, as of March 25, 2020, which concluded that the value was \$1,300,000.00. However, the debtor's principal has testified that the Stagecoach Property's "foundation is compromised and severally damaged." [Declaration of Shahram Hashemizadeh, doc. 50, ¶¶ 3, 10]. Apparently, subsequent to March 2020, Mr. Hashemizadeh became aware of these problems with the Stagecoach Property's foundation. Consequently, the debtor intends to obtain an updated appraisal of the Stagecoach Property, which will reflect its actual condition. [Declaration of Shahram Hashemizadeh, doc. 50, ¶ 6].

Mr. Hashemizadeh avers that he has \$315,947.39 in his checking account, and that he intends to fund \$350,000.00 of the \$555,600.00 in estimated costs, as evidenced by an estimate dated February 26, 2021, to repair and rehabilitate the Stagecoach Property. [Declaration of Shahram Hashemizadeh, doc. 50, ¶¶ 7, 16; Exh. F].

Mr. Hashemizadeh's testimony does not support movant's assertion that the Stagecoach Property is *declining* in value, *since the petition date*. The movant has not demonstrated the amount of any such decline.

Regarding outstanding real property taxes, the debtor avers that it has paid or will pay all

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

Wednesday, March 17, 2021

Hearing Room 301

9:30 AM

CONT... JANA, LLC

Chapter 11

property taxes owed to the Ventura County Tax Collector. The debtor's failure to pay property taxes which come due post-petition or interest accruing on unpaid pre-petition property taxes may constitute "cause" to grant relief under 11 U.S.C. § 362(d)(1).

"The failure to pay real property taxes constitute a basis for finding a lack of adequate protection" when "the equity cushion has all but disappeared, real estate taxes have not been paid . . . and interest continues to accrued on those unpaid taxes. These unpaid taxes and interest further deteriorate [a creditor's] security position." *In re James River Associates*, 148 B.R. 790, 796 (Bankr. E.D. Va. 1992); *In re Lane*, 108 B.R. 6, 11 (Bankr. D.Mass. 1989) (same). A undersecured creditor may be entitled to be adequately protected from interest accrual. *Matter of Ruppert*, 161 B.R. 48, 49 (Bankr. D.Neb. 1993).

Regarding the application of 11 U.S.C. § 362(d)(2), property is necessary for an effective reorganization if "the property is essential for an effective reorganization *that is in prospect*. This means . . . that there must be 'a reasonable possibility of a successful reorganization within a reasonable time.'" *United Sav. Ass'n Tex. V. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 375–76, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988) (emphasis in original) (*quoting In re Timbers of Inwood Forest Assoc., Ltd.*, 808 F.2d 363, 370–71, n. 12–13 (5th Cir. 1987) (en banc)).

The Bankruptcy Appellate Panel for the Ninth Circuit has interpreted the "effective reorganization" requirement as requiring the debtor to prove that a proposed plan "is not patently unconfirmable and has a realistic chance of being confirmed." *Sun Valley Newspaper, Inc. v. Sun World Corp. (In re Sun Valley Newspapers, Inc.)*, 171 B.R. 71, 75 (B.A.P. 9th Cir. 1994) (internal citation omitted). In the early stages of a case, "the burden of proof . . . is satisfied if the debtor can offer sufficient evidence to indicate that a sufficient reorganization within a reasonable time is 'plausible.'" *Id.* At this point in the case, the debtor has provided sufficient evidence that the debtor's ability to reorganize within a reasonable time is plausible.

The Court will continue this hearing to **April 21, 2021 at 9:30 a.m. No later than April 7, 2021**, the debtor must submit a declaration supported by documentary evidence that it is current and has paid all property taxes encumbering the Stagecoach Property, or the Court will mandate that the debtor make monthly adequate protection payments to movant in the amount of the interest accrual on outstanding property taxes.

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

Wednesday, March 17, 2021

Hearing Room 301

9:30 AM

CONT... JANA, LLC

Chapter 11

Party Information

Debtor(s):

JANA, LLC

Represented By
Matthew Abbasi

Movant(s):

PS Funding, Inc.

Represented By
Andrew Still
Eric S Pezold

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

Wednesday, March 17, 2021

Hearing Room 301

9:30 AM

1:16-10925 Josue Soncuya Villanueva

Chapter 13

#7.10 Amended Motion for relief from stay [RP]

SERENATA, INC.
VS
DEBTOR

fr. 3/10/21

Docket 135

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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Party Information

Debtor(s):

Josue Soncuya Villanueva

Represented By

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

Wednesday, March 17, 2021

Hearing Room 301

9:30 AM

CONT... Josue Soncuya Villanueva

Michael F Chekian

Chapter 13

Movant(s):

Serenata, Inc.

Represented By
Austin P Nagel
Elsa M Horowitz

Trustee(s):

Elizabeth (SV) 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 17, 2021

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

#8.00 Status conference re second amended complaint for
declaratory judgment

fr. 7/15/20; 8/19/20; 8/26/20; 10/7/20; 11/25/20; 12/16/20

Docket 52

Tentative Ruling:

The Court will set the defendant's motion to dismiss the second amended complaint [doc. 53] for hearing at **2:30 p.m. on April 21, 2021**. The defendant must file and serve notice of the hearing **no later than March 31, 2021**. The Court also will continue this status conference to **2:30 p.m. on April 21, 2021**.

Appearances on March 17, 2021 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

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

Wednesday, March 17, 2021

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC

Chapter 11

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, March 17, 2021

Hearing Room 301

2:30 PM

1:18-12660 Mohsen Loghmani

Chapter 7

Adv#: 1:20-01086 United States Trustee (SV) v. Loghmani

#9.00 Motion for default judgment under LBR 7055-1

Docket 10

Tentative Ruling:

Grant motion for default judgment pursuant to 11 U.S.C. § 727(d)(1).

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

Movant's appearance at the hearing is excused.

Party Information

Debtor(s):

Mohsen Loghmani Pro Se

Defendant(s):

Mohsen Loghmani Pro Se

Plaintiff(s):

United States Trustee (SV) Represented By
Katherine Bunker

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**

Wednesday, March 17, 2021

Hearing Room 301

2:30 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)

fr. 12/23/20; 3/10/21

Docket 1

Tentative Ruling:

See calendar no. 9.

Party Information

Debtor(s):

Mohsen Loghmani Pro Se

Defendant(s):

Mohsen Loghmani Pro Se

Plaintiff(s):

United States Trustee (SV) Represented By
Katherine Bunker

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, March 18, 2021

Hearing Room 301

10:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the March 18, 2021 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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Join By Computer

Meeting URL: <https://cacb.zoomgov.com/j/1612830698>

Meeting ID: 161 283 0698

Password: 970129

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 161 283 0698

Password: 970129

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Thursday, March 18, 2021

Hearing Room 301

10:30 AM

CONT...

Chapter

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

Thursday, March 18, 2021

Hearing Room 301

10:30 AM

1:17-10378 Kandy Kiss of California, Inc. and Mary Teresa Barnes

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Howard M Ehrenberg, Chapter 7 Trustee

SulmeyerKupetz, Attorneys for Chapter 7 Trustee

Pachulski Stang Ziehl & Jones LLP, Attorneys for former interim Trustee David Gottlieb

Grobstein Teeple, LLP, Accountants for Chapter 7 Trustee

Docket 269

***** VACATED *** REASON: Amended Final Report filed 3/5/221.
Hearing rescheduled for 4/8/21 at 10:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kandy Kiss of California, Inc.

Represented By
Beth Gaschen
Steven T Gubner
Jessica L Bagdanov

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steven T Gubner

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

Thursday, March 18, 2021

Hearing Room 301

10:30 AM

1:19-10059 Aurora Frias Lee-Nelson

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

David K. Gottlieb, Chapter 7 Trustee

Marshack Hayes LLP, Attorneys for Chapter 7 Trustee

Menchaca & Company LLP, Accountants for Chapter 7 Trustee

Docket 152

Tentative Ruling:

David Gottlieb, chapter 7 trustee – approve fees of \$65,400.00 and reimbursement of expenses of \$129.85, on a final basis. The trustee is authorized to collect 100% of the approved fees and reimbursement of expenses.

Marshack Hays LLP ("Marshack"), counsel to chapter 7 trustee – approve fees of \$63,798.50 and reimbursement of expenses of \$5,415.84, pursuant to 11 U.S.C. § 330, on a final basis. Marshack is authorized to collect 100% of the approved fees and reimbursement of expenses.

Menchaca & Company, LLP ("Menchaca"), accountant to chapter 7 trustee – approve fees of \$3,470.50 and reimbursement of expenses of \$20.45, pursuant to 11 U.S.C. § 330, on a final basis. Menchaca is authorized to collect 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.

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

Thursday, March 18, 2021

Hearing Room 301

10:30 AM

CONT... Aurora Frias Lee-Nelson

Chapter 7

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 18, 2021

Hearing Room 301

10:30 AM

1:19-11902 John Christian Lukes

Chapter 11

#3.00 Final application by Resnik Hayes Moradi LLP, general bankruptcy counsel for the Debtor, for allowance of fees and reimbursement of costs for the period February 11, 2020 through January 28, 2021

Docket 208

Tentative Ruling:

Resnik Hayes Moradi LLP ("Applicant"), counsel to the debtor and debtor in possession – approve fees in the amount of \$91,179.50 and reimbursement of expenses in the amount of \$2,173.20, pursuant to 11 U.S.C. § 331, for the period between February 11, 2020 through January 28, 2021, on a final basis. Applicant may collect 100% of the approved fees and 100% of the approved expenses.

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):

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, March 18, 2021

Hearing Room 301

1:00 PM

1:18-11729 Richard Philip Dages

Chapter 7

#4.00 Order to show cause why debtor's counsel should not be ordered to disgorge fees

fr. 3/12/20; 4/30/20; 10/22/20;

Docket 136

Tentative Ruling:

The Court will continue this matter to **1:30 p.m. on April 8, 2021**, to be heard with the debtor's motion to dismiss this case [doc. 208].

Appearances on March 18, 2021 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, March 18, 2021

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; 9/17/20

Docket 1

***** VACATED *** REASON: Order Closing Case on Interim Basis
entered 9/23/20. [Dkt.156]**

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, March 18, 2021

Hearing Room 301

1:00 PM

1:20-10621 Jasmin DelVillar

Chapter 11

#6.00 Status conference re: chapter 11 case

fr. 8/13/20, 9/17/20; 11/12/20; 1/14/21

Docket 1

***** VACATED *** REASON: Order dismissing case entered on 3/16/21**

Tentative Ruling:

- NONE LISTED -

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, March 18, 2021

Hearing Room 301

1:00 PM

1:20-10924 Tikran Eritsyanyan

Chapter 11

#7.00 Confirmation hearing re: chapter 11 plan of reorganization

Docket 52

Tentative Ruling:

The Court intends to continue the hearing regarding confirmation of the *Debtor's Chapter 11 Plan* (the "Plan") [doc. 52]. The debtor and the objecting secured creditor should be prepared to discuss an appropriate continued hearing date.

A. Background

On May 18, 2020, Tikran Eritsyanyan ("Debtor") filed a voluntary chapter 11 petition. On October 30, 2020 Debtor filed the Plan [doc. 51]. On February 1, 2021, the Court entered an order [doc. 83] approving the adequacy of Debtor's disclosure statement [doc. 51].

B. The Plan

The Plan provides for the liquidation of Debtor's non-exempt assets to pay all creditors in full. The Plan is premised on the sale of : (1) residential real property located at 1356 Elm Avenue, Glendale, California 91201 (the "Elm Property"); and (2) residential real property located at 15632 Viewridge Lane, Granada Hills, California 91344 (the "Viewridge Property").

On November 18, 2020, the Court entered an order authorizing the sale of the Viewridge Property [doc. 64]. On December 17, 2020, the Court entered an order authorizing the sale of the Elm Property [doc. 72].

On February 25, 2021, secured creditors Red Dragon Investment and Platinum Business Management ("Creditors") filed an objection to confirmation of the Plan (the "Opposition") [doc. 91]. On March 8, 2021, Debtor filed *Debtor's Brief and Memorandum of Points and Authorities in Support of Confirmation of Chapter 11 Plan of Reorganization* (the "Brief") [doc. 96].

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Thursday, March 18, 2021

Hearing Room 301

1:00 PM

CONT...

Tikran Eritsyan
C. The Elm Property

Chapter 11

Apparently, Debtor has not closed the sale of the Elm Property. In the Brief, Debtor states that the sale of the Elm Property remains pending, and that the sale should occur by March 18, 2021. However, Debtor has not provided further explanation concerning the delayed sale of the Elm Property (for which the Court's related order was entered **months** ago) and why the sale will close in the immediate future, or alternative treatment if the sale of the Elm Property is not timely closed.

Without further information and evidence regarding the delayed sale of the Elm Property and the likelihood that it will close in the immediate future, the Court will not confirm the Plan - which is premised on the sale of the Elm Property.

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, March 18, 2021

Hearing Room 301

1:00 PM

1:20-10924 Tikran Eritsyanyan

Chapter 11

#8.00 Status conference re: chapter 11 case

fr. 7/2/20; 11/19/20; 1/14/21

Docket 1

Tentative Ruling:

On January 14, 2021, the debtor filed his November 2020 monthly operating report [doc. 78]. To date, the debtor has not filed his December 2020, January 2021 and February 2021 MORs.

In light of the debtor's failure to file his MORs, the Court will prepare an order to show cause why this case should not be dismissed or converted to a case under chapter 7.

Party Information

Debtor(s):

Tikran Eritsyanyan

Represented By
Vahe Khojayan

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

Thursday, March 18, 2021

Hearing Room 301

1:30 PM

1:09-26982 Tag Entertainment Corp.

Chapter 7

#9.00 Chapter 7 Trustee's Omnibus Motion for an Order Disallowing Claims:

1. Claim No. 12 filed by Fairy Tale Partners III, LP
2. Claim No. 13 filed by Funny Money The Movie, LP
3. Claim No. 14 filed by American Beauty, LP
4. Claim No. 15 filed by Fairy Tale Partners III, LP
5. Claim No. 16 filed by Animal Partners, LP
6. Claim No. 17 filed by Supercross the Movie, LP
7. Claim No. 18 filed by Ghost Town, LP
8. Claim No. 19 filed by Motocross Kids, LP
9. Claim No. 20 filed by Wild Stallion Partnership, LP

Docket 248

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):

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

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

Thursday, March 18, 2021

Hearing Room 301

1:30 PM

CONT... Tag Entertainment Corp.

Chapter 7

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, March 18, 2021

Hearing Room 301

1:30 PM

1:10-17214 Darin Davis

Chapter 7

#10.00 Darin Davis' Motion for attorney's fees incurred to defend Asphalt Professionals, Inc.'s ("API") Appeal to the U.S. District Court of this Court's April 10, 2020 Order

Docket 475

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 May 9, 2019, after objection by the chapter 7 trustee and Debtor, the Court entered an order disallowing the claims filed by Asphalt Professionals, Inc. ("API") 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 November 15, 2019, Debtor filed a motion requesting attorneys' fees and costs incurred defending the Claim Appeal (the "Claim Appeal Fees Motion") [doc. 385]. API opposed the Claim Appeal Fees Motion [doc. 418]. On April 10, 2020, after holding a hearing on the Claim Appeal Fees Motion, the Court entered an order granting in part and denying in part the Claim Appeal Fees Motion (the "Claim Appeal Fees Order") [doc. 431]. API appealed the Claim Appeal Fees Order to the United States District Court (the "District Court Appeal") [doc. 434]. On September 17, 2020, the District Court entered an order affirming the Claim Appeal Fees Order [doc. 470].

On October 2, 2020, Debtor filed a motion request attorneys' fees incurred defending the District Court Appeal (the "Motion") [doc. 475]. In the Motion, Debtor initially requested \$19,706 in attorneys' fees, including estimated fees. On March 4, 2021, API filed an opposition to the Motion (the "Opposition") [doc. 522]. In the Opposition, API contends that the requested fees are duplicative and excessive. On March 1, 2021, Debtor filed a reply to the Opposition (the "Reply") [doc. 524]. In an

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

Darin Davis

Chapter 7

attachment to the Reply, Debtor's counsel indicates he spent 7.70 hours to prepare the Reply, which is more than the previously estimated amount to prepare the Reply.

II. ANALYSIS

Movants bear the burden of proving that the fees sought are reasonable. *Center for Biological Diversity v. Cty. of San Bernardino*, 188 Cal.App.4th 603, 615 (Ct. App. 2010); *In re Atwood*, 293 B.R. 227, 233 (B.A.P. 9th Cir. 2003). Both California state courts and the Ninth Circuit Court of Appeals customarily assess the reasonableness of attorneys' fees utilizing the "lodestar" approach where the number of hours 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 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

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

Darin Davis

Chapter 7

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.

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. API's calculations based on a percentage reduction are not sound; API suggests calculating the percentage of duplicate lines in a single brief and then using that percentage to reduce Debtor'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 or unnecessarily duplicative, under the authorities above.

The Court will allow the fees incurred researching enforcement of the Claim Appeal Fees Order and attempting to enforce that order. These fees were incurred prior to issuance of an order granting API's request for a stay of the Claim Appeal Fees Order and API's related deposit of funds into the Court's registry. As such, API's argument

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CONT...

Darin Davis

Chapter 7

that enforcement was unnecessary because of the stay is contradicted by the timing of Debtor's enforcement efforts.

With respect to time billed opposing API's motion for a stay, the Court will reduce the amount billed for drafting the opposition to 4 hours. Among other work done specifically for that opposition, the "Introduction/Background" section and the section regarding the impact of a stay on Debtor were appropriately updated, and tailored, for this opposition filed with the District Court. On the other hand, the opposition includes duplicative portions from prior briefs. Under these circumstances, spending 4 hours drafting the opposition is reasonable. The Court will allow the balance of the fees incurred opposing API's motion for a stay, such as fees incurred reviewing API's motion and reply.

As to work done in connection with the appellate briefs, the Court will reduce the billing related to preparing Debtor's appendix from 4.40 hours to 2 hours. The appendix includes two entries with two attached exhibits (prior decisions from the Ninth Circuit Court of Appeals) [2:20-cv-03492-RGK, doc. 24]. Expending 4.40 hours to prepare this appendix appears to be excessive. However, the Court will allow the remaining fees incurred reviewing API's appendix, brief and designation of record, drafting the appellee's brief, conducting research and reviewing API's reply. Although certain portions of the appellee's brief were duplicative, it is reasonable for counsel to research the continued vitality of Debtor's legal authorities. In addition, because the numerous prior appeals were before the BAP, and not the District Court, it was reasonable for Debtor's counsel to spend time adding relevant facts and history to the appellee's brief.

The Court will reduce the estimated amount of time to file a motion to disburse funds from 4 hours to 2 hours. The motions for disbursement of funds do not present complicated legal or factual issues and, as a result, 2 hours is an appropriate amount of time to draft the motion. The Court will allow the fees incurred drafting this Motion and Debtor's reply, as well as the estimated fees for preparing for and appearing at the hearing.

Finally, Debtor agrees that the April 3, 2020 billing entry for 0.10 hours for reviewing and responding to correspondence from "B. Duran" should be withdrawn. As such, the Court will deduct this amount from the total.

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CONT... Darin Davis

Chapter 7

In light of the above, the Court will allow a total of \$14,818.50 from the billing entries attached to the Motion (not including estimated fees), an additional \$3,272.50 for preparing the Reply, \$425 as estimated fees for preparing and appearing at the hearing on the Motion and \$850 as estimated fees for drafting the motion for disbursement of funds.

III. CONCLUSION

The Court will allow an award of attorneys' fees to Debtor in the total amount of \$19,366.

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
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Courtroom 301 Calendar

Thursday, March 18, 2021

Hearing Room 301

1:30 PM

1:19-12590 Marine Kasabyan

Chapter 7

#11.00 Objection to debtor's claim of exemption

fr. 11/10/20, 1/14/21; 3/4/21(stip)

Docket 82

*** VACATED *** REASON: Order Granting Motion to Approve
Compromise with Debtor Re: Homestead Objection entered 3/15/21. [Dkt.
132]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marine Kasabyan

Represented By
Thomas B Ure
Laila Masud

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**

Thursday, March 18, 2021

Hearing Room 301

1:30 PM

1:21-10397 ASMS Holding Company, Inc.

Chapter 11

#11.10 Motion for Joint Administration with Advanced Sleep
Medicine Services, Inc., Case no. 1:21-10396-VK

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASMS Holding Company, Inc.

Represented By
Gregory M Salvato

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, March 18, 2021

Hearing Room 301

1:30 PM

1:21-10396 Advanced Sleep Medicine Services, Inc.

Chapter 11

#11.20 Motion Regarding Chapter 11 First Day and for Order Determining Adequate Assurance of Payment for Utility Services [Bankruptcy Code Section 366; FRBP Rules 6003, 6004]

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Advanced Sleep Medicine Services,

Represented By
Gregory M Salvato

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, March 18, 2021

Hearing Room 301

1:30 PM

1:21-10396 Advanced Sleep Medicine Services, Inc.

Chapter 11

#11.30 Motion for Joint Administration with In re
ASMS Holding Company, Inc., Case No. 1:21-10397-VK
(Refiled at Clerk's Request)

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Advanced Sleep Medicine Services,	Represented By Gregory M Salvato
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Trustee(s):

John-Patrick McGinnis Fritz (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 18, 2021

Hearing Room 301

1:30 PM

1:21-10396 Advanced Sleep Medicine Services, Inc.

Chapter 11

#11.40 Motion Regarding Chapter 11 First Day Motions and for Order
(A) Authorizing Debtor to Reject Certain Non-Residential
Real Property Leases,
(B) Abandoning Any Remaining Personal Property or Fixtures
Located at the Rejected Lease Premises,
(C) Setting a Lease and Contract Rejection Procedure, and
(D) Fixing a Bar Date for Claims Arising From Rejection
[Bankruptcy Code Sections 365(a) & 554(a); FRBP 6006 & 6007]

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Advanced Sleep Medicine Services,

Represented By
Gregory M Salvato

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, March 18, 2021

Hearing Room 301

1:30 PM

1:21-10396 Advanced Sleep Medicine Services, Inc.

Chapter 11

#11.50 Motion Regarding Chapter 11 First Day Motions and for
Order Authorizing Debtor to Maintain Existing Bank Accounts
for Insurance, Private Party and Medicare Payments

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Advanced Sleep Medicine Services,

Represented By
Gregory M Salvato

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, March 18, 2021

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#12.00 Motion For Entry Of An Order: (A) Allowing An Administrative Expense Priority Claim Pursuant To 11 U.S.C. § 503(b)(1) For Post-Petition Expenses Advanced By LDI Ventures, LLC; And (B) Directing Immediate Payment Of Such Administrative Expense Claim

fr. 2/4/21

Stip for voluntary dismissal of motion filed 2/25/21.

Docket 283

***** VACATED *** REASON: per order entered on 2/26/21 doc [298]**

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**

Wednesday, March 24, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

- #0.00 You will not be permitted to be physically present in the courtroom. All appearances for the March 24, 2021 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/1601505395>

Meeting ID: 160 150 5395

Password: 236642

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 160 150 5395

Password: 236642

Docket 0

Tentative Ruling:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, March 24, 2021

Hearing Room 301

9:30 AM

CONT...

- NONE LISTED -

Chapter

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

Wednesday, March 24, 2021

Hearing Room 301

9:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

#1.00 Motion for relief from t stay [PP]

SANTANDER CONSUMER USA INC
VS
DEBTOR

fr. 2/17/21

Stip for adequate protection filed 3/19/21

Docket 107

***** VACATED *** REASON: The Court has approved entry of the stipulated APO [doc. 117].**

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**

Wednesday, March 24, 2021

Hearing Room 301

9:30 AM

1:21-10094 Mary Ann Noto

Chapter 13

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

fr. 2/17/21

Docket 6

Tentative Ruling:

Grant.

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

Note: The objecting secured creditor 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):

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**

Wednesday, March 24, 2021

Hearing Room 301

9:30 AM

1:20-10924 Tikran Eritsyanyan

Chapter 11

#3.00 Motion for relief from stay [RP]

RED DRAGON INVESTMENT AND
PLATINUM BUSINESS MANAGEMENT
VS
DEBTOR

fr. 11/18/20; 12/23/20; 1/20/21; 2/10/21; 3/3/21(stip)

Docket 49

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tikran Eritsyanyan

Represented By
Vahe Khojayan

Movant(s):

Red Dragon Investment and

Represented By
Martin W. Phillips

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

Wednesday, March 24, 2021

Hearing Room 301

9:30 AM

1:20-12257 Galih Nayoan

Chapter 7

#4.00 Motion for relief from stay [PP]

YAMAHA MOTOR FINANCE CORP.
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):

Galih Nayoan

Represented By
Susan Jill Wolf

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Wednesday, March 24, 2021

Hearing Room 301

9:30 AM

1:21-10178 Hanna Kay

Chapter 7

#5.00 Motion for relief from stay [RP]

RICHARD BARLOWE AND IRA FRIEDMAN
VS
DEBTOR

Docket 12

Tentative Ruling:

The Court will grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (4).

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

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.

Movants must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

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

Wednesday, March 24, 2021

Hearing Room 301

9:30 AM

CONT... Hanna Kay

Chapter 7

Debtor(s):

Hanna Kay

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Wednesday, March 24, 2021

Hearing Room 301

9:30 AM

1:20-11286 Transpine, Inc.

Chapter 11

#6.00 Motion for relief from stay [RP]

WHOOSHIES, INC.
VS
DEBTOR

Docket 102

Tentative Ruling:

What is the status of the insurance coverage for the debtor's real property located at 4256 Tarzana Estates Drive, Tarzana, California 91356 (the "Tarzana Property"). As represented in the Motion, did it expire on January 9, 2021 [Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (the "Motion"), doc. 102, Exh. 7, Insurance Notice]?

Pursuant to 11 U.S.C. § 1112(b)(4)(B) and (C), if the Tarzana Property is not currently insured, and given the sizable equity cushion in the Tarzana Property, the Court is inclined to convert this case to chapter 7.

"The bankruptcy court has broad discretion to determine what constitutes 'cause' under § 1112(b)." *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014). *See Dickey v. Harrington*, 559 B.R. 547, 550 (D. Mass. 2016) ("Given that the Property was the only asset of LLC and that [debtor's] ownership interest in LLC was the primary asset of the bankruptcy estate . . . the failure to maintain appropriate insurance on the Property posed a risk to the bankruptcy estate and the public within the meaning of 11 U.S.C. 1112(b)(4)(C).")

In light of, among other things, the timely filed opposition to the Motion [doc. 117], the pending motion to convert this case to one under chapter 7 [doc. 1089], and the sizable equity cushion in the Tarzana Property, the Court will not enter the stipulated order granting relief from the automatic stay [doc. 114].

Party Information

Debtor(s):

Transpine, Inc.

Represented By

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

Wednesday, March 24, 2021

Hearing Room 301

9:30 AM

CONT... Transpine, Inc.

Chapter 11

Leslie A Cohen
Paul M Kelley

Movant(s):

WHOOSHIES, INC.

Represented By
Lawrence C Meyerson

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

Wednesday, March 24, 2021

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

#7.00 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; 12/9/20(stip)

Stip to continue filed.

Docket 27

***** VACATED *** REASON: Order approving stipulation entered 3/1/21.
Hearing continued to 5/12/21 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, March 24, 2021

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, March 24, 2021

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

#8.00 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);
11/4/20(stip); 2/3/21(stip)

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: 6/1/21.

Deadline to complete one day of mediation: 6/15/21.

Deadline to file pretrial motions: 6/30/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 7/28/21.

Pretrial: 8/11/21 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.

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

Wednesday, March 24, 2021

Hearing Room 301

1:30 PM

CONT... Remon Ramzy Hanna

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):

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
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, March 24, 2021

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #9.00** 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;
11/4/20; 1/20/21

Docket 62

Tentative Ruling:

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

Wednesday, March 24, 2021

Hearing Room 301

1:30 PM

CONT...

Kenneth C. Scott

Chapter 13

The Court will set the defendant's motion to dismiss [doc. 73] for hearing at **2:30 p.m. on May 5, 2021**. The defendant must file and serve notice of the hearing **no later than April 7, 2021**. The Court also will continue this status conference to **2:30 p.m. on May 5, 2021**.

Appearances on March 24, 2021 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 24, 2021

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01117 Lev Investments, LLC v. Lisitsa et al

#10.00 Status Conference re: Complaint by Lev Investments, LLC against Yevgeniya Lisitsa, Lisitsa Law, Inc..for (1) Damages for Legal Malpractice and (2) Objection to Proof of Claim No. 7

fr. 2/10/21(stip)

Docket 1

Tentative Ruling:

The Court will set the motion for abstention [doc. 11], filed by the defendants, for hearing at **2:30 p.m. on April 21, 2021**. The defendants must file and serve notice of the hearing **no later than March 31, 2021**.

In the interim, the Court will not stay discovery.

Parties should be prepared to discuss the following:

Deadline to complete discovery: 11/1/21.

Deadline to file pretrial motions: 12/1/21.

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

Pretrial: 1/19/22 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 24, 2021

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):

Yevgeniya Lisitsa

Pro Se

Lisitsa Law, Inc.

Pro Se

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik
Richard P Steelman Jr
Beth Ann R Young

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, March 24, 2021

Hearing Room 301

1:30 PM

1:20-11850 Mariyan Khosravizadeh

Chapter 7

Adv#: 1:21-01003 Soleimanian et al v. Khosravizadeh

#11.00 Status conference re: complaint for non-dischargeability of debt pursuant to 11 U.S.C. § 523(a)(A) & 523(a)(6), and for discharge of bankruptcy pursuant to 11 U.S.C. § 727(a)(4)(A) & § 727(a)(3)

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 7/30/21.

Deadline to submit pretrial motions: 8/13/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 8/25/21.

Pretrial: 9/8/21 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):

Mariyan Khosravizadeh

Represented By
Stephen L Burton

Defendant(s):

Mariyan Khosravizadeh

Pro Se

Plaintiff(s):

Hamid Soleimanian

Represented By

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

Wednesday, March 24, 2021

Hearing Room 301

1:30 PM

CONT... Mariyan Khosravizadeh

Chapter 7

Sanaz Sarah Bereliani

KAM LP

Represented By
Sanaz Sarah Bereliani

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 24, 2021

Hearing Room 301

1:30 PM

1:20-11850 Mariyan Khosravizadeh

Chapter 7

Adv#: 1:21-01004 Soleimanian et al v. Khosravizadeh

#12.00 Status conference re: complaint for non-dischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(a), 523(a)(4) & § 523(a)(6)

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 7/30/21.

Deadline to submit pretrial motions: 8/13/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 8/25/21.

Pretrial: 9/8/21 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):

Mariyan Khosravizadeh

Represented By
Stephen L Burton

Defendant(s):

Mariyan Khosravizadeh

Pro Se

Plaintiff(s):

Amir Soleimanian

Represented By
Sanaz Sarah Bereliani

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

Wednesday, March 24, 2021

Hearing Room 301

1:30 PM

CONT... Mariyan Khosravizadeh

Chapter 7

Soleiman Partners

Represented By
Sanaz Sarah Bereliani

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 24, 2021

Hearing Room 301

1:30 PM

1:20-11850 Mariyan Khosravizadeh

Chapter 7

Adv#: 1:21-01005 US OPPS LLC, an Oregon Limited Liability Company v. Khosravizadeh et

#13.00 Status conference re: complaint for non-dischargeability of debt
11 U.S.C. § 523(a)(2)(A); (a)(6), and of discharge 11 U.S.C. § 727(a)(2), (4);
(a)(3); (a)(4)(A)

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 comply with FRBP 7026 and FRCP 26(a)(1), (f) and (g): 4/7/21.

Deadline to submit joint status report: 4/21/21.

Continued status conference 5/5/21 at 1:30 p.m.

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

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

Party Information

Debtor(s):

Mariyan Khosravizadeh

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 24, 2021

Hearing Room 301

1:30 PM

CONT... Mariyan Khosravizadeh

Chapter 7

Defendant(s):

Mariyan Khosravizadeh Pro Se

Does 1-100 Pro Se

Plaintiff(s):

US OPSS LLC, an Oregon Limited Represented By
Jason D Ahdoot

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 24, 2021

Hearing Room 301

1:30 PM

1:20-11952 Michael A Di Bacco

Chapter 7

Adv#: 1:21-01010 Kline v. Di Bacco

#14.00 Status conference re: complaint

Docket 1

*** VACATED *** REASON: Continued by stip to 4/21/21 at 1:30 p.m. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael A Di Bacco

Represented By
Leon Nazaretian

Defendant(s):

Michael A Di Bacco

Pro Se

Plaintiff(s):

Michael Kline

Represented By
David Brian Lally

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 24, 2021

Hearing Room 301

2:30 PM

1:20-10346 Alan Gene Lau

Chapter 7

Adv#: 1:20-01053 Prior et al v. Lau et al

#15.00 Plaintiffs' Motion for summary judgment

Docket 12

Tentative Ruling:

What is the status of the defendant's motion to vacate the state court judgment?

The plaintiffs' motion for summary judgment is based on the preclusive effect of the state court judgment. Thus, if the state court vacates the state court judgment, the Court will deny the motion for summary judgment.

If the state court judgment is vacated, and to the extent the plaintiffs move for summary judgment based on the declarations submitted by the plaintiffs, the Court will not enter summary judgment. First, the declarations submitted by the plaintiffs in support of the current motion for summary judgment were filed in state court and, as a result, are hearsay. Fed. R. Evid. 801(c)(1). Next, even if the Court considered the declarations, "[w]here intent is at issue, summary judgment is seldom granted." *In re Gertsch*, 237 B.R. 160, 165 (B.A.P. 9th Cir. 1999) (citing *Provenz v. Miller*, 102 F.3d 1478, 1489 (9th Cir. 1996)). The defendant asserts in his declaration that he disclosed settlement and drainage issues to the plaintiffs and, as a result, believed the plaintiffs were on notice regarding foundation issues. Declaration of Alan Lau [doc. 20], ¶¶ 4, 7. The defendant also contends that, prior to selling the subject property, the defendant obtained a Property Inspection Report, which report did not mention a foundation problem. *Id.*, ¶ 8.

In addition, the declarations are insufficient to demonstrate the amount of damages suffered by the plaintiffs. In the Declaration of Richard Prior, Mr. Prior contends that they received estimates for fixing the Property amounting to \$175,700.25. Request for Judicial Notice ("RJN") [doc. 17], Exhibit 3, ¶ 11. Mr. Prior also estimated that his displacement costs would amount to \$10,800. RJN, Exhibit 3, ¶ 15. However, in his declaration, the defendant testifies that the plaintiffs sold the property. Declaration of Alan Lau, ¶ 11. The plaintiffs have not shown that they actually paid \$175,700.25, or any amount, to repair the property or stay in hotels during renovation. In the alternative, if the plaintiffs did not repair the property, the plaintiffs have not shown that they could have sold the property for a higher price had the repairs been done; for instance, the

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

Wednesday, March 24, 2021

Hearing Room 301

2:30 PM

CONT...

Alan Gene Lau

Chapter 7

plaintiffs have not provided appraisals or expert testimony showing that the property would have netted a greater sale price had the defects been repaired. Finally, although Mr. Prior's declaration notes that the plaintiffs request \$150,000 for loss of use and enjoyment damages, the plaintiffs have not offered any support for this number. RJN, Exhibit 3, ¶ 16. Consequently, if the state court judgment is vacated and the Court admitted the declarations, the plaintiffs would not meet their burden of proof.

In his opposition, the defendant contends that he has not yet commenced discovery and requires additional time to conduct discovery on the issues presented in the motion for summary judgment. However, in August 2020, the Court entered an order setting a discovery cutoff date of December 18, 2020 [doc. 8]. The defendant did not move for an extension of this deadline, and has not explained why he did not conduct discovery prior to the expiration of the discovery cutoff date.

The party seeking a continuance under Federal Rule of Civil Procedure ("Rule") 56(d) bears the burden of offering sufficient "facts to show that the evidence sought exists, and that it would prevent summary judgment." *Nidds v. Schindler Elevator Corp.*, 113 F.3d 912, 921 (9th Cir. 1996) (considering Rule 56(d)'s predecessor, Rule 56(f)). A court "does not abuse its discretion by denying further discovery if the movant has failed diligently to pursue discovery in the past." *Conkle v. Jeong*, 73 F.3d 909, 914 (9th Cir. 1995).

Several courts within this circuit have denied Rule 56(d) motions filed after the discovery cutoff date. *See, e.g. Hunt v. City of Los Angeles*, 2021 WL 768248, at *9 (C.D. Cal. Jan. 26, 2021) ("[T]he purpose of Rule 56(d) -- to prevent a party from being 'railroaded' by a premature motion for summary judgment -- would not be served here. Defendants' MSJ, filed... two months after the discovery cut-off, is in no way 'premature.' Most critically, however, Plaintiff admits that he did not even attempt to pursue any discovery prior to the discovery cut-off, and therefore cannot show diligence."); *Fed. Nat'l Mortg. Ass'n v. SFR Invs. Pool 1, LLC*, 2020 WL 3103897, at *2 (D. Nev. June 11, 2020) ("I deny SFR's request for Rule 56(d) relief because SFR's motion was filed after discovery had already closed, SFR did not move to extend the discovery period while it was still open, SFR has not shown good cause to extend the discovery deadline, and SFR has not shown excusable neglect for failing to file a motion to extend time before the discovery deadline expired."); and *Floyd v. Ada Cty.*, 2020 WL 1991400, at *12 (D. Idaho Apr. 27, 2020) ("The Court rejects Floyd's attempt to compel discovery through Rule 56(d) after both the discovery and dispositive motion

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

Wednesday, March 24, 2021

Hearing Room 301

2:30 PM

CONT...

Alan Gene Lau

Chapter 7

deadlines have passed."). In fact, the Ninth Circuit Court of Appeals has affirmed denial of a Rule 56(d) motion even where a party began discovery prior to the discovery cutoff date—

[The plaintiff] waited nearly three years to commence discovery, on July 27, 2000, only two weeks prior to the discovery cutoff set by the court's pretrial order....

The court did not abuse its discretion in failing to grant [the plaintiff] a continuance pending additional discovery. The failure to conduct discovery diligently is grounds for the denial of a Rule 56(f) motion. *E.g., Mackey v. Pioneer Nat'l Bank*, 867 F.2d 520, 524 (9th Cir. 1989) ("A movant cannot complain if it fails diligently to pursue discovery before summary judgment"); *Landmark Dev. Corp. v. Chambers Corp.*, 752 F.2d 369, 372 (9th Cir. 1985) (concluding that court properly denied Rule 56(f) because the "[f]ailure to take further depositions apparently resulted largely from plaintiffs' own delay"). [The plaintiff] waited nearly three years to conduct any discovery and filed a defective request only two weeks prior to discovery cutoff.

Pfingston v. Ronan Eng'g Co., 284 F.3d 999, 1005 (9th Cir. 2002).

Here, the defendant has not explained why he did not conduct discovery prior to the discovery cutoff date. The defendant has not offered an affidavit demonstrating that he diligently pursued discovery prior to expiration of the discovery deadline. Consequently, the Court will not extend the discovery cutoff date or allow the defendant to conduct additional discovery under Rule 56(d).

Party Information

Debtor(s):

Alan Gene Lau

Represented By
Kevin T Simon

Defendant(s):

Alan Gene Lau

Represented By
Andrew Edward Smyth

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, March 24, 2021

Hearing Room 301

2:30 PM

CONT... Alan Gene Lau

Chapter 7

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, March 24, 2021

Hearing Room 301

2:30 PM

1:20-10346 Alan Gene Lau

Chapter 7

Adv#: 1:20-01053 Prior et al v. Lau et al

#16.00 Pretrial conference re complaint to determine the dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)

fr. 7/29/20; 3/10/21

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

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):

Russell Prior

Represented By
Alana B Anaya

Cheryl 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**

Thursday, March 25, 2021

Hearing Room 301

1:00 PM

1: -

Chapter

- #0.00 You will not be permitted to be physically present in the courtroom. All appearances for the March 25, 2021 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/1602438951>

Meeting ID: 160 243 8951

Password: 504486

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: US: 1-669-254-5252 or 1-669-216-1590

Meeting ID: 160 243 8951

Password: 504486

Docket 0

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

Thursday, March 25, 2021

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#1.00 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); 12/17/20; 2/4/21

Docket 1

***** VACATED *** REASON: Continued to 4/8/21 at 1:00 p.m. on the
Court's own motion - jc**

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 25, 2021

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#2.00 Confirmation hearing re debtor's first amended chapter 11 plan
fr. 12/3/20(stip); 2/11/21(stip)

Docket 131

***** VACATED *** REASON: Continued to 4/8/21 at 1:00 p.m. on the
Court's own motion - jc**

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, March 25, 2021

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; 10/15/20; 12/3/20(stip);
2/11/21(stip)

Docket 1

*** VACATED *** REASON: Continued to 4/8/21 at 1:00 p.m. on the
Court's own motion - jc

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, March 25, 2021

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#4.00 Hearing on Debtor's Amended Disclosure Statement

Docket 142

***** VACATED *** REASON: Continued to 4/8/21 at 1:00 p.m. on the
Court's own motion - jc**

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, March 25, 2021

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; 07/23/2020; 8/27/20; 9/17/20;
11/12/20; 12/3/20; 1/21/21

Docket 1

***** VACATED *** REASON: Continued to 4/8/21 at 1:00 p.m. on the
Court's own motion - jc**

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, March 25, 2021

Hearing Room 301

1:00 PM

1:20-11286 Transpine, Inc.

Chapter 11

#6.00 Disclosure statement hearing describing debtor's chapter 11 plan
fr. 2/11/21

Docket 105

***** VACATED *** REASON: Continued to 4/8/21 at 1:30 PM on the
Court's own motion.**

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**

Thursday, March 25, 2021

Hearing Room 301

1:00 PM

1:20-11286 Transpine, Inc.

Chapter 11

#7.00 Status conference re chapter 11 case

fr. 10/15/20; 2/4/21; 2/11/21

Docket 1

***** VACATED *** REASON: Continued to 4/8/21 at 1:30 p.m. on the
Court's own motion**

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**

Thursday, March 25, 2021

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

#8.00 Hearing

RE: [108] Motion to Convert Case From Chapter 11 to 7. [Notice of Motion and Motion to Convert Case to Chapter 7; Memorandum of Points and Authorities and Supporting Declaration of Homan Mobasser] Inc. (Attachments: # 1 Exhibit A to G to Motion to Convert) (McCarthy, Daniel)

Docket 108

***** VACATED *** REASON: Continued to 4/8/21 at 1:30 PM on the Court's own motion**

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**

Thursday, March 25, 2021

Hearing Room 301

2:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#9.00 Confirmation hearing re Debtor's chapter 11, subchapter V plan of liquidation
fr. 1/14/21; 1/21/21

Docket 60

***** VACATED *** REASON: Continued to 4/8/21 at 2:30 PM on the
Court's own motion**

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, March 25, 2021

Hearing Room 301

2:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#10.00 Status conference re: chapter 11 subchapter V case
fr.09/10/20; 11/5/20; 1/14/21; 1/21/21

Docket 1

***** VACATED *** REASON: Continued to 4/8/21 at 2:30 PM on the
Court's own motion**

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, March 25, 2021

Hearing Room 301

2:30 PM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#11.00 Status conference re: chapter 11 subchapter V case

Docket 1

***** VACATED *** REASON: Continued to 4/8/21 at 2:30 p.m. on the
Court's own motion - jc**

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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

Thursday, March 25, 2021

Hearing Room 301

2:30 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

#12.00 Status conference re chapter 11, subchapter V case

Docket 1

***** VACATED *** REASON: Continued to 4/8/21 at 2:30 p.m. on the
Court's own motion - jc**

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton

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

Tuesday, April 6, 2021

Hearing Room 301

9:30 AM

1:

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the April 6, 2021 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 CACB ZoomGov Meeting

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Password: 663272

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 958 8602

Password: 663272

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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

Tuesday, April 6, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Tuesday, April 6, 2021

Hearing Room 301

9:30 AM

1:00-00000

Chapter

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

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, April 6, 2021

Hearing Room 301

10:30 AM

1:15-12329 Rene Dashiell

Chapter 13

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

fr. 3/10/20; 6/9/20; 09/08/20; 12/8/20; 2/9/21

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, April 6, 2021

Hearing Room 301

10:30 AM

1:16-10023 Angelina Rodriguez

Chapter 13

#18.00 Trustee's motion to dismiss chapter 13 case
due to expiration of the plan

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angelina Rodriguez

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, April 6, 2021

Hearing Room 301

10:30 AM

1:17-10230 Brenda Jurado Hill

Chapter 13

#19.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

Docket 33

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, April 6, 2021

Hearing Room 301

10:30 AM

1:17-12163 Cynthia Ann Donahue

Chapter 13

#20.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

Docket 60

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 6, 2021

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

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

fr. 10/6/20; 11/10/20; 1/12/21; 3/9/21

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, April 6, 2021

Hearing Room 301

10:30 AM

1:18-10983 Daniele C Kenney

Chapter 13

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

fr. 2/9/21; 3/9/21

Docket 62

*** VACATED *** REASON: Motion withdrawn 4/1/21 - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniele C Kenney

Represented By
David S Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, April 6, 2021

Hearing Room 301

10:30 AM

1:18-11941 Nathan Cohen

Chapter 13

#23.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 3/9/21

Docket 99

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nathan Cohen

Represented By
Sanaz Sarah Bereliani

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, April 6, 2021

Hearing Room 301

10:30 AM

1:18-12806 Kathleen Magdaleno

Chapter 13

#24.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 3/9/21

Docket 110

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 6, 2021

Hearing Room 301

10:30 AM

1:19-11615 Jose E Martinez

Chapter 13

#25.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose E Martinez

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 6, 2021

Hearing Room 301

10:30 AM

1:19-11856 Maria Menzi Cadelina

Chapter 13

#26.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Menzi Cadelina

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, April 6, 2021

Hearing Room 301

10:30 AM

1:19-11917 Brenda Medina

Chapter 13

#27.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

Docket 86

Tentative Ruling:

- NONE LISTED -

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, April 6, 2021

Hearing Room 301

10:30 AM

1:19-11963 Lana Petrosyan

Chapter 13

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

fr. 3/9/21

Docket 61

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lana Petrosyan

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, April 6, 2021

Hearing Room 301

10:30 AM

1:19-11963 Lana Petrosyan

Chapter 13

#29.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

Docket 70

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lana Petrosyan

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, April 6, 2021

Hearing Room 301

10:30 AM

1:19-12827 Cesario L. Gonzales

Chapter 13

#30.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

Docket 38

***** VACATED *** REASON: Motion withdrawn 3/22/21 - jc**

Tentative Ruling:

- NONE LISTED -

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, April 6, 2021

Hearing Room 301

10:30 AM

1:19-12931 Tiffany Nicole Merlo

Chapter 13

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

fr. 1/12/21; 3/9/21

Docket 36

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tiffany Nicole Merlo

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 6, 2021

Hearing Room 301

10:30 AM

1:19-12947 Ronaldo Garcia

Chapter 13

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

Docket 45

***** VACATED *** REASON: Motion withdrawn 3/22/21 - jc**

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, April 6, 2021

Hearing Room 301

10:30 AM

1:20-10046 Emmanuel Dumada-Ug Sitaca

Chapter 13

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

fr. 3/9/21

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Emmanuel Dumada-Ug Sitaca

Represented By
Ali R Nader

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, April 6, 2021

Hearing Room 301

10:30 AM

1:20-10124 Madeleine Hovsepian Brockway

Chapter 13

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

fr. 12/8/20; 3/9/21

Docket 43

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Madeleine Hovsepian Brockway

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, April 6, 2021

Hearing Room 301

11:30 AM

1:20-12133 Aviva Rachel Harris

Chapter 13

#35.00 Debtor's Motion to Avoid Junior Lien of IRBC2, LLC on Principal Residence

Docket 28

Tentative Ruling:

Deny.

I. BACKGROUND

A. The Deed of Trusts and the Firmament Property

On December 1, 2020, Aviva Rachel Harris ("Debtor") filed a voluntary chapter 13 petition.

In her declaration filed in support of the *Motion to Avoid Junior Lien on Principal Residence Under 11 U.S.C. § 506(d)* (the "Motion") [doc. 28], Debtor represents that her residence is located at 6464 Firmament Avenue, Van Nuys, California 91406 (the "Firmament Property"), Debtor also represents that she rents out a "mother-in-law" unit at the Firmament Property to a long term tenant and two rooms to AirBnB short-term renters. Declaration of Aviva R. Harris, attached to the Motion, doc. 28, ¶¶ 6 and 8.

Prepetition, on June 13, 2005, Debtor executed a promissory note in the principal sum of \$540,000.00 (the "Note"), which was made payable to United Pacific Mortgage ("United"). Motion, doc. 28, Exh. 4, p. 25]. The Note is secured by a deed of trust (the "First Deed of Trust") encumbering the Firmament Property. *Id.*, at p. 33.

On December 31, 2020, U.S. Bank and Nationstar, loan servicer on behalf of U.S. Bank, filed proof of claim 3-1, asserting a claim in the amount of \$617,694.46, secured by the Firmament Property. Motion, Exh. 4, p. 8.

On June 13, 2005, Debtor executed a home equity credit line agreement in the principal sum of \$67,500.00 (the "Credit Agreement"), which was made payable to United. Motion, Exh. 5, p. 15. The Credit Agreement is secured by a deed of trust (the "Second

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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11:30 AM

CONT... Aviva Rachel Harris

Chapter 13

Deed of Trust") encumbering the Firmament Property. *Id.*, at p. 29. On June 21, 2015, the Second Deed of Trust was recorded in the Los Angeles County Recorder's Office. *Id.*, at p. 27.

On September 5, 2012, United executed an assignment deed of trust, transferring its interest in the Second Deed of Trust to the Bank of New York Mellon fka the Bank of New York, as Successor Trustee to JPMorgan Chase Bank, N.A., as Trustee on Behalf of the Certificateholders of the CWHEQ Inc., CWHEQ, Revolving Home Equity Loan Trust, Series 2005-1 ("BNYM"). Motion, Exh. 5, p. 41.

On August 3, 2017, BNYM executed an assignment deed of trust, transferring its interest in the Second Deed of Trust to 2005 Residential Trust 3-1 by Wilmington Savings Fund Society ("Wilmington"). Motion, Exh. 5, p. 44. On August 15, 2017, Wilmington executed an assignment deed of trust, transferring its interest in the Second Deed of Trust to IRBC2, LLC ("IRBC"). Motion, Exh. 5, p. 48.

On December 16, 2020, IRBC filed proof of claim no. 2-1, asserting a claim in the amount of \$133,980.80, secured by the Firmament Property. Motion, Exh. 5, p. 2.

B. Debtor's Assets and Liabilities

In her schedule A/B, Debtor lists her interest in the Firmament Property and states that the Firmament Property has a value of \$635,000.00 [doc. 1]. As set forth in Debtor's schedule D, the Firmament Property is encumbered by the First Deed of Trust and the Second Deed of Trust. *Id.*

C. Motion to Avoid Junior Lien on Principal Residence

On March 5, 2021, Debtor filed the Motion [doc. 28]. Attached to the Motion is an appraisal of the Firmament Property, originally dated April 27, 2017, valuing the Firmament Property at \$635,000.00 [Exh. 2].

In the Motion, based on the appraisal, Debtor requests that the Court partially avoid IRBC's lien against the Firmament Property under 11 U.S.C. § 506(d). When taking into consideration the First Deed of Trust, securing a claim in the amount of \$617,694.46, Debtor contends that IRBC has a secured claim against the Firmament Property in the amount of \$17,305.54. Declaration of Aviva R. Harris, attached to the

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

Tuesday, April 6, 2021

Hearing Room 301

11:30 AM

CONT... Aviva Rachel Harris

Chapter 13

Motion, doc. 28, ¶ 20.

Debtor proposes "to strip the lien of IRBC2, LLC, the holder of the second position deed of trust, down to the value of its interest in the [Firmament Property] and to pay that stripped down value in full over the sixty month life of my Chapter 13 plan." *Id.*

On March 22, 2021, IRBC filed an opposition to the Motion (the "Opposition") [doc. 36]. In the Opposition, IRBC argues that Debtor cannot avoid its lien pursuant to § 506(d) because the Firmament Property represents Debtor's principal residence and IRBC's claim is at least partially secured. [FN1]. IRBC further contends that, based on a residential broker price opinion dated March 23, 2020, the Firmament Property has a value of at least \$800,000.00 [Opposition, Exh. A].

II. DISCUSSION

11 U.S.C. § 506(a)(1) and (d) provides:

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to selloff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

...

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

- (1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or
- (2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Tuesday, April 6, 2021

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11:30 AM

CONT... Aviva Rachel Harris

Chapter 13

11 U.S.C. § 1322(b)(2) provides:

(b) Subject to subsections (a) and (c) of this section, the plan may—

(2) 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.

"In a chapter 13, generally speaking, claims secured by a security interest in a debtor's principal residence may not be modified . . . However, despite § 1322(b)(2), such a lien may be 'stripped off' and avoided under § 506(d) if the bankruptcy court determined under § 506(a) that there is no value in the residence to secured the claim and that the creditor's claim is *rendered wholly unsecured*." *In re Chagolla*, 544 B.R. 676, 683 (B.A.P. 9th Cir. 2016) (citing *In re Zimmer*, 313 F.3d 1220, 1222–23 (9th Cir. 2002) (emphasis added). "[I]f the claim is determined to be wholly unsecured, the rights of the creditor holding only an unsecured claim may be modified under § 1322(b)(2), and the creditor's lien may be avoided, notwithstanding the antimodification protection provided for in § 1322(b)(2)." *In re Boukatch*, 533 B.R. 292, 296 (B.A.P. 9th Cir. 2015) (quotation marks omitted).

Here, assuming that the Firmament Property has a value of \$635,000.00, Debtor cannot avoid IRBC's lien; IRBC's lien must be *wholly* unsecured. Debtor indicates that IRBC has a secured claim in the amount of \$17,305.54. Because IRBC's claim is at least partially secured by the Firmament Property, which is Debtor's principal residence, its lien cannot be avoided.

"In order for § 1322(b)(2) to be applicable, however, and thus lien avoidance possible, the § 506(a)(1) valuation must result in a claim that fits within the language of § 1322(b)(2). In other words, for § 1322(b)(2) to be applicable, a claim after § 506(a)(1) valuation must be either (1) a secured claim, other than a claim secured by real property that is the debtor's principal residence; or (2) an unsecured claim." *In re Leonidas*, 2019 WL 2527884, at *6 (C.D. Cal. June 19, 2019).

Moreover, although Debtor renting some rooms of the Firmament Property to others, the

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11:30 AM

CONT... Aviva Rachel Harris

Chapter 13

Firmament Property remains Debtor's principal residence. The Ninth Circuit Bankruptcy Appellate Panel has held that "the anti-modification exception applies to any loan secured only by real property that the debtor uses as a principal residence property, even if the real property also serves additional purposes." *In re Wages*, 508 B.R. 161, 168 (B.A.P. 9th Cir. 2014); *see also Utzman v. Suntrust Mortgage, Inc.*, 2016 WL 795739, at *9 (N.D. Cal. Mar. 1, 2016) ("Section 1123(b)(5) requires the real property be used as the debtor's principal residence; it does not require the real property be used *solely* as the debtor's principal residence or be deemed the debtor's principal residence in light of the totality of the circumstances . . . the fact that [debtor] rent out a small portion of the property does not defeat the applicability of the exception.") (emphasis in original).

Consequently, because the Firmament Property is Debtor's principal residence and IRBC's lien is not wholly unsecured, in accordance with the anti-modification provision of 11 U.S.C. § 1322(b)(2), Debtor cannot avoid the lien pursuant to 11 U.S.C. § 506(d).

III. CONCLUSION

In light of the foregoing, the Court will deny the Motion.

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

FOOTNOTE

FN1. In the Opposition, IRBC incorrectly references 11 U.S.C. § 1123(b)(5); this is a chapter 13 case, not a chapter 11 case. The applicable anti-modification statute in a chapter 13 case is 11 U.S.C § 1322(b)(2).

Party Information

Debtor(s):

Aviva Rachel Harris

Represented By
Jeffrey J Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:20-12133 Aviva Rachel Harris

Chapter 13

**#36.00 Debtor's Motion to Avoid Junior Lien On Principal Residence;
Statutory Lien with California Franchise Tax Board**

Docket 29

Tentative Ruling:

Grant subject to completion of chapter 13 plan.

The movant must submit the order using form F 4003-2.4.JR.LIEN.ORDER. The movant should check the box in section 5. of the Attachment, 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):

Aviva Rachel Harris

Represented By
Jeffrey J Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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9:30 AM

1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the April 7, 2021 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.

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Meeting ID: 160 754 7784

Password: 287496

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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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); 11/25/20; 1/13/21;
3/3/21

Docket 63

Tentative Ruling:

On March 29, 2021, the Court entered the Order Regarding Motion to Authorize Loan Modification, under which the payments were to commence on March 1, 2021.

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
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9:30 AM

1:16-12985 Tanya Monge

Chapter 13

#2.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

fr. 3/10/21

Stip for adequate protection filed 4/6/21

Docket 104

*** VACATED *** REASON: Order approving stipulation entered 4/6/21.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tanya Monge

Represented By
Kevin T Simon

Movant(s):

U.S. BANK TRUST NATIONAL

Represented By
Erica T Loftis Pacheco

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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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; 10/21/20; 11/18/20; 1/13/21; 2/3/21

Docket 123

***** VACATED *** REASON: withdrawal filed on 3/10/21 [dkt 164]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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Hearing Room 301

9:30 AM

1:20-12079 Valentina Balashova

Chapter 7

#4.00 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
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):

Valentina Balashova

Represented By
Sanaz Sarah Bereliani

Movant(s):

Toyota Lease Trust, as serviced by

Represented By
Kirsten Martinez

**United States Bankruptcy Court
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CONT... Valentina Balashova

Chapter 7

Trustee(s):

Diane C Weil (TR)

Pro Se

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9:30 AM

1:20-12079 Valentina Balashova

Chapter 7

#5.00 Motion for relief from stay [PP]

NISSAN-INFINITY LT
VS
DEBTOR

Docket 29

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Valentina Balashova

Represented By
Sanaz Sarah Bereliani

Trustee(s):

Diane C Weil (TR)

Pro Se

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9:30 AM

1:21-10183 Christopher G Fazzi

Chapter 7

#6.00 Amended motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE FOR
TRUMAN 2016 SC6 TITLE TRUST
VS
DEBTOR

Docket 19

Tentative Ruling:

The Court will grant relief from the automatic stay under 11 U.S.C. § 362(d)(1), (2) and (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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

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9:30 AM

CONT... Christopher G Fazzi

Chapter 7

Debtor(s):

Christopher G Fazzi

Represented By
Onyinye N Anyama

Movant(s):

U.S. Bank, National Association as

Represented By
Diane Weifenbach

Trustee(s):

Nancy J Zamora (TR)

Pro Se

United States Bankruptcy Court
Central District of California
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Wednesday, April 7, 2021

Hearing Room 301

9:30 AM

1:18-11945 Rosa Aminta Cordova de Rodriguez

Chapter 13

#7.00 Motion for relief from stay [PP]

ALLY FINANCIAL
VS
DEBTOR

STIP TO CONTINUE FILED 4/2/21

Docket 57

***** VACATED *** REASON: Order approving stip entered 4/2/21.
Hearing continued to 5/19/21 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosa Aminta Cordova de Rodriguez

Represented By
R Grace Rodriguez

Movant(s):

Ally Financial

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:20-11600 Florence Estella Johnson

Chapter 13

#8.00 Motion for relief from stay [RP]

THE MONEY SOURCE INC.
VS
DEBTOR

Docket 50

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 include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

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

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9:30 AM

CONT... Florence Estella Johnson

Chapter 13

Party Information

Debtor(s):

Florence Estella Johnson

Represented By
R Grace Rodriguez

Movant(s):

The Money Source Inc

Represented By
Kirsten Martinez
Austin P Nagel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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9:30 AM

1:18-12660 Mohsen Loghmani

Chapter 7

#9.00 Motion for confirmation under 11 U.S.C. 362(j) that the automatic stay has terminated under 11 U.S.C. 362(c)(2)

Docket 130

Tentative Ruling:

Grant with 4001(a)(3) waiver and confirmation that no stay is in effect. 11 U.S.C. § 362(c)(2) and (j). The debtor's reopened bankruptcy case, 1:18-bk-12660-VK, does not reinstate the automatic stay. The automatic stay terminates at "the time the case is closed." 11 U.S.C. § 362(c)(2)(A).

The Ninth Circuit Bankruptcy Appellate Panel has held:

Reopening, in and of itself, has little impact upon the estate and upon jurisdiction in light of what occurs as a result of closing the case . . . Reopening the case does not undo any of the statutory consequences of closing . . . Likewise, to the extent that the automatic stay expired in conjunction with closing, *it does not automatically spring back into effect*. If protection is warranted after a case is reopened, then an injunction would need to be imposed.

In re Menk, 241 B.R. 896, 913–14 (B.A.P. 9th Cir. 1999) (emphasis added).

Additionally, the automatic stay is not reinstated when a discharge is denied or revoked. When a debtor receives a discharge, the automatic stay is replaced by a permanent injunction. 11 U.S.C. § 524(a). Revocation of a chapter 7 discharge is equivalent to dissolution of the discharge injunction. *In re Culton*, 111 F.3d 92, 94 (11th Cir. 1997); *Matter of Hendrix*, 986 F.2d 195, 198 (7th Cir. 1993).

Movant must submit the order within seven (7) days

Party Information

Debtor(s):

Mohsen Loghmani

Pro Se

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CONT... Mohsen Loghmani

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
D Edward Hays

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Wednesday, April 7, 2021

Hearing Room 301

9:30 AM

1:21-10437 Sergey Tsoi

Chapter 13

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

Docket 5

Tentative Ruling:

The Court will grant the motion on an interim basis up to date of the continued hearing. The Court will continue this hearing to May 12, 2021 at 9:30 a.m.

In April 2021, the debtor must pay: (1) his April 2021 deed of trust payment in the amount of \$4,315.00 (as stated in his current schedule J) as to the real property located at 5300 Reseda Blvd., Tarzana, California 91356; and (2) his April 2021 plan payment in the amount of \$2,545.00 as stated in the debtor's proposed chapter 13 plan [doc. 12].

No later than May 7, 2021, the debtor must file: (1) a completed and substantiated Declaration Setting Forth Postpetition, Preconfirmation Deed of Trust Payments Official Form F 3015-1.4 to demonstrate that he made his required post-petition deed of trust payment; and (2) a separate declaration with evidence that he made his April 2021 chapter 13 plan payment.

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

Party Information

Debtor(s):

Sergey Tsoi

Represented By
Elena Steers

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:21-10403 Teresa Louise Noto

Chapter 13

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

Docket 10

Tentative Ruling:

The Court will grant the motion on an interim basis up to date of the continued hearing. The Court will continue this hearing to **July 7, 2021 at 9:30 a.m.**

I. BACKGROUND

On March 10, 2021, Teresa Louise Noto ("Debtor") filed a voluntary chapter 13 petition.

A. The Deed of Trust and the Granada Property

Prior to filing her most recent chapter 13 petition, on February 3, 2006, Debtor executed a promissory note in the principal sum of \$310,000.00 (the "Note"), which was made payable to Downey Savings and Loan Association ("Downey"). 1:14-bk-15350-VK (the "First Case"), doc. 38, Exh. 1. The Note is secured by a deed of trust (the "Deed of Trust") encumbering residential real property located at 10828 Aqueduct Avenue, Granada Hills, California 91344 (the "Granada Property"). *Id.*, at Exh. 2. On February 9, 2006, the Deed of Trust was recorded in the Los Angeles County Recorder's Office. *Id.*

On May 20, 2013, Downey recorded an assignment deed of trust in the Los Angeles County Recorder's Office, transferring its interest in the Granada Property to U.S. Bank. First Case, doc. 38, Exh. 3.

B. The First Case

On November 30, 2014, Debtor filed a voluntary chapter 13 petition, initiating the First Case. In her petition, Debtor listed the Granada Property as her residence and, in her schedule A, Debtor listed an interest in the Granada Property. First Case, docs. 1, 10.

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On March 25, 2015, the Court entered an order confirming Debtor's chapter 13 plan. First Case, doc. 29 (the "First Case Plan"). In the First Case Plan, Debtor was to make plan payments in the amount of \$884.00 for 60 months, which would provide for payment of 100% of allowed nonpriority unsecured claims.

On May 5, 2017, based on Debtor's failure to make seven (7) postpetition postconfirmation deed of trust payments, the Court entered an order granting U.S. Bank's motion for relief from stay. First Case, doc. 42.

On September 26, 2017, the chapter 13 trustee filed a motion to dismiss the First Case based on delinquent plan payments in the amount of \$3,536.00 (the "Motion to Dismiss"). First Case, doc. 44. On January 24, 2018, the Court entered an order granting the Motion to Dismiss and dismissing the First Case. First Case, doc. 46.

C. The Second Case

On October 21, 2020, Debtor filed another chapter 13 petition, initiating case 1:20-bk-11888-VK (the "Second Case").

On November 3, 2020, Debtor filed her schedules and Statement of Financial Affairs. Second Case, doc. 14. In her schedule A, Debtor listed an interest in the Granada Property with a fair market value of \$575,000.00. In her schedule C, Debtor claimed a homestead exemption in the amount of \$175,000.00.

In her schedule D, Debtor indicated that the Granada Property is encumbered by: (1) a first position deed of trust to Rushmore Loan Management Service, loan servicer for U.S. Bank, in the amount of \$362,788.00; and (2) a second position deed of trust to Green Tree Servicing LLC in the amount of \$35,000.00. In her schedule E/F, Debtor listed no priority unsecured claims and listed aggregate nonpriority unsecured claims in the amount of \$30,094.00.

In her schedules I and J, Debtor listed her monthly income as \$2,790.96 and her monthly expenses as \$2,451.51, leaving a net monthly income of \$339.45.

On November 3, 2020, Debtor filed a proposed chapter 13 plan (the "Second Case Plan"). Second Case, doc. 15. In the Second Case Plan, Debtor proposed plan

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CONT...

Teresa Louise Noto

Chapter 13

payments in the amount of \$340.00 from months 1 through 12, then \$1,500.00 from months 13 through 60; this would pay approximately 31% of nonpriority unsecured claims. The Second Case Plan would pay \$50,117.59 in arrears to Rushmore Loan Management Service.

On November 19, 2020, U.S. Bank filed claim 3-2, asserting a claim secured by the Deed of Trust in the amount of \$364,041.64, with prepetition arrears in the amount of \$49,981.66. Second Case, claim 3-2. On December 23, 2020, U.S. Bank filed an objection to the Second Case Plan (the "U.S. Bank Objection"). Second Case, doc. 25. In its Objection, U.S. Bank asserted that the Second Case Plan was infeasible because Debtor lacking sufficient disposable income to make step-up plan payments. Second Case, doc. 25.

The chapter 13 trustee also filed objections to confirmation of the Second Case Plan, noting, among other things, that Debtor, at that time, may not have been entitled to a \$175,000 homestead exemption and that the Second Case Plan may be infeasible. The chapter 13 trustee stated that Debtor should "file [a] declaration with court explaining how will increase plan payment from \$340 to \$1,500 in month 13." Second Case, doc. 22.

On January 8, 2021, Debtor filed a Declaration that she had made three postpetition deed of trust payments to U.S. Bank, representing the payments due on November 1, 2020, December 1, 2020 and January 1, 2021. Second Case, doc. 28.

On February 22, 2021, Debtor filed a notice of non-opposition to the U.S. Bank Objection. Second Case, doc. 30. On March 11, 2021, the Court entered an order dismissing the Second Case. Second Case, doc. 31.

D. The Pending Chapter 13 Case

On March 10, 2021, Debtor filed another chapter 13 petition, initiating this case.

On March 15, 2021, Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 (the "Motion") [doc. 10]. Debtor states that, because her income was insufficient to propose a 100% plan, Debtor acquiesced to dismissal of the Second Case. Declaration of Teresa Louise Noto, attached to the Motion, doc. 12, ¶ 9–10. Debtor also represents that she intends to propose a feasible chapter 13 plan based on

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her current disposable income, as well as potential future sources of income, such as renting rooms in the Granada Property. *Id.*, at ¶ 11–12.

On March 24, 2021, U.S. Bank filed an opposition to the Motion (the "Opposition") [doc. 14]. In the Opposition (which is not supported by a declaration), U.S. Bank contends that Debtor filed her pending case in bad faith because: (1) Debtor filed the pending case on the same day that the Second Case was dismissed; (2) Debtor failed to make mortgage payments between January 2021 to March 2021; (3) Debtor has yet to file her schedules or chapter 13 plan in the pending case; and (4) Debtor has not shown that her financial situation has significantly changed to ensure plan feasibility and performance.

On March 24, 2021, Debtor filed her schedules and Statement of Financial Affairs [doc. 18]. In her schedule A, Debtor lists an interest in the Granada Property with a fair market value of \$642,700.00. In her schedule C, Debtor claims a homestead exemption in the amount of \$243,658.36 (based on a substantial increase in the statutory homestead exemption).

In her schedule D, Debtor indicates that the Granada Property is encumbered by: (1) a first position deed of trust to Rushmore Loan Management Service, loan servicer for U.S. Bank, in the amount of \$364,041.64; and (2) a second position deed of trust to Green Tree Servicing LLC in the amount of \$35,000.00. In her schedule E/F, Debtor lists no priority unsecured claims and lists aggregate nonpriority unsecured claims in the amount of \$30,094.00.

In her schedule I, Debtor states that she is a senior accounting clerk, where she has been employed for the last 21 years, that her spouse is disabled and collects Social Security, and that Debtor has a 12-year old child.

In her schedules I and J, Debtor sets forth monthly income of \$3,215.43 and monthly expenses of \$2,451.51, leaving a net monthly income of \$763.92. Since the Second Case, the income of Debtor and her spouse has not materially changed. The primary difference is Debtor's net monthly income, in comparison with her net income in the Second Case, arises from a reduction in Debtor's payroll deductions.

On March 24, 2021, Debtor filed a proposed chapter 13 plan (the "Third Case Plan") [doc. 15]. In the Third Case Plan, Debtor proposes to make plan payments in the

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CONT... Teresa Louise Noto

Chapter 13

amount of \$765.00 from months 1 through 12, then \$1,555.00 from months 13 through 60, which Debtor estimates will pay 52% of nonpriority unsecured claims. The Third Case Plan provides for payment of \$49,982.00 in arrears to Rushmore Loan Management Service.

II. 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. The presumption may be rebutted by "clear and convincing" evidence to the contrary.

In the Motion, Debtor states that she agreed to dismissal of the Second Case because she was unable to propose a feasible chapter 13 plan, given that her homestead exemption was significantly less and her income was insufficient to propose a plan which would pay 100% of nonpriority unsecured claims.

In her pending case, Debtor's monthly income is \$3,215.43 and her monthly expenses are \$2,451.51, leaving a net monthly income of \$763.92. Debtor further states that she intends to rent out rooms in the Granada Property to generate additional income.

Like in the Second Case, despite her significantly increased homestead exemption, Debtor's proposed chapter 13 plan may remain infeasible. Debtor has not yet sufficiently demonstrated how she can make step-up plan payments in the amount of \$1,555.00.

III. CONCLUSION

In light of the foregoing, 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 **July 7, 2021 at 9:30 a.m.**

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CONT... Teresa Louise Noto

Chapter 13

Prior to the continued hearing, Debtor must pay: (1) her April 2021, May 2021 and June 2021 deed of trust payments in the amount of \$1,641.51 (as stated in her current schedule J) as to the Granada Property; and (2) her April 2021, May 2021 and June 2021 plan payments in the amount of \$765.00 as stated in the Third Case Plan [doc. 15].

No later than July 2, 2021, Debtor must file and serve on Rushmore Loan Management Service: (1) a completed and substantiated Declaration Setting Forth Postpetition, Preconfirmation Deed of Trust Payments Official Form F 3015-1.4 to demonstrate that she made her required post-petition deed of trust payments; (2) a separate declaration with evidence that she made her April 2021, May 2021 and June 2021 Third Case Plan payments; and (3) a separate declaration with evidence demonstrating that Debtor has received, or made progress to obtain, rental income from the Granada Property.

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

Party Information

Debtor(s):

Teresa Louise Noto

Represented By
Nima S Vokshori

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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1:16-13382 Christopher Sabin Nassif

Chapter 11

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

- #12.00** 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); 8/12/20 (stip); 2/10/21(stip); 2/17/21

Docket 1

***** VACATED *** REASON: Continued to 6/9/21 at 1:30pm pursuant to
order [doc. 99].**

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

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CONT... Christopher Sabin Nassif

Chapter 11

Robin Nassif

Represented By
Matthew D. Resnik

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Hearing Room 301

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1:18-11488 Christopher Anderson

Chapter 7

Adv#: 1:19-01044 Gottlieb v. Biddle et al

#13.00 Pre-Trial 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; 7/22/20; 10/21/20(stip); 1/20/21(stip)

Stip to dismiss filed 3/26/21.

Docket 7

***** VACATED *** REASON: Order dismissing case entered 3/29/21. [Dkt. 85]**

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

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CONT...

Christopher Anderson

Howard Camhi

Chapter 7

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1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01065 Lev Investments, LLC v. SENSIBLE CONSULTING AND

#14.00 Pre-Trial conference re: removed proceeding

fr. 8/12/20; 9/16/20; 10/7/20; 2/17/21

Docket 1

Tentative Ruling:

On June 26, 2020, the plaintiff removed this action to this Court. On September 21, 2020, the Court entered an order severing the action and retaining jurisdiction over claims related to the plaintiff's real property. The plaintiff has since sold this real property and confirmed a chapter 11 plan. The Court remanded the other claims in the removed action that were not directly related to the real property.

On October 7, 2020, the Court held a status conference. At that time, based on a status report filed by the parties and their proposed deadlines, the Court set the following dates and deadlines governing this adversary proceeding: (A) a discovery cutoff date of November 30, 2020; (B) a deadline to file pretrial motions of January 15, 2021; (C) a deadline to file a joint pretrial stipulation of February 3, 2021; and (D) a pretrial conference on February 17, 2021. The Court instructed the plaintiff to submit a scheduling order no later than October 14, 2020.

The plaintiff did not submit a scheduling order. On February 17, 2021, the Court held a pretrial conference. Contrary to the Court's ruling and Local Bankruptcy Rule 7016-1(b), the parties did not file a joint pretrial stipulation, and the plaintiff did not file a unilateral pretrial statement. As such, on February 19, 2021, the Court issued an Order to Show Cause why this adversary proceeding should not be dismissed for failure to prosecute (the "OSC") [doc. 48].

On March 24, 2021, the plaintiff filed a response to the OSC [doc. 51]. However, once again, the parties did not timely file a joint pretrial stipulation, and the plaintiff did not timely file a unilateral pretrial statement. The plaintiff also did not submit a scheduling order.

Instead, the parties filed a joint status report [doc. 52]. In the joint status report, the

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CONT... Lev Investments, LLC

Chapter 11

parties propose dates and deadlines that already have expired, such as the discovery cutoff date and the deadline to file a joint pretrial stipulation. The plaintiff also notes that the plaintiff is considering filing an amended complaint. However, the plaintiff has not moved to extend these deadlines, including the deadline to file a motion to amend the pleadings, under Federal Rule of Civil Procedure 16(b)(4) or Federal Rule of Bankruptcy Procedure 9006(b)(1). Moreover, although the plaintiff contends that it may request leave to amend the complaint "[i]n light of a filing of numerous proofs of claims by" the defendants, the defendants filed their proofs of claim on August 10, 2020, months before the pretrial motion deadline of January 15, 2021.

Pursuant to Federal Rule of Civil Procedure 16(b)(4), "[a] schedule may be modified only for good cause and with the judge's consent." This Court "is given broad discretion in supervising the pretrial phase of litigation...." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992).

The plaintiff has not shown good cause to extend the dates and deadlines set forth in the Court's original schedule. In addition, in light of the plaintiff's continued failure to submit a scheduling order, timely file requests for extension of deadlines and timely file a pretrial statement, the plaintiff also has not shown cause why this adversary proceeding should not be dismissed. Consequently, the Court will dismiss this case for failure to prosecute.

The Court will prepare the Order.

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

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CONT... Lev Investments, LLC
RUVIN FEYGENBERG

Represented By
John Burgee

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

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1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01065 Lev Investments, LLC v. SENSIBLE CONSULTING AND

#15.00 Order to show cause why this adversary proceeding should not be dismissed for failure to prosecute

Docket 1

Tentative Ruling:

See calendar no. 14.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

SENSIBLE CONSULTING AND

Represented By
John Burgee
David A Tilem

MICHAEL LEIZEROVITZ

Represented By
John Burgee
David A Tilem

RUVIN FEYGENBERG

Represented By
John Burgee
David A Tilem

Ming Zhu LLC

Pro Se

DOES 1 through 100, inclusive

Pro Se

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh

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Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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1:18-11342 Victory Entertainment Inc

Chapter 7

Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

#16.00 Defendants' motion to dismiss second amended complaint

Docket 37

Tentative Ruling:

Grant in part and deny in part.

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]. On October 16, 2020, Defendants filed a motion to dismiss the FAC (the "First Motion") [doc. 20].

On December 23, 2020, the Court held a hearing on the First Motion. At that time, the Court issued a ruling (the "Ruling") [doc. 27] holding that: (A) as to the Trustee's claim under 11 U.S.C. § 547(b), the Trustee failed to adequately allege that Debtor was insolvent during the relevant preferential period; (B) as to the Trustee's claim for fraudulent transfer, the Trustee (i) could not step into the shoes of the Internal Revenue Service (the "IRS") to avoid transfers 10 years before the petition date and (ii) did not include sufficient allegations regarding insolvency. On January 7, 2021, the Court entered an order granting the First Motion (the "Dismissal Order") [doc. 34]. In the Dismissal Order, the Court also instructed that, in any amended complaint, the Trustee should plead facts regarding Defendants' non-statutory insider status.

On January 22, 2021, the Trustee filed a second amended complaint (the "SAC") [doc. 36]. On February 5, 2021, Defendants filed a motion to dismiss the SAC (the "Motion") [doc. 37]. In the Motion, Defendants assert that: (A) the Trustee did not adequately allege that Defendants are non-statutory insiders; (B) the Trustee did not

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adequately allege that Debtor was insolvent at the time of the relevant transfers; (C) the allegations in the SAC do not amount to a breach of the alleged lease agreement between Debtor and Defendants; and (D) the Trustee's breach of contract and breach of the implied covenant of good faith and fair dealing claims are time barred.

On March 24, 2021, the Trustee filed an opposition to the Motion (the "Opposition") [doc. 44]. On March 31, 2021, Defendants filed a reply to the Opposition [doc. 46].

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

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determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

"A court may [also] consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). 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).

B. Sufficiency of Allegations Regarding Defendants' Insider Status

Non-statutory insiders are entities that are "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." *In re Enter. Acquisition Partners, Inc.*, 319 B.R. 626, 631 (B.A.P. 9th Cir. 2004) (citing *In re Anderson*, 165 B.R. 482, 485 (Bankr. D. Or. 1994)). For instance, in *In re*

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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.

Standard Stores, 124 B.R. at 325.

"[A]t the pleading stage, a complaint need only to raise the possibility that the Defendant was an insider of the debtor at the time of the payments above the speculative level." *In re Oconee Reg'l Health Sys., Inc.*, 621 B.R. 64, 78 (Bankr. M.D. Ga. 2020) (internal quotation omitted); *see also Fayer*, 649 F.3d at 1064 (holding that "[t]he plausibility standard is not akin to a probability requirement" and that courts "construe the pleadings in the light most favorable to the non-moving party").

Here, the Trustee adequately alleged that Defendants qualified as non-statutory insiders. The SAC includes factual allegations beyond mere conclusory allegations of law. First, with respect to Hala, the SAC includes detailed allegations that Hala is an alter ego of Mr. Halajyan. SAC, ¶¶ 35-46. Defendants do not challenge the Trustee's alter ego allegations.

As to Mr. Halajyan, the Trustee alleges that: (A) Mr. Halajyan is related to Debtor's principal; (B) for a number of years, Mr. Halajyan was Debtor's principal; (C) at the time Mr. Halajyan was Debtor's principal, Mr. Halajyan was heavily involved in the day-to-day operations of Debtor; and (D) after Mr. Halajyan sold Debtor's business to

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Debtor, Mr. Halajyan continued to be involved with Debtor by serving as a primary witness on behalf of Debtor during ongoing litigation initiated by the creditor with one of the largest claims against the estate. SAC, ¶ 16(a)-(z). In addition, the Trustee also alleges that, after selling Debtor's business to Debtor, Defendants entered into a lease agreement with Debtor and, since then, have maintained a lessor-lessee relationship with Debtor. SAC, ¶ 17.

Defendants argue that the Trustee has not alleged an insider relationship at the time of the subject transfers. However, neither Defendants' role as Debtor's landlord nor Mr. Halajyan's familial relationship with Debtor's principal terminated prior to the time the subject transfers occurred. These allegations, combined with the numerous allegations regarding Defendants' past ownership of and involvement with Debtor, are sufficient to "raise the possibility that" Defendants were insiders "above the speculative level." *Oconee Regional*, 621 B.R. at 78.

C. Sufficiency of Allegations Regarding Insolvency

Defendants also contend that the Trustee has not adequately alleged insolvency at the time of the preferential or fraudulent transfers. However, at this pleading stage, the allegations are sufficient to show "more than a sheer possibility" that Debtor was insolvent at the time of the transfers. *Fayer*, 649 F.3d at 1064. Conclusory allegations that a debtor was insolvent at the time of the subject transfer are insufficient. *See In re Caremerica, Inc.*, 409 B.R. 737, 752 (Bankr. E.D.N.C. 2009) ("In this case, the trustee asserts that '[e]ach preferential transfer was made while the [t]ransferor was insolvent.' Without factual assertions in support of the debtor's insolvency, however, the trustee's conclusory statement fails to satisfy the first prong under *Iqbal*."). However, allegations regarding insolvency are sufficient if the plaintiff includes factual allegations in support of the conclusion that a debtor was insolvent. *See e.g. In re Amcad Holdings, LLC*, 579 B.R. 33, 39-40 (Bankr. D. Del. 2017) (holding that allegations sufficient where the complaint alleged that the debtor's president stated that proper accounting practices would have shown that the debtor was insolvent); and *In re Prototype Eng'g & Mfg., Inc.*, 2019 WL 9243004, at *4 (Bankr. C.D. Cal. Dec. 12, 2019) (aggregating cases regarding sufficiency of allegations of insolvency for purposes of California's fraudulent transfer law and noting that "insolvency is best left to discovery to determine").

Here, the Trustee has adequately alleged that Debtor was insolvent during the period

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between 90 days and one year before the petition date. In the SAC, the Trustee, referring to Debtor's judicially noticeable schedule F, alleges that Debtor owed multiple debts arising in 2015 to 2016. SAC, ¶ 53. The Trustee also alleges that Debtor was facing liability from a class action lawsuit estimated to exceed \$10 million. *Id.* The Court may take judicial notice of the fact that the class action lawsuit was filed on September 10, 2010, i.e., before the preference period. Finally, the Trustee alleges that Debtor did not have sufficient assets to satisfy these debts and liabilities. SAC, ¶ 53. These allegations are not conclusory allegations that Debtor was insolvent, and are sufficient to survive a motion to dismiss.

Defendants argue that the Trustee cannot rely on the estimated liability from the class action lawsuit because the liability qualifies as a contingent liability. However, for purposes of determining insolvency under § 547(b), "contingent liabilities must be included in the computation of total indebtedness." *In re Imagine Fulfillment Servs., LLC*, 489 B.R. 136, 146 (Bankr. C.D. Cal. 2013) (internal quotation omitted). Nevertheless, "if there is a contingent asset or contingent liability, that asset or liability must be reduced to its present, or expected value." *Id.* To the extent Defendants assert that the SAC must discount the \$10 million value attributed to the class action lawsuit, the Trustee alleges that the value of the lawsuit is "estimated." SAC, ¶ 53. As such, the Trustee has alleged the "present, or expected value" of the lawsuit. Defendants have set forth no authority that, at the motion to dismiss stage, the Trustee is required to provide evidence supporting its estimation of the value of the lawsuit. Defendants may challenge the value of this contingent liability when the parties are ready to present evidence. *See In re Felt Mfg. Co., Inc.*, 371 B.R. 589, 637 (Bankr. D.N.H. 2007) ("To survive a motion to dismiss, a plaintiff only has to allege sufficient facts, not prove them.").

With respect to the insolvency allegations related to the Trustee's fraudulent transfer claim, the Trustee has not included any allegations regarding liabilities predating the class action lawsuit, which was filed on September 10, 2010. As such, the Court will dismiss the fraudulent transfer claim for any transfers preceding September 10, 2010. In any event, in connection with the FAC, the Court ruled that, because the FAC did not include any allegations that the IRS was an actual creditor of the estate, the Trustee could not step into the shoes of the IRS to take advantage of a longer statute of limitations period. The SAC is similarly devoid of allegations regarding the IRS; in addition, the Court may take judicial notice that the IRS has not filed a claim against the estate. Under Cal. Civ. Code § 3439.09(c), "a cause of action under this

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chapter with respect to a transfer or obligation is extinguished if no action is brought or levy made within seven years after the transfer was made or the obligation was incurred." As such, the Trustee may not recover any transfers before May 25, 2011 (seven years before the petition date). With respect to transfers occurring within the period that is not time barred, the Trustee has adequately pled insolvency.

D. Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing

"The elements of a cause of action for breach of contract are (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." *Tribeca Companies, LLC v. First Am. Title Ins. Co.*, 239 Cal.App.4th 1088, 1109 (Ct. App. 2015) (internal quotations omitted).

Defendants contend that the SAC does not establish a breach of the lease agreement because Debtor agreed to pay the amounts charged by Defendants, even if those amounts exceeded the cap on rent under the subject lease.

Defendants misconstrue the allegations in the SAC. In the SAC, the Trustee alleges that Defendants miscalculated the annual rent increases in contravention of the terms of the lease. SAC, ¶ 24. The Trustee does not allege that Debtor agreed to the rent increase, or knowingly accepted the miscalculated rent. Rather, the Trustee alleges that Debtor and Defendants were parties to a lease (the existence of a contract), that Debtor made all payments under the lease agreement (Debtor's performance under the lease), that Defendants violated the term of the lease placing a cap on rent by miscalculating and overcharging Debtor without Debtor's knowledge (the breach) and that Debtor was damaged by paying more than the lease allowed (the damages). These allegations state a claim for relief under California law for breach of contract. In addition, although Defendants argue that the alleged facts do not qualify as a breach under the cases referenced by Defendants, the allegations constitute "an unjustified or unexcused failure to perform... part of what is promised in a contract," i.e., the promise to cap the rent in the lease. *Sackett v. Spindler*, 248 Cal.App.2d 220, 227 (Ct. App. 1967).

The remaining authorities cited by Defendants are inapposite. Defendants first reference Cal. Civ. Code § 1698(b), which provides that "[a] contract in writing may be modified by an oral agreement to the extent that the oral agreement is executed by

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the parties." Here, the Trustee is not alleging that Debtor and Defendants modified the lease with an oral agreement. The Trustee is alleging that Defendants overcharged rent without Debtor's knowledge.

In *Julian v. Gold*, 214 Cal. 74 (1931), the court held that a landlord that accepts less than the amount of rent is estopped from later recovering the balance if the landlord did not object upon receipt of the rent. *Julian*, 214 Cal. at 80. However, this holding was based on the fact that the lessor knew, at the time the lessor accepted the tender of money, that the amount was less than the contracted amount. *Id.* The holding also was based on California Code of Civil Procedure ("CCP") § 2076, which provides—

The person to whom a tender is made must, at the time, specify any objection he may have to the money, instrument, or property, or he must be deemed to have waived it; and if the objection be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards.

Here, the Trustee is not alleging that Debtor knowingly overpaid rent, thereby accepting the overcharged amount. The Trustee is alleging that Defendants miscalculated and overcharged Debtor without Debtor's knowledge of the miscalculation. In addition, CCP § 2076 does not apply to this case because Debtor was not the entity "to whom a tender is made," but was the party making the tender to Defendants. Similarly, the holding in *Wagner v. Shapona*, 123 Cal.App.2d 451, 460 (Ct. App. 1954), was that an oral agreement or knowing conduct by a party to an agreement could modify the terms of the agreement or estop a party from complaining about a breach of the agreement. Here, the Trustee does not allege either a subsequent oral agreement or knowing acceptance of the overcharged rent in violation of the lease. As such, the Trustee has sufficiently alleged a breach of the lease.

Defendants assert that the Trustee's claim for breach of the covenant of good faith and fair dealing also fails because the SAC did not adequately plead a breach of the lease. However, because the Trustee has adequately alleged a breach of the lease, the Trustee's claim for breach of the covenant of good faith and fair dealing is not subject to dismissal on this basis.

E. The Statute of Limitations

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Pursuant to CCP § 337(a), actions for breach of written contracts are subject to a four year statute of limitations. The same statute applies to actions for a breach of the covenant of good faith and fair dealing. *Perez-Encinas v. AmerUs Life Ins. Co.*, 468 F.Supp.2d 1127, 1134 (N.D. Cal. 2006).

As discussed in the Ruling, "[i]t 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 *Tsemetzin*). 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.

Here, because the alleged lease is divisible, the continuous doctrine applies. As such, although the alleged breaches related to monthly payments that are outside the four

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year period are time barred, any overcharged payments within four years of the petition date are not barred by the statute of limitations.

In the Opposition, the Trustee argues that the "discovery rule" applies to toll the statute of limitations. "[A] cause of action under the discovery rule accrues when the plaintiff discovers or should have discovered all facts essential to his cause of action." *Apr. Enterprises, Inc. v. KTTV*, 147 Cal.App.3d 805, 826 (Ct. App. 1983) (internal quotations omitted). "[T]his has been interpreted under the discovery rule to be when plaintiff either (1) actually discovered his injury... or (3) could have discovered injury and cause through the exercise of reasonable diligence." *Id.*

There are no allegations in the SAC regarding when Debtor and/or the Trustee discovered the alleged breach of the lease. There also are no allegations regarding whether Debtor could have discovered the miscalculation with due diligence. As such, in looking at the four corners of the SAC, the discovery rule does not apply. The Court will dismiss the Trustee's breach claims with respect to any transfers that occurred prior to four years before the petition date.

F. The Trustee's Sixth and Ninth Claims

The Trustee's Sixth and Ninth Claims are dependent on whether the Trustee may avoid transfers as preferential or fraudulent. Because the Court is not dismissing the Trustee's claims for preferential and fraudulent transfers, these claims also survive.

III. CONCLUSION

The Court will grant the Motion with respect to time barred transfers, as discussed above. The Court will deny the Motion with respect to the balance of the claims.

If the Trustee elects to proceed with the SAC, Defendants must file an answer to the SAC no later than **April 21, 2021**.

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

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By

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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

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1:18-11342 Victory Entertainment Inc

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Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

- #17.00** Status conference re: second amended complaint for:
- 1) Avoidance and recovery of fraudulent transfers pursuant to Title 11 U.S.C. sec 544(a) and (b), 548 and 550; and Cal. Civ. Code §§ 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) Breach of contract;
 - 5) Breach of covenant of good faith and fair dealing; and
 - 6) Turnover of property

fr. 7/29/20; 08/26/20; 11/4/20; 12/9/20; 12/23/20; 3/3/21

Docket 36

Tentative Ruling:

See calendar no. 16.

The Court intends to continue this status conference to **1:30 p.m. on May 12, 2021**.
No later than **April 28, 2021**, the parties must submit a joint status report.

Plaintiff must submit a scheduling order within seven (7) days.

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

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Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Elissa Miller
Paul A Beck

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1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#18.00 Motion to extend deadline for pre-trial motions to be filed

Docket 39

Tentative Ruling:

Grant.

I. BACKGROUND

On January 10, 2020, Husnutkin K. Zairov ("Defendant") filed a voluntary chapter 7 petition. On March 23, 2020, Alexander Ermakov ("Plaintiff") filed a complaint against Defendant, requesting nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(2) and (a)(4).

On October 21, 2020, the Court held a status conference. At that time, the Court set dates and deadlines related to this adversary proceeding. On October 29, 2020, the Court entered a scheduling order [doc. 37], setting February 12, 2021 as the last day to file a pretrial motion (the "Pretrial Motion Deadline").

On February 19, 2021, one week after the Pretrial Motion Deadline, Plaintiff filed the Motion. In support of the Motion, Plaintiff provided declarations by an employee and one of his attorneys in which these individuals represent that they failed to calendar the pretrial motion deadline because, among other things: (A) several employees of the firm quit at the time the deadline would have been calendared; and (B) in light of Covid-19, the limited staff has been working remotely. Concurrently, Plaintiff filed a motion for summary judgment (the "MSJ") [doc. 40].

On March 24, 2021, Defendant filed an opposition to the Motion (the "Opposition") [doc. 45]. In the Opposition, Defendant argues that Plaintiff has not shown excusable neglect under Federal Rule of Bankruptcy Procedure 9006(b)(1).

II. ANALYSIS

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Pursuant to Federal Rule of Civil Procedure ("Rule") 16(b)(4), "[a] schedule may be modified only for good cause and with the judge's consent." "The district court is given broad discretion in supervising the pretrial phase of litigation...." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992).

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 9006(b)(1)—

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

FRBP 9006(b)(1).

To determine whether a party's failure to meet a deadline constitutes "excusable neglect," courts apply the following four factor test: "(1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1261 (9th Cir. 2010) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498, 123 L.Ed. 2d 74 (1993)).

Here, Plaintiff has shown good cause to extend the pretrial motion deadline. Plaintiff offered two declarations demonstrating that staffing changes resulting from the pandemic caused the one week delay in filing the MSJ. In addition, Plaintiff will be moving for summary judgment based on issue preclusion. Although Defendant argues that allowing the MSJ to proceed will deny Defendant the right to testify and present evidence at trial, Defendant may present any testimony or evidence in opposition to the MSJ. In addition, proceeding with trial instead of adjudicating the MSJ will not prevent Plaintiff from arguing that the state court judgment is preclusive. Rather than expend the significant time and cost of trial, it is more efficient for both parties to present their arguments for or against preclusion by

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moving for or opposing summary judgment.

Plaintiff also has met the excusable neglect standard of FRBP 9006(b)(1). With respect to prejudice to the opposing party, Defendant asserts that allowing Plaintiff to proceed with the MSJ will prevent Defendant from testifying at trial. However, denying this Motion will not bar Plaintiff from arguing that the state court judgment precludes litigation; Plaintiff may present his preclusion arguments at trial. If the state court judgment precludes litigation, the Court will not consider any testimony or evidence, beyond the state court judgment, in entering a judgment under § 523(a)(2) (A). As such, proceeding to trial may result in Defendant expending unnecessary resources. On the other hand, if the state court judgment does not preclude litigation of the issues, Defendant will have an opportunity to testify at trial. As such, Defendant will not be prejudiced by the short delay in filing the MSJ.

Next, although Defendant states there was a nine month delay between Plaintiff's counsel stating that he would file an MSJ and the actual filing of the MSJ, the actual delay was one week. The deadline to file pretrial motions expired on February 12, 2021. Plaintiff filed the MSJ on February 19, 2021. The short delay will not significantly impact this proceeding. In addition, Plaintiff has provided detailed declarations regarding the reason for delay. Finally, the record does not contain any indication of bad faith, and Defendant does not contend that Plaintiff acted in bad faith. Consequently, Plaintiff has demonstrated good cause to extend the deadline and excusable neglect to allow the post-expiration extension under FRBP 9006(b)(1).

III. CONCLUSION

The Court will grant the Motion. The Court also will set the MSJ for hearing at **2:30 p.m. on May 19, 2021**. Plaintiff must file and serve notice of the hearing on the MSJ **no later than April 7, 2021**.

Plaintiff must submit an order on the Motion within seven (7) days.

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

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Defendant(s):

Husnutkin K Zairov

Represented By
Elena Steers
Adam Stevens

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:20-10067 Husnutkin K Zairov

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Adv#: 1:20-01034 Ermakov v. Zairov

#19.00 Pretrial 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; 3/10/21

Docket 15

Tentative Ruling:

The Court will continue this pretrial conference to **2:30 p.m. on May 19, 2021.**

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

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1:20-10678 John Michael Smith, Jr
Adv#: 1:20-01111 Smith v. Strigari

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#20.00 Motion for summary judgment

fr. 2/10/21

Docket 6

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On March 23, 2020, John Michael Smith, Jr. and Rebecca Phelps Smith ("Debtors") filed a chapter 13 petition. On June 18, 2020, after a request by Debtors, the Court entered an order converting Debtors' case to a chapter 11 case [Bankruptcy Docket, doc. 35].

A. Prepetition Events

On April 25, 2018, Joyce Applegate, Ms. Smith's mother, died without a will. Declaration of Louis Strigari [doc. 16], ¶ 2. On July 10, 2018, the probate court presiding over Ms. Applegate's probate estate appointed the Louis F. Strigari (the "Administrator") to administer the estate. *Id.*, ¶ 6.

On October 15, 2018, the Administrator filed an inventory of the estate. *Id.*, ¶ 10. On October 29, 2018, Ms. Smith filed exceptions to the inventory. *Id.* After a dispute arose between Ms. Smith and her sisters, the probate court helped negotiate a resolution to Ms. Smith's exceptions. *Id.*, ¶ 12. On January 30, 2019, the probate court issued an entry memorializing the agreement (the "Entry"). *Id.*, ¶ 12, Exhibit 4. As noted in the Entry, Ms. Smith and her sisters agreed that Ms. Smith would be permitted to take any items of personal property from the probate estate as part of her distributive share. *Id.*

On March 20, 2019, the Internal Revenue Service (the "IRS") delivered a notice to the Administrator directing the probate estate to pay Ms. Smith's distributions to the IRS.

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Declaration of Joshua L. Goode [doc. 17], ¶ 8. Subsequently, Ms. Smith and the Administrator discussed staying the probate proceedings for Ms. Smith to resolve the issues with the IRS. *Id.*, ¶¶ 9-10, 13, 15.

On January 14, 2020, the Administrator filed a motion for instructions from the probate court regarding distribution of the probate estate (the "Motion for Instructions"). *Id.*, ¶ 34. On January 20, 2021, the probate court held a hearing on the Motion for Instructions. *Id.*, ¶ 36. After the hearing, the Magistrate presiding over the hearing issued an order (the "Magistrate Order"). *Id.*, ¶ 36, Exhibit 9. In the Magistrate Order, the Magistrate held that: (A) a barber chair belonged to Ms. Smith and was not property of the probate estate; (B) the Administrator should hold personal property of the probate estate until February 7, 2020, to allow Ms. Smith time to resolve her issues with the IRS; (C) if, by the deadline of February 7, 2020, Ms. Smith did not select items to purchase from the estate, the Administrator would be allowed to sell the personal property; and (D) a narwhal tusk that was property of the probate estate could not be legally sold and would be donated to a museum. *Id.*

Ms. Smith filed an objection the Magistrate Order. *Id.*, ¶ 37. On March 19, 2020, the probate court entered an order on Ms. Smith's objections (the "Probate Order"). *Id.*, ¶ 40, Exhibit 14. In the Probate Order, the probate court recited the pertinent factual history, including, in relevant part, a discussion about the Entry that allowed Ms. Smith to select personal items from the probate estate. Probate Order, p. 1 ("In January 2019, the exceptions were resolved by agreement, which included an agreement that Rebecca Smith be entitled to select items of personal property from the estate, which would be counted against her distributive share."). After discussing the Magistrate Order, which set a deadline for Ms. Smith to resolve issues with the IRS and purchase items from the probate estate, the probate court held—

The Court finds that the Magistrate property determined the facts and appropriately applied the law and that the Magistrate's Order was appropriate based upon the information available at the time.

The Administrator has now asserted that any distribution of assets to Ms. Smith would violate the IRS levy. The estate administration has been extended to allow Ms. Smith time to resolve the IRS tax levy. She has apparently been unable to do so. The Administrator's function is to marshal the assets of the estate and make distributions pursuant to

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the statute of descent and distribution. The Administrator is authorized to convert the assets to cash including selling the personal property, which was discussed with the Magistrate. The Administrator should execute his duties based upon his interpretation of the IRS levy. The Administrator is not required to permit Ms. Smith to purchase items of personal property from the estate, and may proceed immediately with the sale of the personal property.

Ms. Rebecca Smith's objections are hereby denied.

Id.

B. Debtors' Bankruptcy Case and this Adversary Proceeding

On March 23, 2020, after entry of the Probate Order, Debtors filed their bankruptcy petition. On May 1, 2020, Debtors and the IRS entered into a stipulation for relief from the automatic stay (the "IRS Stipulation") [doc. 18]. In the IRS Stipulation, Debtors and the IRS noted that the IRS recorded several Notices of Federal Tax Lien against Debtors' property and that, prepetition, the IRS issued a levy on the probate estate of Ms. Applegate. Through the IRS Stipulation, Debtors and the IRS agreed that the automatic stay would be lifted as to the IRS's levy against the probate estate and that, if Ms. Smith received a distribution from the probate estate, the IRS's lien would attach to the distribution.

On November 1, 2020, Ms. Smith filed a complaint (the "Complaint") against the Administrator. Through the Complaint, Ms. Smith asserts claims for declaratory relief regarding the estate's interest in the personal property that was the subject of the Probate Order (the "Probate Assets"), violation of the automatic stay based on the Administrator's control over and custody of the Probate Assets and turnover of the Probate Assets to the estate.

On December 2, 2020, the Administrator filed a motion to dismiss the Complaint (the "Motion to Dismiss") [doc. 6]. At the hearing on the Motion to Dismiss, the Court advised the parties that it would convert the Motion to Dismiss to a motion for summary judgment.

On February 24, 2021, the Administrator filed a brief in support of his request for

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summary judgment (the "MSJ") [doc. 15]. In the MSJ, the Administrator asserts that: (A) under the probate exception, federal courts do not have jurisdiction to administer a probate estate; and (B) assets of the probate estate are not property of the estate.

On March 10, 2021, Ms. Smith filed an opposition to the MSJ (the "Opposition") [doc. 27]. In the Opposition, Ms. Smith asserts that: (A) the Probate Order established that the Probate Assets are Ms. Smith's personal property and the Probate Order precludes relitigation of the issue of ownership; (B) the automatic stay prevented the Administrator from selling the Probate Assets; and (C) the levy issue with the IRS was resolved through the IRS Stipulation.

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.*,

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121 F.3d 1315, 1317 (9th Cir. 1997).

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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. The Probate Exception

"[T]he probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court." *Marshall v. Marshall*, 547 U.S. 293, 311–12, 126 S.Ct. 1735, 1748, 164 L.Ed.2d 480 (2006). The exception is "a reiteration of the general principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*." *Id.*, at 311; *see also Goncalves By & Through Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1252 (9th Cir. 2017) (holding that, under *Marshall*, federal courts are barred from: (1) probating

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or annulling a will; (2) administering a decedent's estate; or (3) assuming *in rem* jurisdiction over property that is in the custody of the probate court).

For example, in *Rentas v. Gonzalez*, 507 B.R. 32 (B.A.P. 1st Cir. 2014), a probate court identified assets of the probate estate and entered judgment designating heirs entitled to receive a distribution of the estate after liquidation of the probate assets. *Rentas*, 507 B.R. at 35. After the probate court entered this judgment, the debtors filed a chapter 7 petition. *Id.* Postpetition, the probate administrator sold probate assets and deposited the funds with the probate court. *Id.*, at 35-36.

Subsequently, the chapter 7 trustee filed an adversary complaint against heirs of the probate estate, alleging that the debtors had previously entered into agreements to purchase the heirs' shares, and requesting turnover of the proceeds from the sale of the probate assets. *Id.*, at 37. After a motion for summary judgment, the bankruptcy court held that the proceeds should be turned over to the debtors' bankruptcy estate. *Id.*, at 41. On appeal, the Bankruptcy Appellate Panel of the First Circuit reversed, holding that, although the bankruptcy court has jurisdiction to make determinations under 11 U.S.C. § 542, the probate assets (including the sale proceeds) were not property of the estate subject to turnover under § 542. *Id.*, at 43. The panel explained—

Here, as the bankruptcy court correctly determined in another proceeding in this case, because the assets of the probate or "hereditary" estate—first in the form of real property and now in the form of the proceeds thereof—have never been distributed and have remained at all times in the possession of the CFI, they have never ceased to be part of the probate estate. As of the commencement of the bankruptcy case (and even today), the funds were not property of the Debtors, and therefore they have never become property of their bankruptcy estate. At most, the Debtors owned a right to distribution of a fraction of the hereditary estate; until the funds are distributed, the Debtors and their bankruptcy estate have no property interest in the funds themselves. Therefore, the funds in question are not property of the bankruptcy estate and may not be recovered through § 542(a).

Id., at 43. The panel also held that, to the extent the chapter 7 trustee asserted claims requesting distribution of proceeds on any other basis, the probate exception

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prevented the bankruptcy court from adjudicating the adversary proceeding—

Here, the trustee's complaint, in seeking an order requiring the CFI to distribute the funds in its jurisdiction and possession, asks the bankruptcy court to dispose of—or at least endeavor to dispose of—property in the custody of the CFI, serving here as a probate court. The funds in question, the proceeds from sale of the Properties, are in the in rem jurisdiction and custody of the CFI. Under the probate exception, their distribution is the CFI's exclusive preserve. Indeed, only the CFI has comprehensive jurisdiction over all claims against those assets.

Id., at 44.

Here, as in *Rentas*, the Probate Assets are not property of the estate, and this proceeding falls squarely within the probate exception. Through the Complaint, Ms. Smith requests turnover of *res* within the custody of the probate court. Ms. Smith also requests an injunction preventing the Administrator from liquidating that *res*, i.e. from administering the decedent's estate. Because the probate court had jurisdiction over the Probate Assets before Debtors filed their bankruptcy petition, this Court does not have jurisdiction over the Probate Assets, and cannot enjoin the Administrator from liquidating the Probate Assets.

In the Opposition, Ms. Smith attempts to differentiate her case from *Rentas* by asserting that, here, there was a prepetition determination by the probate court that Ms. Smith is entitled to the Probate Assets. Ms. Smith appears to argue that, unlike *Rentas*, the prepetition Probate Order designated the Probate Assets as Ms. Smith's personal property. In reviewing the Probate Order, it is unclear how Ms. Smith reached this conclusion. [FN1].

Ms. Smith repeatedly refers to the following language in the Probate Order: "In January 2019, the exceptions were resolved by agreement, which included an agreement that [Ms. Smith] be entitled to select items of personal property from the estate, which would be counted against her distributive share." Probate Order, p. 1. However, this language was merely a recitation of relevant procedural history. The balance of the Probate Order, which Ms. Smith does not discuss, reflects that the Probate Order superseded and replaced both the January 2019 agreement and the Magistrate Order. *See State ex rel. Fraternal Ord. of Police, Cleveland Lodge No. 8 v.*

**United States Bankruptcy Court
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San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, April 7, 2021

Hearing Room 301

2:30 PM

CONT... **John Michael Smith, Jr**

Chapter 11

Tegreene, 58 Ohio St. 2d 235, 237 (1979) ("When two prior judgments conflict, the last in point of time operates as Res judicata [to] a third, later action.").

As clearly set forth in the Probate Order, the barber chair was the *sole* asset designated as Ms. Smith's personal property. The probate court held that the Administrator could proceed with liquidating the remaining assets for distribution to the decedent's estate. Any preexisting agreement Ms. Smith may have had was nullified when the Magistrate ordered the Administrator to liquidate the Probate Assets, subject to Ms. Smith's right to purchase items before their sale. That Ms. Smith had an option to purchase the Probate Assets indicates that the Probate Assets did not belong to Ms. Smith. In any event, after Ms. Smith objected to the Magistrate Order, the probate court held that the Administrator was "not required to permit Ms. Smith to purchase items of personal property from the estate, and may proceed immediately with the sale of the personal property." Probate Order, p. 3. At that time, the probate court also abrogated Ms. Smith's right to purchase the Probate Assets.

In light of the above, the Probate Order contradicts Ms. Smith's arguments regarding Ms. Smith's interest in the Probate Assets. With the exception of the barber chair, the Probate Order establishes that the Probate Assets are not property of the estate.

The automatic stay also does not prevent the Administrator from liquidating the Probate Assets. The automatic stay "is designed to effect an immediate freeze of the *status quo* by precluding and nullifying post-petition actions...in nonbankruptcy fora against the debtor..." *Hillis Motors, Inc. v. Hawaii Auto Dealers' Ass'n*, 997 F.2d 581, 585 (9th Cir. 1993). In the Opposition, Ms. Smith argues that Debtors filed their bankruptcy case to preserve Ms. Smith's right to the Probate Assets. In connection with this argument, Ms. Smith states that Debtors filed their bankruptcy petition on March 22, **2019**. Opposition, p. 17. However, Debtors filed their petition on March 23, **2020** [1:20-bk-10678-VK], *after* entry of the Probate Order on March 19, 2020. As such, the status quo, at the time of Debtors' bankruptcy filing, was a state court determination that, with the exception of the barber chair, the Probate Assets were property of the probate estate.

The IRS Stipulation also does not help Ms. Smith. First, the IRS Stipulation did not resolve the tax levy. In fact, the IRS Stipulation provides that "the IRS shall not be required to release its Probate Estate Levy or [the liens] against the Probate Estate." IRS Stipulation, p. 4. As such, to the extent Ms. Smith is arguing that she is entitled

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CONT... **John Michael Smith, Jr**

Chapter 11

to choose assets from the probate estate because she reached a resolution with the IRS, the argument is not supported by the terms of the IRS Stipulation. Next, the Magistrate set a firm deadline by which Ms. Smith had to resolve her issues with the IRS. The Probate Order reflects that Ms. Smith did not timely resolve the tax levy, and, as a result, lost her option to choose or purchase assets from the probate estate. Thus, even if the IRS Stipulation resolved the tax levy, the IRS Stipulation was executed *after* the deadline for Ms. Smith to resolve these issues.

As such, the Court will not enter judgment as to the barber chair; the Court will enter judgment in favor of the Administrator as to the remaining Probate Assets. [FN2].

III. CONCLUSION

The Court will not enter judgment on the issue of ownership of the barber chair. The Court will enter judgment in favor of the Administrator as to the remaining Probate Assets.

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

FOOTNOTES

1. Ms. Smith also asserts that issue preclusion bars relitigation of the findings and conclusions in the Magistrate Order. The Administrator does not dispute that the prepetition orders entered by the probate court preclude relitigation of the issues decided by the probate court, including whether the Probate Assets are property of the probate estate. The Court agrees that the probate court's prepetition orders are preclusive as to the issue of ownership of the Probate Assets. *See In re Doll*, 585 B.R. 446, 456 (Bankr. N.D. Ohio 2018) (outlining elements of issue preclusion under Ohio law). However, the doctrine of issue preclusion does not support Ms. Smith's assertion that the Probate Assets are property of her bankruptcy estate. For the reasons discussed herein, the Probate Order, which is the most recent prepetition order entered by the probate court, establishes that, with the exception of the barber chair, the Probate Assets are property of the *probate* estate.
2. The Administrator has not clearly stated his position with respect to the barber chair.

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CONT... John Michael Smith, Jr

Chapter 11

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

Plaintiff's Evidentiary Objections to the Declaration of Joshua L. Goode

paras. 7, 17, 30, 32: overrule

para. 28: overrule as to "she stated that she was not and she had filed a lawsuit against the IRS;" sustain as to the rest

para. 29: sustain as to "Teresa Applegate and Susanna Applegate were opposed to donation;" overrule as to the rest

para. 31: sustain as to "who had indicated they would accept the donation;" overrule as to the rest

para. 43: sustain

Plaintiff's Evidentiary Objections to the Declaration of Eric W. Goering

para. 8: sustain as to "which was denied by the Magistrate's Court Order of January 23, 2020;" overrule as to the rest

Party Information

Debtor(s):

John Michael Smith Jr

Represented By
Louis J Esbin

Defendant(s):

Louis F Strigari

Represented By
William E. Winfield

Joint Debtor(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

Movant(s):

Louis F Strigari

Represented By
William E. Winfield

**United States Bankruptcy Court
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2:30 PM

CONT... John Michael Smith, Jr

Chapter 11

Plaintiff(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
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Wednesday, April 7, 2021

Hearing Room 301

2:30 PM

1:20-10678 John Michael Smith, Jr
Adv#: 1:20-01111 Smith v. Strigari

Chapter 11

- #21.00** Status conference re complaint for:
1. Declaratory Relief;
 2. Injunctive Relief for Violation of Automatic Stay;
 3. Turnover of Property of the Bankruptcy Estate;
 4. Attorney Fees and Costs Under 11 U.S.C. § 362(k)

fr. 1/6/21; 1/13/21; 2/10/21

Docket 1

Tentative Ruling:

See calendar no. 20. How do the parties wish to proceed regarding Ms. Smith's barber chair, in light of the IRS levy?

Party Information

Debtor(s):

John Michael Smith Jr

Represented By
Louis J Esbin

Defendant(s):

Louis F Strigari

Pro Se

Joint Debtor(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

Plaintiff(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
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Thursday, April 8, 2021

Hearing Room 301

10:30 AM

1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the April 8, 2021 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.

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Meeting ID: 160 768 7708

Password: 157770

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 768 7708

Password: 157770

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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Hearing Room 301

10:30 AM

CONT...

Chapter

Tentative Ruling:

You will not be permitted to be physically present in the courtroom. All appearances for the April 8, 2021 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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Thursday, April 8, 2021

Hearing Room 301

10:30 AM

1:17-10378 Kandy Kiss of California, Inc. and Mary Teresa Barnes

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Howard Ehrenberg, Chapter 7 Trustee

Sulmeyerakupetz, Attorney for Chapter 7 Trustee

Pachulski Stang Ziehl & Jones LLP, Attorneys for David K. Gottlieb Former Interim Trustee

Grobstein Teeple, LLP, Accountants for Chapter 7 Trustee

Docket 274

Tentative Ruling:

The Court is continuing this hearing to **10:30 a.m. on April 22, 2021.**

Appearances on April 8, 2021 are excused.

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
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Thursday, April 8, 2021

Hearing Room 301

10:30 AM

1:18-12371 Jose Cadena

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

SLBiggs, A Division of SingerLewak, Accountant for Chapter 7 Trustee

Docket 43

Tentative Ruling:

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$3,680.00 and reimbursement of expenses of \$890.46. The trustee is authorized to collect 100% of the approved fees and reimbursement of expenses.

SLBiggs & Co. ("SLBiggs"), accountant to chapter 7 trustee – approve fees of \$2,635.00 and reimbursement of expenses of \$122.60, pursuant to 11 U.S.C. § 330, on a final basis. SLBiggs is authorized to collect 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

Debtor(s):

Jose Cadena

Represented By
Juanita V Miller

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 8, 2021

Hearing Room 301

10:30 AM

1:20-10156 Shalva Tikva

Chapter 7

#3.00 Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

SLBiggs, A Division of SingerLewak, Accountants for the Trustee

Docket 118

Tentative Ruling:

Nancy Hoffmeier Zamora, chapter 7 trustee – approve fees of \$7,700.00 and reimbursement of expenses of \$1,813.86. The trustee is authorized to collect 100% of the approved fees and reimbursement of expenses.

SLBiggs & Co. ("SLBiggs"), accountant to chapter 7 trustee – approve fees of \$2,950.00 and reimbursement of expenses of \$117.86, pursuant to 11 U.S.C. § 330, on a final basis. SLBiggs is authorized to collect 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

Debtor(s):

Shalva Tikva

Represented By
Michael R Totaro

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 8, 2021

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; 11/5/20(stip); 12/17/20; 2/4/21;
3/25/21

Docket 1

Tentative Ruling:

On July 28, 2020, the debtor filed a proposed chapter 11 plan (the "Plan") [doc. 108] and related disclosure statement (the "Disclosure Statement") [doc. 107]. Secured creditor JPMorgan Chase Bank, N.A. ("Chase") filed an objection to approval of the Disclosure Statement [doc. 128], noting that the Plan hinged on approval of the debtor's request for loan modification. Chase further stated that, although the debtor proposed making contractual mortgage payments and curing all arrears if the debtor's loan modification request was denied, the promissory note already matured. As such, Chase asserted that, unless the debtor obtains a loan modification, the debtor cannot afford to pay the amounts due under the promissory note.

Subsequently, the debtor withdrew the Plan and the Disclosure Statement.

What is the status of the debtor's request for loan modification? If the debtor is unable to obtain a loan modification, how does the debtor intend to proceed?

If the debtor is not making property tax payments, why is the debtor not doing so?

Is the debtor current on her settlement payments to Banc of California, N.A.? What is the status of the debtor's 2020 tax return? The debtor should be prepared to discuss these issues.

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D Resnik

**United States Bankruptcy Court
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Thursday, April 8, 2021

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#5.00 Status conference re: chapter 11 case

fr. 11/21/19; 4/9/20; 7/9/20, 7/16/20; 9/10/20; 10/15/20; 12/3/20(stip);
2/11/21(stip); 3/25/21

STIP TO CONTINUE FILED 3/18/21

Docket 1

***** VACATED *** REASON: Order approving stip entered 3/19/21.
Hearing continued to 4/22/21 at 1:00 PM. [Dkt.168]**

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

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Thursday, April 8, 2021

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#6.00 Confirmation hearing re debtor's first amended chapter 11 plan

fr. 12/3/20(stip); 2/11/21(stip); 3/25/21

STIP TO CONTINUE FILED 3/18/21

Docket 131

***** VACATED *** REASON: Order approving stip entered 3/19/21.
Hearing continued to 4/22/21 at 1:00 PM. [Dkt.168]**

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
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Judge Victoria Kaufman, Presiding
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Thursday, April 8, 2021

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#7.00 Hearing on Debtor's Amended Disclosure Statement

fr. 3/25/21

Docket 142

Tentative Ruling:

Deny.

At the hearing on approval of the debtor's original disclosure statement, held on January 21, 2021, the Court issued a ruling denying approval of the debtor's original disclosure statement and noted the following deficiencies, among others: (A) the debtor did not discuss how she intends to fund a plan and pay her mortgages and arrears if she is not successful in pending state court litigation; (B) in the attached financial statements, the debtor did not account for taxes owed by the debtor; (C) the debtor did not attach a Declaration of Current/Postpetition Income and Expenses; and (D) the class of general unsecured claims did not include any deficiency claims held by secured creditors.

On February 11, 2021, the debtor filed an amended chapter 11 plan and amended disclosure statement [docs. 142, 143]. The debtor did not cure any of the deficiencies outlined above.

In addition, the debtor has not specified how she intends to treat the claims of secured lenders. In both the original chapter 11 plan and the current amended chapter 11 plan, the proposed treatment of the secured lenders' claims appear to hinge on the debtor's success in state court litigation. The debtor believes such state court litigation may result in the reduction of the debtor's loan balances as well as an award of damages in favor of the debtor. However, the debtor has not explained the nature and extent of the potential reductions. For instance, in the ledger attached to the proof of claim filed by Wells Fargo Bank, N.A., the lender includes advances for "[c]ounty tax disbursement." Does the debtor believe all of these advances will be reduced to \$0 if she is successful in litigation, or does the debtor owe property tax payments that she will continue to owe regardless of the state court litigation? Do the current monthly payments proposed by the debtor account for payment of any delinquent property taxes, aside from those that arose in connection with the work performed on her real properties?

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1:00 PM

CONT... Blanca Mohd

Chapter 11

Aside from past due property tax payments, in her projections, the debtor apparently does not account for future property or income tax payments.

Moreover, the debtor has not provided disclosures detailing: (A) the amounts the debtor will owe the lenders in the event the debtor successfully reduces the loan balances; (B) how the debtor anticipates funding the contractual monthly payments and the payments on any remaining arrears; and (C) how, upon expiration of the adequate protection agreement, the debtor anticipates making payments beyond the \$2,000 per month set forth in that agreement.

In the event the debtor is not successful in state court, the debtor has not provided alternative treatment for these claims. What is the amount of contractual monthly payments the debtor will make if she is unsuccessful in state court? Does the debtor anticipate making payments under the loan modification agreements attached to the lenders' proofs of claim? In light of the anti-modification provision of 11 U.S.C. § 1123(b)(5), how will the debtor treat the claim secured by her residence? How will the debtor afford making payments to lenders if there is no reduction in her loan balance, or if the debtor does not receive any damages from the state court litigation?

As discussed by the U.S. Trustee, the debtor did not provide information about the terms of the leases related to her rental properties, and did not specify the amounts of anticipated rental increases. In Exhibit B to the amended disclosure statement, the debtor projected that she will receive \$3,300 per month in "family/household contributions." However, the debtor has not specified who will contribute this amount; if the debtor is referring to the household contributions mentioned in the tenants' declarations, the tenants did not specify the amounts they contribute per month, and did not commit to contributing a specific amount during the plan period.

The Court will allow the debtor to file an amended chapter 11 plan and amended disclosure statement **no later than May 6, 2021**. The debtor must cure all of the deficiencies outlined above. The Court will set a hearing on approval of the second amended disclosure statement **at 1:00 p.m. on June 17, 2021**.

If the debtor does not timely cure **all** of the deficiencies outlined above, the Court will dismiss or convert this case in accordance with 11 U.S.C. § 1112(b), based on, among other things, substantial continuing loss to or diminution of the estate and the absence of

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1:00 PM

CONT...

Blanca Mohd

Chapter 11

a reasonable likelihood of rehabilitation.

The Court will prepare the order.

Party Information

Debtor(s):

Blanca Mohd

Represented By
Nancy Korompis

**United States Bankruptcy Court
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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; 9/17/20;
11/12/20; 12/3/20; 1/21/21; 3/25/21

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blanca Mohd

Represented By
Dana M Douglas

**United States Bankruptcy Court
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Thursday, April 8, 2021

Hearing Room 301

1:30 PM

1:18-11729 Richard Philip Dages

Chapter 7

#9.00 Order to show cause why debtor's counsel should not be ordered to disgorge fees

fr. 3/12/20; 4/30/20; 10/22/20; 3/18/21

Docket 136

Tentative Ruling:

The Court will continue this matter to **1:30 p.m. on April 22, 2021**, to be heard with the debtor's motion to dismiss this case [doc. 208].

Appearances on April 8, 2021 are excused.

Party Information

Debtor(s):

Richard Philip Dages

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

Thursday, April 8, 2021

Hearing Room 301

1:30 PM

1:18-11729 Richard Philip Dages

Chapter 7

#10.00 Debtor's motion to dismiss chapter 7 case

STIP TO CONTINUE FILED 3/28/21

Docket 208

*** VACATED *** REASON: Order approving stip entered 3/29/21.
Hearing continued to 4/22/21 at 1:30 pm. [Dkt. No. 216]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Philip Dages

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**

Thursday, April 8, 2021

Hearing Room 301

1:30 PM

1:21-10396 Advanced Sleep Medicine Services, Inc.

Chapter 11

#11.00 Motion Regarding Chapter 11 First Day and for Order Determining Adequate Assurance of Payment for Utility Services [Bankruptcy Code Section 366; FRBP Rules 6003, 6004]

fr. 3/18/21

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):

Advanced Sleep Medicine Services,

Represented By
Gregory M Salvato

Movant(s):

Advanced Sleep Medicine Services,

Represented By
Gregory M Salvato

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, April 8, 2021

Hearing Room 301

1:30 PM

1:18-12660 Mohsen Loghmani

Chapter 7

- #12.00** Trustee's motion to sell debtor's ownership interest in Huntley Broadlawn LLC;
(1) Outside the ordinary course of business
(2) Free and clear of liens
(3) For good faith determination under 11 U.S.C. section 363(m)
(4) For waiver of 14-day stay

Docket 136

Tentative Ruling:

Grant.

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

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, April 8, 2021

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

#13.00 Status conference re chapter 11 case

fr. 10/15/20; 2/4/21; 2/11/21; 3/25/21

STIP TO CONTINUE FILED 3/18/21

Docket 1

***** VACATED *** REASON: Continued to 4/15/21 at 1:30 p.m. per order
entered on 3/19/21 [doc 128]**

Tentative Ruling:

- NONE LISTED -

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

Thursday, April 8, 2021

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

#14.00 Disclosure statement hearing describing debtor's chapter 11 plan

fr. 2/11/21/ 3/25/21

STIP TO CONTINUE FILED 3/18/21

Docket 105

*** VACATED *** REASON: Continued to 4/15/21 at 1:30 p.m. per order
entered on 3/19/21 [doc 128]

Tentative Ruling:

- NONE LISTED -

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**

Thursday, April 8, 2021

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

#15.00 Motion to convert case from chapter 11 to 7
fr. 3/25/21

STIP TO CONTINUE FILED 3/18/21

Docket 108

***** VACATED *** REASON: Continued to 4/15/21 at 1:30 p.m. per order
entered on 3/19/21 [doc 128]**

Tentative Ruling:

- NONE LISTED -

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**

Thursday, April 8, 2021

Hearing Room 301

1:30 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

#15.10 Notice of Setting/Increasing Insider Compensation

Docket 1

Tentative Ruling:

Having reviewed the *Stipulation Re Insider Compensation* filed on April 7, 2021 [doc. 56], the Court will continue this hearing to **May 20, 2021, at 2:30 p.m.**

Any supplemental briefing from either side must be filed and served no later than **12 p.m. on May 13, 2021.**

Appearances on April 8, 2021 are excused.

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton
Yi S Kim

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

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

Thursday, April 8, 2021

Hearing Room 301

2:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#16.00 Confirmation hearing re debtor's first amended chapter 11,
subchapter V plan of liquidation

fr. 1/14/21; 1/21/21; 3/25/21

Docket 81

Tentative Ruling:

Confirm Amended Chapter 11, Subchapter V Plan dated March 18, 2021 [doc. 81]. No later than **July 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 **July 22, 2021 at 2:30 p.m.**

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

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, April 8, 2021

Hearing Room 301

2:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#17.00 Status conference re: chapter 11 subchapter V case

fr.09/10/20; 11/5/20; 1/14/21; 1/21/21; 3/25/21

Docket 1

Tentative Ruling:

- NONE LISTED -

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, April 8, 2021

Hearing Room 301

2:30 PM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#18.00 Status conference re: chapter 11 subchapter V case

fr. 3/25/21

Docket 1

Tentative Ruling:

Contrary to the Court's *Order Setting Hearing on Status of Chapter 11, Subchapter V Case and Requiring Report on Status of Chapter 11, Subchapter V Case* [doc. 30], the subchapter V trustee did not timely file a declaration.

The debtors did not sign the *Subchapter V Status Report* and support *Debtors' Supplement to Subchapter V Status Report* [doc. 47] with a signed declaration under penalty of perjury. The debtors must submit a **signed** Subchapter V Status Report and such a declaration.

In the status report, the debtors indicate that they are involved in litigation with "Andre Berger et al." (the "Berger Parties"). In their Statement of Financial Affairs [doc. 37], the debtors identified a state court action which the debtors filed against the Berger Parties for "accounting and declaratory relief;" the debtors stated that the state court action is pending. In their status report, the debtors also note that they intend to file a turnover action against the Berger Parties to recover moneys owed to the debtors.

"[T]urnover proceedings involve return of *undisputed* funds." *In re Gurga*, 176 B.R. 196, 199 (B.A.P. 9th Cir. 1994) (emphasis in *Gurga*). "A turnover proceeding is not intended as a remedy to determine the disputed rights of parties to property; rather it is intended as the remedy to obtain what is acknowledged to be property of the bankruptcy estate." *In re Century City Doctors Hosp., LLC*, 466 B.R. 1, 19 (Bankr. C.D. Cal. 2012) (internal quotation omitted).

It appears there is a pending dispute before the state court that may be the subject of the debtors' turnover action. Because turnover is not a remedy to recover funds that are in dispute, the Court questions whether instituting a turnover action is appropriate or constructive. The debtors should be prepared to discuss the status of their state court action against the Berger Parties.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, April 8, 2021

Hearing Room 301

2:30 PM

CONT... Alex Foxman and Michal J Morey

Chapter 11

The bar date has been set for **April 14, 2021**.

Pursuant to 11 U.S.C. § 1189(b), the debtors' deadline to file a proposed plan is **May 4, 2021**.

The Court will continue this status conference to **2:30 p.m. on April 22, 2021**, to be held with the objection to the debtors' designation of this case as a subchapter V case [doc. 50]. At the continued status conference, the debtors should be prepared to discuss the issues outlined above.

No later than **April 15, 2021**, the subchapter V trustee must file a declaration which addresses, but is not limited to: (a) a discussion of any potential issues the trustee foresees with the debtors' case; (b) a statement regarding whether the debtors have complied with their duties under title 11; and (c) a summary of the discussions with the debtors and other material parties in interest regarding progress made toward a consensual chapter 11 plan or the debtors' chapter 11 plan prospects.

Appearances on April 8, 2021 are excused.

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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

Thursday, April 8, 2021

Hearing Room 301

2:30 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

#19.00 Status conference re: chapter 11, subchapter V case
fr. 3/25/21

Docket 1

Tentative Ruling:

The parties should address the following:

Why has the subchapter V trustee not timely filed a declaration, as mandated in the *Amended Order Setting Hearing on Status of Chapter 11, Subchapter V Case and Requiring Report on Status of Chapter 11, Subchapter V Case?* [doc. 15]

How does the debtor intend to respond to the pending *Motion to Dismiss or Convert Case Under 11 U.S.C. § 1112(b)* (the "UST Motion")? [doc. 50]

The bar date has been set for **April 21, 2021 (non-gov't)** and **August 9, 2021 (gov't)**.

Pursuant to 11 U.S.C. § 1189(b), the debtor's deadline to file a proposed plan is **May 11, 2021**.

In the UST Motion, the United States Trustee (the "UST") requests that the Court set a date certain for the debtor to file a disclosure statement and for the Court to approve the adequacy of information in that disclosure statement. Does the UST contend that there is cause, in this Subchapter V case, to require the filing and Court approval of a disclosure statement, pursuant to 11 U.S.C. § 1181(b)?

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton

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

Wednesday, April 14, 2021

Hearing Room 301

9:30 AM
1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the April 14, 2021 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1600771981>

Meeting ID: 160 077 1981

Password: 935746

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 077 1981

Password: 935746

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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

Wednesday, April 14, 2021

Hearing Room 301

9:30 AM
CONT...

Chapter

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

Wednesday, April 14, 2021

Hearing Room 301

9:30 AM

1:21-10302 Armen Shane Minassian

Chapter 7

#1.00 Motion for relief from stay [UD]

MADLENE MINASSIAN
VS
DEBTOR

Docket 18

Party Information

Debtor(s):

Armen Shane Minassian

Pro Se

Movant(s):

MADLENE MINASSIAN

Represented By
Helen G Long

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 14, 2021

Hearing Room 301

9:30 AM

1:20-10971 Benjamin Marsh

Chapter 13

#2.00 Motion for relief from stay [RP]

CIT BANK, N.A.
VS
DEBTOR

Docket 74

Party Information

Debtor(s):

Benjamin Marsh

Represented By
Natalya Vartapetova

Movant(s):

CIT Bank, N.A.

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (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 15, 2021

Hearing Room 301

1:00 PM
1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the April 15, 2021 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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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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1615111709>

Meeting ID: 161 511 1709

Password: 404930

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 511 1709

Password: 404930

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, April 15, 2021

Hearing Room 301

1:00 PM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Thursday, April 15, 2021

Hearing Room 301

1:00 PM

1:21-10292 RT Development LLC

Chapter 11

#1.00 U.S. Trustee's Motion to Dismiss or Convert Convert Case Under
11 U.S.C. § 1112(b)

Docket 20

Tentative Ruling:

Pursuant to 11 U.S.C. § 1112(b)(1) and (4)(C), (F) and (H), the Court will dismiss this case. In making this determination, the Court has not considered the *Joinder to U.S. Trustee's Motion to Dismiss or Convert*, filed by Zarabella Skye [doc. 32], to the extent that joinder raises facts and issues that were not discussed in the United States Trustee's motion to dismiss or convert.

Having filed its chapter 11 petition on February 22, 2021, RT Development, LLC (the "debtor"), has not: (1) timely submitted its monthly operating reports for February 2021 and March 2021; (2) shown that it has maintained sufficient insurance coverage throughout this case; (3) shown that it is in good standing with the California Secretary of State and allowed to operate; and (4) timely provided requested bank statements to the United States Trustee.

It appears that dismissal of this chapter 11 case is in the best interest of creditors and the estate. Based on the debtor's schedules and statement of financial affairs, the debtor's assets, *i.e.*, two real properties, are overencumbered, and the debtor has not generated any income from January 2018 through the date it filed this case [doc. 13]. In its *Chapter 11 Status Conference Report (Initial)* [doc. 34], the debtor has represented that one of its properties is currently uninhabitable and the other is occupied by the former owner, who has not been paying rent. If the debtor's case is converted, it appears that there would be insufficient assets that could be administered for the benefit of nonpriority unsecured creditors.

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

Party Information

Debtor(s):

RT Development LLC

Represented By

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

Thursday, April 15, 2021

Hearing Room 301

1:00 PM

CONT... RT Development LLC

Chapter 11

Matthew D. Resnik
Roksana D. Moradi-Brovia

Movant(s):

United States Trustee (SV)

Represented By
Katherine Bunker

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

Thursday, April 15, 2021

Hearing Room 301

1:00 PM

1:21-10292 RT Development LLC

Chapter 11

#2.00 Status conference re: chapter 11 voluntary case

Docket 1

Tentative Ruling:

See calendar no. 1.

Party Information

Debtor(s):

RT Development LLC

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 15, 2021

Hearing Room 301

1:00 PM

1:20-10924 Tikran Eritsyan

Chapter 11

#3.00 U.S. Trustee's Motion to Dismiss or Convert Case under 11 U.S.C. § 1112(b)

Docket 97

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tikran Eritsyan

Represented By
Vahe Khojayan

Movant(s):

United States Trustee (SV)

Represented By
Katherine Bunker

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

Thursday, April 15, 2021

Hearing Room 301

1:30 PM

1:21-10292 RT Development LLC

Chapter 11

#4.00 Application of Debtor and Debtor-In-Possession for Authority to Employ Resnik Hayes Moradi LLP as its General Bankruptcy Counsel

Docket 9

Tentative Ruling:

The Court will approve employment effective April 15, 2021.

I. BACKGROUND

On February 22, 2021, RT Development, LLC ("Debtor") filed a voluntary chapter 11 petition. On March 3, 2021, Debtor filed an application to employ Resnik Hayes Moradi LLP ("RHM") as general bankruptcy counsel (the "Application") [doc. 9]. The Application requests approval of RHM's *employment effective February 22, 2021*.

On March 10, 2021, the United States Trustee ("UST") filed a limited objection to the Application (the "Objection") [doc. 17]. The UST argues that the Application improperly seeks *nunc pro tunc* relief, and that the effective date should be when the Court approves the Application. On April 8, 2021, Debtor filed a reply to the Objection [doc. 35], asserting that, among other things, Debtor is not requesting *nunc pro tunc* relief and that RHM's employment should be effective February 22, 2021 when it provided services to Debtor.

II. DISCUSSION

The UST, referencing Debtor's request to approve RHM's employment effective February 22, 2021, asserts that the Application improperly seeks *nunc pro tunc* relief. The UST cites *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 140 S. Ct. 696, 206 L. Ed. 2d 1 (2020). In *Acevedo*, on February 6, 2018, the Roman Catholic Archdiocese of San Juan, Puerto Rico (the "Archdiocese") removed the case from a Puerto Rico court to a federal district court. *Acevedo*, 140 S. Ct. at 699-700. On March 16, March 26 and March 27, 2018, while the case was before the federal district court, the Puerto Rico court entered certain payment and seizure orders against the Archdiocese (the "Puerto Rico Orders"). *Id.*, at 700. Approximately five months later, the federal district court remanded the case to the Puerto Rico court. *Id.*

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Central District of California
San Fernando Valley
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CONT... RT Development LLC

Chapter 11

However, the remand was by way of a *nunc pro tunc* judgment, which stated that the remand was effective March 13, 2018. *Id.*, at 700.

One of the issues before the Supreme Court of the United States was whether the Puerto Rico Orders were effective despite the fact that, at the time the Puerto Rico Orders were entered, the federal district court had jurisdiction over the case. The Supreme Court held that the Puerto Rico court lacked jurisdiction to enter the Puerto Rico Orders, and that the federal district court could not provide *nunc pro tunc* relief—

Federal courts may issue *nunc pro tunc* orders, or "now for then" orders, Black's Law Dictionary, at 1287, to "reflect the reality" of what has already occurred, *Missouri v. Jenkins*, 495 U.S. 33, 49, 110 S.Ct. 1651, 109 L.Ed.2d 31 (1990). "Such a decree presupposes a decree allowed, or ordered, but not entered, through inadvertence of the court." *Cuebas y Arredondo v. Cuebas y Arredondo*, 223 U.S. 376, 390, 32 S.Ct. 277, 56 L.Ed. 476 (1912).

Put colorfully, "[n]unc pro tunc orders are not some Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact." *United States v. Gillespie*, 666 F.Supp. 1137, 1139 (N.D. Ill. 1987). Put plainly, the court "cannot make the record what it is not." *Jenkins*, 495 U.S. at 49, 110 S.Ct. 1651.

Nothing occurred in the District Court case on March 13, 2018. See Order Granting Motion to Remand in No. 3:18-cv-01060 (noting, on August 20, 2018, that the motion is "hereby" granted and ordering judgment "accordingly").... [T]he case remained in federal court until that court, on August 20, reached a decision about the motion to remand that was pending before it. The [Puerto Rico court's] actions in the interim, including the payment and seizure orders, are void.

Id., at 700-01.

After *Acevedo*, certain bankruptcy courts have held that *Acevedo* prohibits bankruptcy courts from retroactively approving employment of professionals. See, e.g. *In re Miller*, 620 B.R. 637 (Bankr. E.D. Cal. 2020); and *In re Benitez*, 2020 WL 1272258 (Bankr. E.D.N.Y. Mar. 13, 2020). In *Miller*, on July 14, 2020, the chapter 7 trustee moved to

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CONT... RT Development LLC

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employ special litigation counsel effective March 3, 2013. *Miller*, 620 B.R. at 639. The *Miller* court held that *Acevedo* barred such *nunc pro tunc* relief—

[*Acevedo*'s] significant limit on the use by federal courts of *nunc pro tunc* orders has necessitated a change in bankruptcy practice. *Nunc pro tunc* orders have been common, particularly with respect to employment under § 327. Bankruptcy courts have recognized that practice must now stop.

Id., at 641 (citing *In re Roberts*, 618 B.R. 213, 217 (Bankr. S.D. Ohio 2020); and *Benitez*, 2020 WL 1272258 at *2). Nevertheless, the court held that *Acevedo* is not "a *per se* prohibition of all retroactive relief in all instances." *Id.* Noting that "[s]tatutes may... serve as a basis, express or implied, for orders that have retroactive effect" without the need to employ a court's inherent power to provide *nunc pro tunc* relief, the court held that 11 U.S.C. §§ 327 and 330 and FRBP 6003(a) empower courts to compensate professionals "for services provided before employment is formally approved...." *Id.*, at 641-42.

As support for this proposition, the court cited, *inter alia*, the Ninth Circuit Court of Appeals' decision in *In re Harbin*, 486 F.3d 510 (9th Cir. 2007). In *Harbin*, one of the issues before the Court of Appeals was whether the Court could approve a financing agreement *after* the debt was incurred. *Harbin*, 486 F.3d at 521-22. As explained by *Miller*, the *Harbin* court held that courts had the power to approve such agreements—

The salient point is that retroactive approval of the postpetition debt did not depend on the fact of prior authorization by the bankruptcy court to enter into the financing transaction. In other words, there was no need to create facts or rewrite history with a *nunc pro tunc* order in order support the retroactive relief granted.

Miller, 620 B.R. at 641. The *Miller* court also referenced *In re Atkins*, 69 F.3d 970 (9th Cir. 1995), in which case the Ninth Circuit Court of Appeals "reaffirmed the long-recognized principle that 'the bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services.'" *Miller*, 620 B.R. at 642 (quoting *Atkins*, 69 F.3d at 973). As such, the *Miller* court approved the employment of special litigation counsel effective the date of approval of the application to employ, but allowed compensation for the "reasonable, necessary, and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, April 15, 2021

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CONT... RT Development LLC

Chapter 11

beneficial services" that counsel provided to the chapter 7 trustee and the estate prior to approval of employment. *Id.*, at 643-44.

Similarly, in *Benitez*, the trustee moved to employ general bankruptcy counsel approximately 11 months after counsel performed services for the estate. *Benitez*, 2020 WL 1272258 at *3. The trustee requested *nunc pro tunc* approval of employment. *Id.* The court held that, in light of *Acevedo*, "utilizing *nunc pro tunc* orders to approve the retention of estate professionals retroactive to some date prior to the actual date of court approval is inappropriate." *Id.*, at *1. However, as in *Miller*, the *Benitez* court held that—

[N]either the Code nor the Rules preclude an award of "reasonable compensation" or reimbursement for "actual, necessary expenses" pursuant to section 330 for services rendered prior to an order approving retention of the professional. The only temporal requirement in the Code and Rules is that a professional must have been retained pursuant to section 327 to successfully obtain a court award of compensation. Simply stated, a professional must be retained as required by the statute, but once having been retained, the bankruptcy court is free to compensate him for services rendered to the estate at any time, pre and post-court approval, in accordance with section 330 of the Code.

Id., at *2.

In light of the authorities above, the Court will approve the Application effective the date of the hearing, i.e., "the actual date of court approval." *Benitez*, 2020 WL 1272258 at *1. Although the Court will not approve retroactive employment of RHM, the Court will not prohibit RHM from requesting fees arising from the "reasonable, necessary, and beneficial services" that RHM provided to Debtor and the estate prior to approval of employment. *Miller*, 620 B.R. at 643-44. The Court will assess whether such fees are "reasonable, necessary, and beneficial" after RHM files an application for compensation.

III. CONCLUSION

The Court will approve RHM's employment effective April 15, 2021.

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

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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CONT... RT Development LLC

Chapter 11

Debtor(s):

RT Development LLC

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Movant(s):

RT Development LLC

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 15, 2021

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

#5.00 Motion for protective order regarding depositions of Nisan Tepper

Docket 116

Tentative Ruling:

- NONE LISTED -

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**

Thursday, April 15, 2021

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

#6.00 Motion to Convert Case to Chapter 7

fr. 3/25/21; 4/8/21

Docket 108

Tentative Ruling:

Grant and convert case to one under chapter 7, for the reasons discussed below.

I. BACKGROUND

This case involves residential real property located at 4256 Tarzana Estates Drive, Tarzana, California 91356 (the "Tarzana Property") owned by Transpine, Inc. ("Debtor"). Nisan Tepper is Debtor's CEO, sole officer and equity holder [Bankruptcy Docket, 20-11286, doc. 40, Corporate Ownership Statement, p. 2–3; Statement of Financial Affairs, item 28].

On July 22, 2020, Debtor filed a voluntary chapter 11 petition. At the subsequent 341(a) meeting, Nisan Tepper represented that his son, Daniel Tepper, and grandson, Oren Tepper, reside at the Tarzana Property without paying rent, Debtor has no other assets other than the Tarzana Property and that the Tarzana Property has not generated rental or other income for a significant amount of time. [Bankruptcy Docket, 20-11286, doc. 108, Declaration of Homan Mobasser ("Mobasser Decl."), attached to the *Motion to Convert Case to Chapter 7* (the "Motion"), ¶ 4].

A. The State Court Action

On May 30, 2017, Overland Direct, Inc. ("Overland") 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

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Thursday, April 15, 2021

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transferred the Tarzana Property to Debtor [Adversary Docket, 20-01074, doc. 1, Exh. A, Grant Deed, p. 178].

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 deed of trust. *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, Overland 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].

In the TAC, Overland 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.

...

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.

...

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.

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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, Overland seeks, among other relief, a judicial declaration to determine who owns the Tarzana Property, injunctive relief, voidable transfer and monetary damages against Defendants. *Id.* at p. 27.

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]. On August 10, 2020, the Superior Court of California, for the County of Los Angeles (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].

On August 19, 2020, Debtor removed the State Court Action to this Court, initiating case no. 1:20-ap-01074-VK. On October 15, 2020, the Court entered an order remanding the State Court Action to the State Court [Adversary Docket, 20-01074, doc. 24]. On November 5, 2020, the Court entered an order modifying the automatic stay pursuant to 11 U.S.C. §§ 105(a) and 362(d)(1) to allow Overland to proceed to final judgment against Debtor regarding the claims asserted in the State Court Action [Bankruptcy Docket, 20-11286, doc. 66].

On December 1, 2020, the State Court issued a minute order granting Overland's motion to compel deposition of Daniel Tepper and motion to compel further discovery responses from Nisan Tepper [Bankruptcy Docket, 20-11286, doc. 108-1, Exh. A, State Court Minute Order, p. 6]. The State Court Action is scheduled for trial on November 15, 2021 [Bankruptcy Docket, 20-11286, doc. 144, Declaration of Nisan Tepper, ¶ 5].

B. Debtor's Bankruptcy Case

On September 4, 2020, Debtor filed its schedules and Statement of Financial Affairs [Bankruptcy Docket, 20-11286, doc. 40]. In its schedule A/B, Debtor lists an interest in

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the Tarzana Property and \$246.91 in cash [Bankruptcy Docket, 20-11286, doc. 40, schedule A/B]. Debtor's schedule G indicates that it has no unexpired leases [Bankruptcy Docket, 20-11286, doc. 40, schedule G].

As set forth in Debtor's schedule D, 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]. In Debtor's schedule A/B, Debtor stated that the Tarzana Property has a value of \$2.4 million [Bankruptcy Docket, 20-11286, doc. 40, schedule A/B].

In its schedule E/F, Debtor sets forth: (1) a priority unsecured tax debt owed to the California Franchise Tax Board in the amount of \$800.00; (2) a priority unsecured tax debt owed to the Internal Revenue Service in the amount of \$2,200.00; (3) non-priority unsecured debts payable to Nisan Tepper in the amount of \$101,000.00; (4) non-priority unsecured debts payable to counsel of record for Nisan Tepper and Debtor for representation in the State Court Action in the amount of \$85,000.00; and (5) non-priority unsecured debt, described as contingent, unliquidated and disputed, payable to Overland [Bankruptcy Docket, 20-11286, doc. 40, schedule E/F].

On July 28, 2020, the Los Angeles County Treasurer and Tax Collector ("LACTTC") filed proof of claim no. 1-1, for delinquent property taxes accrued between 2017 and 2021, in the amount of \$94,568.00, with an annual interest rate of 18%. This claim is secured by a lien against the Tarzana Property. On February 10, 2021, Overland filed proof of claim no. 3-2, asserting a claim in the amount of \$50,000.00.

Debtor's monthly operating reports ("MORs") [docs. 39, 52, 61, 82, 90, 91, 124, 125] from July 2020 through February 2021 (the most recent MOR on file) reflect the following income and expenses:

Month	Receipts	Disbursements	Balance	Filing Date
July 2020	\$0.00	\$0.00	\$246.41	September 2, 2020
August 2020	\$0.00	\$246.14	\$0.00	October 15, 2020
September 2020	\$0.00	\$3.00	\$243.41	October 27, 2020
October 2020	\$0.00	\$13.00	\$230.41	December 9, 2020
November 2020	\$330.00	\$3.00	\$557.41	January 22, 2021
December 2020	\$1,169.47	\$1,273.00	\$453.58	January 22, 2021
January 2021	\$0.00	\$13.00	\$440.58	March 17, 2021
February 2021	\$500.00	\$336.25	\$604.33	March 17, 2021

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Based on its Statement of Financial Affairs and November 2020 MOR, Debtor generated no rental or other income from 2018 to November 2020 [Bankruptcy Docket, 20-11286, doc. 40, Statement of Financial Affairs, Part 1; doc. 90, November 2020 monthly operating report].

On December 31, 2020, Debtor filed a proposed chapter 11 plan (the "Plan") [Bankruptcy Docket, 20-11286, doc. 84] and related disclosure statement (the "Disclosure Statement") [Bankruptcy Docket, 20-11286, doc. 83]. In the Disclosure Statement, Debtor represented that: (1) starting January 2021, its tenant, Daniel Tepper, would begin to make monthly payments in the amount of \$5,000.00; (2) Debtor would sell the Tarzana Property after the State Court Action concludes; and (3) Nisan Tepper would make a new value contribution in the amount of \$45,000.00 to fund the Plan. Additionally, Debtor represented that it would make monthly payments to Wooshies from rental income collected from the Tarzana Property [Bankruptcy Docket, 20-11286, doc. 94].

On February 16, 2021, the Court entered an order [Bankruptcy Docket, 20-11286, doc. 98] directing Debtor to file an amended plan and related disclosure statement [Bankruptcy Docket, 20-11286, doc. 97]. Among other issues noted by the Court, Debtor's disclosure statement lacked adequate information regarding the employment of special litigation counsel, Debtor's ability to fund an engagement with such counsel, Debtor's ability to collect rental income from Daniel Tepper and Nisan Tepper's ability to make a new value contribution.

On February 25, 2021, Debtor filed a first amended chapter 11 plan (the "Amended Plan") [Bankruptcy Docket, 20-11286, doc. 106] and related first amended disclosure statement (the "Amended Disclosure Statement") [Bankruptcy Docket, 20-11286, doc. 105]. In the Amended Disclosure Statement, Debtor indicated that it anticipated having \$60,000.00 in available cash on the effective date of the Amended Plan. Debtor further represented that, based on a real estate broker's opinion, the Tarzana Property has a value of \$2.7 to \$2.8 million [Bankruptcy Docket, 20-11286, doc. 105, Exh. D, Broker's Opinion]. Debtor also represented that it anticipated receiving: (A) \$5,000.00 in monthly rental income starting January 2021 from Daniel Tepper; (B) \$2,484,000.00 from the sale of the Tarzana Property; and (C) \$45,000.00 from Nisan Tepper in July 2021. Debtor listed monthly expenses totaling \$1,400.00 to \$2,400.00, including utilities, maintenance, and insurance payments.

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On March 10, 2021, the United States Trustee filed an objection to the Amended Disclosure Statement [Bankruptcy Docket, 20-11286, doc. 115], asserting that the Amended Disclosure Statement failed to explain when Debtor expects the sale of the Tarzana Property to close, as well as Debtor's ability to receive rental income from Daniel Tepper and Nisan Tepper's ability to make a new value contribution in order to fund the Amended Plan.

On March 31, Debtor filed an application to employ Berkshire Hathaway as a real estate broker, indicating that it seeks to list the Tarzana Property for sale in the amount of \$2.95 million [Bankruptcy Docket, 20-11286, docs. 137]. On that same day, Debtor filed an application to employ Kelley Semmel LLP ("Kelley Semmel") as special litigation counsel in the State Court Action; Debtor indicated that Nisan Tepper would personally pay the legal fees incurred by Debtor without seeking reimbursement [Bankruptcy Docket, 20-11286, docs. 139].

On April 1, 2021, Overland filed an amended objection to the Amended Disclosure Statement (the "Objection") [Bankruptcy Docket, 20-11286, doc. 152]. In the Objection, Overland contended that: (1) Debtor failed to explain why it expects to receive rental income from Daniel Tepper starting January 2021 when Debtor has never received such rental income; (2) Debtor failed to provide evidence demonstrating Nisan Tepper's ability to make a new value contribution in the amount of \$45,000.00; (3) Debtor contends it will close the sale of the Tarzana Property in June 2021, yet it did not file an application to employ a real estate broker until March 31, 2021; (4) Debtor failed to explain how a new value contribution of \$45,000.00 will meet the requirements of cramdown; and (5) Debtor's chapter 7 liquidation analysis is flawed and misleading.

On April 8, 2021, Debtor filed a second amended chapter 11 plan (the "Second Amended Plan") [Bankruptcy Docket, 20-11286, doc. 160] and related second amended disclosure statement (the "Second Amended Disclosure Statement") [Bankruptcy Docket, 20-11286, doc. 159]. In the Second Amended Disclosure Statement, Debtor indicated that: (1) it will receive \$2,484,000.00 from the sale of the Tarzana Property in June 2021; (2) it will segregate the proceeds from the sale until the State Court Action concludes before paying creditors; (3) Kelley Semmel and Debtor's counsel, Leslie Cohen Law PC, will be paid from non-debtor sources of funding; and (4) if the Second Amended Plan is confirmed, Nisan Tepper will waive his unsecured claims in the amount of \$101,000.00. Unlike the information provided in the Plan and Amended

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Plan, Debtor indicates it will not receive monthly rental income from Daniel Tepper.

C. Motion to Convert

On March 3, 2021, Overland filed the Motion [Bankruptcy Docket, 20-11286, doc. 108]. Overland argues that, because Debtor seeks to delay the sale of the Tarzana Property in order to allow Daniel Tepper to reside rent-free on the property, the case should be converted to chapter 7 for the following reasons: (1) the chapter 7 trustee will promptly sell the Tarzana Property and remove Daniel Tepper and Oren Tepper from the premises; (2) the chapter 7 trustee would earnestly negotiate with creditors, respond to depositions and effectively administer the estate's assets; and (3) the fees associated with chapter 7 are less than the attorney's fees and other costs in chapter 11.

Alternatively, in the Motion, Overland argues that cause exists under 11 U.S.C. § 1112(b)(1) to convert Debtor's case to one under chapter 7. Overland argues that: (1) Debtor engaged in mismanagement of the bankruptcy estate when it allowed its owner's son, Daniel Tepper, to reside on the Tarzana Property rent-free; (2) Debtor has failed to pay post-petition property taxes on the Tarzana Property; (3) Debtor has no intention to reorganize; (4) Debtor has failed to timely file monthly operating reports; and (5) Debtor has failed to make post-petition payments to Wooshies. Overland also argues that Nisan Tepper, Debtor's sole officer able to speak on behalf of Debtor, has refused to be deposed and provide documentation regarding the Tarzana Property's financial situation and whether its tenants, Daniel Tepper and Oren Tepper, have provided rental payments to Debtor. Declaration of Daniel J. McCarthy, ¶¶ 5-6, Bankruptcy Docket, 20-11286, doc. 153.

On April 1, 2021, Debtor filed an opposition to the Motion (the "Opposition") [Bankruptcy Docket, 20-11286, doc. 144]. In the Opposition, Debtor contends that, among other things, cause does not exist to convert this case because: (1) creditors are protected by the Tarzana Property's substantial equity cushion; (2) Debtor seeks to reorganize its business affairs by paying all creditors through the sale of the Tarzana Property; (3) Debtor recently filed its MORs and applications to employ a real estate broker and special litigation counsel; (4) the Motion raises issues that should be addressed at plan confirmation; and (5) remaining in chapter 11 is more efficient and cost-effective than conversion.

On April 6, 2021, Overland filed a reply to the Opposition (the "Reply") [doc. 154]. In

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the Reply, Overland argues that, among other things, the property taxes encumbering the Tarzana Property are accruing \$28,000.00 per year from penalties and interest, which is reducing the amount of equity available in the Tarzana Property to pay Overland and unsecured creditors. Overland also argues that, based on gross mismanagement and diminution of the bankruptcy estate by Debtor, conversion is necessary to effectuate the sale of the Tarzana Property to pay creditors, before the Tarzana Property's equity cushion diminishes any further.

II. DISCUSSION

11 U.S.C. § 1112(b) provides in pertinent part:

(b)(1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

(2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes—

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4) (A)—

(i) for which there exists a reasonable justification for the act or omission; and

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(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;

(B) gross mismanagement of the estate;

...

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

...

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief

Section 1112(b)(4) provides an enumerated list of grounds that amount to "cause," yet these grounds are not exhaustive; bankruptcy courts may look beyond 11 U.S.C. § 1112(b) and "consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases." *In re Consolidated Pioneer Mortg. Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). "The bankruptcy court has broad discretion to determine what constitutes 'cause' under § 1112(b)." *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014). The movant bears the burden of establishing by a preponderance of the evidence that cause exists. *Id.*

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). Regarding the second prong, "the court must consider the interest of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 960 (9th

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A. 11 U.S.C. § 1112(b)(1)

"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 Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). "The existence of good faith depends on an amalgam of factors and not upon a specific fact." *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). "The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *Marsch*, 36 F.3d at 828. In other words, a bankruptcy petition is filed in bad faith when a debtor files for "tactical reasons unrelated to reorganization." *Id.*

The Fifth Circuit Court of Appeals in *Matter of Little Creek Development Co.*, 779 F.2d 1068 (1986), identified ten factors that support the existence of bad faith:

The debtor has one asset, such as a tract of undeveloped or developed real property. The secured creditors' liens encumber this tract. There are generally no employees except for the principals, little or no cash flow, and no available sources of income to sustain a plan of reorganization or to make adequate protection payments pursuant to 11 U.S.C. sections 361, 362(d)(1), 363(e), or 364(d)(1). Typically, there are only a few, if any, unsecured creditors whose claims are relatively small. The property has usually been posted for foreclosure because of arrearages on the debt and the debtor has been unsuccessful in defending actions against foreclosure in state court. Alternatively, the debtor and one creditor may have proceeded to a standstill in state court litigation, and the debtor has lost or has been required to post a bond which it cannot afford. Bankruptcy offers the only possibility of forestalling loss of the property. There are sometimes allegations of wrongdoing by the debtor or its principals.

In re Can-Alta Properties, Ltd., 87 B.R. 89, 91 (B.A.P. 9th Cir. 1998) (quoting *Little Creek*, 779 F.2d at 1073). Not all the factors listed in *Little Creek* are necessary in finding bad faith. *Id.*

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Here, Debtor has filed this case for "tactical reasons unrelated to reorganization" and "is attempting to unreasonably deter" its most significant creditor, Overland, rather than "attempting to effect a speedy, efficient reorganization." Debtor's apparent goal is to minimize Overland's collection of its judgment, if Overland prevails in the State Court Action, and to promote the ability of the son and grandson of Debtor's principal to reside in a valuable single family home, without making rental payments. In the meantime, the equity in the home is being reduced by accruing property taxes and increasing secured debt.

First, within a month of filing its petition on July 22, 2020, Debtor removed the State Court Action to this Court, in order to delay the State Court's determination of whether Debtor properly holds title to the Tarzana Property. Second, Debtor has not generated rental or other income for a significant amount of time. Third, although it was not collecting rent and has no funds to pay property taxes and service its secured debt, Debtor waited until March 31, 2021 to file its applications to employ special litigation counsel and a real estate broker. Fourth, Debtor's Second Amended Plan makes apparent that Debtor has no intention to collect rental income from its sole asset, a multi-million dollar house; such rental income does not appear in the income projections. Fifth, despite his availability to attend the 341(a) meeting and that he is the only officer able to speak on behalf of Debtor, Nisan Tepper has refused to be deposed or provide relevant documentation concerning Debtor's financial situation. Sixth, Debtor intends to list the Tarzana Property for sale in the amount of \$2.95 million, which is significantly greater than that property's alleged value, as represented in Debtor's Second Amended Disclosure Statement, i.e., \$2.7 million; this suggests that Debtor has no intention of selling the Tarzana Property expeditiously.

The *Little Creek* factors also support a finding that Debtor filed its bankruptcy petition in bad faith: (1) Debtor has one asset encumbered by a single deed of trust; (2) Debtor filed its bankruptcy petition to delay the State Court Action; (3) Debtor has no employees; (4) there is little or no cash flow to support reorganization; and (5) Debtor has few unsecured creditors and of those few, one is its principal and another is its former litigation counsel for the State Court Action (which counsel has agreed to waive that unsecured claim, if the Court approves its post-petition employment).

B. 11 U.S.C. § 1112(b)(4)(A)

There is "cause" to convert a case to chapter 7 when "there is a substantial or continuing

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loss to the estate and the absence of a likelihood of rehabilitation." "[A] negative cash flow situation alone is sufficient to establish continuing loss to or diminution of the estate." *Loop Corp. v. U.S. Trustee*, 379 F.3d 511, 515–516 (8th Cir. 2004). "A debtor lacks a reasonable likelihood of rehabilitation where, for example, it lacks income . . . lacks operating funds . . . or lacks employees, capital, or continuing revenue-generating activity." *In re Bay Area Material Handling, Inc.*, 76 F.3d 384, 384 (9th Cir. 1996).

Reasonable likelihood of rehabilitation "is not the technical one of whether the debtor can confirm a plan, but, rather whether the debtor's business prospects justify continuance of the reorganization effort." *In re Khan*, 2012 WL 2043074, at *6 (B.A.P. 9th Cir. 2012). "Because the [debtor] here [intends] to liquidate their assets rather than restore their business operations, they [have] no reasonable likelihood of rehabilitation." *Loop Corp.*, 379 F.3d at 516.

Here, there is cause to convert the case. Debtor's January MOR indicates that it received no receipts; its February MOR shows that Debtor received \$500.00 in receipts and has \$604.33 in cash. Debtor is not generating sufficient rental or other income to justify its continuance in chapter 11. Without regular business income, there is a continuing loss to the bankruptcy estate. Though the Tarzana Property has an equity cushion, Debtor is not paying its post-petition property taxes or making post-petition payments on the Wooshies DOT. Furthermore, as Debtor's sole proposed means to repay creditors, as stated in each of its filed chapter 11 plans, is to sell the Tarzana Property, there is no likelihood of rehabilitation.

C. 11 U.S.C. § 1112(b)(4)(B)

"The § 1112(b)(4)(B) inquiry typically focuses on how the debtor or the debtor's agents have managed the estate's assets or business during the pendency of the chapter 11 proceeding and how they have reported and handled, post-petition, income and expenses derived from the assets/business." *In re Grego*, 2015 WL 3451559, at *5 (B.A.P. 9th Cir. 2015). "Bankruptcy courts have found gross mismanagement in cases where debtors have not maintained an effective corporate management team, failed to follow through on their fiduciary duties under chapter 11, including obtaining credit or financing outside the ordinary course of business, filed monthly reports without closely monitoring them; or where the business lacks effective management." *Kingsway Capital Partners, LLC v. Sosa*, 549 B.R. 897, 904 (N.D. Cal. 2016) (citations omitted).

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Here, there is cause to convert the case. Debtor has failed to honor its fiduciary duties as a debtor in possession and has exhibited gross mismanagement with respect to the Tarzana Property. Debtor purported that it would receive monthly rental income from Daniel Tepper starting January 2021, which has not been the case. Although Debtor has generated no income for years, and there are significant costs associated with maintaining the Tarzana Property, Debtor filed its application to employ a real estate broker long after the case commenced. Debtor's sole officer, Nisan Tepper, has refused to be deposed or provide documentation concerning Debtor's finances. Debtor has not paid post-petition property taxes, which have priority over prepetition claims. Debtor also has not made post-petition payments on the Wooshies DOT, despite representing earlier in the case that it would do so. Consequently, as time progresses, the equity available in the Tarzana Property, required for Debtor to pay allowed claims of unsecured creditors, is eroding.

Debtor's failure to obtain rental payments for Daniel Tepper's occupancy of the Tarzana Property, while post-petition property taxes and increasing secured debt erode the equity in that property, demonstrates that Debtor is not honoring its fiduciary duties to creditors. This conduct is cause for conversion of this case to one under chapter 7.

D. 11 U.S.C. § 1112(b)(4)(F)

Failure to timely file monthly operating reports constitutes cause to dismiss or convert. *In re YBA Nineteen, LLC*, 505 B.R. 289, 303 (S.D. Cal. 2014). Monthly operating reports provide necessary information to creditors and demonstrates a debtor's ability to reorganize its affairs:

To allow a debtor to sidestep [its] duties simply because he is "busy" would render the Code's reporting requirements a nullity . . . The late filing of catch-up monthly reports does not satisfactorily explain or excuse failure to satisfy a debtor's duties as a chapter 11 debtor . . . Monthly reports and the financial disclosures contained within them are the life-blood of the Chapter 11 process and are more than mere busy work . . . The reporting requirements provide the primary means for monitoring the debtor's compliance with the Code's requirements and they serve as a litmus test for a debtor's ability to reorganize . . . If a debtor does not fulfill this basic obligation during the Chapter 11 case, when it knows it will have to come before the court on any number of

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occasions, how can the creditors have any confidence that the debtor will timely and accurately report its income and make the required distributions under its plan, when the court and the [United States Trustee] are no longer monitoring the case? Consequently, the importance of filing monthly reports cannot be over-emphasized. A debtor ignores this basic duty at its own peril.

Id. (quoting *In re Whetten*, 473 B.R. 380, 383–4 (Bankr. D. Colo. 2012); *see also Andover Covered Bridge, LLC*, 553 B.R. 162, 173 (B.A.P. 1st Cir. 2016) ("The failure to file monthly operating statements . . . whether based on inability to do so or otherwise, undermines the Chapter 11 process and constitutes cause for dismissal or conversion of the Chapter 11 proceedings.") (internal quotation marks omitted).

Debtor has filed its MORs in an untimely fashion; Debtor filed its January and February 2021 MORs on March 17, 2021. Debtor is not generating rental or other income to justify a delay in filing its MORs. This failure to timely file MORs constitutes cause for conversion under 11 U.S.C. § 1112(b)(4)(F).

E. 11 U.S.C. § 1112(b)(4)(I)

Based on Debtor's MORs from July 2020 through February 2021 [docs. 39, 52, 61, 82, 90, 91, 124, 125], Debtor has not paid post-petition property taxes for the Tarzana Property.

Cause for conversion or dismissal under 11 U.S.C. § 1112(b)(4)(I) includes failure to pay post-petition real property taxes. *In re Miell*, 419 B.R. 357, 368 (Bankr. N.D. Iowa 2009) ("Other factors which support a finding of cause under § 1112(b) include Debtor's history of failing to pay real estate taxes."); *see also In re TP, Inc.*, 455 B.R. 455, 456 (Bankr. E.D.N.C. 2011).

III. CONCLUSION

In light of the foregoing, the Court will grant the Motion. Because there is significant equity in the Tarzana Property, and Debtor is unlikely to take action to preserve that equity if this case is dismissed, the Court finds that conversion of this case to chapter 7, rather than dismissal of this case, is in the best interest of creditors.

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

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Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, April 15, 2021

Hearing Room 301

1:30 PM

CONT... Transpine, Inc.

Chapter 11

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**

Thursday, April 15, 2021

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

#7.00 Second Amended Disclosure Statement hearing describing debtor's chapter 11 plan

fr. 2/11/21; 3/25/21; 4/8/21

Docket 159

Tentative Ruling:

- NONE LISTED -

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**

Thursday, April 15, 2021

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 11

#8.00 Status conference re chapter 11 case

fr. 10/15/20; 2/4/21; 2/11/21; 3/25/21;4/8/21

Docket 1

Tentative Ruling:

- NONE LISTED -

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**

Tuesday, April 20, 2021

Hearing Room 301

8:30 AM
1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the April 20, 2021 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1605461706>

Meeting ID: 160 546 1706

Password: 434088

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 546 1706

Password: 434088

For more information on appearing before Judge Barash by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-martin-r-barash> under the tab "Telephonic Instructions."

Docket 0

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

Tuesday, April 20, 2021

Hearing Room 301

8:30 AM
CONT...

Chapter

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

Tuesday, April 20, 2021

Hearing Room 301

8:30 AM

1:20-12140 Grouver Cunanan Tolentino and Jenand Nuqui Manansala

Chapter 7

**#1.00 Reaffirmation Agreement Between Debtor and
Capital One Auto Finance, a division of Capital One, N.A.**

Docket 15

Party Information

Debtor(s):

Grouver Cunanan Tolentino

Represented By
Elena Steers

Joint Debtor(s):

Jenand Nuqui Manansala Tolentino

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, April 20, 2021

Hearing Room 301

8:30 AM

1:21-10125 Isel E Collins

Chapter 7

#2.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation

Docket 8

Party Information

Debtor(s):

Isel E Collins

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 21, 2021

Hearing Room 301

9:30 AM

1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the April 21, 2021 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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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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1606202310>

Meeting ID: 160 620 2310

Password: 237501

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 620 2310

Password: 237501

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, April 21, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Wednesday, April 21, 2021

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; 12/9/20; 3/3/21(stip)

Docket 73

*** VACATED *** REASON: Continued by Stip to 5/19/21 at 9:30 a.m. -
jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Movant(s):

Wilmington Savings Fund Society,

Represented By
Jenelle C Arnold

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov

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

Wednesday, April 21, 2021

Hearing Room 301

9:30 AM

1:20-10521 Marisol V. Perez

Chapter 13

#2.00 Motion for relief from stay [RP]

DEUTSCHE BANK TRUST COMPANY AMERICAS
VS
DEBTOR

fr. 3/10/21

Stipulation for adequate protection filed 4/16/21.

Docket 49

*** VACATED *** REASON: Order approving stipulation entered
4/19/21. [Dkt. 59]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marisol V. Perez

Represented By
Donald E Iwuchuku

Movant(s):

DEUTSCHE BANK TRUST

Represented By
Jenelle C Arnold
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, April 21, 2021

Hearing Room 301

9:30 AM

1:18-10831 Jose Reynaldo Juarez

Chapter 13

**#3.00 Debtor's Objection to Notice of Default Letter dated
December 10, 2020**

fr. 2/10/21; 3/10/21

Docket 83

***** VACATED *** REASON: APO entered on 4/19/21 [doc. 95].**

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**

Wednesday, April 21, 2021

Hearing Room 301

9:30 AM

1:21-10005 JANA, LLC

Chapter 11

#4.00 Motion for relief from stay [RP]

PS FUNDING, INC.

VS

DEBTOR

fr. 3/17/21

Docket 39

Tentative Ruling:

3/17/21 Ruling

At this time, the Court will not grant relief pursuant to 11 U.S.C. § 362(d)(1) or (d)(2).

On January 5, 2021, the debtor filed its chapter 11 petition. The debtor's primary asset is real property located at 10 Stagecoach Road, Bell Canyon, California 91307 (the "Stagecoach Property"). In October 2018, the debtor purchased the Stagecoach Property at a public auction [Declaration of Shahram Hashemizadeh, doc. 50, ¶ 4].

Prepetition, the debtor obtained an appraisal of the Stagecoach Property's fair market value, as of March 25, 2020, which concluded that the value was \$1,300,000.00. However, the debtor's principal has testified that the Stagecoach Property's "foundation is compromised and severally damaged." [Declaration of Shahram Hashemizadeh, doc. 50, ¶¶ 3, 10]. Apparently, subsequent to March 2020, Mr. Hashemizadeh became aware of these problems with the Stagecoach Property's foundation. Consequently, the debtor intends to obtain an updated appraisal of the Stagecoach Property, which will reflect its actual condition. [Declaration of Shahram Hashemizadeh, doc. 50, ¶ 6].

Mr. Hashemizadeh avers that he has \$315,947.39 in his checking account, and that he intends to fund \$350,000.00 of the \$555,600.00 in estimated costs, as evidenced by an estimate dated February 26, 2021, to repair and rehabilitate the Stagecoach Property. [Declaration of Shahram Hashemizadeh, doc. 50, ¶¶ 7, 16; Exh. F].

Mr. Hashemizadeh's testimony does not support movant's assertion that the Stagecoach

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, April 21, 2021

Hearing Room 301

9:30 AM

CONT... JANA, LLC

Chapter 11

Property is *declining* in value, *since the petition date*. The movant has not demonstrated the amount of any such decline.

Regarding outstanding real property taxes, the debtor avers that it has paid or will pay all property taxes owed to the Ventura County Tax Collector. The debtor's failure to pay property taxes which come due post-petition or interest accruing on unpaid pre-petition property taxes may constitute "cause" to grant relief under 11 U.S.C. § 362(d)(1).

"The failure to pay real property taxes constitute a basis for finding a lack of adequate protection" when "the equity cushion has all but disappeared, real estate taxes have not been paid . . . and interest continues to accrued on those unpaid taxes. These unpaid taxes and interest further deteriorate [a creditor's] security position." *In re James River Associates*, 148 B.R. 790, 796 (Bankr. E.D. Va. 1992); *In re Lane*, 108 B.R. 6, 11 (Bankr. D.Mass. 1989) (same). A undersecured creditor may be entitled to be adequately protected from interest accrual. *Matter of Rupprecht*, 161 B.R. 48, 49 (Bankr. D.Neb. 1993).

Regarding the application of 11 U.S.C. § 362(d)(2), property is necessary for an effective reorganization if "the property is essential for an effective reorganization *that is in prospect*. This means . . . that there must be 'a reasonable possibility of a successful reorganization within a reasonable time.'" *United Sav. Ass'n Tex. V. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 375–76, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988) (emphasis in original) (*quoting In re Timbers of Inwood Forest Assoc., Ltd.*, 808 F.2d 363, 370–71, n. 12–13 (5th Cir. 1987) (en banc)).

The Bankruptcy Appellate Panel for the Ninth Circuit has interpreted the "effective reorganization" requirement as requiring the debtor to prove that a proposed plan "is not patently unconfirmable and has a realistic chance of being confirmed." *Sun Valley Newspaper, Inc. v. Sun World Corp. (In re Sun Valley Newspapers, Inc.)*, 171 B.R. 71, 75 (B.A.P. 9th Cir. 1994) (internal citation omitted). In the early stages of a case, "the burden of proof . . . is satisfied if the debtor can offer sufficient evidence to indicate that a sufficient reorganization within a reasonable time is 'plausible.'" *Id.* At this point in the case, the debtor has provided sufficient evidence that the debtor's ability to reorganize within a reasonable time is plausible.

The Court will continue this hearing to **April 21, 2021 at 9:30 a.m. No later than April 7, 2021**, the debtor must submit a declaration supported by documentary evidence

**United States Bankruptcy Court
Central District of California
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Wednesday, April 21, 2021

Hearing Room 301

9:30 AM

CONT... JANA, LLC

Chapter 11

that it is current and has paid all property taxes encumbering the Stagecoach Property, or the Court will mandate that the debtor make monthly adequate protection payments to movant in the amount of the interest accrual on outstanding property taxes.

Party Information

Debtor(s):

JANA, LLC

Represented By
Matthew Abbasi

Movant(s):

PS Funding, Inc.

Represented By
Andrew Still
Eric S Pezold

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

Wednesday, April 21, 2021

Hearing Room 301

9:30 AM

1:19-11777 Winters-Schram & Associates

Chapter 7

#5.00 Motion for relief from stay [AN]

ROSANNE ZIERING
VS
DEBTOR

Docket 103

Tentative Ruling:

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

Movant states that she 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 after July 16, 2019, were done without knowledge of the debtor's bankruptcy case.

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

Any other request for relief is denied.

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

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a 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
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Wednesday, April 21, 2021

Hearing Room 301

9:30 AM

CONT... Winters-Schram & Associates

Chapter 7

Debtor(s):

Winters-Schram & Associates

Represented By
Daniel H Reiss
Lindsey L Smith

Movant(s):

Interested Party

Represented By
Scott A Schiff
Riebert Sterling Henderson
Richard W Labowe

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, April 21, 2021

Hearing Room 301

9:30 AM

1:21-10496 Marshall Goldberg and Susan Goldberg

Chapter 13

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

Docket 13

Tentative Ruling:

Grant.

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):

Marshall Goldberg

Represented By
Matthew D. Resnik

Joint Debtor(s):

Susan Goldberg

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, April 21, 2021

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

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

#7.00 Pretrial conference re: complaint to deny debtor's discharge

fr. 8/21/19; 10/2/19; 11/6/19; 1/15/20; 11/18/20

Docket 1

Tentative Ruling:

Does the plaintiff intend to prosecute this adversary proceeding? If the plaintiff intends to proceed, the Court will set a pretrial conference at **1:30 p.m. on June 16, 2021**. The parties must submit a joint pretrial stipulation **no later than June 2, 2021**.

The plaintiff must submit a scheduling order within seven (7) days.

Appearances required.

11/18/2020 Tentative:

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, April 21, 2021

Hearing Room 301

1:30 PM

CONT... Deborah Lois Adri

Chapter 7

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, April 21, 2021

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

#8.00 Pretrial conference re: complaint to deny discharge

fr. 10/2/19; 11/6/19; 1/15/20; 10/14/20;11/18/20

Docket 1

Tentative Ruling:

At a hearing on a motion for summary judgment filed by the plaintiff, held on October 14, 2020, the Court set a deadline of **April 7, 2021** for the parties to submit a joint pretrial stipulation. Contrary to the Court's schedule and Local Bankruptcy Rule 7016-1(b), the parties did not timely file a joint pretrial stipulation; alternatively, the plaintiff did not timely submit 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):

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

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

Wednesday, April 21, 2021

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 21, 2021

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

#9.00 Status 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); 11/4/20(stip); 2/3/21(stip); 3/24/21

Docket 1

*** VACATED *** REASON: Order approving stip entered 4/9/21.
Hearing continued to 6/9/21 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

Gamalat Youssef Khalil

Pro Se

Joint Debtor(s):

Gamalat 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
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Wednesday, April 21, 2021

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, April 21, 2021

Hearing Room 301

1:30 PM

1:19-10448 Linda Moraga

Chapter 7

Adv#: 1:20-01122 Zamora v. Smith et al

#10.00 Status Conference re: Complaint for:
(1) Avoidance of Fraudulent Transfers; and
(2) Recovery of Avoided Transfer

fr. 2/24/21; 3/3/21(stip)

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 8/31/21.

Deadline to file pretrial motions: 9/15/21.

Deadline to complete and submit pretrial stipulation in accordance with Local
Bankruptcy Rule 7016-1: 10/6/21.

Pretrial: 10/20/21 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).

Party Information

Debtor(s):

Linda Moraga

Represented By
Daniel King

Defendant(s):

Jason Robert Smith

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, April 21, 2021

Hearing Room 301

1:30 PM

CONT... **Linda Moraga**
Jeong Min Lee

Pro Se

Chapter 7

Plaintiff(s):

Nancy H Zamora

Represented By
Anthony A Friedman

Trustee(s):

Nancy J Zamora (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Wednesday, April 21, 2021

Hearing Room 301

1:30 PM

1:19-11696 Peter M. Seltzer

Chapter 11

Adv#: 1:19-01151 Kessler v. Seltzer

#11.00 Pretrial 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; 9/23/20

Docket 15

*** VACATED *** REASON: Continued by stip to 6/23/21 at 1:30 p.m. - jc

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

Wednesday, April 21, 2021

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#12.00 Order to show cause why this adversary proceeding should not be dismissed for failure to prosecute

Docket 42

Tentative Ruling:

In light of the plaintiff's response and the plaintiff's counsel's declaration in support of the response [doc. 52], the Court will discharge this Order to Show Cause.

Appearances on April 21, 2021 are excused.

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
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Wednesday, April 21, 2021

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#13.00 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; 12/09/20; 2/3/21; 3/3/21

Docket 4

Tentative Ruling:

On March 4, 2021, the Court entered a scheduling order setting dates and deadlines [doc. 44]. Those dates and deadlines will govern this adversary proceeding.

Appearances on April 21, 2021 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

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, April 21, 2021

Hearing Room 301

1:30 PM

CONT... Shobert Vartan

Chapter 7

**United States Bankruptcy Court
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Wednesday, April 21, 2021

Hearing Room 301

1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

Adv#: 1:20-01067 ZAMORA v. Perez

- #14.00** 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; 12/16/20

Docket 1

***** VACATED *** REASON: Continued to 7/7/21 at 1:30 p.m. - jc**

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, April 21, 2021

Hearing Room 301

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1:20-11952 Michael A Di Bacco

Chapter 7

Adv#: 1:21-01010 Kline v. Di Bacco

#15.00 Status conference re: complaint

fr. 3/24/21

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to comply with FRBP 7026 and FRCP 26(a)(1), (f) and (g): 4/28/21.

Deadline to submit joint status report: 5/5/21.

Continued status conference 5/19/21 at 1:30 p.m.

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

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

Party Information

Debtor(s):

Michael A Di Bacco

Represented By
Leon Nazaretian

Defendant(s):

Michael A Di Bacco

Pro Se

Plaintiff(s):

Michael Kline

Represented By
David Brian Lally

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CONT... Michael A Di Bacco

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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San Fernando Valley
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Wednesday, April 21, 2021

Hearing Room 301

2:30 PM

1:19-11696 Peter M. Seltzer

Chapter 7

Adv#: 1:19-01151 Kessler v. Seltzer

#16.00 Plaintiff's Motion for Order: (1) Compelling Defendant to Respond to Plaintiffs First Set of Requests for Production of Documents and Interrogatories; (2) Compelling Defendant to Appear for Oral Examination; (3) Continuing Discovery Cutoff Deadline; and (4) Awarding Plaintiff Discovery Sanctions Against Defendant

Docket 65

***** VACATED *** REASON: Order approving in part stipulation entered 4/9/21. Hearing continued to 5/5/21 at 2:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Misty A Perry Isaacson

Defendant(s):

Peter M. Seltzer

Represented By
Rebecca J Winthrop

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies
Noreen A Madoyan
Montserrat Morales

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan
Jessica L Bagdanov

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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

#17.00 Defendant Lev Investments, LLC's Motion To Dismiss Plaintiff's Second Amended Complaint Or, Alternatively, Motion To Strike The Declaratory Relief Claim Added Without Leave Of Court And Without Defendant's Consent

Docket 53

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"), Ruvin Feygenberg and Michael Leizerovitz to this Court.

On October 14, 2020, Plaintiff filed a first amended complaint (the "FAC"). On October 28, 2020, Sensible, Mr. Feygenberg and Mr. Leizerovitz filed a motion to dismiss the FAC [doc. 32]. On November 16, 2020, Debtor filed a motion to dismiss the FAC (the "Debtor Motion") [doc. 34]. On December 16, 2020, the Court held a hearing on the Sensible Motion and the Debtor Motion. At that time, the Court issued a ruling dismissing the FAC with leave to amend [doc. 45].

On January 15, 2021, Plaintiff filed a second amended complaint (the "SAC") [doc. 52]. In the SAC, Plaintiff names Debtor as the sole defendant. Through the SAC, Plaintiff requests declaratory judgment that: (A) Debtor holds net sale proceeds from the sale of Debtor's real property (the "Sale Proceeds") in a resulting trust for the benefit of Plaintiff; (B) Plaintiff's interest in the Sale Proceeds is not property of Debtor's bankruptcy estate; and (C) Plaintiff is entitled to payment from the Sale Proceeds in an amount equal to the proportion of the amount Kevin Moda (Plaintiff's alleged assignor) allegedly made available, in order for Debtor to acquire title to the real property. In support of this request, Plaintiff alleges, as relevant to Plaintiff—

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Lev Investments, LLC

Chapter 11

Debtor was one of the beneficiaries of a second deed of trust encumbering residential real property located at 13854 Albers Street, Sherman Oaks, California (the "Albers Property"). In June 2018, the beneficiary of the first deed of trust against the Albers Property, Evergreen Advantage, LLC ("Evergreen"), recorded a notice of default.

Debtor requested that its counsel, Yevgeniya Lisitsa, help it raise funds to purchase Evergreen's loan secured by a first deed of trust (the "Evergreen Loan"), through which Debtor would obtain title to the Albers Property. In December 2018, Debtor, Ruvyn Feygenberg and Michael Leizerovitz entered into an agreement to raise funds to purchase the Evergreen Loan (the "Debt Purchase Agreement"). Pursuant to the Debt Purchase Agreement, Debtor would pay \$1,022,500.00 and Feygenberg/Leizerovitz would pay \$1,257,675.00 toward the purchase of the Evergreen Loan. The interest in the Evergreen Loan was to be held by (1) Debtor as to an undivided 50% interest, (2) Feygenberg as to an undivided 25% interest, and (3) Leizerovitz as to an undivided 25% interest. Upon foreclosure of the Albers Property, title to the Albers Property was to be placed in Debtor's name, subject to a first priority deed of trust to be held by Mr. Feygenberg and Mr. Leizerovitz.

To facilitate the purchase, Ms. Lisitsa collected funds to purchase the Evergreen Loan into her client trust account (the "Lisitsa Trust Account") and opened an escrow with Lawyer's Title Company. Ms. Lisitsa raised funds from, among others, Plaintiff's assignor, Kevin Moda. Ms. Lisitsa represented to Mr. Moda that he would own a proportional share of the Albers Property based on the amount of his contribution. Mr. Moda anticipated a return of his investment plus a proportional share of profits when Debtor later sold the Albers Property, and Mr. Moda deposited \$119,000 into the Lisitsa Trust Account.

SAC, ¶¶ 12-13, 18-20, 24-25. [FN1].

On February 16, 2021, Debtor filed a motion to dismiss the SAC (the "Motion") [doc. 53]. On April 7, 2021, Plaintiff filed an opposition to the SAC (the "Opposition") [doc. 59]. On April 14, 2021, Debtor filed a reply to the Opposition [doc. 61].

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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 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

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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. Declaratory Judgment and Resulting Trusts

The Declaratory Judgment Act (the "DJA"), 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.

"The DJA's operation 'is procedural only.'" *Flores v. EMC Mortg. Co.*, 997 F.Supp.2d 1088, 1111 (E.D. Cal. 2014) (quoting *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240, 57 S.Ct. 461, 463, 81 L.Ed. 617 (1937)). "A declaratory judgment is not a theory of recovery. The DJA "merely offers an *additional remedy* to litigants." *Id.* (internal quotation omitted) (emphasis in *Flores*). "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." *Id.* (internal quotation omitted).

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"Since a declaratory judgment is not a corrective action, it should not be used to remedy past wrongs." *Clinton v. Boladian*, 2013 WL 12126107, at *3 (C.D. Cal. May 2, 2013) (citing *Marzan v. Bank of Am.*, 779 F.Supp.2d 1140, 1146 (D. Haw. 2011) ("[B]ecause Plaintiffs' claims are based on allegations regarding Defendants' past wrongs, a claim under the Declaratory Relief Act is improper and in essence duplicates Plaintiffs' other causes of action.")). The "useful purpose served by the declaratory judgment is the clarification of legal duties for the future." *Amsouth Bank v. Dale*, 386 F.3d 763, 786 (6th Cir. 2004); see also *Societe de Conditionnement en Aluminum v. Hunter Eng'g Co.*, 655 F.2d 938, 943 (9th Cir. 1981) ("[The Declaratory Judgment Act] brings to the present a litigable controversy, which otherwise might only by [sic] tried in the future.").

Here, although Debtor asserts that declaratory relief is inappropriate because Plaintiff is attempting to recover money for past wrongs, the prayer for relief seeks a declaration regarding the parties' rights to the Sale Proceeds. As such, construing the SAC in a light most favorable to Plaintiff, the prayer for relief may be read as a request seeking "clarification of legal duties for the future..." in that Plaintiff is asking for a declaration regarding its rights to a distribution from the Sale Proceeds. *Amsouth Bank*, 386 F.3d at 786. [FN2].

Plaintiff seeks a judicial declaration that Debtor "holds the... Sale Proceeds in a resulting trust for the benefit of Plaintiff," that "Plaintiff's interest in the... Sale Proceeds is not" property of Debtor's estate and that "Plaintiff is entitled to payment from the... Sale Proceeds." SAC, p. 8. Plaintiff is not seeking a general declaration that Debtor owes Plaintiff money; rather, Plaintiff is asking for a declaration that Debtor holds a portion of the Sale Proceeds in trust for Plaintiff. [FN3].

Plaintiff bases its declaratory judgment claim on a resulting trust theory. 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*. Evidence to support the declaration of a resulting trust must be clear and convincing." *In re Cedar Funding, Inc.*, 408 B.R. 299, 315 (Bankr. N.D. Cal. 2009)(emphasis added).

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"Property that a debtor holds subject to a resulting trust never becomes part of that debtor's bankruptcy estate because the debtor took the property as a trustee and never held more than a bare legal title with the full beneficial interest residing in the beneficiary." *Id.* at 314.

There are several problems with Plaintiff's resulting trust theory. First, the allegations in the SAC, taken in the light most favorable to Plaintiff, do not establish a resulting trust. Based on the allegations and the Debt Purchase Agreement (attached to the SAC), it is not plausible that Debtor did not intend to take the beneficial interest in the Albers Property, and that Debtor intended to hold title to the Albers Property, and any of the Sale Proceeds, in trust for Plaintiff.

Although Plaintiff includes several allegations regarding the background of the transactions between Debtor and others, the allegations related to Plaintiff's involvement are: (A) Debtor requested that his counsel, Yevgeniya Lisitsa, help it to raise funds to purchase the Evergreen Loan, through which Debtor intended to obtain title to the Albers Property; (B) Ms. Lisitsa raised funds from, among others, Plaintiff's assignor, Kevin Moda; (C) Ms. Lisitsa represented to Mr. Moda that he would own a proportional share of the Albers Property based on the amount of his contribution; and (D) Mr. Moda anticipated a return of his investment plus a proportional share of profits. SAC, ¶¶ 18-19, 22-25. None of these allegations indicate that Debtor intended to hold, or authorized Ms. Lisitsa to promise that Debtor would hold, the Albers Property and any of the Sale Proceeds in trust for anyone who partially funded Debtor's acquisition of an interest in the Evergreen Loan.

At most, Plaintiff alleges that Debtor authorized Ms. Lisitsa to obtain funding to purchase Debtor's interest in the Evergreen Loan, which *may* lead to an inference that Debtor authorized Ms. Lisitsa to hold Debtor responsible for repayment of advanced funds and/or sharing of profits. If Debtor actually used any funds deposited by Mr. Moda into the Lisitsa Trust Account, to partially fund the purchase of the Debtor's interest in the Evergreen Loan, at best Plaintiff has an unsecured claim against property of the estate. In that situation, "the Bankruptcy Code's strong policy of ratable distribution among all creditors" weighs against imposition of a resulting trust. *In re Foam Systems*, 92 B.R. 406, 409 (B.A.P. 9th Cir. 1988), *aff'd*, 893 F.2d 1338 (9th Cir. 1990).

In *Foam Systems*, an insurance company issued a bond to indemnify one of the debtor's

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customers, which had paid the full contract price to the debtor, in advance. *Id.*, at 407. The funds paid by the customer were placed in a bank account in the debtor's name; the insurance company retained control over the account. *Id.* After the debtor filed its bankruptcy petition, and the insurance company honored its bond, the insurance company argued that a resulting trust should be imposed over the funds in the bank account, and that the funds were not property of the estate. *Id.*, at 408.

The bankruptcy court disagreed. *Id.* On appeal, the Bankruptcy Appellate Panel of the Ninth Circuit affirmed the bankruptcy court's ruling, holding—

If the only parties to be considered were Insurance Co. and the debtor, then the equities might favor the imposition of a resulting trust. However, in light of the Bankruptcy Code's strong policy of ratable distribution among all creditors, the bankruptcy court properly declined to exclude the funds in the account from the debtor's estate by imposing a resulting trust. *See In re Lewis W. Shurtleff, Inc.*, 778 F.2d 1416, 1419–1420 (9th Cir.1985) (although equities as between debtor and one group of creditors favored imposition of a constructive trust, court would not impose constructive trust and deprive estate of property which could be distributed to other creditors as well); *In re North American Coin & Currency, Ltd.*, 767 F.2d 1573, 1575 (9th Cir.1985) (court reluctant to exercise relatively undefined equitable power, the imposition of a constructive trust, in favor of one group of potential creditors at the expense of other creditors, because ratable distribution among all creditors is one of the strongest policies of bankruptcy law.)

Id., at 409. The Ninth Circuit Court of Appeals affirmed this holding, stating—

Although it may not be entirely clear as a matter of state law whether [the transferor] intended to give [the debtor] a beneficial interest in the fund, the equities do not appear to favor the imposition of a resulting trust. The bankruptcy court found that the policy of ratable distribution would be frustrated if it were to allow [the insurance company] to recover its funds in their entirety, rather than allocating the funds among the creditors in the appropriate statutory priority. It concluded that there was not sufficient justification to ignore the "ratable distribution" policy and to impose a resulting trust. In doing so, it did not commit reversible error.

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In re Foam Sys. Co., 893 F.2d 1338 (9th Cir. 1990).

As such, even if Plaintiff could plausibly allege facts supporting the imposition of a resulting trust in Plaintiff's favor, which Plaintiff has not, the Court cannot set aside the policy of ratable distribution in favor of imposing a resulting trust, in Plaintiff's favor, against the Sale Proceeds. Because the policy set forth in *Foam Systems* prevents the Court from imposing a resulting trust against the Sale Proceeds, the Court "is satisfied that the deficiencies in the [SAC] could not possibly be cured by amendment." *Jackson*, 353 F.3d at 758. As such, the Court will dismiss the SAC without leave to amend. [FN4].

III. CONCLUSION

The Court will dismiss the SAC without leave to amend.

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

FOOTNOTES

1. Curiously, Plaintiff does not allege that Debtor actually used this \$119,000, allegedly provided by Mr. Moda, to purchase the Evergreen Loan. Moreover, the Lisitsa Trust Account's statement, attached to the SAC, reflects a \$119,000 deposit from an *unidentified* source. Even if the Court assumes this source was Mr. Moda, Buyer's/Borrower's Settlement Statement attached to the SAC does not demonstrate that Debtor used this \$119,000 to acquire the Evergreen Loan.

Aside from the \$119,000 deposit, the Lisitsa Trust Account statement reflects the following wire transfers into that trust account: (A) \$566,337.50 from Mr. Leizerovitz; (B) \$566,337.50 from Mr. Feygenberg; and (C) \$600,000.00 from Debtor's principal. This amount (excluding the \$119,000) totals \$1,732,675.00. The Buyer's/Borrower's Settlement Statement attached to the SAC also reflects an escrow deposit from Mariya Ayzenberg in the amount of \$300,000.00, bringing the total funded, without use of the \$119,000 deposit, to \$2,032,675. The alleged purchase price of the Evergreen Loan being \$2,037,302.61, this leaves a difference of \$4,627.61. As such, the aggregate deposits in the Lisitsa Trust Account (including the \$119,000 deposit) and into escrow exceed the

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funds used to purchase the Evergreen Loan. Consequently, it is not clear that Debtor used any part of the \$119,000 deposit, reflected in the Lisitsa Trust Account's statement, to buy its interest in the Evergreen Loan.

2. Debtor also asserts that Plaintiff did not include sufficient allegations about the terms of the alleged assignment between Mr. Moda and Plaintiff. Because the SAC does not include many allegations regarding the assignment, and Plaintiff improperly includes allegations in the Opposition that were not in the SAC, there may be insufficient allegations regarding the terms of the assignment. However, even if Plaintiff adequately alleged the terms of the assignment, such allegations would not prevent dismissal of the SAC, for the reasons discussed herein.
3. The SAC does not contain any allegations that Mr. Moda was promised a lien against any property to secure repayment for his alleged contribution to Debtor's purchase of Debtor's interest in the Evergreen Loan. Even if it did, that would not justify the imposition of a resulting trust. "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." *Cedar Funding*, 408 B.R. at 315 (emphasis added); *see also In re Foam Systems*, 92 B.R. 406, 409 (B.A.P. 9th Cir. 1988), *aff'd*, 893 F.2d 1338 (9th Cir. 1990).
4. The parties also dispute whether Plaintiff had leave to add new claims. Because the Court is dismissing the SAC for failure to state a claim, the Court need not decide whether dismissal is appropriate based on the parameters of the Court's previous leave to amend.

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

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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

Plaintiff(s):

FR LLC, a California limited

Represented By
Donald W Reid

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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#18.00 Status conference re second amended complaint for
declaratory judgment

fr. 7/15/20; 8/19/20; 8/26/20; 10/7/20; 11/25/20; 12/16/20; 3/17/21

Docket 52

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

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Plaintiff(s):

FR LLC

Represented By
Michael Shemtoub

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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1:20-11006 Lev Investments, LLC

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Adv#: 1:20-01117 Lev Investments, LLC v. Lisitsa et al

#19.00 Motion for Abstention as to Lev Investments, LLC's
Complaint for Legal Malpractice

Docket 11

Tentative Ruling:

Deny.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition.

A. Relevant Prepetition History

On June 20, 2019, Debtor filed a complaint in state court against Sensible Consulting and Management, Inc., Michael Leizerovitz and Ruvin Feygenberg (together, the "Sensible Parties"), initiating state court action no. 19VECV00878 (the "Sensible Action"). Request for Judicial Notice ("RJN") [doc. 13], Exhibit A. Subsequently, the Sensible Parties filed an answer to the complaint and, concurrently, a cross-complaint against Debtor and, among others, Lisitsa Law, Inc. ("Lisitsa Law") and Yevgeniya Lisitsa (together, the "Lisitsa Parties"). RJN, Exhibit B. As concerns the Lisitsa Parties, the Sensible Parties alleged—

In December 2018, the Sensible Parties entered into a business transaction with Debtor for Debtor's acquisition of real property located in Sherman Oaks, California (the "Property"). The parties entered into an agreement to purchase a defaulted promissory note secured by a first position deed of trust against the Property (the "Agreement"). The Lisitsa Parties prepared the Agreement and acted as counsel for all parties. Pursuant to the Agreement, after foreclosing on the acquired deed of trust, Debtor was to take title to the Property, and the Sensible Parties would be provided with a first position deed of trust.

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After acquisition of the promissory note, the property owner engaged in litigation, over which the Sensible Parties were charged over \$24,000 in attorneys' fees and costs incurred by the Lisitsa Parties. The Sensible Parties assumed that, upon foreclosure on the deed of trust, they would be reimbursed these fees and costs.

After foreclosure of the Property, and despite supervision by the Lisitsa Parties, the Sensible Parties were included on title to the Property. Because of this mistake, a judgment lien against Mr. Feygenberg attached to the Property. In addition, the Lisitsa Parties did not record the Sensible Parties' deed of trust until months after the foreclosure, despite repeated demands from the Sensible Parties.

Under the Agreement, Debtor was supposed to contribute \$1,022,500 to the purchase of the note and deed of trust. However, unbeknownst to the Sensible Parties, the Lisitsa Parties (and other defendants named in the Sensible Action) obtained and concealed secret loans from third parties. The Sensible Parties did not learn about the loans until one of the lenders filed a lawsuit to recover the loaned funds.

Id. On these allegations, the Sensible Parties asserted causes of action for breach of fiduciary duty, concealment, indemnity and declaratory relief against the Lisitsa Parties. RJN, Exhibit B. Although Debtor is a party to certain claims in the Sensible Action, Debtor has not asserted any causes of action against the Lisitsa Parties in the Sensible Action.

On January 19, 2020, the Sensible Parties filed a complaint against the Lisitsa Parties for legal malpractice (the "Malpractice Action"). RJN, Exhibit C. Through the Malpractice Action, the Sensible Parties assert that, based on similar allegations made by the Sensible Parties in the Sensible Action, the Lisitsa Parties failed to advise the Sensible Parties of conflicts of interest, failed to obtain a written conflict waiver in connection with the loan transaction, failed to properly structure the loan transaction related to the acquisition of the Property and failed to protect the Sensible Parties' interests as a lender and first position holder of a deed of trust. *Id.* Debtor is not a party to the Malpractice Action.

B. Debtor's Bankruptcy Filing

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On June 1, 2020, Debtor filed a voluntary chapter 11 petition. On June 26, 2020, the Sensible Parties removed the Sensible Action to this Court. The Lisitsa Parties requested remand of the Sensible Action to state court. [1:20-ap-01065-VK, doc. 44]. On September 16, 2020, the Court held a hearing on whether to remand the Sensible Action. At that time, the Court issued a ruling severing the claims and remanding the Sensible Action in part (the "Severance Ruling") [1:20-ap-01065-VK, doc. 44]. Specifically, the Court remanded the Sensible Parties' claims against the Lisitsa Parties, as well as certain other claims, but did not remand the claims between Debtor and the Sensible Parties related to the Property. The Court held, in relevant part, that: (A) the claims between Debtor and the Sensible Parties impacted the sale and administration of the Property, and should not be remanded; and (B) the Sensible Parties' claims against the Lisitsa Parties may entitle the parties to a jury trial, involved exclusively California law and may not be constitutionally core claims allowing this Court to enter final judgment, thus warranting remand of those claims to state court.

On August 4, 2020, Lisitsa Law filed a claim against Debtor's estate, asserting a claim in the amount of \$139,266.89 based on "legal services performed and costs incurred." On December 9, 2020, Debtor filed a complaint against the Lisitsa Parties (the "Complaint"), initiating this adversary proceeding. In the Complaint, Debtor alleges—

The Lisitsa Parties served as counsel to Debtor from December 2018 through October 2019, at which time the Lisitsa Parties withdrew from representing Debtor. The Lisitsa Parties prepared acquisition documents related to purchase of the Property and the debt against the Property, representing both Debtor and the Sensible Parties. However, Debtor was never presented with an engagement agreement with respect to the Lisitsa Parties' joint representation of the parties, nor was Debtor ever advised of the conflict of interest presented by the joint representation.

Notwithstanding the terms of the parties' agreement, the Lisitsa Parties failed to accurately prepare the Trustee's Deed Upon Sale, placing the Sensible Parties on title to the Property with Debtor. After being advised of the mistake, the Lisitsa Parties attempted to fix the mistake by preparing a grant deed to divest the Sensible Parties of any interest in the Property, and to provide the Sensible Parties with a first position deed of trust against the Property. The Lisitsa Parties failed to immediately record these documents. As such, a judgment lien against Mr.

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Feygenberg attached to the Property.

In addition, the loan document prepared by the Lisitsa Parties included a usurious interest rate. Debtor believes that the Lisitsa Parties: (a) improperly and secretly refunded to designees of the Sensible Parties \$210,000 of the acquisition loan and compensated the Lisitsa Parties in the amount of \$25,000, which deprived Debtor of those loan proceeds; and (b) failed to revise the acquisition loan documents to reflect the lesser amount of the loan proceeds delivered to Debtor. The refunds to the Sensible Parties were made to family members of the Sensible Parties to conceal the nature of the payments.

In March 2020, Debtor entered into an agreement to sell the Property for \$3.15 million, which included carry-back seller financing that Debtor would retain. The Lisitsa Parties represented Debtor as the seller in this transaction. When preparing the escrow instructions, rather than providing for Debtor to be the sole carry-back lender, the Lisitsa Parties included a \$600,000 proposed loan from a third party.

The sale did not close. Eventually, the Sensible Parties declared a default on the acquisition loan and sought to foreclose on the Property. Debtor disputed the default. Certain terms of the acquisition loan were never explained to Debtor or concealed from Debtor. Moreover, in connection with the acquisition loan, Ms. Lisitsa advised Debtor that she would be contributing \$300,000 of her own funds as an investor in the Property. However, Ms. Lisitsa did not advise Debtor of the conflict of interest present in such a transaction. Further, the funds Ms. Lisitsa purportedly invested were from another party, who later sued Debtor for recovery of \$300,000 on the basis that the advance was a loan, not an investment. Debtor later learned that Ms. Lisitsa's representations regarding the \$300,000 transfer were false.

In May 2020, as a direct consequence of actions taken by Ms. Lisitsa, the Property was hijacked by individuals who entered the Property using access provided by Ms. Lisitsa. Ms. Lisitsa did not have any authority to provide these strangers with access to the Property. The strangers were forcibly removed from the Property by the Los Angeles Police

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Department. Debtor sustained damages in the sum of at least \$20,000 as a result of this incident. In addition, a company named FR L.L.C. asserted a claim against Debtor related to an alleged investment in the Property. Lisitsa Law's bank statement shows a deposit of \$119,000, but Ms. Lisitsa claims she does not know who deposited the funds. Ms. Lisitsa claims the funds were for the acquisition loan. Debtor believes Ms. Lisitsa owns an interest in and controls FR L.L.C. or has a joint venture relationship with the principal of FR L.L.C., Kevin Moda. Ms. Lisitsa never made disclosures to Debtor regarding these issues. In addition, the Lisitsa Parties have failed to account for Debtor's funds maintained by the Lisitsa Parties.

Based on these allegations, Debtor asserts a claim for legal malpractice; Debtor also objects to the Lisitsa Parties' claim against Debtor's estate, based on the malpractice allegations and the Lisitsa Parties' failure to support the proof of claim with documentation in accordance with Federal Rule of Bankruptcy Procedure 3001.

On January 20, 2021, the Court entered an order confirming Debtor's chapter 11 plan (the "Confirmation Order") [Bankruptcy Docket, doc. 286]. The Confirmation Order provides that "this Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the [Bankruptcy] Case and the Plan to the fullest extent permitted by law...." Confirmation Order, ¶ 19.

On March 5, 2021, the Lisitsa Parties filed a motion for permissive abstention (the "Motion") [doc. 11]. On April 7, 2021, Debtor filed an opposition to the Motion (the "Opposition") [doc. 22]. On April 14, 2021, the Lisitsa Parties filed a reply to the Opposition [doc. 28].

On March 24, 2021, the Court held a status conference. At that time, the Court set a discovery cutoff date, a deadline to file pretrial motions, a deadline to submit a joint pretrial stipulation and a pretrial conference. On March 29, 2021, the Court entered a scheduling order with the dates and deadlines [doc. 20].

II. ANALYSIS

Title 28, United States Code, § 1334(c)(1) states that "nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or

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respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11."

Courts consider the following twelve factors under 28 U.S.C. § 1334(c)(1):

(1) the effect or lack thereof on the efficient administration of the estate if a court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990).

Here, the factors weigh against abstention. First, the objection to the Lisitsa Parties' claim, as well as the claim for monetary damages, impacts distribution of funds in accordance with Debtor's chapter 11 plan. As such, this proceeding has an effect on administration, and also is related to the main bankruptcy case because it involves the claims disallowance process. Next, although state law governs Debtor's malpractice claim, bankruptcy law governs part of Debtor's objection to the Lisitsa Parties' claim, regarding lack of supporting documentation. In addition, the malpractice claim is neither difficult nor unsettled. [FN1].

Moreover, Debtor's objection to the Lisitsa Parties' claim is core. *See Stern v. Marshall*, 564 U.S. 462, 499, 131 S.Ct. 2594, 2618, 180 L.Ed.2d 475 (2011) (matters necessarily resolved in claims allowance process are core). Because Debtor's malpractice claim is intertwined with Debtor's objection to the Lisitsa Parties' claim, severing the claims is not feasible. *See Billing v. Ravin, Greenberg & Zackin, P.A.*, 22 F.3d 1242 (3d Cir.

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1994) ("The close connection between the malpractice action and the objections to fees leads us to conclude that the debtors' allegations of malpractice are part of the process of allowance and disallowance of claims."). Denying the request for abstention also will not burden this Court's docket; the Court already entered dates and deadlines applicable in this case. There also is no evidence of forum shopping by Debtor.

Further, it is not evident that the Lisitsa Parties have a right to a jury trial in this case. The Lisitsa Parties raise the Court's Severance Ruling as support for their argument that they are entitled to a jury trial. However, in the Severance Ruling, the Court raised the right to a jury trial as a concern because the claims against the Lisitsa Parties were asserted by *the Sensible Parties*, not Debtor. Here, the malpractice claim was asserted by Debtor after the Lisitsa Parties filed a claim against the estate.

"When a creditor files a claim in bankruptcy, that claim and all counterclaims are triable in equity without a jury even though such claims or counterclaims are otherwise legal in nature and entitled to trial by jury." *In re Hickman*, 384 B.R. 832, 837 (B.A.P. 9th Cir. 2008) (citing *Langenkamp v. Culp*, 498 U.S. 42, 44, 111 S.Ct. 330, 330, 112 L. Ed. 2d 343 (1990); and *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 58, 109 S.Ct. 2782, 106 L. Ed. 2d 26 (1989)). "This extends to claims for affirmative relief." *Id.* (citing *Langenkamp*, 498 U.S. at 44). Courts have held that malpractice claims filed by the debtor against attorneys who file proofs of claim may not be entitled to a jury trial because the creditors have subjected themselves to the equitable jurisdiction of the bankruptcy court. *See, e.g. In re CBI Holding Co., Inc.*, 529 F.3d 432, 466–67 (2d Cir. 2008); *In re McClelland*, 332 B.R. 90, 97–98 (Bankr. S.D.N.Y. 2005); and *Billing*, 22 F.3d at 1253. The parties have not discussed *Langenkamp* or other applicable authorities governing a right to a jury trial in a malpractice action where the attorney has filed a proof of claim in the debtor's estate. As such, this factor does not weigh in favor of abstention.

The Lisitsa Parties heavily focus on their argument that there is a related proceeding in state court, and express concern that findings from one court may have a preclusive effect on the other court. However, neither the Sensible Action nor the Sensible Malpractice Action involve *Debtor's* claims of malpractice (or any other theory related to the Lisitsa Parties' representation of Debtor in the subject transactions) against the Lisitsa Parties. Thus, although some allegations made by the Sensible Parties are similar to allegations made by Debtor, any judgment from the state court will not have a preclusive effect on this Court, and vice versa, because Debtor and the Sensible Parties are not in privity. *See*

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In re Harmon, 250 F.3d 1240, 1245 (9th Cir. 2001) (holding that an element of preclusion under California law is that "the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding"); *and Rein v. Providian Fin. Corp.*, 270 F.3d 895, 898-99 (9th Cir. 2001) (holding that, under federal law on preclusion, "the parties [must be] identical or in privity").

In addition, Debtor's claim against the Lisitsa Parties is supported by several allegations of conduct not alleged by the Sensible Parties, such as the Lisitsa Parties' alleged refund to the Sensible Parties and Debtor's contention that the Lisitsa Parties failed to provide any accounting to Debtor with respect to Debtor's funds on deposit with, and utilized by, the Lisitsa Parties. Ultimately, Debtor and the Sensible Parties were different clients with different attorney-client relationships with the Lisitsa Parties. Consequently, the applicable factors weigh against abstention. [FN2].

III. CONCLUSION

The Court will deny the Motion.

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

FOOTNOTES

1. In their reply, the Lisitsa Parties cite *Arroyo v. Wilson*, 1998 WL 34635 (N.D. Cal. Jan. 20, 1998), and *In re Phelps Techs., Inc.*, 238 B.R. 819, 822 (Bankr. W.D. Mo. 1999), as support for their argument that the Court should abstain from malpractice claims because they are state law claims. However, in *Arroyo*, the court assessed whether *mandatory* abstention was applicable, not permissive abstention. *Arroyo*, 1998 WL 34635 at *2. In addition, the complaint here includes an objection to the Lisitsa Parties' claim, a federal issue. In *Phelps*, the presence of state law issues was one of many factors the court found to be present, including the creditors' right to a jury trial "*if they have not filed a claim against the bankruptcy estate.*" *Phelps*, 238 B.R. at 824 (emphasis added). The court also noted that "[a]bstention is the exception rather than the rule." *Id.*, at 822. Here, as discussed below, the Lisitsa Parties filed a proof of claim, and a majority of the factors weigh against abstention. Thus, these cases are distinguishable from this case.

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2. In their conclusion, the Lisitsa Parties also request, in the alternative, remand or dismissal of this action. However, this proceeding was not removed and, as a result, remand is inapplicable. In addition, the Lisitsa Parties have not provided any basis to dismiss this action. *Martinez v. Nestle Dreyer's Ice Cream Co.*, No. 118CV01582DADJLT, 2019 WL 2918025, at *1 (E.D. Cal. July 8, 2019) ("Federal courts... have concluded that they lack authority to remand a case to state court if it was originally filed in federal court.").

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Yevgeniya Lisitsa

Represented By
Lisa D Angelo

Lisitsa Law, Inc.

Represented By
Lisa D Angelo

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik
Richard P Steelman Jr
Beth Ann R Young

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the April 22, 2021 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).

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Docket 0

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Tentative Ruling:

- NONE LISTED -

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1:20-11286 Transpine, Inc.

Chapter 11

#1.00 Application for compensation for Leslie A Cohen, debtor's attorney, period: 7/22/2020 to 3/25/2021, fee: \$98,294.50, expenses: \$2,482.65.

Docket 141

Tentative Ruling:

Leslie Cohen Law PC ("Applicant"), counsel to the debtor and former debtor in possession – approve fees in the amount of \$96,259.50 and reimbursement of expenses in the amount of \$2,482.65, pursuant to 11 U.S.C. § 331, for the period between July 22, 2020 through March 25, 2021, on an interim basis.

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

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen
Paul M Kelley

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1:17-10378 Kandy Kiss of California, Inc. and Mary Teresa Barnes

Chapter 7

#1.10 Trustee's Final Report and Applications for Compensation

Howard Ehrenberg, Chapter 7 Trustee

SulmeyerKupetz, Attorney for Chapter 7 Trustee

Pachulski Stang Ziehl & Jones LLP, Attorneys for David K. Gottlieb Former Interim Trustee

Grobstein Teeple, LLP, Accountants for Chapter 7 Trustee

fr. 4/8/21

Docket 274

Tentative Ruling:

Howard M. Ehrenberg, chapter 7 trustee – approve fees of \$160,550.39 and reimbursement of expenses of \$68.94, on a final basis. The chapter 7 trustee is authorized to collect 100% of the approved fees and reimbursement of expenses.

SulmeyerKupetz, counsel to chapter 7 trustee – approve fees of \$292,518.50 and reimbursement of expenses of \$9,058.82. The Court will not approve \$4,060.50 in fees for the reasons set forth below.

Pachulski Stang Ziehl & Jones LLP ("Pachulski"), counsel to former interim chapter 7 trustee – approve fees of \$40,048.50 and reimbursement of expenses of \$308.65, pursuant to 11 U.S.C. § 330, on a final basis. Pachulski is authorized to collect 100% of the approved fees and reimbursement of expenses.

Grobstein Teeple LLP ("Grobstein"), accountant to chapter 7 trustee – approve fees of \$37,058.50 and reimbursement of expenses of \$398.79, pursuant to 11 U.S.C. § 330, on a final basis. To the extent Grobstein has billed up to an additional \$3,500.00 in fees and \$500.00 in expenses (the estimated maximum amounts), Grobstein must file documentation supporting those additional fees and expenses. Grobstein is authorized to collect 100% of the approved fees and reimbursement of expenses.

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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 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

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contrary, routine employment applications remain a trustee duty." *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained "a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee." *Id.* at 727.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed for the services identified below by SulmeyerKupetz. It appears that these fees are for services that are duplicative of those that could and should be performed by the chapter 7 trustee, as a trustee:

Category	Date	Timekeeper	Description	Rate	Time	Fee
Asset Analysis & Recovery	12/1/17	DAL	Review and revise notice application for order authorizing employment of SulmeyerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee	\$595	0.10	\$59.50
Case Administration	6/15/18	DAL	Review and analyze multiple correspondence from Mr. Lesnick and Ms. Khalili re issues re proposed abandonment of books and records and manner of proceeding re same	\$595	0.20	\$119.00

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Case Administration	6/15/18	DAL	Multiple correspondence to Mr. Lesnick and Ms. Khalili re issues re proposed abandonment of books and records and manner of proceeding re same and conferred with Mr. Ehrenberg, trustee, and Ms. Cortez, trustee administrator, re motion re same	\$595	0.30	\$178.50
Case Administration	6/25/18	DAL	Review and analyze multiple correspondence from Mr. Lesnick, Ms. Khalili, Mr. Watson, Mr. Kurtzhall, and Mr. Bollinger re issues re proposed abandonment of books and records and manner of proceeding re same and conferred with Ehrenberg, trustee, re same	\$595	0.50	\$297.50
Case Administration	7/2/18	DAL	Preparation of notice and voluntary dismissal of notice of abandonment of books and records	\$595	0.50	\$297.50

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Fee & Employment Application	11/30/17	DAL	Review and analyze files, pleadings, and documents re issues re preparation of application for order authorizing employment of SulmeyerKupertz, A Professional Corporation, as general bankruptcy counsel for chapter 7 Trustee.	\$595	0.50	\$297.50
Fee & Employment Application	11/30/17	DAL	Preparation of application for order authorizing employment of SulmeyerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee.	\$595	2.00	\$1,190.00
Fee & Employment Application	11/30/17	DAL	Preparation of declaration of Daniel Lev in support of application for order authorizing employment of SulmeyerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee.	\$595	0.50	\$297.50

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Fee & Employment Application	11/30/17	DAL	Preparation of notice of application for order authorizing employment of SulmeyerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee.	\$595	0.50	\$297.50
Fee & Employment Application	12/1/17	DAL	Review and revise application for order authorizing employment of SulmeyerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee.	\$595	0.80	\$476.00
Fee & Employment Application	12/1/17	DAL	Review and revise declaration of Daniel Lev in support of application for order authorizing employment of SulmeyerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee.	\$595	0.10	\$59.50

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Fee & Employment Application	12/7/17	DAL	Preparation of application for order authorizing employment of Brutzkus Gubner Rozansky Seror Weber LLP and Resch Polster & Berger LLP as special litigation counsel for chapter 7 trustee.	\$595	2.00	\$1,190.00
Fee & Employment Application	12/12/17	DAL	Preparation of declaration of Steven Gubner in support of application for order authorizing employment of Brutzkus Gubner Rozansky Seror Weber LLP and Resch Polster & Berger LLP as special litigation counsel for chapter 7 trustee.	\$595	0.50	\$297.50
Fee & Employment Application	12/13/17	DAL	Preparation of notice of application for order authorizing employment of Brutzkus Gubner Rozansky Seror Weber LLP and Resch Polster & Berger LLP as special litigation counsel for chapter 7 trustee.	\$595	0.50	\$297.50

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Fee & Employment Application	12/18/17	DAL	Review and revise application for order authorizing employment of Brutzkus Gubner Rozansky Seror Weber LLP and Resch Polster & Berger LLP as special litigation counsel for chapter 7 trustee.	\$595	0.30	\$178.50
Fee & Employment Application	12/18/17	DAL	Review and revise declaration of Steve Gubner in support of application for order authorizing employment of Brutzkus Gubner Rozansky Seror Weber LLP and Resch Polster & Berger LLP as special litigation counsel for chapter 7 trustee.	\$595	0.10	\$59.50
Fee & Employment Application	12/18/17	DAL	Review and revise notice of application for order authorizing employment of Brutzkus Gubner Rozansky Seror Weber LLP and Resch Polster & Berger LLP as special litigation counsel for chapter 7 trustee.	\$595	0.10	\$59.50

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Fee & Employment Application	12/28/17	DAL	Preparation of declaration of Daniel Lev re non-opposition for order authorizing employment of SulmeyerKupetz, A Professional Corporation, as general bankruptcy counsel for chapter 7 trustee.	\$595	0.50	\$297.50
Fee & Employment Application	12/28/17	DAL	Preparation of order granting application for order authorizing employment of SulmeyerKupetz, a Professional Corporation, as general bankruptcy counsel for chapter 7 trustee.	\$595	0.50	\$297.50

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

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/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):

Kandy Kiss of California, Inc.

Represented By
Beth Gaschen
Steven T Gubner
Jessica L Bagdanov

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Thursday, April 22, 2021

Hearing Room 301

10:30 AM

CONT... Kandy Kiss of California, Inc. and Mary Teresa Barnes

Chapter 7

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, April 22, 2021

Hearing Room 301

1:00 PM

1:17-12214 Yegiya Kutyan and Haykush Helen Kutyan

Chapter 11

#2.00 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;10/22/20;

Docket 1

***** VACATED *** REASON: Order Closing case on Interim Basis entered
11/24/20. [Dkt.#198]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yegiya Kutyan

Represented By
Sheila Esmaili

Joint Debtor(s):

Haykush Helen Kutyan

Represented By
Sheila Esmaili

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

Thursday, April 22, 2021

Hearing Room 301

1:00 PM

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

Chapter 11

#3.00 Post confirmation status conference

fr. 9/12/19; 10/3/19; 04/16/20; 12/17/20

Docket 1

Tentative Ruling:

Continue to **1:00 p.m. on October 21, 2021**. On or before **October 7, 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 April 22, 2021 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 22, 2021

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#4.00 Confirmation hearing re debtor's first amended chapter 11 plan
fr. 12/3/20(stip); 2/11/21(stip); 3/25/21; 4/22/21(stip)

Docket 131

Tentative Ruling:

Confirm First Amended Chapter 11 Plan filed on October 1, 2020 [doc. 131]. No later than **October 7, 2021**, the debtors must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) AND BE SUPPORTED BY EVIDENCE. A postconfirmation status conference will be held on **October 21, 2021 at 1:00 p.m.**

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

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 22, 2021

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#5.00 Status conference re: chapter 11 case

fr. 11/21/19; 4/9/20; 7/9/20, 7/16/20; 9/10/20; 10/15/20; 12/3/20(stip);
2/11/21(stip); 3/25/21; 4/8/21(stip)

Docket 1

Tentative Ruling:

See calendar no. 4.

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 22, 2021

Hearing Room 301

1:00 PM

1:20-10678 John Michael Smith, Jr and Rebecca Phelps Smith

Chapter 11

#6.00 Status conference re chapter 11 case

fr. 7/16/20; 11/5/20; 1/21/21

Docket 36

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on June 17, 2021**. No later than **June 3, 2021**, the debtors must file and serve a status report regarding their progress toward confirming a chapter 11 plan.

Appearances on April 22, 2021 are excused.

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, April 22, 2021

Hearing Room 301

1:00 PM

1:20-10924 Tikran Eritsyanyan

Chapter 11

#7.00 Confirmation hearing re: chapter 11 plan of reorganization

fr. 3/18/21

Docket 52

Tentative Ruling:

March 18, 2021 Tentative Ruling

The Court intends to continue the hearing regarding confirmation of the *Debtor's Chapter 11 Plan* (the "Plan") [doc. 52]. The debtor and the objecting secured creditor should be prepared to discuss an appropriate continued hearing date.

A. Background

On May 18, 2020, Tikran Eritsyanyan ("Debtor") filed a voluntary chapter 11 petition. On October 30, 2020 Debtor filed the Plan [doc. 51]. On February 1, 2021, the Court entered an order [doc. 83] approving the adequacy of Debtor's disclosure statement [doc. 51].

B. The Plan

The Plan provides for the liquidation of Debtor's non-exempt assets to pay all creditors in full. The Plan is premised on the sale of: (1) residential real property located at 1356 Elm Avenue, Glendale, California 91201 (the "Elm Property"); and (2) residential real property located at 15632 Viewridge Lane, Granada Hills, California 91344 (the "Viewridge Property").

On November 18, 2020, the Court entered an order authorizing the sale of the Viewridge Property [doc. 64]. On December 17, 2020, the Court entered an order authorizing the sale of the Elm Property [doc. 72].

On February 25, 2021, secured creditors Red Dragon Investment and Platinum Business Management ("Creditors") filed an objection to confirmation of the Plan (the "Opposition") [doc. 91]. On March 8, 2021, Debtor filed *Debtor's Brief and*

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Thursday, April 22, 2021

Hearing Room 301

1:00 PM

CONT... Tikran Eritsyan

Chapter 11

Memorandum of Points and Authorities in Support of Confirmation of Chapter 11 Plan of Reorganization (the "Brief") [doc. 96].

C. The Elm Property

Apparently, Debtor has not closed the sale of the Elm Property. In the Brief, Debtor states that the sale of the Elm Property remains pending, and that the sale should occur by March 18, 2021. However, Debtor has not provided further explanation concerning the delayed sale of the Elm Property (for which the Court's related order was entered **months** ago) and why the sale will close in the immediate future, or alternative treatment if the sale of the Elm Property is not timely closed.

Without further information and evidence regarding the delayed sale of the Elm Property and the likelihood that it will close in the immediate future, the Court will not confirm the Plan - which is premised on the sale of the Elm Property.

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, April 22, 2021

Hearing Room 301

1:00 PM

1:20-10924 Tikran Eritsyan

Chapter 11

#8.00 Status conference re: chapter 11 case
fr. 7/2/20; 11/19/20; 1/14/21; 3/18/21

Docket 1

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**

Thursday, April 22, 2021

Hearing Room 301

1:00 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#9.00 Postconfirmation status conference re chapter 11, subchapter V case
fr, 7/16/20; 9/17/20; 12/10/20

Docket 1

***** VACATED *** REASON: to be heard at 2:30 p.m. with the sub V
calendar**

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, April 22, 2021

Hearing Room 301

1:00 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#10.00 Status conference re: chapter 11 case

fr. 8/13/20; 9/10/20; 2/4/21

Docket 1

Tentative Ruling:

Debtor's Third Status Report, filed on April 12, 2021 [doc. 117], is not supported by evidence.

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, April 22, 2021

Hearing Room 301

1:00 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#11.00 Status conference re: chapter 11 case

fr. 9/10/20

Docket 1

Tentative Ruling:

If the debtor has filed all monthly operating reports for the period through March 31, 2021, the Court will continue this status conference to **1:00 p.m. on June 17, 2021**, and no later than **June 3, 2021**, the debtor must file and serve a status report, supported by evidence, regarding its progress toward confirming a chapter 11 plan.

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, April 22, 2021

Hearing Room 301

1:00 PM

1:20-11769 Dashing Properties Management, Inc.

Chapter 11

#12.00 Status conference re chapter 11 case
fr. 11/19/20

Docket 1

***** VACATED *** REASON: Order dismissing case entered on 3/8/21
[doc. 68].**

Tentative Ruling:

- NONE LISTED -

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, April 22, 2021

Hearing Room 301

1:30 PM

1:18-11729 Richard Philip Dages

Chapter 7

#13.00 Debtor's motion to dismiss chapter 7 case
fr. 4/8/21(stip)

Docket 208

Tentative Ruling:

Grant, except the Court will not impose the deadlines set forth in the motion for the chapter 7 trustee's distribution of funds received from the debtor.

The Court will retain jurisdiction over the debtor's payment of \$23,000.00 to the chapter 7 trustee, the chapter 7 trustee's distribution of the funds remitted by the debtor to the chapter 7 trustee and compliance with 11 U.S.C. § 704(a)(9). This case will remain open until the chapter 7 trustee files a trustee distribution report.

To assess the chapter 7 trustee's progress with administration of the estate, the Court will set a status conference at **1:00 p.m. on June 24, 2021**. No later than **June 10, 2021**, the chapter 7 trustee must file a status report regarding the distribution of funds paid by the debtor and completion of a final report and trustee distribution report.

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

Party Information

Debtor(s):

Richard Philip Dages

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**

Thursday, April 22, 2021

Hearing Room 301

1:30 PM

1:18-11729 Richard Philip Dages

Chapter 7

#13.10 Order to show cause why debtor's counsel should not be ordered to disgorge fees

fr. 3/12/20; 4/30/20; 10/22/20; 3/18/21; 4/8/21

Docket 136

Tentative Ruling:

The Court will continue this hearing to **1:00 p.m. on June 24, 2021**, to be held with the chapter 7 case status conference set for the same time and date.

Party Information

Debtor(s):

Richard Philip Dages

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**

Thursday, April 22, 2021

Hearing Room 301

1:30 PM

1:19-12082 Robert M. Gerstein

Chapter 7

#14.00 Chapter 7 Trustee's Motion to Approve Compromise of Controversy

Docket 136

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):

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, April 22, 2021

Hearing Room 301

1:30 PM

1:19-12082 Robert M. Gerstein

Chapter 7

#15.00 Trustee's Motion to Leave Certain Asset of the Estate Unadministered

Docket 138

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):

Robert M. Gerstein

Represented By
John D Faucher

Trustee(s):

Amy L Goldman (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
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San Fernando Valley
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Hearing Room 301

1:30 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#16.00 Motion for interim and final approval of postpetition financing pursuant to 11 U.S.C. §364(d)(1) and approval of priming lien against estate property

fr. 1/14/21, 1/28/21; 2/11/21; 3/4/21(stip)

Docket 38

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
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San Fernando Valley
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Hearing Room 301

1:30 PM

1:20-12097 Philip H. Lee

Chapter 7

#17.00 Creditor Keybank National Association's Motion for extension of time to object to entry of discharge and deadline to file a nondischargeability complaint

Docket 39

Tentative Ruling:

In light of the debtor's untimely opposition to the motion, and to give the movant an opportunity to file a reply, the Court will continue this hearing to **1:30 p.m. on May 6, 2021**. No later than **April 29, 2021**, the movant may file and serve a reply to the opposition.

Appearances on April 22, 2021 are excused.

Party Information

Debtor(s):

Philip H. Lee

Represented By
Matthew Abbasi

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 22, 2021

Hearing Room 301

1:30 PM

1:21-10130 Carlos Alberto Andrade and Maria Cruz Andrade

Chapter 7

#18.00 Debtors' Motion for Order to Vacate Dismissal

Docket 20

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):

Carlos Alberto Andrade

Represented By
Daniel King

Joint Debtor(s):

Maria Cruz Andrade

Represented By
Daniel King

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 22, 2021

Hearing Room 301

1:30 PM

1:21-10503 BAIC

Chapter 11

#18.10 Motion for Order Authorizing Use of Cash Collateral

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BAIC

Represented By
Michael E Plotkin

**United States Bankruptcy Court
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Thursday, April 22, 2021

Hearing Room 301

1:30 PM

1:21-10500 Restorations

Chapter 11

#18.20 Motion for Order Authorizing Use of Cash Collateral

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Restorations

Represented By
Michael E Plotkin

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

Thursday, April 22, 2021

Hearing Room 301

2:30 PM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#19.00 Berger-Frandsen Creditors' objection to debtors' designation
as small business debtors and subchapter V election

Docket 50

Tentative Ruling:

The Court will continue the hearing on this contested matter to **2:30 p.m. on April 29, 2021.**

Appearances on April 22, 2021 are excused.

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

2:30 PM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#20.00 Motion for Order Authorizing Use Cash Collateral

Docket 55

Tentative Ruling:

Grant.

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

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

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Movant(s):

Alex Foxman

Represented By
Stella A Havkin
Stella A Havkin

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, April 22, 2021

Hearing Room 301

2:30 PM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#21.00 Status conference re: chapter 11 subchapter V case
fr. 3/25/21; 4/8/21

Docket 1

Tentative Ruling:

The Court will continue this chapter 11 case status conference to **2:30 p.m. on April 29, 2021.**

Appearances on April 22, 2021 are excused.

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 22, 2021

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#22.00 Postconfirmation status conference re chapter 11, subchapter V case
fr, 7/16/20; 9/17/20; 12/10/20

Docket 1

Tentative Ruling:

Continue to **2:30 p.m. on October 21, 2021**. On or before **October 7, 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, 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**.

Appearances on April 22, 2021 are excused.

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
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Thursday, April 29, 2021

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2:30 PM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1607906542>

Meeting ID: 160 790 6542

Password: 633591

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 790 6542

Password: 633591

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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San Fernando Valley
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CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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Thursday, April 29, 2021

Hearing Room 301

2:30 PM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#1.00 Berger-Frandsen Creditors' objection to debtors' designation
as small business debtors and subchapter V election

fr. 4/22/21

Docket 50

Tentative Ruling:

Deny.

I. BACKGROUND

On February 3, 2021, Alex Foxman and Michal J. Morey ("Debtors") filed a voluntary chapter 11, subchapter V petition.

A. *Relevant Prepetition History*

Prepetition, a bond issuer required that collateral in the total amount of \$4,150,000 (the "Bond") be posted by National ACO, LLC ("NACO") and its guarantors. Declaration of Russell Frandsen ("Frandsen Declaration") [doc. 51], ¶ 6. NACO contributed \$2 million towards the Bond, and the guarantors agreed to contribute the remaining \$2.15 million. *Id.* Debtors did not contribute their agreed-upon share of collateral. Consequently, other guarantors, such as Andre Berger, Russell Frandsen, Tracy Berger and Christie Frandsen (together, the "Berger-Frandsen Parties"), were required to cover Debtors' share. *Id.*

Subsequently, the Berger-Frandsen Parties sued Debtors (the "First Lawsuit"). *Id.*, ¶ 5. Through the First Lawsuit, the Berger-Frandsen Parties asserted that Debtors: (A) breached their contractual and fiduciary duties to the Berger-Frandsen Parties by misrepresenting their financial affairs and failing to contribute their agreed-upon share of collateral towards the Bond; and (B) fraudulently transferred their real properties located at 14606 Sutton Street, Sherman Oaks, CA 91403 (the "Sutton Property") and 321 S. San Vicente Boulevard, #407, Los Angeles, CA 90048 (the "San Vicente Property"). *Id.*

On March 31, 2019, Debtors, Ilana Mikhlin and Richard Fox, on the one hand, and NACO and the Berger-Frandsen Parties, on the other hand, executed a settlement

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2:30 PM

CONT... Alex Foxman and Michal J Morey

Chapter 11

agreement resolving the First Lawsuit (the "Settlement Agreement"). *Id.*, ¶ 4, Exhibit 1. Through the Settlement Agreement, Debtors agreed to execute a promissory note (the "Note") and two deeds of trust against the Sutton Property and San Vicente Property in favor of the Berger-Frandsen Parties (the "Deeds of Trust"). *Id.*, ¶¶ 4, 7, Exhibit 1. The Note provides that Debtors owed the Berger-Frandsen Parties \$881,740 in principal and interest at 6.25% (absent an "Event of Default," which would increase the interest rate to 10%). *Id.*, Exhibit 2.

The Settlement Agreement also provided that Debtors would pay an additional \$75,000 to the Berger-Frandsen Parties on account of the attorneys' fees and costs incurred by the Berger-Frandsen Parties. *Id.*, ¶¶ 4, 8, Exhibit 1. Although Debtors paid \$25,000 of this obligation, Debtors did not pay the remaining \$50,000, which came due upon maturity of the Note. *Id.*

NACO, Dr. Foxman and Dr. Berger also entered into an agreement for legal services with the law firm Baute Crochetiere Hartley & Velkei LLP ("Baute"). Declaration of Andre Berger ("Berger Declaration") [doc. 51], ¶ 3. Through that representation, NACO, Dr. Foxman and Dr. Berger became jointly and severally liable for attorneys' fees and costs incurred by Baute. *Id.* In June 2019, Dr. Berger entered into a settlement agreement with Baute, in which Dr. Berger agreed to pay \$400,000 to Baute; as of February 3, 2021, Dr. Berger has paid \$311,100 to Baute. *Id.*, ¶¶ 4-5.

B. Debtors' Bankruptcy Filing and Scheduled Liabilities

On February 3, 2021, Debtors filed their bankruptcy petition. In their original schedule D, Debtors identified the following secured debts: (A) a \$1,152,521.07 lien against the Sutton Property in favor of "Andre Berger, et al," which claim Debtors indicated is contingent, unliquidated and disputed; (B) a lien against the San Vicente Property in favor of Specialized Loan Services, LLC ("SLS")/U.S. Bank in the amount of \$244,593.97; (C) a first priority lien against the Sutton Property in favor of Wells Fargo Home Mortgage in the amount of \$783,727.63; and (D) a second priority lien against the Sutton Property in the amount of \$385,392.31 in favor of Union Bank.

In their schedule E/F, Debtors identified the following unsecured claims: (A) \$825,000 in favor of Baute, which claim Debtors indicated is contingent, unliquidated and disputed; (B) \$471,300 in favor of Ilana Mikhlin based on a "personal loan;" (C) \$86,041.13 in favor of Navient based on student loans; (D) \$1,150,000 in favor of

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Richard Fox based on a contract; and (E) \$56,293.05 in favor of "Wells Fargo" based on a business line of credit.

On February 11, 2021, Debtors filed amended schedules D and E/F [doc. 24]. In their amended schedule D, Debtors split the scheduled debt owed to the Berger-Frandsen Parties into the following two debts: (A) a \$486,880 claim secured by the Sutton Property that Debtors indicated is contingent, unliquidated and disputed; and (B) a \$394,860 claim secured by the San Vicente Property that Debtors did not schedule as contingent, unliquidated or disputed.

On March 9, 2021, Debtors filed a second amended schedule E/F [doc. 43]. In the second amended schedule E/F, Debtors reduced the unsecured claim in favor of Mr. Fox to \$460,000. On March 18, 2021, Debtors filed another set of amended schedules D and E/F [doc. 45]. In the amended schedule D, Debtor added descriptions to certain secured claims, stating: (A) the claims in favor of the Berger Parties are business debts; (B) the lien in favor of SLS/U.S. Bank arose from a "loan to repay [a] business debt;" and (C) the lien in favor of Union Bank arose from a "[b]usiness debt for rental property." In the amended schedule E/F, Debtors also indicated that the claim of Ms. Mikhlin is based on a "[l]oan to pay business debts and business investments" and that the claim of Mr. Fox is based on a "[c]ontract for purchase of [a] home."

C. The Claims Filed Against Debtors' Estate

To date, 11 creditors have filed claims against the estate. The chart below summarizes the nature and amount of each claim:

Claimant	Proof of Claim Amount/Basis
Wells Fargo Bank, N.A. ("Wells Fargo Credit")	\$6,084.53 based on "money loaned"
Navient Solutions, LLC	\$4,719.42 based on student loans
Navient Solutions, LLC	\$71,604.21 based on student loans

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Wells Fargo Bank, N.A. ("Wells Fargo LOC")	\$56,293.05 based on a business line of credit, with "Alex Foxman, M.D., Inc." identified as the applicant on the credit agreement and Dr. Foxman identified as guarantor
SLS/U.S. Bank	\$242,577.84 based on a promissory note and deed of trust against the San Vicente Property
Wells Fargo Bank, N.A. ("Wells Fargo Mortgage")	\$785,864.47 based on a promissory note and first priority deed of trust against the Sutton Property
Los Angeles County Treasurer and Tax Collector ("LACT")	\$901.16 based on property taxes
U.S. Bank, National Association	\$53,840.46 based on financing for a 2020 Tesla Model Y (the "Tesla"). The sale contract related to the Tesla identifies the buyer as Med Institute, Inc. and the co-buyer as Dr. Foxman.
Union Bank, N.A.	\$386,539.91 based on a promissory note and second priority deed of trust against the Sutton Property
Baute	\$646,018.06 based on legal services and costs
Berger-Frandsen Parties	\$1,209,793.31 based on "settlement of litigation"

D. Debtors' Lawsuit Against the Berger-Frandsen Parties

On April 8, 2021, Debtors filed a complaint against the Berger-Frandsen Parties, among others (the "Adversary Complaint"), initiating adversary proceeding no. 1:21-ap-01014-VK. In the Adversary Complaint, Debtors allege that the Settlement Agreement contemplated that the debt owed under the agreement would be adjusted based on subsequent events, including a reduction in the Bond. Adversary Complaint, ¶ 14. Debtors further allege that, because the obligation under the Bond was reduced, Debtors' obligation under the Settlement Agreement also should be reduced. *Id.*, ¶ 15. Debtors

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also allege that the Berger-Frandsen Parties retaliated against Dr. Foxman by cutting him out of business ventures, diluting Dr. Foxman's interest in their shared businesses and transferring assets from businesses in which Dr. Foxman had an interest to other entities. *Id.*, ¶¶ 16-17, 37-41.

On these allegations, Debtors assert the following causes of action against the Berger-Frandsen Parties: (A) accounting; (B) declaratory relief; (C) breach of fiduciary duty (based on the retaliation allegations); (D) breach of the Settlement Agreement based on the alleged failure to credit Dr. Foxman for the reduction in the Bond and contributions by third parties, the alleged wrongful acceleration of the amount due and imposition of 10% default interest and failure to pay 100% of Dr. Foxman's share to the bonding company; (E) breach of the operating agreement related to certain businesses; (F) breach of an oral agreement related to a shared business venture; (G) breach of the implied covenant of good faith and fair dealing, including with respect to the Settlement Agreement; (H) an injunction to prevent all defendants from transferring assets of businesses in which Dr. Foxman has an interest; and (I) a determination of the extent of the liens in favor of the Berger-Frandsen Parties based on the assertion that the amounts owed under the Settlement Agreement should be reduced.

As concerns the Settlement Agreement, Note or Deeds of Trust, Debtors request, through their declaratory relief claim, a declaration that: (A) based on the terms of the Settlement Agreement and post-settlement events, the amount owed under the Settlement Agreement should be reduced; (B) Debtors require access to books and records; (C) Debtors have not defaulted under the terms of the Settlement Agreement, Note or Deeds of Trust; and (D) the default rate of interest of 10% demanded by the Berger-Frandsen Parties is not due and owing and the fixed interest rate payments are excessive.

E. The Objection to Debtors' Subchapter V Designation

On March 27, 2021, the Berger-Frandsen Parties filed an objection to Debtors' designation as small business debtors and Debtors' election to proceed under subchapter V of chapter 11 (the "Objection") [doc. 50]. In the Objection, Creditors assert that Debtors do not meet the statutory definition of a "small business debtor" because they cannot show that 50% or more of their qualifying debts arose from business activities. Specifically, Creditors assert that Debtors have not met their burden of proving that: (A) the debt owed to Creditors is liquidated; (B) the debt owed to Baute is liquidated or, if liquidated, that Debtors owe the scheduled amount of \$825,000; (C) the debt owed to

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Wells Fargo LOC is noncontingent; (D) the debts owed to Ms. Mikhlin and Mr. Fox are non-insider debts; and (E) the debts owed to Union Bank and SLS/U.S. Bank are business debts.

On April 8, 2021, Debtors filed an opposition to the Objection (the "Opposition") [doc. 63]. In a declaration attached to the Opposition, Dr. Foxman asserts that Debtors obtained a loan from Union Bank to pay business expenses, using \$322,790.14 for business expenses and \$61,513.52 for personal expenses. Declaration of Alex Foxman, M.D. F.A.C.P. (the "Foxman Declaration") [doc. 63], ¶ 3. Dr. Foxman also states that, originally, Debtors purchased the San Vicente Property as their home but, in 2009, converted the San Vicente Property to a rental property. *Id.*, ¶ 4. Finally, Dr. Foxman asserts that title to the Tesla is held in the name of one of Dr. Foxman's businesses, and that the vehicle is used for business purposes. *Id.*, ¶ 5.

On April 15, 2021, the Berger-Frandsen Parties filed a reply to the Opposition [doc. 68], as well as evidentiary objections to the Foxman Declaration [doc. 69]. On April 26, 2021, Debtors filed a belated supplemental declaration (the "Supplemental Declaration") [doc. 77]. [FN1].

II. ANALYSIS

A. The Burden of Proof

In the Objection, the Berger-Frandsen parties contend that Debtors have the burden of proving their eligibility to proceed under subchapter V of chapter 11. Debtors do not address the burden of proof. Currently, there is no binding authority regarding the burden of proof related to objections to a debtor's election to proceed under subchapter V. However, a majority of courts addressing the issue have held that the debtor bears the burden of proving eligibility. *See, e.g. In re Ikalowych*, 2021 WL 1433241, at *7 (Bankr. D. Colo. Apr. 15, 2021) ("The Debtor bears the burden to prove his eligibility under Subchapter V."); *In re Thurmon*, 625 B.R. 417, 419 n.4 (Bankr. W.D. Mo. 2020) ("As the parties who filed the petition and elected the subchapter V small business debtor election, the [debtors] bear the burden to prove their eligibility...."); and *In re Wright*, 2020 WL 2193240, at *2 (Bankr. D.S.C. Apr. 27, 2020) ("When a debtor's eligibility to file under a particular chapter of the Bankruptcy Code is challenged, the burden is upon the debtor to establish such eligibility.") (internal quotation omitted).

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In disputes over a debtor's eligibility to proceed under a particular chapter, courts in this circuit also have placed the burden on the debtor. *See, e.g. In re City of Vallejo*, 408 B.R. 280, 289 (B.A.P. 9th Cir. 2009) ("The burden of establishing eligibility under § 109(c) is on the debtor."); and *In re Powers*, 2011 WL 3663948, at *1 (Bankr. N.D. Cal. Aug. 12, 2011) ("The party filing a petition under Chapter 12 bears the burden of proving eligibility."); *see also In re Lewis*, 2019 WL 5777647, at *4 (Bankr. D. Nev. Oct. 3, 2019) ("When eligibility for bankruptcy relief is challenged, the burden of proof rests with the debtor to establish the statutory requirements by a preponderance of the evidence.") (citing cases).

The Court agrees that, in voluntary cases, the burden to prove eligibility to file under a particular chapter should be placed on the debtors. In involuntary cases, the Ninth Circuit Court of Appeals places the burden of proving eligibility on the petitioning creditors, i.e., the parties filing the petition. *See In re Rothery*, 143 F.3d 546, 548 (9th Cir. 1998) ("The filing of an involuntary case requires the petitioning creditor to meet the burden of proof on the main elements of § 303."). The parties completing the petition, whether they be petitioning creditors or debtors, are in the best position to provide evidentiary support for the representations they make in the petition. In voluntary subchapter V petitions, debtors are likely to be in the best position to prove that they are qualified to be subchapter V debtors, including by providing evidence regarding the nature of their debts.

In any event, under any burden allocation, the present record before the Court reflects that Debtors are eligible to proceed under subchapter V of chapter 11.

B. The Court's Consideration of Evidence Beyond the Schedules

The parties dispute whether the Court, in assessing Debtors' eligibility to proceed under subchapter V, is limited to a review of Debtors' schedules. First, the Berger-Frandsen Parties contend that representations in Debtors' schedules and statements are judicial admissions and, as a result, Debtors' own characterization of the debt owed to the Berger-Frandsen Parties as contingent and unliquidated controls. The Berger-Frandsen Parties cite *In re Bohrer*, 266 B.R. 200, 201 (Bankr. N.D. Cal. 2001), in which the bankruptcy court held that the debtor's scheduled expenses qualified as judicial admissions.

While a debtor's statements regarding facts may serve as binding judicial admissions,

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identifying a claim as liquidated or contingent amounts to a legal conclusion, not a factual admission. "To constitute a judicial admission, the statement must be one of fact—a legal conclusion does not suffice." *In re Motors Liquidation Co.*, 957 F.3d 357, 360 (2d Cir. 2020). Because the characterization of a debt as contingent or liquidated is a legal conclusion, Debtors' scheduled classification of the subject debts will not be treated as an admission. [FN2].

The Berger-Frandsen Parties also contend that, under *In re Scovis*, 249 F.3d 975 (9th Cir. 2001), the Court's determination of eligibility should be limited to a review of Debtors' originally filed schedules and statements. In *Scovis*, the Court of Appeals held that "the rule for determining Chapter 13 eligibility under § 109(e) [is] that eligibility should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." *Scovis*, 249 F.3d at 982. The Court of Appeals relied, in part, on *Matter of Pearson*, 773 F.2d 751, 756 (6th Cir. 1985), for the proposition that a chapter 13 eligibility determination is "similar in nature to the subject matter jurisdiction context for purposes of determining diversity jurisdiction." *Scovis*, 249 F.3d at 982 (citing *Pearson*, 773 F.2d at 756-57). Specifically, the *Pearson* court held—

This threshold eligibility determination for Chapter 13 is in many respects like the threshold subject matter jurisdiction determination in diversity cases where the \$10,000 minimum amount in controversy is challenged. Clearly in both situations Congress intended to limit the class of persons who might avail themselves of access to the federal forum. Just as clearly, it is necessary that the procedures for determining initial jurisdiction cannot be allowed to dominate the proceedings themselves nor to delay them unduly. As important as this may be in the ordinary diversity litigation in a district court, it is even more important with respect to Chapter 13 proceedings for time is of the essence. The resources of the debtor are almost by definition limited and the means of determining eligibility must be efficient and inexpensive. To allow an extensive inquiry in each case would do much toward defeating the very object of the statute.

Pearson, 773 F.2d at 757.

There are no cases within the Ninth Circuit applying the holding and/or policy of *Scovis*

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and *Pearson* to subchapter V cases. While subchapter V cases also are subject to shortened timelines, triggering concerns regarding efficiency and undue delay, the question of eligibility in subchapter V cases is more complex than eligibility in chapter 13 cases. Specifically, as highlighted by the dispute between the parties in this case, assessing whether a debtor may proceed under subchapter V involves characterizing debts as "business" or "consumer" debts. The confines of bankruptcy schedules and statements rarely allow debtors to include sufficient information for parties and/or the Court to readily conclude the business or consumer nature of debts.

In addition, *Scovis* and *Pearson* compared chapter 13 eligibility to subject matter jurisdiction in diversity cases. In chapter 13 and diversity cases, a determination regarding lack of eligibility results in dismissal. In subchapter V cases, holding that the debtor does not qualify as a subchapter V debtor merely removes the subchapter V election, and the debtor may proceed as a chapter 11 debtor. As such, the same jurisdictional concerns are not present.

Nevertheless, even if *Scovis* applies to this subchapter V case, exceptions to the general rule apply. Recently, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") revisited *Scovis* in *In re Fountain*, 612 B.R. 743, 748 (B.A.P. 9th Cir. 2020). In *Fountain*, the debtor filed a chapter 13 petition and scheduled an unsecured claim in favor of Deutsche Bank in the amount of \$1,000, marking it contingent, unliquidated and disputed. *Fountain*, 612 B.R. at 747. Deutsche Bank filed a proof of claim evidencing an unsecured claim for \$1,751,326.06 and attaching the promissory note. *Id.*

Deutsche Bank also filed a motion to dismiss the petition, arguing that the debtor's debts exceeded the debt limit set forth in 11 U.S.C. § 109(e). *Id.* The debtor opposed the motion, asserting that the debt was contingent and unliquidated and that the bankruptcy court should not look beyond the schedules to determine eligibility. *Id.* The bankruptcy court granted the motion to dismiss, holding that the debt was neither contingent nor unliquidated. *Id.* On appeal, the BAP affirmed the bankruptcy court's order; as concerns *Scovis*, the BAP held—

Eligibility under § 109(e) "should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." *In re Scovis*, 249 F.3d at 982. But, where a good faith objection to eligibility has been filed by a party in interest, the bankruptcy court can make a limited inquiry outside of the schedules to

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determine if the Debtor estimated her debts in good faith, and if not, whether she was eligible for chapter 13 relief. *Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 918 (9th Cir. BAP 2006).

The phrase "checking only to see if the schedules were made in good faith" does not require the bankruptcy court to find bad faith or that a debtor intentionally misrepresented her debts. *Id.* at 920. If it appears to be a legal certainty from the record that the claim is not as stated in the schedules, an actual "good faith" inquiry may be unnecessary. *Id.* at 921.

Id., at 748–49. Using this standard, the BAP stated that, in reviewing Deutsche Bank’s proof of claim and the debtor’s acknowledgment that she signed the promissory note, "it appeared to a legal certainty that Deutsche Bank’s claim was not \$1,000 as stated in Debtor’s schedules" and that "the [bankruptcy] court was justified in looking past the schedules and considering the note as evidence of Debtor’s unsecured debts." *Id.*, at 749.

Similar to *Fountain*, many of the creditors scheduled by Debtors have filed proofs of claim contradicting Debtors’ characterization of certain debts. Both parties also have submitted evidence that serves to undermine Debtors’ characterization of debts in their originally-filed schedules. Moreover, during the approximately three months since Debtors filed their petition, Debtors have filed six amendments to their original schedules or statements. As such, a review of evidence beyond Debtors’ schedules and statements is warranted.

C. The Debt Owed to the Berger-Frandsen Creditors

The Berger-Frandsen Parties contend that their claim is not liquidated and, as a result, does not count towards the calculation of Debtors’ business debts. "[A] debt is liquidated if the amount is readily ascertainable, notwithstanding the fact that the question of liability has not been finally decided." *In re Slack*, 187 F.3d 1070, 1075 (9th Cir. 1999). "The test for ‘ready determination’ is whether the amount due is fixed or certain or otherwise ascertainable by reference to an agreement or by a simple computation." *Fountain*, 612 B.R. at 749 (quoting *In re Nicholes*, 184 B.R. 82 (B.A.P. 9th Cir. 1995)).

"The definition of ‘ready determination’ turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested

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evidentiary hearing in which substantial evidence may be necessary to establish amounts or liability." *In re Wenberg*, 94 B.R. 631, 634 (B.A.P. 9th Cir. 1988). "Under this test, disputed contractual claims are generally liquidated." *Id.*

Here, the claim asserted by the Berger-Frandsen Parties is based on the Settlement Agreement, Note and Deeds of Trust. Ordinarily, because the amount of the claim is readily determined by a review of these agreements, and because settlement agreements generally convey that the debtors agreed to the amount, the claim would be liquidated. However, the Berger-Frandsen Parties contend that Debtors' disputes over their claim, as set forth in the Adversary Proceeding, render the claim unliquidated. A review of Debtors' claims in the Adversary Proceeding leads to the opposition conclusion.

First, Debtors' claims related to the allegations that Dr. Foxman is entitled to a membership interest and profits from certain entities, or other damages based on the alleged retaliation against Dr. Foxman, are claims for affirmative relief against the Berger-Frandsen Parties. Such claims, if proven, would not lead to disallowance of the Berger-Frandsen Parties' claim against the estate. Instead, successful litigation of such claims may provide Debtors a right of setoff. However, "[t]he right of setoff — even if it exceeds the amount and therefore negates the amount owed a creditor — does not make a liquidated debt unliquidated." *In re Aparicio*, 589 B.R. 667, 676 (Bankr. E.D. Cal. 2018). As such, these claims do not impact the characterization of the claim asserted by the Berger-Frandsen Parties.

The relevant claims related to the Settlement Agreement, Note and Deeds of Trust, which form the basis of the Berger-Frandsen Parties' claim, boil down to the following: (A) Debtors dispute that they have defaulted under the terms of the Settlement Agreement, Note or Deeds of Trust (the "Default Dispute"); (B) based on post-settlement events, such as payments reducing the underlying Bond by third parties, Debtors are entitled to a reduction of the claim (the "Reduction Dispute"); and (C) Debtors are entitled to access to books and records and an accounting (the "Accounting Dispute").

The Default Dispute qualifies as a dispute over liability, not amount. If Debtors successfully prosecute the claims related to the Default Dispute, the result will be that Debtors may not be liable under parts of the Settlement Agreement, Note and/or Deeds of Trust, such as for the balloon payment or payment of the default rate of interest. The *amount* of Debtors' liability, however, is subject to ready determination; the Court need only refer to the Settlement Agreement and the Note to calculate Debtors' liability pre-

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The claims related to the Reduction Dispute also are subject to ready determination. If Debtors successfully argue that they should not be liable for part of the Berger-Frandsen Parties' claim because third parties have paid down the debt, the result will be a simple deduction of the amount paid by third parties from the amount claimed by the Berger-Frandsen Parties. While the litigation over *liability* may be extensive, the Court will not require "extensive and contested evidentiary hearing[s]" on the *amount* of the debt. *Wenberg*, 94 B.R. at 634.

The same reasoning applies to the Accounting Dispute; first, the Accounting Dispute is a request for production of documents, and will not, in and of itself, impact either the amount of or liability on the Berger-Frandsen Parties' claim. Next, even if an accounting reveals that Debtors owe less than claimed by the Berger-Frandsen Parties, the Court will need, at most, a "simple hearing" to subtract amounts paid on the claim from the amount asserted against the estate. *Wenberg*, 94 B.R. at 634. Thus, although the Adversary Proceeding may involve complicated issues related to liability, and potentially extensive litigation over Debtors' claims for affirmative relief, a careful review of the Adversary Complaint reveals that the amount of the debt is subject to ready determination. Consequently, the claim asserted by the Berger-Frandsen Parties will be included in the calculation of Debtors' business debts.

D. The Debt Owed to Baute

As to the claim in favor of Baute, the Berger-Frandsen Parties assert that third parties paid down the debt owed to Baute and, as a result, the claim should be reduced by \$311,100, for a total of \$291,958. [FN3]. While satisfaction of part of the debt would serve to reduce the claim against the estate, a holding that the claim in favor of Baute should be reduced would amount to a partial disallowance of Baute's claim, without a properly filed objection to the claim. In other words, reducing Baute's claim, at this time, would violate Baute's due process rights.

Moreover, as support for this argument, the Berger-Frandsen Parties refer to a declaration from Dr. Berger, in which Dr. Berger contends he entered into a settlement agreement with Baute agreeing to pay a portion of the attorneys' fees and costs owed to Baute. Berger Declaration, ¶¶ 3-5. However, there is no evidence that the amounts paid by Dr. Berger reduced Debtors' liability on the claim asserted by Baute, and Dr. Berger

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is not the appropriate party to provide such evidence on behalf of Baute.

Baute currently asserts a \$646,018.016 claim against the estate. Baute has not amended its claim to reduce the amount asserted in its proof of claim, and an individual with personal knowledge regarding Baute's claim has not testified that the amounts paid by Dr. Berger reduced Debtors' liability. As such, there is no evidence in the record before the Court that Baute's claim should be reduced.

E. The Debt Owed to Wells Fargo LOC

The Berger-Frandsen Parties assert that the debt owed to Wells Fargo LOC is contingent because Dr. Foxman is a guarantor, and there is no evidence that there is a default by the principal. "A debt is contingent when 'the debtor will be called upon to pay [it] only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor.'" *Fountain*, 612 B.R. at 749 (quoting *In re Fostvedt*, 823 F.2d 305, 306 (9th Cir. 1987)). "If 'all events giving rise to liability occurred prior to the filing of the bankruptcy petition,' the claim is not contingent." *Id.* (quoting *Nicholes*, 184 B.R. at 88). "A dispute over liability for a claim does not make the debt contingent." *Id.* (internal citation omitted).

In response to the Berger-Frandsen Parties, Debtors contend that this debt is not contingent because Dr. Foxman is a co-obligor, not a guarantor. Debtors reference the attachments to Wells Fargo LOC's proof of claim, which includes an attached *Business Direct Credit Application Agreement and Personal Guarantee* (the "Credit Agreement"). However, the Credit Agreement, which includes "personal guarantee" as part of the agreement's title, contradicts Debtors' argument. The Credit Agreement identifies "Alex Foxman, M.D., Inc." as the applicant and provides, in relevant part—

By signing below, I also, in my individual capacity (even though I may place a title or other designation next to my signature) *jointly and severally unconditionally guarantee* and promise to pay to Bank all indebtedness of the Applicant at any time arising under or relating to any credit requested through this application, as well as any extensions, increases or renewals of that indebtedness. *As guarantor*, I waive (i) presentment, demand, protest, notice of protest, and notice of non-payment; (ii) any defense arising by reason of any defense of the Applicant or other guarantor; and (iii) *the right to require Bank to*

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proceed against the Applicant or any other guarantor, to pursue any remedy in connection with the guaranteed indebtedness, or to notify guarantor of any additional indebtedness incurred by the Applicant, or of any changes in the Applicant's financial condition. I also authorize Bank, without notice or prior consent, to (i) extend, modify, compromise, accelerate, renew, increase or otherwise change the terms of the guaranteed indebtedness; (ii) *proceed against one or more guarantors without proceeding against the Applicant or another guarantor*; and (iii) release or substitute any party to the indebtedness or this guaranty. I agree (i) I will pay Bank's costs and attorneys' fees in enforcing this guaranty; (ii) this guaranty will be governed by California law; and (iii) this guaranty shall benefit Bank and its successors and assigns; and (iv) an electronic facsimile of my signature, in any capacity, may be used as evidence of my agreement to the terms of this guaranty.

Credit Agreement, p. 1 (emphases added). Pursuant to this language in the Credit Agreement, Dr. Foxman is a guarantor. Although guarantors "typically [do not have] liability unless and until the principal defaults," the Credit Agreement includes language waiving this requirement. *In re Saunders*, 440 B.R. 336, 341 (Bankr. E.D. Pa. 2006). Under California law, guarantors may contractually waive such protections. *California Bank & Tr. v. DelPonti*, 232 Cal.App.4th 162, 166–67 (Ct. App. 2014) ("Civil Code section 2856 provides that any guarantor or other surety, including a guarantor of a note secured by real property, may waive rights and defenses that would otherwise be available to the guarantor.").

In the quoted paragraph above, the Credit Agreement provides that Dr. Foxman waived his "right to require [Wells Fargo LOC] to proceed against the Applicant or any other guarantor" and authorized Wells Fargo LOC to "proceed against one or more guarantors without proceeding against the Applicant." The Credit Agreement also refers to Dr. Foxman as "jointly and severally" liable on the debt, and does not require a default by the principal to collect the debt from Dr. Foxman. As such, neither party having provided argument or evidence to contradict Wells Fargo LOC's proof of claim, the record before the Court indicates that the debt is not contingent.

F. The Debts Owed to Union Bank and SLS/U.S. Bank

With respect to the debts owed to Union Bank and SLS/U.S. Bank, the Berger-Frandsen

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Parties contend that Debtors have not met their burden of proving the debts are business debts. "The test for determining whether a debt should be classified as a business debt, rather than as a consumer debt, is whether it was incurred with an eye toward profit." *In re Ventura*, 615 B.R. 1, 19 (Bankr. E.D.N.Y. 2020); *see also In re Cherrett*, 873 F.3d 1060, 1067 (9th Cir. 2017) (noting that "debt incurred for business ventures or other profit-seeking activities is plainly not consumer debt"); *and* 11 U.S.C. § 101(8) (defining "consumer debt" as "debt incurred by an individual primarily for a personal, family, or household purpose"). "Courts determine the debtor's purpose as of the time the debt was incurred." *Cherrett*, 873 F.3d at 1067.

"Where the debt was incurred for more than one purpose, the *primary* purpose of the debt will determine its nature." *In re Cherrett*, 523 B.R. 660, 670 (B.A.P. 9th Cir. 2014), *aff'd*, 873 F.3d 1060 (9th Cir. 2017) (emphasis in *Cherrett*). For instance, in the context of evaluating whether a particular debt is a consumer debt, one court held—

[T]he language of § 101(8) is clear that a[n] individual debt is either entirely a consumer debt or it is not. That provision requires that a debt be categorized as a "consumer debt" if the debt was incurred "*primarily* for a personal, family, or household purpose." (emphasis added). Put another way, dividing a single debt into both consumer debt and non-consumer debt is inappropriate; the total amount of a debt will be counted as consumer debt, even if a portion of it was incurred by the debtor for a business purpose.

In re Kempkers, 2012 WL 4953076, at *2 (Bankr. D. Idaho Oct. 16, 2012).

Although Debtors bifurcate the debt owed to Union Bank into a business debt portion and a consumer debt portion, under the authorities above, the Court must assess the *primary* purpose of the debt owed to Union Bank. That determination will control the characterization of the claim as a whole.

As evidentiary support for their contention that the debt owed to Union Bank is a business debt, Debtors refer to the Foxman Declaration, in which Dr. Foxman states that Debtors used \$322,790.14 of the loan for business expenses and \$61,513.52 of the loan for personal expenses. Foxman Declaration, ¶ 3. The record also includes Dr. Foxman's testimony from the § 341(a) Meeting of Creditors, where Dr. Foxman also testified that the loan was used "for living expenses, for paying into [Dr. Foxman's] personal

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CONT... **Alex Foxman and Michal J Morey**

Chapter 11

practices... [including] paying for employee salaries, paying for equipment, paying for rent and so forth, and some loan repayments..." and that the loan was "mostly at the time... necessary to subsidize [Dr. Foxman's] practices." Transcript of § 341(a) Meeting of Creditors [doc. 58], pp.17, 24. Although the Court is not admitting Debtors' itemized bank statements into the record, the record does not include any evidence contradicting Dr. Foxman's testimony. [FN4]. As such, at this time, Dr. Foxman's testimony is sufficient to demonstrate that the primary purpose of the loan from Union Bank was for business or commercial activity.

With respect to the claim of SLS/U.S. Bank, secured by the San Vicente Property, Dr. Foxman acknowledges that Debtors originally purchased the San Vicente Property as their home. Foxman Declaration, ¶ 4. Debtors did not offer any other evidence regarding Debtors' purpose at the time they incurred the debt. As such, the testimony in support of the Opposition would indicate that, "as of the time the debt was incurred," the debt was primarily for a consumer purpose. *Cherrett*, 873 F.3d at 1067. [FN5].

Debtors belatedly filed the Supplemental Declaration. In the Supplemental Declaration, Dr. Foxman now states

[Debtors] intended from the start to have the San Vicente property to be an investment property as [Debtors] always intended to move to the San Fernando Valley to raise [their] son and be close to family. [Dr. Foxman] also utilized the San Vicente condo for business purposes because [he] was starting [his] mobile physician practice from there.

Supplemental Declaration, ¶ 6. It is unclear why Debtors did not include this testimony in the Foxman Declaration. The belated filing of the Supplemental Declaration deprives the moving party of a reasonable chance to assess or challenge the new testimony. Nevertheless, even if the Court excludes this debt, the amount of qualifying business debt exceeds 50% of Debtors' total qualifying debt. As such, the Court need not reach the issue of whether this debt qualifies as a business debt. Instead of continuing the hearing for additional briefing, or setting an evidentiary hearing on Debtors' intent, the existing record shows that Debtors qualify as subchapter V debtors even if the debt owed to SLS/U.S. Bank is considered a consumer debt.

G. The Student Loan Debt

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Finally, Debtors argue, in their Opposition, that the claims by Navient also are business debts because the student loans were incurred for Dr. Foxman to become a medical doctor. "There is conflicting case law as to whether student loan debt constitutes 'consumer debt' within the meaning of 11 U.S.C. § 101(8)." *In re Teter*, 2019 WL 9899504, at *2 (Bankr. N.D. Ohio Dec. 11, 2019) (collecting cases); *compare, e.g. In re Ferreira*, 549 B.R. 232 (Bankr. E.D. Cal. 2016) (holding that debtors must show that student loans were incurred for an existing business or current job advancement to be considered nonconsumer debt); *with In re De Cuna*, 2013 WL 6389205 (Bankr. S.D. Tex. Dec. 6, 2013) (holding that student loans are not consumer debt when used for "direct educational expenses with the intent that the education received will enhance the borrower's ability to earn a future living"). There is no binding authority on point. However, the Court did not find any case that applied a *per se* rule characterizing student loans as either consumer or business debts.

Assuming the standard test in this circuit applies, i.e., an assessment of the primary purpose of the debt at the time the debt was incurred, Debtors have not provided any evidence regarding Dr. Foxman's purpose in obtaining the student loans. Both the Foxman Declaration and the Supplemental Declaration are devoid of any discussion regarding Dr. Foxman's purpose at the time he incurred the debts, and there is no other evidence in the record to support Debtors' conclusory arguments. In any event, with or without the student loans, the qualifying business debts exceed the threshold set forth in 11 U.S.C. § 101(51D).

H. The Calculation of Qualifying Claims

As a preliminary matter, Debtors agree that the claims in favor of Ilana Mikhlin and Richard Fox should be excluded from the calculation as debts owed to insiders. Opposition, p. 8. In addition, although Debtors include the LATC debt as part of their calculation of business debts, there is no evidence on the record that the LATC debt is a business debt. LATC's proof of claim does not identify which property generated the property taxes; as such, it is not evident that property taxes relate to Debtors' rental property, as opposed to their residence. As to the remaining qualifying debts, the following chart reflects the calculations (based on proofs of claim filed by the creditors):

Claimant	Amount of Claim	Characterization
Wells Fargo Credit	\$6,084.53	Not business (undisputed)

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Navient Solutions, LLC	\$4,719.42	No evidence that this is a business debt
Navient Solutions, LLC	\$71,604.21	No evidence that this is a business debt
Wells Fargo LOC	\$56,293.05	Business
SLS/U.S. Bank (deed of trust against San Vicente Property)	\$242,577.84	Insufficient evidence that this is a business debt
Wells Fargo Mortgage (first priority deed of trust against Sutton Property)	\$785,864.47	Not business (undisputed)
LACT	\$901.16	Insufficient evidence that this is a business debt
U.S. Bank (Tesla)	\$53,840.46	Business (undisputed)
Union Bank, N.A. (second priority deed of trust against Sutton Property)	\$386,539.91	Business
Baute	\$646,018.06	Business (undisputed as to business classification)
Berger-Frandsen Parties	\$1,209,793.31	Business (undisputed as to business classification)
TOTAL:	\$3,464,236.42	TOTAL BUSINESS DEBT: \$2,352,484.79

Given that the total qualifying debt amounts to \$3,464,235.89, at least \$1,732,117.945 of Debtors' total debts must arise from commercial or business activities. 11 U.S.C. § 101(51D). The record reflects that Debtors have \$2,352,484.79 in business debt. Consequently, Debtors qualify as subchapter V debtors.

III. CONCLUSION

The Court will overrule the Objection.

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

FOOTNOTES

1. On April 27, 2021, the Berger-Frandsen Parties filed a motion to strike the untimely Supplemental Declaration (the "Motion to Strike") [doc. 79]. As discussed herein, the Court did not consider the belated Supplemental Declaration. As such, the Motion to Strike is moot.
2. The Berger-Frandsen Parties also reference Debtors' amended Statement of Financial Affairs [docs. 24, 37], in which Debtors stated that their debts are primarily consumer debts. Because the characterization of debt as consumer or business debts is a legal conclusion, the Court will not consider these statements a judicial admission.
3. The Berger-Frandsen Parties also contend that the Court should deem this debt contingent and unliquidated, based on Debtors' schedules. However, as discussed above, the Court is not limiting its review to Debtors' schedules and statements. A review of the claim filed by Baute leads to the conclusion that this claim is both liquidated and noncontingent. The claim is liquidated because, even if reduced, the amount of the claim is "readily ascertainable" after a simple calculation. *Slack*, 187 F.3d at 1075. The claim is noncontingent because "all events giving rise to liability occurred prior to the filing of the bankruptcy petition." *Fountain*, 612 B.R. at 749.
4. Debtors did not properly authenticate Exhibit 2 to the Foxman Declaration. There is no information regarding the handwritten inserts, many of which are illegible. In addition, both the handwritten inserts and the itemized entries include abbreviations about which Debtors did not provide any testimony.
5. In the Opposition, Debtors cite *In re Abdelgadir*, 455 B.R. 896, 903 (B.A.P. 9th Cir. 2011), in which the BAP held that "the determinative date for whether a claim is secured by a debtor's principal residence is, like all claims, fixed at the petition date." The issue in *Abdelgadir* was whether, under 11 U.S.C. § 1123(b) (5), debtors could modify a claim secured by their residence. *Abdelgadir*, 455 B.R. at 898. As such, *Abdelgadir* is inapplicable to the issue before the Court; the relevant standard is set forth by *Cherrett*, which directs courts to assess

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Debtors' purpose at the time the debt was incurred.

Tentative ruling regarding the Berger-Frandsen Parties' evidentiary objections to the identified paragraphs in and exhibit to the Declaration of Alex Foxman set forth below:

para. 2: sustain
para. 3: overrule
ex. 2: sustain

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#2.00 Status conference re: chapter 11 subchapter V case
fr. 3/25/21; 4/8/21; 4/22/21

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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Chapter

- #0.00 You will not be permitted to be physically present in the courtroom. All appearances for the May 5, 2021 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 CACB ZoomGov Meeting

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Meeting ID: 160 709 3521

Password: 906684

Join by Telephone

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Meeting ID: 160 709 3521

Password: 906684

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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Chapter

Tentative Ruling:

- NONE LISTED -

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1:20-11600 Florence Estella Johnson

Chapter 13

#1.00 Motion for relief from stay [RP]

THE MONEY SOURCE INC.
VS
DEBTOR

fr. 4/7/21

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Florence Estella Johnson

Represented By
R Grace Rodriguez

Movant(s):

The Money Source Inc

Represented By
Kirsten Martinez
Austin P Nagel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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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; 10/21/20(stip); 11/25/20; 1/13/21; 3/3/21;
4/7/21

Docket 63

Tentative Ruling:

On March 29, 2021, the Court entered the Order Regarding Motion to Authorize Loan Modification, under which the payments were to commence on March 1, 2021.

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

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1:20-10924 Tikran Eritsyian

Chapter 11

#3.00 Motion for relief from stay [RP]

RED DRAGON INVESTMENT AND
PLATINUM BUSINESS MANAGEMENT
VS
DEBTOR

fr. 11/18/20; 12/23/20; 1/20/21; 2/10/21; 3/3/21(stip);3/24/21

Docket 49

Tentative Ruling:

Movant filed this motion in October 2020 and has agreed to several continuances of the hearing. If the debtor still has not consummated the Court-approved sale of the subject real property, which the Court authorized in December 2020, and if movant wishes to proceed with the motion, movant should supplement the motion with evidence regarding any post-petition increase in the amount of its claim.

Party Information

Debtor(s):

Tikran Eritsyian

Represented By
Vahe Khojayan

Movant(s):

Red Dragon Investment and

Represented By
Martin W. Phillips

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1:20-10910 Thomas A Perez

Chapter 7

#4.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 124

*** VACATED *** REASON: voluntary dismissal filed on 4/9/21 [doc 127]

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

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Hearing Room 301

9:30 AM

1:16-10495 Indira LaRoda

Chapter 13

#5.00 Motion for relief from stay [RP]

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

Docket 120

Tentative Ruling:

The debtor has not included a declaration with her opposition [doc. 123].

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

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

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Party Information

Debtor(s):

Indira LaRoda

Represented By
Michael F Chekian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:20-11369 Mitchell S. Cohen

Chapter 13

#6.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY, FSB
VS
DEBTOR

Docket 54

*** VACATED *** REASON: Debtor dismissed on 4/9/21 [doc. 56].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mitchell S. Cohen

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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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 Pretrial 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; 6/3/20

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:

In light of the parties' stipulation to dismiss the chapter 7 trustee from this adversary proceeding, and to abandon the estate's claims against the remaining parties [doc. 127], the Court will issue an Order to Show Cause why this Court should not abstain from this proceeding. In connection with their responses to the Order to Show Cause, the parties also must brief whether, if the Court abstains, the funds in the Court's Registry will be transferred and, if so, where the funds will be deposited.

The Court will set the hearing on the Order to Show Cause at **1:30 p.m. on June 16, 2021, with briefing to filed and served on the opposing party no later than June 2, 2021.** The Court will continue the pretrial conference to the same time and date.

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CONT... Hermann Muennichow Chapter 7

Unless the parties cannot accommodate this timing and seek to address the briefing and hearing dates for the Order to Show Cause, appearances on May 5, 2021 are excused.

The Court will prepare the Order to Show Cause.

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Defendant(s):

Duane Van Dyke Irrevocable Trust

Pro Se

Helayne Muennichow

Pro Se

David Seror

Represented By
Richard Burstein

Plaintiff(s):

The Lincoln National Life Insurance

Represented By
Erin Illman

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

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1:19-12677 John Stephen Travers

Chapter 7

Adv#: 1:20-01010 Ace Industrial Supply, Inc. v. Travers

#8.00 Pre-trial conference re: complaint to determine dischargeability

fr. 3/25/20; 5/6/20; 6/10/20; 12/9/20; 2/10/21

STIP TO CONTINUED FILED 2/11/21 - jc

Docket 1

*** VACATED *** REASON: continued to 8/4/21 at 1:30 p.m. per order entered on 2/19/21 doc [49]

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

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1:20-10276 Hormoz Ramy

Chapter 7

Adv#: 1:20-01077 Seror v. Ramy

#9.00 Pretrial 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)

fr. 11/4/20

Docket 1

***** VACATED *** REASON: continued to 8/4/21 per order entered on
2/26/21 doc [17]**

Tentative Ruling:

- NONE LISTED -

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

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1:20-10855 Patricia Esmeralda Rangel

Chapter 7

Adv#: 1:20-01055 Rangel v. Navient Solutions LLC., dba Navient, Navient Solut

#10.00 Pretrial 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; 11/18/20

Docket 1

*** VACATED *** REASON: Order setting S/C for 5/19/21 entered
4/21/21 [doc. 24].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Esmeralda Rangel Pro Se

Defendant(s):

Navient Solutions LLC., dba Represented By
Dennis C. Winters

U.S. Department of Education Pro Se

Plaintiff(s):

Patricia Esmeralda Rangel Pro Se

Trustee(s):

David Keith Gottlieb (TR) Pro Se

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1:20-11850 Mariyan Khosravizadeh

Chapter 7

Adv#: 1:21-01005 US OPPTS LLC, an Oregon Limited Liability Company v. Khosravizadeh et

#11.00 Status conference re: complaint for non-dischargeability of debt
11 U.S.C. § 523(a)(2)(A); (a)(6), and of discharge 11 U.S.C. § 727(a)(2), (4);
(a)(3); (a)(4)(A)

fr. 3/24/21

Docket 1

Tentative Ruling:

When do the parties anticipate that they can finalize their settlement agreement?

Given that the complaint includes claims under 11 U.S.C. § 727, if the parties intend to dismiss this adversary proceeding in connection with their settlement agreement, the plaintiff must provide notice in accordance with Federal Rule of Bankruptcy Procedure 7041. After the parties finalize their settlement agreement, the plaintiff must file and serve a notice on the U.S. Trustee, the chapter 7 trustee and all creditors (the "Notice"). The Notice must include a 14-day deadline by which a party in interest may substitute into this action, and inform the parties in interest that, unless there is a substitution, this adversary proceeding will be dismissed. The Court will not dismiss this adversary proceeding unless there is a properly filed and served Notice.

Party Information

Debtor(s):

Mariyan Khosravizadeh

Represented By
Stephen L Burton

Defendant(s):

Mariyan Khosravizadeh

Pro Se

Does 1-100

Pro Se

Plaintiff(s):

US OPPTS LLC, an Oregon Limited

Represented By

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CONT... Mariyan Khosravizadeh

Jason D Ahdoot

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#12.00 Defendants' Motion to Dismiss Pursuant to Rules 9, 12(b) and 12(f)

Docket 73

Tentative Ruling:

In the motion to dismiss the second amended complaint (the "Motion") [doc. 73], the debtor contends that he "no longer wishes to contest the amount in [the plaintiff's] proof of claim." Motion, p. 17. Are the parties prepared to stipulate to allowance of the plaintiff's claim against the debtor's bankruptcy estate?

If so, is it contemplated that this Court will adjudicate only the plaintiff's claims for nondischargeability of what the debtor owes to the plaintiff, fraudulent transfer and the liability of the entity defendants?

The parties do not specifically discuss the **entity defendants'** liability in their papers. Do the entity defendants also concede the **amount** of damages set forth in the plaintiff's proof of claim? Do the entity defendants contest their liability for that amount?

After assessing the parties' responses to these issues, the Court intends to continue this hearing to **2:30 p.m. on May 19, 2021.**

Party Information

Debtor(s):

Kenneth C. Scott

Represented By
Arash Shirdel
Daniel Parker Jett

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

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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

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1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #13.00** 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; 11/4/20; 1/20/21; 3/24/21

Docket 62

Tentative Ruling:

- NONE LISTED -

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Judge Victoria Kaufman, Presiding
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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
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Judge Victoria Kaufman, Presiding
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1:19-11696 Peter M. Seltzer

Chapter 7

Adv#: 1:19-01151 Kessler v. Seltzer

#14.00 Plaintiff's Motion for Order: (1) Compelling Defendant to Respond to Plaintiffs First Set of Requests for Production of Documents and Interrogatories; (2) Compelling Defendant to Appear for Oral Examination; (3) Continuing Discovery Cutoff Deadline; and (4) Awarding Plaintiff Discovery Sanctions Against Defendant

fr. 4/21/21(stip)

Docket 65

Tentative Ruling:

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 one under chapter 7 [Bankruptcy Docket, doc. 98].

On December 16, 2019, Darren Kessler ("Plaintiff") filed a complaint against Debtor, initiating this adversary proceeding. On May 12, 2020, Plaintiff filed a first amended complaint, requesting nondischargeability of the debt owed to Plaintiff under 11 U.S.C. § 523(a)(2), (a)(4) and (a)(6) and denial of Debtor's discharge under 11 U.S.C. § 727(a)(2), (a)(4) and (a)(5).

On September 29, 2020, the Court entered a scheduling order [doc. 42], setting March 1, 2021 as the discovery cutoff date and March 15, 2021 as the deadline to file any pretrial dispositive motions. On January 26, 2021, Plaintiff served Debtor with written discovery requests, including requests for admission, interrogatories and requests for production of documents (the "Discovery Requests"). Declaration of Monsi Morales [doc. 65], ¶¶ 10-11, Exhibits B-C. On the same day, Plaintiff served Debtor with a Notice of Oral Deposition, setting a deposition on March 1, 2021. *Id.*, ¶ 13.

Debtor's responses to the Discovery Requests were due on February 26, 2021. Debtor did not timely respond to the Discovery Requests. *Id.*, ¶¶ 14-15. On February 26, 2021, Plaintiff's counsel sent an email to Debtor's counsel: (A) notifying Debtor that the

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deposition set for March 1, 2021 was canceled and would be rescheduled upon receipt of Debtor's responses to the Discovery Requests; (B) requesting that Debtor stipulate to extend the discovery cutoff date for the purpose of receiving Debtor's responses and taking Debtor's deposition; and (C) requesting a "meet and confer" conference. *Id.*, ¶ 16.

On March 3, 2021, Debtor's counsel and Plaintiff's counsel telephonically met and conferred. *Id.*, ¶ 17. At that time, Debtor's counsel represented that Debtor would provide responses to the Discovery Requests and sit for a deposition, but refused to stipulate to extend the discovery cutoff date. *Id.*, ¶ 18.

On March 30, 2021, Plaintiff and Debtor stipulated to continue the pretrial conference and deadline to submit a joint pretrial stipulation [doc. 63]. The Court approved this stipulation [doc. 70], extending the deadline for the parties to submit a joint pretrial stipulation to June 9, 2021 and continuing the pretrial conference to 1:30 p.m. on June 23, 2021.

On March 31, 2021, Plaintiff filed a motion to compel Debtor to respond to the Discovery Requests and attend a deposition and a request to continue the discovery cutoff date (the "Motion") [doc. 65]. Through the Motion, Plaintiff requests that the Court: (A) compel Debtor to provide complete responses to Plaintiff's discovery requests; (B) continue the discovery cutoff date to May 31, 2021; and (C) impose sanctions against Debtor. On April 13, 2021, Debtor filed an opposition to the Motion (the "Opposition") [doc. 77]. In the Opposition, Debtor argues that: (A) the Motion was filed after the discovery cutoff date; (B) Plaintiff is not entitled to an extension of the discovery cutoff date; (C) Plaintiff did not comply with Local Bankruptcy Rule ("LBR") 7026-1(c)(3); and (D) Plaintiff failed to allow Debtor's counsel sufficient time to respond to a joint stipulation. The Opposition is not supported by a declaration. On April 21, 2021, Plaintiff filed a reply to the Opposition [doc. 79].

II. ANALYSIS

A. *Compliance with LBR 7026-1(c)(3)*

Pursuant to LBR 7026-1(c)(3)—

If the parties are unable to resolve the [discovery] dispute, the party seeking discovery must file and serve a notice of motion together with a written

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stipulation by the parties.

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- (A) The stipulation must be contained in 1 document and must identify, separately and with particularity, each disputed issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each issue.
- (B) The stipulation must not simply refer the court to the document containing the discovery request forming the basis of the dispute. For example, if the sufficiency of an answer to an interrogatory is in issue, the stipulation must contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated.
- (C) In the absence of such stipulation or a declaration of a party of noncooperation by the opposing party, the court will not consider the discovery motion.

Debtor contends that the stipulation attached to the Motion violates LBR 7026-1(c)(3) because Plaintiff did not "identify, separately and with particularity, each disputed issue that remains to be determined," and because the stipulation did not "contain, verbatim," each discovery request propounded by Plaintiff. However, Debtor misconstrues LBR 7026-1(c)(3). LBR 7026-1(c)(3)(B) requires verbatim inclusion of each discovery request where there is a dispute regarding the sufficiency of the response.

Here, Debtor did not respond to the requests at all. As such, the attached stipulation properly states, with particularity, the dispute between the parties, i.e., that Debtor failed to respond timely to discovery requests. As such, the Court will not deny the Motion on this basis.

B. Timeliness of Request to Continue Discovery Cutoff Date and Motion to Compel

Pursuant to Federal Rule of Civil Procedure ("Rule") 16(b)(4), "[a] schedule may be modified only for good cause and with the judge's consent." "The district court is given broad discretion in supervising the pretrial phase of litigation..." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992). Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 9006(b)(1)—

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

FRBP 9006(b)(1).

To determine whether a party's failure to meet a deadline constitutes "excusable neglect," courts apply the following four factor test: "(1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1261 (9th Cir. 2010) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498, 123 L.Ed. 2d 74 (1993)).

Here, Plaintiff requested an extension of the discovery cutoff date *after* expiration of the deadline. As such, under FRBP 9006(b)(1), Plaintiff must demonstrate that the failure to meet the deadline constitutes "excusable neglect." Plaintiff has not offered any evidence regarding excusable neglect, and has not discussed the four factors courts consider when assessing whether failure to meet a deadline constitutes "excusable neglect."

Moreover, assuming the Court does not grant Plaintiff's request to extend the discovery cutoff date, neither Plaintiff nor Debtor offered any legal authority regarding the timeliness of motions to compel brought after the discovery cutoff date. Debtor asserts, in a conclusory fashion, that the Motion is untimely because it was filed after the discovery cutoff date. Plaintiff asserts, in a conclusory fashion, that the Motion was timely because Plaintiff propounded the subject discovery prior to the cutoff date. Recently, one in-circuit court provided a detailed analysis regarding the timing of motions to compel—

With respect to a motion to compel discovery, there is no specific

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deadline enunciated in the governing rules and a determination as to the timeliness of such a motion is left to the exercise of judicial discretion. *Wyles v. Sussman*, 445 F.Supp.3d 751, 755 (C.D. Cal. 2020). That determination is guided by whether the movant unduly delayed in seeking relief. *Gault v. Nabisco Biscuit Co.*, 184 F.R.D. 620, 622 (D. Nev. 1999). A finding of untimeliness, standing alone, dooms a motion to compel regardless of its substantive merits. *KST Data, Inc. v. DXC Tech. Co.*, 344 F.Supp.3d 1132, 1136 n.1 (C.D. Cal. 2018). Indeed, courts "will often deny Rule 37(a) motions because the moving party delayed too long." *V5 Techs. v. Switch, Ltd.*, 332 F.R.D. 356, 360 (D. Nev. 2019) (quoting 8B Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, FEDERAL PRACTICE & PROCEDURE, § 2285 (3d ed. Supp. 2019)).

Herndon v. City of Henderson, 2020 WL 7382766, at *3 (D. Nev. Dec. 16, 2020). [FN1]. The court further noted that "a motion to compel filed during the discovery period (*i.e.*, prior to expiration of the discovery cutoff) will generally be considered timely," but "a motion to compel filed after the dispositive motion deadline is presumptively untimely because continuing to entertain discovery matters at that juncture interferes with the advancement of the case to the merits phase." *Id.*, at *4. Nevertheless, rather than impose a bright line rule, the *Herndon* court set forth the following eight factor test to determine the timeliness of a motion to compel—

- (1) the length of time since expiration of the discovery deadline;
- (2) the length of time the moving party has known about the discovery;
- (3) whether the discovery deadline has been extended;
- (4) the explanation for the tardiness or delay;
- (5) whether dispositive motions have been scheduled or filed;
- (6) the age of the case;
- (7) any prejudice to the party from whom discovery is sought; and
- (8) disruption of the Court's schedule.

Id.

The parties have not discussed these standards. To properly assess Plaintiff's request, Plaintiff must file and serve a supplemental brief, supported by evidence, discussing both the excusable neglect factors and the *Herndon* factors. In addition, Debtor did not

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support the Opposition with a declaration or discuss any applicable law; as such, if Debtor intends to oppose the Motion, Debtor also must file and serve a supplemental responsive brief, supported by evidence. [FN2].

III. CONCLUSION

The Court will continue this hearing to **2:30 p.m. on June 9, 2021**. No later than **May 19, 2021**, Plaintiff must file and serve a supplemental brief, supported by evidence, discussing the factors outlined above. No later than **May 26, 2021**, Debtor must file and serve a responsive brief, supported by evidence, discussing the applicable authorities above.

Appearances on May 5, 2021 are excused. The Court will prepare the order.

FOOTNOTES

1. Although only the Westlaw citation is currently available, *Herndon* is a published decision.
2. Plaintiff filed evidentiary objections to Debtor's alleged facts in the Opposition. Because the allegations are not evidence, the Court will not rule on evidentiary objections.

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Misty A Perry Isaacson

Defendant(s):

Peter M. Seltzer

Represented By
Rebecca J Winthrop

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies

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Noreen A Madoyan
Montserrat Morales

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan
Jessica L Bagdanov

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10:30 AM

1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the May 6, 2021 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1601988297>

Meeting ID: 160 198 8297

Password: 625651

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 198 8297

Password: 625651

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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Chapter

Tentative Ruling:

- NONE LISTED -

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10:30 AM

1:19-10293 Marotto Corporation

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Gottlieb, Chapter 7 Trustee

Hahn Fife & Company, Accountants for Ch. 7 Trustee

Docket 25

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$5,991.93 and reimbursement of expenses of \$230.09, on a final basis. The trustee is authorized to collect 100% of the approved fees and reimbursement of expenses.

Hahn Fife & Company, LLP ("Hahn Fife"), accountant to chapter 7 trustee – approve fees of \$1,711.00 and reimbursement of expenses of \$242.50, pursuant to 11 U.S.C. § 330, on a final basis. Hahn Fife is authorized to collect 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

Debtor(s):

Marotto Corporation

Represented By
Andrew Goodman

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:00 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

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

Stip to continue filed 4/30/21

Docket 50

*** VACATED *** REASON: Order approving stipulation entered 5/3/21.
Hearing continued to 6/3/21 at 2:00 PM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton
Yi S Kim

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

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1:09-26982 Tag Entertainment Corp.

Chapter 7

#3.00 Chapter 7 Trustees Motion for an Order Disallowing Claim of Christopher Macdonald and Therese Macdonald [Claim No. 5-1]

Docket 262

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):

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

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1:09-26982 Tag Entertainment Corp.

Chapter 7

#4.00 Chapter 7 Trustees Motion for an Order Disallowing Claim of Goldstein & Digio, LLP n/k/a Becker & Poliakoff, LLP [Claim No. 7-1]

Docket 259

***** VACATED *** REASON: Voluntary withdrawal filed on 4/27/21 [doc 277]**

Tentative Ruling:

- NONE LISTED -

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

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1:20-11286 Transpine, Inc.

Chapter 11

#5.00 Motion for protective order regarding depositions of Nisan Tepper
fr. 4/15/21

Docket 116

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen
Paul M Kelley

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1:30 PM

1:21-10267 Cindy Kaur Bhui

Chapter 7

#6.00 Debtor's motion to avoid liens under 11 U.S.C. §522(f)

Docket 15

Tentative Ruling:

Grant.

I. BACKGROUND

On February 18, 2021, Cindy Kaur Bhui ("Debtor") filed a voluntary chapter 7 petition. In her schedule A/B, Debtor identified a partial interest, as a tenant in common, in real property located at 19101 Strathern Street, Reseda, CA 91335 (the "Property"). Debtor valued the Property at \$780,000. In her amended schedule C [doc. 13], Debtor claimed a \$390,000 exemption in the Property pursuant to California Code of Civil Procedure ("CCP") §§ 704.720 and 704.730.

On March 17, 2021, Debtor filed a motion to avoid liens (the "Motion") [doc. 15]. Through the Motion, Debtor seeks to avoid four judgment liens, totaling \$480,929.27, in favor of Charmaine Diaz. On March 30, 2021, Ms. Diaz filed an opposition to the Motion (the "Opposition") [doc. 20]. In the Opposition, Ms. Diaz asserts that: (A) Debtor previously stated that she owned the Property in full; (B) the appraisal in support of the Motion is not authenticated by the appraiser, and should be disregarded; and (C) Debtor may not claim the higher exemption amounts, effective January 1, 2021, because CCP § 704.965 requires an assessment as of the date Ms. Diaz's abstracts of judgment were recorded. On April 21, 2021, Debtor filed a reply to the Opposition (the "Reply") [doc. 24].

II. ANALYSIS

A. Ms. Diaz's Objection to the Appraisal and to Debtor's Characterization of the Property

In the Opposition, Ms. Diaz asserts that, during prior state court litigation, Debtor stated in responses to interrogatories that she was the 100% owner of the Property. However, Debtor has provided evidence of the chain of title related to the Property, which

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Chapter 7

demonstrates that Debtor owns half the Property as a tenant in common. Declaration of Alfredo Nava [doc. 24], ¶ 14, Exhibit D. Other than Debtor's prior statement, which Debtor testifies was based on a misunderstanding of the question posed to her, Ms. Diaz has not offered any evidence that contradicts the chain of title shown by the recorded deeds submitted with the Reply. Declaration of Cindy Bhui [doc. 24], ¶ 4. As such, the record demonstrates that Debtor owns 50% of the Property.

Ms. Diaz also asserts that the appraisal provided by Debtor is not authenticated by the appraiser. In the Reply, Debtor provided a declaration by the appraiser with the attached appraisal. Declaration of Jose P. Cubas [doc. 24], ¶¶ 2-3, Exhibit C. Thus, the Court will not deny the Motion on these grounds.

B. The Applicable Date for Calculating Debtor's Homestead Exemption

Ms. Diaz contends that Debtor is not entitled to claim the increased homestead exemption set forth in CCP § 704.730; rather, Ms. Diaz asserts that the Court should use the statutory homestead amounts applicable at the time Ms. Diaz recorded her abstracts of judgment. Ms. Diaz references CCP § 704.965, which provides—

If a *homestead declaration* is recorded prior to the operative date of an amendment to Section 704.730 which increases the amount of the homestead exemption, the amount of the exemption for the purposes of subdivision (c) of Section 704.950 and Section 704.960 is the increased amount, except that, if the judgment creditor obtained a lien on the *declared homestead* prior to the operative date of the amendment to Section 704.730, the exemption *for the purposes of subdivision (c) of Section 704.950 and Section 704.960* shall be determined as if that amendment to Section 704.730 had not been enacted.

(emphases added). The plain language of CCP § 704.965 limits the applicability of the statute to declared homesteads. In addition, the statute explicitly states that judgment debtors are limited to claiming exemptions existing at the time a judgment creditor obtained a lien "for the purposes of subdivision (c) of Section 704.950 and Section 704.960...." CCP § 704.965. Sections 704.950(c) and 704.960 involve *declared* homestead exemptions.

"Two types of homestead exemptions exist in California: the declared homestead

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Cindy Kaur Bhui

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exemption governed by Article 5; and the automatic homestead exemption governed by Article 4." *In re Elliott*, 523 B.R. 188, 194 (B.A.P. 9th Cir. 2014). "The declared and automatic homestead exemptions are separate and distinct." *Id.* "[T]he filing of a bankruptcy triggers application of the *automatic* homestead exemption." *In re Johnson*, 604 B.R. 875, 881 (Bankr. S.D. Cal. 2019) (emphasis added). In her schedules, Debtor also claimed an exemption under California's automatic homestead exemption statutes; there is no evidence in the record that Debtor recorded a declared homestead exemption.

With respect to automatic homestead exemptions, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") has held, in a case similar to this one, that debtors are entitled to the amount of an exemption available to the debtor *on the petition date*. *In re Mayer*, 167 B.R. 186, 188 (B.A.P. 9th Cir. 1994). In *Mayer*, judgment creditors objected to the debtor's claim of an exemption, arguing that the debtor was limited to the lesser exemption amount applicable on the date the creditors' judgment lien attached to the debtor's property. *Mayer*, 167 B.R. at 187. The bankruptcy court sustained the objection to the amount of the debtor's claimed exemption. *Id.*, at 188. On appeal, the BAP reversed the bankruptcy court's holding, stating—

The [judgment creditors'] lien is not relevant in determining whether [the debtor] is entitled to the homestead exemption listed in his schedules. The filing of the petition constitutes an attempt by the trustee to levy on the property. It is this hypothetical levy the court must focus on in analyzing [the debtor's] entitlement to a homestead exemption. The existence of the [judgment creditors'] judgment lien may impact a trustee's decision to abandon or sell property of the estate, but it does not affect the exemption that [the debtor] is entitled to claim.

Id., at 189 (internal citation omitted). As a result, the BAP held that the debtor was entitled to claim the higher amount of the exemption available on the petition date. *Id.*

The BAP revisited the issue in *In re Zall*, 2006 WL 6811022 (B.A.P. 9th Cir. Sep. 5, 2006), holding that *Mayer* "is on point and mandates that [the BAP] affirm the bankruptcy court's decision to use [the debtors'] petition date to determine the amount of their exemption." *Zall*, 2006 WL 6811022 at *2. The BAP also expanded on the policy behind the holding in *Mayer*—

The holding in *In re Mayer* is not only controlling, but also sound. When

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a debtor files a bankruptcy petition, all legal and equitable property interests become property owned by the bankruptcy estate. 11 U.S.C. § 541. A debtor is entitled, however, to exempt certain assets from the estate. 11 U.S.C. § 522. In general, exemption rights are determined as of the petition date. Indeed, without support of legal authority, an attempt to carve out an exception to the well-established law that exemption rights are determined on the petition date must be rejected.

Creditor contends that California exemption law in effect on the petition date provides that parties should refer to prior versions of the statutes to determine whether the exemption amount of a judgment lien predates the current enactment. This procedure is not only unworkable in the bankruptcy context, but it is also inconsistent with the Bankruptcy Code.

First, as a practical matter, if the exemption amount is fixed as of the dates of multiple judgment liens, a debtor may have varying amounts of exemptions in the same property. How would a bankruptcy trustee, who is generally the party who objects to a debtor's exemptions, be able to determine the appropriate amount of the exemption if there are multiple judgment liens against the property?

Secondly, and more importantly, limiting the exemption to the amounts available on the dates that judgment liens attach is inconsistent with section 522(f). Under section 522(f), Debtor could simply avoid Creditor's lien as impairing his exemption and the exemption amount would be that amount available on the petition date.

Id., at *2–3 (internal citations and quotations omitted).

Ms. Diaz references three cases in support of her proposition that CCP § 704.965 should apply to this case. *See In re Sweitzer*, 332 B.R. 614 (Bankr. C.D. Cal. 2005); *In re Combs*, 166 B.R. 417 (Bankr. N.D. Cal. 1994); and *In re Morgan*, 157 B.R. 467 (Bankr. C.D. Cal. 1993). However, *Combs* and *Morgan* involved *declared* homestead exemptions. Although Ms. Diaz asserts that CCP § 704.965 should apply to automatic homestead exemptions as well, Ms. Diaz does not articulate why the Court should deviate from *Mayer* or the plain language of CCP § 704.965, which exclusively references declared homestead exemptions. In addition, both *Combs* and *Morgan*

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Cindy Kaur Bhui

Chapter 7

predate *Mayer*. In *Sweitzer*, the bankruptcy court referenced CCP § 704.965 in passing, without engaging in an analysis of the statute's language or any authorities related to the pertinent issues herein. *Sweitzer*, 332 B.R. at 616. The bulk of the *Sweitzer* opinion involved issues not present in this case. In light of the directly applicable holding of *Mayer*, the *Sweitzer* court's tangential comment regarding CCP § 704.965 is not persuasive.

Pursuant to *Mayer* and the policy considerations discussed in *Zall*, Debtor is entitled to the exemption amount in effect on Debtor's petition date. Using the increased homestead exemption amount, the applicable calculation yields the following: \$780,000 (value of the Property) minus \$97,889.88 (amount of consensual lien against the Property) [FN1] equals \$682,110.12, which divided by two amounts to \$340,055.06 (Debtor's 50% interest in the Property). Debtor claimed an exemption for \$390,000, which exempts the remaining equity in the Property. As such, Ms. Diaz's liens may be avoided in full.

III. CONCLUSION

The Court will grant the Motion.

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

FOOTNOTES

1. Although Debtor deducts the consensual lien from her share of the Property, the attached deed of trust appears to encumber the entire Property. Declaration of Cindy Bhui [doc. 15], ¶ 7, Exhibit E.

Party Information

Debtor(s):

Cindy Kaur Bhui

Represented By
Gary A Starre

Movant(s):

Cindy Kaur Bhui

Represented By
Gary A Starre

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

Thursday, May 6, 2021

Hearing Room 301

1:30 PM

CONT... Cindy Kaur Bhui

Chapter 7

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Thursday, May 6, 2021

Hearing Room 301

1:30 PM

1:21-10500 Restorations

Chapter 11

#7.00 Motion to Dismiss or Convert

Docket 20

Tentative Ruling:

Deny.

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

Party Information

Debtor(s):

Restorations

Represented By
Michael E Plotkin

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

Thursday, May 6, 2021

Hearing Room 301

1:30 PM

1:21-10503 BAIC

Chapter 11

#8.00 Motion to Dismiss or Convert

Docket 16

Tentative Ruling:

Deny.

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

Party Information

Debtor(s):

BAIC

Represented By
Michael E Plotkin

Movant(s):

Harlan Helvey

Represented By
Michael G Spector
Arthur R Petrie II

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

Thursday, May 6, 2021

Hearing Room 301

2:30 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

#9.00 Status conference re: chapter 11, subchapter V case

fr. 3/25/21; 4/8/21

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on June 17, 2021.**

No later than June 3, 2021, the debtor must file a status report, to be served on the 20 largest unsecured creditors, the subchapter V trustee and the United States Trustee, **which must be supported by evidence**, regarding the debtor's progress toward a consensual plan of reorganization.

Appearances on May 6, 2021 are excused.

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton

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

Thursday, May 6, 2021

Hearing Room 301

2:30 PM

1:21-10396 Advanced Sleep Medicine Services, Inc.

Chapter 11

#10.00 Status conference re: chapter 11 subchapter V case

Docket 1

***** VACATED *** REASON: Amended order entered 3/23/21 [doc. 51]
setting initial S/C for 2:30pm on 5/20/21.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Advanced Sleep Medicine Services,

Represented By
Gregory M Salvato

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**

Tuesday, May 11, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the May 11, 2021 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: 659038

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Docket 0

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

Tuesday, May 11, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Tuesday, May 11, 2021

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 11, 2021

Hearing Room 301

10:30 AM

1:16-10126 Angela Cordero Britton

Chapter 13

#11.00 Trustee's motion to dismiss case due to expiration of the plan

Docket 109

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, May 11, 2021

Hearing Room 301

10:30 AM

1:16-10925 Josue Soncuya Villanueva

Chapter 13

#12.00 Trustee's motion to dismiss case due to material default of plan: failure to submit all tax refunds

fr. 3/9/21

Docket 127

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, May 11, 2021

Hearing Room 301

10:30 AM

1:17-10230 Brenda Jurado Hill

Chapter 13

#13.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

fr. 4/6/21

Docket 33

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, May 11, 2021

Hearing Room 301

10:30 AM

1:17-13080 Kathleen Moore

Chapter 13

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

fr. 10/6/20; 11/10/20; 1/12/21; 3/9/21; 4/6/21

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, May 11, 2021

Hearing Room 301

10:30 AM

1:18-11504 Juan Pedro Torres

Chapter 13

#15.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 78

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, May 11, 2021

Hearing Room 301

10:30 AM

1:19-10022 Gus Albert Bolona and Deirdre Marie Bolona

Chapter 13

#16.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 88

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, May 11, 2021

Hearing Room 301

10:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#17.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 105

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, May 11, 2021

Hearing Room 301

10:30 AM

1:19-10499 Michael Gary Vickery and Elise Rose Vickery

Chapter 13

#18.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 3/9/21

Docket 46

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

Trustee(s):

Elizabeth (SV) 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 11, 2021

Hearing Room 301

10:30 AM

1:19-10806 Abrahan Moran

Chapter 13

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

fr. 3/9/21

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Abrahan Moran

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 11, 2021

Hearing Room 301

10:30 AM

1:19-12961 Andre Robert Janian

Chapter 13

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

fr. 1/12/21; 3/9/21

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andre Robert Janian

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 11, 2021

Hearing Room 301

10:30 AM

1:20-10460 Veronica E Pledger

Chapter 13

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

fr. 12/8/20; 3/9/21

Docket 45

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, May 11, 2021

Hearing Room 301

10:30 AM

1:20-10619 Reginald Vergial Liddell

Chapter 13

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

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Reginald Vergial Liddell

Represented By
Rabin J Pournazarian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, May 11, 2021

Hearing Room 301

10:30 AM

1:20-11300 Gilbert Louis Villanueva

Chapter 13

#23.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gilbert Louis Villanueva

Represented By
Ramiro Flores Munoz

Trustee(s):

Elizabeth (SV) 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 11, 2021

Hearing Room 301

10:30 AM

1:19-12073 Scott Alan Secor and Iman Secor

Chapter 13

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

Docket 58

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Alan Secor

Represented By
Stephen L Burton

Joint Debtor(s):

Iman Secor

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 11, 2021

Hearing Room 301

10:30 AM

1:20-10868 Stanley LaMont Engelson and Lola Falana Engelson-Webb

Chapter 13

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

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stanley LaMont Engelson

Represented By
Michael E Clark

Joint Debtor(s):

Lola Falana Engelson-Webb

Represented By
Michael E Clark

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, May 11, 2021

Hearing Room 301

11:00 AM

1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

#25.00 JPMorgan Chase Bank's Motion for allowance and payment of administrative claim

Docket 127

Tentative Ruling:

Grant.

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

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

Party Information

Debtor(s):

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 11, 2021

Hearing Room 301

11:00 AM

1:19-12073 Scott Alan Secor and Iman Secor

Chapter 13

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

Docket 58

*** VACATED *** REASON: Set in error. Hearing is set for 10:30 AM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Alan Secor

Represented By
Stephen L Burton

Joint Debtor(s):

Iman Secor

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 11, 2021

Hearing Room 301

11:30 AM

1:20-10173 Sally Beltran

Chapter 13

#27.00 Application for Compensation for Rabin J Pournazarian, Debtor's Attorney

Docket 36

*** VACATED *** REASON: Voluntary dismissal filed on 4/15/21]doc #
56]

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**

Wednesday, May 12, 2021

Hearing Room 301

9:30 AM
1:00-00000

Chapter

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Docket 0

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

Wednesday, May 12, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Wednesday, May 12, 2021

Hearing Room 301

9:30 AM

1:21-10437 Sergey Tsoi

Chapter 13

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

fr. 4/7/21

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sergey Tsoi

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, May 12, 2021

Hearing Room 301

9:30 AM

1:21-10366 Rojanatanakul Sitapa

Chapter 7

#2.00 Motion for relief from stay [PP]

DAIMLER TRUST
VS
DEBTOR

Docket 22

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Rojanatanakul Sitapa

Represented By
Stephen L Burton

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, May 12, 2021

Hearing Room 301

9:30 AM

CONT... Rojanatanakul Sitapa

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Wednesday, May 12, 2021

Hearing Room 301

9:30 AM

1:19-11471 Melissa Roberta Ramirez

Chapter 13

#3.00 Motion for relief from stay [RP]

ROYAL PACIFIC FUNDING CORPORATION
VS
DEBTOR

Docket 59

Tentative Ruling:

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

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

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

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

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

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party 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 12, 2021

Hearing Room 301

9:30 AM

CONT... Melissa Roberta Ramirez

Chapter 13

Party Information

Debtor(s):

Melissa Roberta Ramirez

Represented By
Hasmik Jasmine Papian

Movant(s):

Royal Pacific Funding Corporation

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, May 12, 2021

Hearing Room 301

9:30 AM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#4.00 Motion for relief from stay [AN]

ANDRE BERGER; TRACY BERGER; RUSSELL FRANSDEN; CHRISTIE
FRANSDEN; AND NATIONAL ACO, LLC
VS
DEBTOR

Docket 72

Tentative Ruling:

Grant.

I. BACKGROUND

On February 3, 2021, Alex Foxman and Michal J. Morey ("Debtors") filed a voluntary chapter 11, subchapter V petition. In their latest-amended schedule A/B [doc. 24], Debtors identified an interest in two real properties: (A) 14606 Sutton Street, Sherman Oaks, CA 91403 (the "Sherman Oaks Property"); and (B) 321 S. San Vicente Boulevard, #407, Los Angeles, CA 90048 (the "San Vicente Property"). Debtors identified first priority deeds of trust against both properties, as well as other liens [doc. 60]. In their latest-amended schedule E/F [doc. 60], Debtors scheduled a total of \$1,405,842.21 in unsecured debt. Overall, in their amended schedules, Debtors identified \$3,653,859.47 in assets and \$3,755,136.58 in liabilities.

A. Prepetition Events and Litigation

In 2017, National ACO, LLC ("NACO") began participating in a government program with the Centers for Medicare and Medicaid Services ("CMS") to be an accountable care organization. Declaration of Russell Frandsen ("Reply Declaration") [doc. 91], ¶ 3. To participate in this program, CMS required a financial guarantee of repayment from NACO, such as a bond. *Id.* At that time, the major shareholders of NACO were Andre Berger, Dr. Foxman, Volker Winkler and Russell Frandsen. *Id.*

Atlantic Specialty Insurance Company ("ASIC") agreed to issue a bond to CMS on NACO's behalf. *Id.*, ¶ 4. In August 2017, NACO and its major shareholders, as well as

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

Wednesday, May 12, 2021

Hearing Room 301

9:30 AM

CONT...

Alex Foxman and Michal J Morey

Chapter 11

the shareholders' spouses, executed a general indemnity agreement (the "GIA") and promised to: (A) indemnify ASIC from losses incurred in connection with the bond; and (B) pledge collateral to ASIC. *Id.* Another agreement between the shareholders (the "Shareholder Agreement") provided that the shareholders would contribute collateral and indemnify the other contributing shareholders. *Id.*

Subsequently, ASIC demanded that the parties to the GIA contribute additional collateral. *Id.* Debtors contributed \$100,000 in cash to ASIC. *Id.* According to Mr. Frandsen, the \$100,000 contribution was short of Debtors' agreed-upon share.

On January 8, 2019, Dr. Berger, Tracy Berger, Mr. Frandsen, Christie Frandsen and NACO (the "Berger-Frandsen Parties") filed a complaint against Debtors and other defendants, initiating state court case no. 19STCV00723 (the "State Court Action"). Declaration of Russell Frandsen ("Frandsen Declaration") [doc. 72], ¶¶ 4-5. Through the State Court Action, the Berger-Frandsen Parties asserted that, among other things, Debtors breached their contractual duties to the Berger-Frandsen Parties by failing to contribute their share of collateral in connection with the GIA and Shareholder Agreement. Reply Declaration, ¶ 7.

B. The Settlement Agreement

On March 31, 2019, Debtors and the Berger-Frandsen Parties entered into a settlement agreement resolving the State Court Action (the "Settlement Agreement"). Frandsen Declaration, ¶ 5. Pursuant to the Settlement Agreement, the parties agreed, in relevant part—

1. The amount that Alex Foxman owes to Andre-Berger and Russell Frandsen for Foxman's share of the obligation to ASIC is \$681,740. This amount may increase or decrease depending on attorney's fees and other charges imposed by ASIC. It may decrease if money is recovered from the Winkler estate.

...

4. The Foxmans will execute a promissory note in favor of Berger and Frandsen of \$881,740, which includes, in addition to the ASIC debt, \$200,000 on account of A. Foxman's joint and several liability to Baute & Corchetiere (the "Promissory Note"). The Promissory Note will be due

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

Wednesday, May 12, 2021

Hearing Room 301

9:30 AM

CONT...

Alex Foxman and Michal J Morey

Chapter 11

and payable on or before December 31, 2020. The Promissory Note will bear interest at 6.25% per annum, compounded annually.

...

5. The Foxmans will execute a deed of trust on the Sherman Oaks property and a deed of trust on the San Vicente Property (the "Deeds of Trust") in favor of the Individual Plaintiffs to secure the Promissory Note given to Andre Berger and Russell Frandsen. If the security on the note is foreclosed, the condominium will be sold at least 10 days before the Sherman Oaks property (the Foxmans' single-family home) is sold, as long as the Individual Plaintiffs have received at least \$400,000 from the Foxmans (including the payments from CRM Properties, Inc., if any) prior to foreclosure of either property.

...

8. If any person pays consideration for the ownership, the property or the business of NACO and/or CCM TENN, LLC, then all amounts that would otherwise be payable to the Foxmans shall instead be paid to Andre Berger and Russell Frandsen to the extent of the amounts still owing by the Foxmans to the Individual Plaintiffs.

...

14. The lawsuit referred to in Recital G above, will be dismissed, in its entirety, without prejudice to the Foxmans and with prejudice to all other defendants. The [state court] shall retain jurisdiction to enforce this Agreement under C.C.P. Section 664.6. For that purpose, the parties to this Agreement shall submit this Agreement to the [state court] to accept its continuing jurisdiction over this Agreement.

Frandsen Declaration, Exhibit B. On May 13, 2019, the state court held a hearing. *Id.* At that time, the state court entered an order, stating that the state court "retains jurisdiction to make orders to enforce any and all terms of settlement, including judgment, pursuant to Code of Civil Procedure Section 664.6." *Id.*

On December 9, 2020, the Berger-Frandsen Parties filed a motion to enforce the Settlement Agreement (the "Motion to Enforce"). Frandsen Declaration, ¶ 8, Exhibit A.

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Through the Motion to Enforce, the Berger-Frandsen Parties seek the following order from the state court—

1. That [Debtors] anticipatorily breached the Settlement Agreement and Promissory Note by disavowing their payment obligations to [the Berger-Frandsen Parties] under each agreement.
2. That all unpaid principal and interest owed by [Debtors] under the Promissory Note are immediately due and payable, without any reduction.
3. That Plaintiffs be awarded their attorney's fees and costs in accordance with the terms of the Settlement Agreement and the Promissory Note, in an amount to be determined by the state court upon motion by [the Berger-Frandsen Parties].

Frandsen Declaration, Exhibit A. The hearing on the Motion to Enforce was originally scheduled for January 6, 2021. Frandsen Declaration, ¶ 9. The parties stipulated to continue the hearing to February 17, 2021. *Id.* On January 27, 2021, the Berger-Frandsen Parties received a draft of Debtors' opposition to the Motion to Enforce. *Id.*, ¶ 10.

C. Debtors' Bankruptcy Filing and the Adversary Proceeding

On February 3, 2021, prior to the hearing on the Motion to Enforce, Debtors filed their bankruptcy petition. On April 8, 2021, Debtors filed a complaint against the Berger-Frandsen Parties and three limited liability companies (the "LLCs"), initiating adversary proceeding no. 1:21-ap-01014-VK (the "Adversary Proceeding"). Debtors asserted claims for an accounting, declaratory relief, breach of fiduciary duty, breach of contract, breach of the covenant of good faith and fair dealing and injunctive relief.

On April 21, 2021, the Berger-Frandsen Parties filed a motion for relief from the automatic stay (the "Motion") [doc. 72], requesting relief to proceed with the Motion to Enforce in the State Court Action.

On April 28, 2021, Debtors filed a first amended complaint (the "FAC") [1:21-ap-01014-VK, doc. 3], adding fraudulent transfer and quiet title claims. In relevant part, Debtors allege—

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Subsequent to the Settlement Agreement, after reconsideration by the bond claimant and because of a contribution by the estate of an obligated partner, the bond obligation was substantially reduced. The Settlement Agreement specifically contemplated that the debt owed by Debtors would be adjusted based on subsequent events. As such, Dr. Foxman provided the Berger-Frandsen Parties with calculations over how the debt should be adjusted based on these events. In response to Dr. Foxman providing such a calculation, the Berger-Frandsen Parties responded with their own calculations, and then demanded that Dr. Foxman pay Mr. Frandsen attorneys' fees incurred responding to the calculations. Dr. Foxman did not tender the attorneys' fees, and the Berger-Frandsen Parties wrongfully declared a default on the Settlement Agreement, accelerating the default interest rate to 10%.

In the meantime, the Berger-Frandsen Parties retaliated against Dr. Foxman by cutting him out of ongoing business, depriving him of information, purporting to reduce his interest and transferring assets to and among new companies to dilute Dr. Foxman's interest in the business. Dr. Foxman learned that CCM Tenn, LLC ("CCM Tenn"), the successor of NACO, received \$3.268 million from CMS as shares savings, attributed in large part to Dr. Foxman's work and contributions. The parties had agreed that their debts arising from guarantying NACO's debt would be repaid from shared savings earned by CCM Tenn.

In addition, although the Berger-Frandsen Parties sought, as part of the State Court Action, rescission of the shares Dr. Foxman received for personally guaranteeing the bond, the Settlement Agreement dismissed the claim for rescission. Thus, Dr. Foxman's shares in NACO remained as they were before the State Court Action.

Dr. Foxman is a substantial shareholder of CCM Tenn and is entitled to a substantial portion of the shared savings. The Berger-Frandsen Parties have reimbursed themselves from the shared savings, but refuse to reimburse Dr. Foxman. Dr. Foxman has an interest in CCM Tenn, a right to payment and reimbursement and a right to receive his share of the cash in CCM Tenn. Moreover, the Berger-Frandsen Parties improperly

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transferred assets of CCM Tenn to a new entity, NCCM, LLC. Dr. Foxman contends he has an interest in NCCM, LLC.

On these allegations, Debtors assert the following claims—

- (A) accounting (to determine how much is owed to Debtors from the LLCs);
- (B) declaratory relief;
- (C) breach of fiduciary duty (based on the Berger-Frandsen Parties denying Dr. Foxman's alleged membership in NACO and the LLCs, denying Dr. Foxman his right to reimbursement and profits from CCM Tenn, fraudulently conveying assets of CCM Tenn to NCCM, refusing to account for the reduction in the bond obligation and failing to disclose or credit Dr. Foxman for the contribution by an obligated partner);
- (D) breach of the Settlement Agreement (based on failure to reduce the debt owed under the Settlement Agreement, wrongfully declaring a default and wrongfully charging attorneys' fees);
- (E) breach of operating agreements (based on diluting Dr. Foxman's shares in the LLCs, failing to compensate Dr. Foxman and denying a portion of Dr. Foxman's interest in the LLCs);
- (F) breach of partially written, partially oral and partially implied contracts (based on the allegations that the guaranteed debts paid by Dr. Foxman would be reimbursed by CCM Tenn);
- (G) breach of the implied covenant of good faith and fair dealing (based on the Settlement Agreement and the operating agreements of the LLCs);
- (H) injunction under 11 U.S.C. § 105(a) (to stop the alleged transfer of assets from the LLCs to the Berger-Frandsen Parties or other entities);
- (I) determination of the validity and extent of the Berger-Frandsen Parties' liens (based on all allegations above);

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(J) avoidance and recovery of fraudulent transfer (to avoid the Deeds of Trust);

(K) quiet title and removing cloud on title (to cancel the Promissory Note and Deeds of Trust).

On the same day Debtors filed the FAC, Debtors filed an opposition to the Motion (the "Opposition") [doc. 82]. In the Opposition, Debtors contend that granting the Motion would hinder Debtors' ability to prosecute their fraudulent transfer claims and recover funds for administration of the estate.

On May 4, 2021, Debtors filed a proposed chapter 11 plan of reorganization [doc. 88]. On May 5, 2021, the Berger-Frandsen Parties filed a reply to the Opposition [doc. 91]. On May 9, 2021, Debtors filed evidentiary objections to the Reply Declaration.

II. ANALYSIS

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Company, Inc.*, 47 F.3d 233, 238 (7th Cir. 1995) (emphasis added).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a non-bankruptcy forum include:

- (1) Whether the relief will result in a partial or complete resolution of the issues.
- (2) The lack of any connection with or interference with the bankruptcy case.
- (3) Whether the foreign proceeding involves the debtor as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases.
- (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation.
- (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question.
- (7) Whether litigation in another forum would prejudice the interests of other

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- creditors, the creditors' committee and other interested parties.
- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c).
 - (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f).
 - (10) The interest of judicial economy and the expeditious and economical determination of litigation for the parties.
 - (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial.
 - (12) The impact of the stay on the parties and the "balance of the hurt."

In re Curtis, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984) (citations omitted); *see also In re Sonnax Industries, Inc.*, 99 B.R. 591 (D. Vt. 1989), *aff'd*, 907 F.2d 1280 (2d Cir. 1990) (listing factors).

Here, the factors weigh in favor of granting relief from the automatic stay for the parties to proceed with the Motion to Enforce in state court. First, in the interest of judicial economy, the state court is in the best position to determine expeditiously the issues raised in the Motion to Enforce. The state court reviewed the Settlement Agreement and issued an order retaining jurisdiction over enforcement of the Settlement Agreement. Moreover, when Debtors filed their bankruptcy petition, the state court was shortly to preside over a hearing on the Motion to Enforce. The state court already having relevant background regarding the State Court Action and the Settlement Agreement, the state court may more efficiently resolve the current dispute between the parties.

In the Opposition, Debtors contend that the state court did not adjudicate the State Court Action. However, the state court presided over the approval of the Settlement Agreement and retained jurisdiction over issues related to the Settlement Agreement. The current dispute involves interpretation and application of that Settlement Agreement. The remaining issues raised by Debtors, such as the fraudulent transfer claims asserted by Debtors after the Berger-Frandsen Parties filed the Motion, are not within the scope of the request for relief from the automatic stay.

Moreover, a stay would negatively impact all parties. If the Court denied the Motion, the parties would present the issues in connection with the Adversary Proceeding. Debtors having recently filed the FAC, this Court is not likely to enter judgment on any of Debtors' claims in the near future. Because both parties have an interest in speedy

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determination of the Motion to Enforce, denying relief from the automatic stay would delay adjudication on the issues presented therein.

In the Opposition, Debtors assert that granting relief from the automatic stay would deprive Debtors of the opportunity to prosecute their fraudulent transfer claims before this Court. However, Debtors' claims for fraudulent transfer are separate from the issues raised in the Motion to Enforce and/or any issues that would necessarily be decided by the state court in connection with adjudication of the Motion to Enforce. In the Motion to Enforce, the Berger-Frandsen Parties request an order that Debtors anticipatorily breached the Settlement Agreement and Promissory Note, that all unpaid principal and interest owed under the Promissory Note is due and payable, without any reduction and that the Berger-Frandsen Parties be awarded attorneys' fees and costs. This determination involves interpretation of the terms of the Settlement Agreement.

In contrast, Debtors' fraudulent transfer claims request avoidance of the Deeds of Trust on the basis that Debtors did not receive reasonably equivalent value in exchange for executing the Deeds of Trust, and that the execution of the Deeds of Trust left Debtors insolvent. The state court's ruling on the Motion to Enforce will not preclude this Court's ruling on the fraudulent transfer claims. Debtors are free to proceed with their fraudulent transfer claims via the Adversary Proceeding.

Debtors also contend that granting relief from the automatic stay will interfere with Debtors' bankruptcy case by delaying the expedited timeline in subchapter V cases. However, Debtors already filed a proposed chapter 11 plan of reorganization within the expedited deadline. The proposed plan treatment of the Berger-Frandsen Parties' claims accounts for post-confirmation contingencies, such as a disallowance, reduction or full allowance of the claim. Consequently, the litigation, whether in state court or this Court, will not significantly impact confirmation proceedings related to Debtors' proposed plan.

Further, the scope of relief provided by the Court will allow for complete resolution of the issue of whether Debtors anticipatorily breached the Settlement Agreement and Promissory Note and/or whether the Berger-Frandsen Parties breached the Settlement Agreement by allegedly refusing to adjust the amount owed under that agreement. Aside from the issues set forth in the Motion to Enforce, any claims asserted by Debtors directly related to the issues raised in the Motion to Enforce also should be raised before the state court. [FN1]. Thus, while Debtors may argue that severing the FAC results in "partial resolution" of the Adversary Proceeding, the FAC presents distinct claims that are easily

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severed and may completely resolve the issues related to interpretation of the Settlement Agreement.

The remaining *Curtis* factors are inapplicable to this case or do not significantly change the Court's analysis above. In light of the above, the Court will grant the Berger-Fransden Parties' request for relief from the automatic stay. [FN2].

III. CONCLUSION

The Court will grant the Motion.

The Berger-Fransden Parties must submit an order within seven (7) days.

FOOTNOTES

1. Those claims include breach of the fiduciary duty based on the alleged refusal to account for a reduction in the bond obligation and failure to disclose or credit Dr. Foxman with the settlement with another obligated partner, breach of the Settlement Agreement and the other breach of contract claims to the extent they relate to interpretation of the Settlement Agreement and the portions of the declaratory relief claim related to interpretation of the Settlement Agreement. The Court intends to adjudicate Debtors' fraudulent transfer, validity of lien and quiet title claims.
2. With the exception of the timing of Debtors' bankruptcy filing, the Berger-Fransden Parties do not adequately discuss their contention that Debtors filed this case in bad faith. Because the Court is granting relief from the automatic stay in accordance with the *Curtis* factors, the Court need not reach the issue of bad faith.

Tentative ruling regarding Debtors' evidentiary objections to the identified paragraphs in the Reply Declaration set forth below:

paras. 3-4, 7: overrule

para. 5: sustain as to "contractually required to contribute" and "And during this time, the Debtors took some questionable actions. For example, in December 2017, the Debtors took out a \$386,000 second mortgage on their residence (the proceeds of which

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they have not fully accounted for), and in July 2018, they deeded title to their residence and their rental condominium to Alex Foxman's brother and mother, respectively, without consideration;" overrule as to the rest
paras. 6, 9-13: sustain
para. 8: overrule as to "The parties to the First Lawsuit subsequently entered into a settlement agreement on or about March 31, 2019 (the "Settlement Agreement");"
sustain as to the rest

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Movant(s):

Christie Frandsen

Represented By
Matthew D Pham

Russell Frandsen

Represented By
Matthew D Pham

Tracy Berger

Represented By
Matthew D Pham

Andre Berger

Represented By
Matthew D Pham

National ACO, LLC

Represented By
Matthew D Pham

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10736 Top Flight Investments, LLC

Chapter 11

#4.10 Motion for relief from stay/relief from turnover [RP]

SOUND EQUITY HIGH INCOME DEBT FUND LLC
VS
DEBTOR

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Top Flight Investments, LLC

Represented By
Matthew Abbasi

Movant(s):

Sound Equity High Income Debt

Represented By
Michael S Myers

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1:18-11620 Antoine R Chamoun

Chapter 7

Adv#: 1:19-01105 Seror, Chapter 7 Trustee v. Chamoun et al

#5.00 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; 12/9/20(stip); 3/24/21(stip)

STIP TO CONTINUE FILED 4/15/21 - jc

Docket 27

***** VACATED *** REASON: continued to 7/14/21 at 1:30 p.m. per order entered on 4/16/21 doc [72]**

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

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Chapter 7

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan

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1:18-11620 Antoine R Chamoun

Chapter 7

Adv#: 1:21-01013 Seror v. Chamoun

#6.00 Status conference re: complaint by David Seror against Antoine R Chamoun

STIP TO CONTINUE FILED 4/15/21 - jc

Docket 1

*** VACATED *** REASON: continued to 7/14/21 at 1:30 p.m. per order
entered on 4/16/21 doc [7]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Defendant(s):

Antoine R Chamoun

Pro Se

Plaintiff(s):

David Seror

Represented By
Ryan Coy

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol
Ryan Coy

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#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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).

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Meeting ID: 160 046 5511

Password: 852150

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Tentative Ruling:

- NONE LISTED -

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1:20-12097 Philip H. Lee

Chapter 7

#1.00 Creditor Keybank National Association's Motion for extension of time to object to entry of discharge and deadline to file a nondischargeability complaint

fr. 4/22/21

Docket 39

Tentative Ruling:

Grant.

I. BACKGROUND

On November 24, 2020, Philip H. Lee ("Debtor") filed a voluntary chapter 7 petition. The deadline for parties in interest to object to Debtor's discharge or file a complaint for nondischargeability of debt was set as March 1, 2021 (the "Deadline").

On February 26, 2021, prior to expiration of the Deadline, creditor KeyBank National Association ("Creditor") filed the Motion [doc. 39]. Creditor requests a 60-day extension of the Deadline. On April 15, 2021, Debtor belatedly filed an opposition to the Motion (the "Opposition") [doc. 46]. As such, the Court continued the hearing to provide Creditor an opportunity to file a reply. On May 6, 2021, Creditor filed a reply to the Opposition [doc. 47].

II. ANALYSIS

Federal Rule of Bankruptcy Procedure ("FRBP") 4004 states, in pertinent part—

- (a) Time for Objecting to Discharge; Notice of Time Fixed. In a chapter 7 case, a complaint, or a motion under §727(a)(8) or (a)(9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under §341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under §1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United

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States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

(b) Extension of Time.

- (1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.
- (2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

FRBP 4007(c) states, in pertinent part—

Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On a motion by a party in interest, the court may for cause extend the time filed under this subdivision. The motion shall be filed before the time has expired.

Pursuant to FRBP 9006(b)(1)—

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

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"The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules." FRBP 9006(b)(3) (emphasis added).

In opposing the Motion, Debtor contends that Creditor did not demonstrate excusable neglect. Debtor references FRBP 9006(b)(1) and *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 383, 113 S.Ct. 1489, 1492, 123 L.Ed.2d 74 (1993). However, *Pioneer* involved interpreting the phrase "excusable neglect" under the second prong of FRBP 9006(b)(1), which requires a showing of "excusable neglect" when a motion is "made *after the expiration of the specified period...*" (emphasis added). Here, Creditor timely filed the Motion prior to expiration of the Deadline.

In any event, under FRBP 9006(b)(3), the Court may enlarge the time under FRBP 4004(a) and 4007(c) "only to the extent and under the conditions stated in those rules. Both FRBP 4004(a) and 4007(c) require that motions to enlarge be filed before expiration of the deadline. If a motion is timely filed, as it is here, FRBP 4004(a) and 4007(c) require only a showing of "cause."

In declarations attached to the Motion, Creditor's representatives explain that: (A) prepetition, in connection with a state court action, Debtor did not respond to discovery requests and obtained multiple continuances of a Debtor's Exam; (B) postpetition, Debtor did not appear at his first § 341(a) meeting of creditors, triggering a continuance of the meeting; (C) Creditor has been researching and reviewing real estate records related to properties that may be owned by Debtor; and (D) in light of the research, Creditor believes it may have a claim based on transfers and/or concealment of property. Declaration of Natalie Peled, ¶¶ 2, 4-6, Declaration of Charles Benjamin, ¶¶ 2, 6.

Debtor does not refute this showing of "cause." Rather, Debtor states that, because he has not received any discovery requests from Creditor, Creditor has not been diligent. However, Creditor's investigation of Debtor's assets prior to propounding discovery on Debtor does not necessarily demonstrate a lack of diligence; a preliminary investigation without the expense of discovery may preserve resources, especially if Creditor decides not to pursue litigation against Debtor. Moreover, this is Creditor's first request for a continuance. In his declaration, Debtor also discusses certain health issues. Debtor has not provided any authority that such issues serve as a bar to extension of deadlines. Creditor having shown cause, the Court will grant the Motion.

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III. CONCLUSION

The Court will grant the Motion and extend the Deadline to **July 15, 2021**.

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

Party Information

Debtor(s):

Philip H. Lee

Represented By
Matthew Abbasi

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:21-10166 Samba Group, Inc.

Chapter 7

#2.00 Motion for Order Authorizing Trustee to Sell Liquor License
Number 47-478741 Free and Clear of Liens and Interests,
Subject to Overbid

Docket 27

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Samba Group, Inc.

Represented By
Eileen Keusseyan

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 13, 2021

Hearing Room 301

1:30 PM

1:10-17214 Darin Davis

Chapter 7

#3.00 Debtor Darin Davis' Fourth Motion for the Court to Order
Disbursement of Funds Out of the Bankruptcy Court's Registry

Docket 531

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, May 13, 2021

Hearing Room 301

1:30 PM

1:10-17214 Darin Davis

Chapter 7

#4.00 Judgment Creditor Fairland Liquidation Corporation's Motion for the Court to Order Disbursement of Funds Out of the Bankruptcy Court's Registry

Docket 536

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, May 13, 2021

Hearing Room 301

1:30 PM

1:21-10302 Armen Shane Minassian

Chapter 7

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

Docket 1

***** VACATED *** REASON: Payment received 4/21/21.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Armen Shane Minassian

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Thursday, May 13, 2021

Hearing Room 301

1:30 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#6.00 Motion for Order Authorizing Bankruptcy Rule 2004 Examination of La Mesa Fund Control and Escrow

Docket 66

***** VACATED *** REASON: Order entered 4/16/21. [Dkt. 127]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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

Thursday, May 13, 2021

Hearing Room 301

1:30 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#7.00 Motion for order authorizing bankruptcy rule 2004 examination of Michael Yates of Pacific Valuation Realty Advisors and for production of documents pursuant to local bankruptcy rule 2004-1

Docket 64

***** VACATED *** REASON: Order entered on 4/20/21. [Doc. 138]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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

Thursday, May 13, 2021

Hearing Room 301

1:30 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#8.00 Motion for Order Authorizing Bankruptcy Rule 2004 Examination of Sandy MacDougall (President of Mortgage Vintage, Inc.)

Docket 68

***** VACATED *** REASON: Order entered 4/16/21. [Dkt. 126]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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

Thursday, May 13, 2021

Hearing Room 301

1:30 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#9.00 Motion for Order Authorizing Bankruptcy rule 2004 Examination of Shannon Sheehan (President of Citizen Properties Incorporated)

Docket 70

***** VACATED *** REASON: Order entered 4/16/21. [Dkt. 125]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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

Thursday, May 13, 2021

Hearing Room 301

1:30 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#10.00 Motion for order authorizing bankruptcy rule 2004 examination of Cody Steward of of consulting & inspection services, LLC and for production of documents pursuant to local bankruptcy rule 2004-1

Docket 60

***** VACATED *** REASON: Order entered 4/15/21. [Dkt. 122]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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

Thursday, May 13, 2021

Hearing Room 301

1:30 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#11.00 Motion for Order Authorizing Bankruptcy Rule 2004 Examination of Andrew Manning of Berkshire Hathaway Home Services

Docket 58

***** VACATED *** REASON: Order entered 4/15/21. [Dkt. 121]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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

Tuesday, May 18, 2021

Hearing Room 301

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 May 18, 2021 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/1610468895>

Meeting ID: 161 046 8895

Password: 723495

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: 161 046 8895

Password: 723495

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

Tuesday, May 18, 2021

Hearing Room 301

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, May 18, 2021

Hearing Room 301

8:30 AM

1:21-10063 Yosef Y. Shabtay

Chapter 7

#1.00 Reaffirmation Agreement Between Debtor and
Capital One Auto Finance, a division of Capital One, N.A.

Docket 9

Party Information

Debtor(s):

Yosef Y. Shabtay

Represented By
Clifford Bordeaux

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 18, 2021

Hearing Room 301

8:30 AM

1:21-10172 Oscar A Aragon and Paula Montoya Aragon

Chapter 7

**#2.00 Reaffirmation Agreement Between Debtor and
Wells Fargo Bank N.A.**

Docket 15

Party Information

Debtor(s):

Oscar A Aragon

Represented By
R Grace Rodriguez

Joint Debtor(s):

Paula Montoya Aragon

Represented By
R Grace Rodriguez

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Tuesday, May 18, 2021

Hearing Room 301

8:30 AM

1:21-10172 Oscar A Aragon and Paula Montoya Aragon

Chapter 7

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

Docket 18

Party Information

Debtor(s):

Oscar A Aragon

Represented By
R Grace Rodriguez

Joint Debtor(s):

Paula Montoya Aragon

Represented By
R Grace Rodriguez

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Tuesday, May 18, 2021

Hearing Room 301

8:30 AM

1:21-10172 Oscar A Aragon and Paula Montoya Aragon

Chapter 7

**#4.00 Reaffirmation Agreement Between Debtor and
Wells Fargo Bank N.A.**

Docket 21

Party Information

Debtor(s):

Oscar A Aragon

Represented By
R Grace Rodriguez

Joint Debtor(s):

Paula Montoya Aragon

Represented By
R Grace Rodriguez

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Tuesday, May 18, 2021

Hearing Room 301

8:30 AM

1:21-10307 Maryam Sarkisian

Chapter 7

**#5.00 Reaffirmation Agreement Between Debtor and
Wescom Central Credit Union**

Docket 11

Party Information

Debtor(s):

Maryam Sarkisian

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**

Tuesday, May 18, 2021

Hearing Room 301

8:30 AM

1:21-10418 Ajay Kumar Gambhir

Chapter 7

**#6.00 Reaffirmation Agreement Between Debtor and
Technology Credit Union**

Docket 11

Party Information

Debtor(s):

Ajay Kumar Gambhir

Represented By
David S Hagen

Trustee(s):

David Seror (TR)

Pro Se

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

Wednesday, May 19, 2021

Hearing Room 301

9:30 AM

1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the May 19, 2021 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1601058278>

Meeting ID: 160 105 8278

Password: 093088

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 105 8278

Password: 093088

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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

Wednesday, May 19, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Wednesday, May 19, 2021

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; 12/9/20; 3/3/21(stip); 4/21/21(stip)

STIP TO CONTINUED FILED 5/14/21

Docket 73

*** VACATED *** REASON: Order approving stip entered 5/14/21.
Hearing continued to 6/23/21 at 9:30 AM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Movant(s):

Wilmington Savings Fund Society,

Represented By
Jenelle C Arnold

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov

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

Wednesday, May 19, 2021

Hearing Room 301

9:30 AM

1:21-10005 JANA, LLC

Chapter 11

#2.00 Motion for relief from stay [RP]

PS FUNDING, INC.
VS
DEBTOR

fr. 3/17/21; 4/21/21

Docket 39

Tentative Ruling:

As adequate protection, beginning May 14, 2021, the debtor must pay movant the amount of \$239.20 per month.

It appears that, based on a defaulted tax bill, there are unpaid property taxes in the amount of \$21,212.82. The debtor's obligation to pay these taxes accrues interest in the amount of \$239.20 per month. This interest accrual reduces the value of the movant's secured claim.

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

3/17/21 Ruling

At this time, the Court will not grant relief pursuant to 11 U.S.C. § 362(d)(1) or (d)(2).

On January 5, 2021, the debtor filed its chapter 11 petition. The debtor's primary asset is real property located at 10 Stagecoach Road, Bell Canyon, California 91307 (the "Stagecoach Property"). In October 2018, the debtor purchased the Stagecoach Property at a public auction [Declaration of Shahram Hashemizadeh, doc. 50, ¶ 4].

Prepetition, the debtor obtained an appraisal of the Stagecoach Property's fair market value, as of March 25, 2020, which concluded that the value was \$1,300,000.00. However, the debtor's principal has testified that the Stagecoach Property's "foundation is compromised and severally damaged." [Declaration of Shahram

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

Wednesday, May 19, 2021

Hearing Room 301

9:30 AM

CONT... JANA, LLC

Chapter 11

Hashemizadeh, doc. 50, ¶¶ 3, 10]. Apparently, subsequent to March 2020, Mr. Hashemizadeh became aware of these problems with the Stagecoach Property's foundation. Consequently, the debtor intends to obtain an updated appraisal of the Stagecoach Property, which will reflect its actual condition. [Declaration of Shahram Hashemizadeh, doc. 50, ¶ 6].

Mr. Hashemizadeh avers that he has \$315,947.39 in his checking account, and that he intends to fund \$350,000.00 of the \$555,600.00 in estimated costs, as evidenced by an estimate dated February 26, 2021, to repair and rehabilitate the Stagecoach Property. [Declaration of Shahram Hashemizadeh, doc. 50, ¶¶ 7, 16; Exh. F].

Mr. Hashemizadeh's testimony does not support movant's assertion that the Stagecoach Property is *declining* in value, *since the petition date*. The movant has not demonstrated the amount of any such decline.

Regarding outstanding real property taxes, the debtor avers that it has paid or will pay all property taxes owed to the Ventura County Tax Collector. The debtor's failure to pay property taxes which come due post-petition or interest accruing on unpaid pre-petition property taxes may constitute "cause" to grant relief under 11 U.S.C. § 362(d) (1).

"The failure to pay real property taxes constitute a basis for finding a lack of adequate protection" when "the equity cushion has all but disappeared, real estate taxes have not been paid . . . and interest continues to accrued on those unpaid taxes. These unpaid taxes and interest further deteriorate [a creditor's] security position." *In re James River Associates*, 148 B.R. 790, 796 (Bankr. E.D. Va. 1992); *In re Lane*, 108 B.R. 6, 11 (Bankr. D.Mass. 1989) (same). A undersecured creditor may be entitled to be adequately protected from interest accrual. *Matter of Ruppert*, 161 B.R. 48, 49 (Bankr. D.Neb. 1993).

Regarding the application of 11 U.S.C. § 362(d)(2), property is necessary for an effective reorganization if "the property is essential for an effective reorganization *that is in prospect*. This means . . . that there must be 'a reasonable possibility of a successful reorganization within a reasonable time.'" *United Sav. Ass'n Tex. V. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 375–76, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988) (emphasis in original) (*quoting In re Timbers of Inwood Forest*

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

Wednesday, May 19, 2021

Hearing Room 301

9:30 AM

CONT... JANA, LLC

Chapter 11

Assoc., Ltd., 808 F.2d 363, 370–71, n. 12–13 (5th Cir. 1987) (en banc)).

The Bankruptcy Appellate Panel for the Ninth Circuit has interpreted the "effective reorganization" requirement as requiring the debtor to prove that a proposed plan "is not patently unconfirmable and has a realistic chance of being confirmed." *Sun Valley Newspaper, Inc. v. Sun World Corp. (In re Sun Valley Newspapers, Inc.)*, 171 B.R. 71, 75 (B.A.P. 9th Cir. 1994) (internal citation omitted). In the early stages of a case, "the burden of proof . . . is satisfied if the debtor can offer sufficient evidence to indicate that a sufficient reorganization within a reasonable time is 'plausible.'" *Id.* At this point in the case, the debtor has provided sufficient evidence that the debtor's ability to reorganize within a reasonable time is plausible.

The Court will continue this hearing to **April 21, 2021 at 9:30 a.m. No later than April 7, 2021**, the debtor must submit a declaration supported by documentary evidence that it is current and has paid all property taxes encumbering the Stagecoach Property, or the Court will mandate that the debtor make monthly adequate protection payments to movant in the amount of the interest accrual on outstanding property taxes.

Party Information

Debtor(s):

JANA, LLC

Represented By
Matthew Abbasi

Movant(s):

PS Funding, Inc.

Represented By
Andrew Still
Eric S Pezold

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

Wednesday, May 19, 2021

Hearing Room 301

9:30 AM

1:20-10924 Tikran Eritsyanyan

Chapter 11

#2.10 Motion for relief from stay [RP]

RED DRAGON INVESTMENT AND
PLATINUM BUSINESS MANAGEMENT
VS
DEBTOR

fr. 11/18/20; 12/23/20; 1/20/21; 2/10/21; 3/3/21(stip);3/24/21; 5/5/21

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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

May 5, 2021 Tentative Ruling

Movant filed this motion in October 2020 and has agreed to several continuances of the hearing. If the debtor still has not consummated the Court-approved sale of the subject real property, which the Court authorized in December 2020, and if movant wishes to proceed with the motion, movant should supplement the motion with evidence regarding any post-petition increase in the amount of its claim.

Party Information

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

Wednesday, May 19, 2021

Hearing Room 301

9:30 AM

CONT... Tikran Eritsyan

Chapter 11

Debtor(s):

Tikran Eritsyan

Represented By
Vahe Khojayan

Movant(s):

Red Dragon Investment and

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 19, 2021

Hearing Room 301

9:30 AM

1:21-10252 Porfirio Andrades

Chapter 7

#3.00 Motion for relief from stay [RP]

AMERIHOM MORTGAGE COMPANY, LLC
VS
DEBTOR

Docket 11

Tentative Ruling:

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

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

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

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

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

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

Wednesday, May 19, 2021

Hearing Room 301

9:30 AM

CONT... Porfirio Andrades

Chapter 7

Debtor(s):

Porfirio Andrades

Represented By
Jasmine Motazedi

Movant(s):

AmeriHome Mortgage Company,

Represented By
Bonni S Mantovani
Diana Torres-Brito

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 19, 2021

Hearing Room 301

9:30 AM

1:21-10506 Roberta K Duran

Chapter 7

#3.10 Motion for relief from stay [RP}

ANCHOR LOANS, LP
VS
DEBTOR

Docket 13

Tentative Ruling:

The Court will grant relief from the automatic stay under 11 U.S.C. § 362(d)(1), (2) and (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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Movant must submit the order within seven (7) days

Party Information

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

Wednesday, May 19, 2021

Hearing Room 301

9:30 AM

CONT... Roberta K Duran

Chapter 7

Debtor(s):

Roberta K 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**

Wednesday, May 19, 2021

Hearing Room 301

9:30 AM

1:18-11945 Rosa Aminta Cordova de Rodriguez

Chapter 13

#4.00 Motion for relief from stay [PP]

ALLY FINANCIAL
VS
DEBTOR

fr. 4/7/21(stip)

Docket 57

*** VACATED *** REASON: Continued by stip to 6/23/21 at 9:30 a.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosa Aminta Cordova de Rodriguez

Represented By
R Grace Rodriguez

Movant(s):

Ally Financial

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) 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 19, 2021

Hearing Room 301

9:30 AM

1:20-10971 Benjamin Marsh

Chapter 13

#5.00 Motion for relief from stay [RP]

CIT BANK, N.A.
VS
DEBTOR

fr. 4/14/21(stip)

Docket 74

*** VACATED *** REASON: Continued by stip to 6/23/21 at 9:30 a.m. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Benjamin Marsh

Represented By
Natalya Vartapetova

Movant(s):

CIT Bank, N.A.

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) 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 19, 2021

Hearing Room 301

9:30 AM

1:17-12299 Timothy Lee Weaver and Mary Jane Weaver

Chapter 13

#6.00 Motion for relief from stay [RP]

SELECT PORTFOLIO SERVICING INC.
VS
DEBTOR

Docket 76

*** VACATED *** REASON: Continued by stip to 6/23/21 at 9:30 a.m. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy Lee Weaver

Represented By
Kenneth A Freedman

Joint Debtor(s):

Mary Jane Weaver

Represented By
Kenneth A Freedman

Movant(s):

Select Portfolio Servicing Inc., as

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) 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 19, 2021

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

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

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

fr. 8/21/19; 10/2/19; 11/6/19; 1/15/20; 11/18/20; 4/21/21

Docket 1

Tentative Ruling:

See calendar no. 9.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Gary R Wallace

Defendant(s):

Deborah Adri

Pro Se

Plaintiff(s):

Moshe Adri

Pro Se

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, May 19, 2021

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

#8.00 Order to Show Cause Why This Adversary Proceedng Should Not
Be Dismissed For Failure To Prosecute

Docket 59

Tentative Ruling:

The Court will discharge the Order to Show Cause.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Gary R Wallace

Defendant(s):

Deborah Lois Adri

Represented By
Gary R Wallace

Plaintiff(s):

Elissa D. Miler, chapter 7 trustee for

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, May 19, 2021

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 Pretrial conference re: complaint to deny discharge

fr. 10/2/19; 11/6/19; 1/15/20; 10/14/20;11/18/20; 4/21/21

Docket 1

Tentative Ruling:

The Court will continue this, *as a status conference*, to **1:30 p.m. on July 14, 2021**, to provide the parties an opportunity to mediate this matter. No later than **June 30, 2021**, the parties must submit a joint status report in accordance with LBR 7016-1(a). If a unilateral status report is filed, the parties must comply with LBR 7016-1(a)(3).

In light of the global mediation to take place on June 15, 2021, the Court will vacate the deadline of April 7, 2021 to file a pre-trial stipulation.

Unless and until otherwise ordered by the Court, all deadlines set forth in the *Consolidated Status Conference and Scheduling Order Pursuant to LBR 7016-1(a) (4)*, entered on October 8, 2019 [doc. 18], **except for the deadline to file a pre-trial stipulation** (which deadline is vacated), remain unchanged.

The Court will prepare an order vacating the deadline to file a pre-trial stipulation, setting a status conference at 1:30 p.m. on July 14, 2021 and requiring the filing of a joint status report or unilateral status report, in accordance with LBR 7016-1(a).

Appearances on May 19, 2021 are excused.

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 19, 2021

Hearing Room 301

1:30 PM

CONT... Deborah Lois Adri

Chapter 7

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, May 19, 2021

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

- #10.00** Status conference re: second amended complaint for:
- 1) Avoidance and recovery of fraudulent transfers pursuant to Title 11 U.S.C. sec 544(a) and (b), 548 and 550; and Cal. Civ. Code §§ 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) Breach of contract;
 - 5) Breach of covenant of good faith and fair dealing; and
 - 6) Turnover of property

fr. 7/29/20; 08/26/20; 11/4/20; 12/9/20; 12/23/20; 3/3/21; 4/7/21

Docket 36

Tentative Ruling:

Parties should be prepared to discuss the following:

Deadline to complete discovery: 11/30/21.

Deadline to file pretrial motions: 12/17/21.

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

Pretrial: 1/19/22 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 19, 2021

Hearing Room 301

1:30 PM

CONT... Victory Entertainment Inc

Chapter 7

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
Elissa Miller
Paul A Beck

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

Wednesday, May 19, 2021

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; 12/23/20; 3/10/21

Docket 1

Tentative Ruling:

On May 12, 2021, the plaintiff filed a motion to approve a compromise with the defendants (the "Compromise Motion") [Bankruptcy Docket, doc. 34]. The plaintiff attached the parties' settlement agreement (the "Agreement") to the Compromise Motion [Bankruptcy Docket, doc. 34, Exhibit A]. The Agreement provides that, after approval of the Agreement by the Court, the defendants will provide the plaintiff with a stipulation to dismiss this adversary proceeding with prejudice, which the plaintiff will file with the Court.

In light of this language, the Court will continue this status conference to **1:30 p.m. on July 14, 2021**. If the parties file, and the Court approves, a stipulation to dismiss this adversary proceeding prior to July 14, 2021, the Court will take the continued status conference off calendar.

Appearances on May 19, 2021 are excused.

Party Information

Debtor(s):

Guadalupe Villegas Pro Se

Defendant(s):

Antonio Villegas Pro Se

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

Wednesday, May 19, 2021

Hearing Room 301

1:30 PM

CONT... Guadalupe Villegas

Chapter 7

Gabriella Zapata

Pro Se

Fabian Villegas

Pro Se

Plaintiff(s):

Nancy J. Zamora, Chapter 7 Trustee

Represented By
Jeremy Faith
Anna Landa

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, May 19, 2021

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

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

- #12.00** Status conference re: second amended complaint for:
1. Misrepresentation;
 2. Breach of implied covenant of good faith and fair dealing

Demand for jury trial

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); 12/23/20;
1/21/20; 3/10/21

Docket 93

***** VACATED *** REASON: Continued to 6/16/21 at 2:30 p.m.**

Tentative Ruling:

The Court will set the defendant's motion to dismiss the second amended complaint [doc. 96] for hearing at **2:30 p.m. on June 16, 2021**. The defendant must file and serve notice of the hearing on interested parties. The Court will continue this status conference to the same time and date.

Appearances on May 19, 2021 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

GHR Divine Remodeling

Pro Se

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

Wednesday, May 19, 2021

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, May 19, 2021

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 Pretrial 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; 12/9/20;

Docket 31

*** VACATED *** REASON: Continued by stip to 6/23/21 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 19, 2021

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; 11/18/20; 5/5/21

Docket 1

Tentative Ruling:

Does the plaintiff intend to litigate any claims other than discharge of the debt under 11 U.S.C. § 523(a)(8)?

Parties should be prepared to discuss the following:

Deadline to file pretrial motions: 6/30/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 7/14/21. The parties must use Judge Vincent P. Zurzolo's pretrial stipulation format, located at <https://www.cacb.uscourts.gov/judges/honorable-vincent-p-zurzolo> under the "Forms" tab.

Pretrial: 7/28/21 at 1:30 p.m.

The Court will prepare 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):

Patricia Esmeralda Rangel

Pro Se

Defendant(s):

Navient Solutions LLC., dba

Represented By

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

Wednesday, May 19, 2021

Hearing Room 301

1:30 PM

CONT... Patricia Esmeralda Rangel

Chapter 7

Dennis C. Winters

U.S. Department of Education

Pro Se

Plaintiff(s):

Patricia Esmeralda Rangel

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Wednesday, May 19, 2021

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 Motion to set new deadlines and date for pretrial status conference

Docket 42

Tentative Ruling:

The Court will continue this matter to **1:30 p.m. on June 23, 2021**, to be heard with the continued pretrial conference.

Appearances on May 19, 2021 are excused.

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, May 19, 2021

Hearing Room 301

2:30 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

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

#16.00 Motion For Summary Judgment or in the
alternative for Partial Summary Adjudication

STIP TO CONTINUE FILED 4/23/21

Docket 101

***** VACATED *** REASON: Hearing continued to 5/26/21 at 2:30 PM per
order at Document #108.**

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

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, May 20, 2021

Hearing Room 301

10:30 AM

1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the May 20, 2021 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1616362260>

Meeting ID: 161 636 2260

Password: 422319

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 636 2260

Password: 422319

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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

Thursday, May 20, 2021

Hearing Room 301

10:30 AM

CONT...

Chapter

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**

Thursday, May 20, 2021

Hearing Room 301

10:30 AM

1:19-12820 Juan Francisco Figueroa

Chapter 7

#1.00 Trustee's final report and applications for compensation
David K. Gottlieb, Chapter 7 Trustee

Docket 25

Matter Notes:

Approve _____ Deny _____ W/drawn _____

Allowed: Fees _____

Expenses _____

Continued _____

Evidentiary Hearing _____

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$823.60 and reimbursement of expenses of \$50.00, 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):

Juan Francisco Figueroa

Represented By

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

Thursday, May 20, 2021

Hearing Room 301

10:30 AM

CONT... Juan Francisco Figueroa

Daniel King

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Thursday, May 20, 2021

Hearing Room 301

10:30 AM

1:20-10092 Orlando Ray Garcia

Chapter 7

#2.00 Trustee's final report and applications for compensation

David K. Gottlieb, Chapter 7 Trustee

Docket 29

Matter Notes:

Approve _____ Deny _____ W/drawn _____

Allowed: Fees _____

Expenses _____

Continued _____

Evidentiary Hearing _____

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$397.00 and reimbursement of expenses of \$50.00, 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):

Orlando Ray Garcia

Represented By
Stephen Parry

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

Thursday, May 20, 2021

Hearing Room 301

10:30 AM

CONT... Orlando Ray Garcia

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Thursday, May 20, 2021

Hearing Room 301

10:30 AM

1:20-11006 Lev Investments, LLC

Chapter 11

#3.00 Second and final application of Caroline R. Djang, Subchapter V Trustee for approval of compensation and reimbursement of expenses

Docket 305

Matter Notes:

Approve _____ Deny _____ W/drawn _____

Allowed: Fees _____

Expenses _____

Continued _____

Evidentiary Hearing _____

Tentative Ruling:

Caroline R. Djang, chapter 11 subchapter V trustee – approve fees of \$1,053.75 and reimbursement of expenses of \$26.25 for the period covering November 20, 2020 through April 28, 2021, pursuant to 11 U.S.C. § 331, on an interim and final basis.

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 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):

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, May 20, 2021

Hearing Room 301

10:30 AM

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, May 20, 2021

Hearing Room 301

10:30 AM

1:20-11006 Lev Investments, LLC

Chapter 11

#4.00 Second and final application of Levene, Neale, Bender, Yoo & Brill LLP
for approval of fees and reimbursement of expenses

Docket 306

Matter Notes:

Approve _____ Deny _____ W/drawn _____

Allowed: Fees _____

Expenses _____

Continued _____

Evidentiary Hearing _____

Tentative Ruling:

Levene, Neale, Bender, Yoo & Brill LLP ("Applicant"), counsel to debtor and debtor in possession – approve fees of \$41,603.00 and reimbursement of expenses of \$4,221.30 for the period covering November 21, 2020 through February 4, 2021, pursuant to 11 U.S.C. § 330, on a final basis.

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

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

Party Information

Debtor(s):

Lev Investments, LLC

Represented By

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

Thursday, May 20, 2021

Hearing Room 301

10:30 AM

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, May 20, 2021

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; 10/8/20; 11/5/20(stip); 12/17/20; 2/4/21;
3/25/21, 4/8/21

Docket 1

Matter Notes:

Continued _____

Convert _____ Dismiss _____ Appoint Ch 11 Trustee _____

Claims bar date _____

Deadline to file Disclosure Statement _____

Evidentiary Hearing _____

Tentative Ruling:

The Court will hold a combined hearing on the adequacy of the debtor's proposed first amended chapter 11 disclosure statement (the "Disclosure Statement") and confirmation of the debtor's first amended chapter 11 plan of reorganization (the "Plan").

Hearing on confirmation of the Plan: **July 8, 2021 at 1:00 p.m.**

Deadline for the debtor to mail the 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: **May 21, 2021.**

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.

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

Thursday, May 20, 2021

Hearing Room 301

1:00 PM

CONT... Maryam Sheik

Chapter 11

Deadline to file and serve any objections to confirmation or to adequacy of the Disclosure Statement and to return completed ballots to the debtor: **June 18, 2021.**

Deadline for the debtor to file and serve the debtor's brief and evidence, including declarations and the returned ballots, in support of confirmation, and in reply to any objections to confirmation: **June 28, 2021.** 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 Court will prepare the scheduling order.

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, May 20, 2021

Hearing Room 301

1:00 PM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#6.00 Confirmation hearing re debtor's first amended chapter 11 plan
fr. 12/3/20(stip); 2/11/21(stip); 3/25/21; 4/22/21(stip); 4/22/21

Docket 131

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:

Confirm First Amended Chapter 11 Plan filed on October 1, 2020 [doc. 131]. No later than **November 4, 2021**, the debtors must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) AND BE SUPPORTED BY EVIDENCE. A postconfirmation status conference will be held on **November 18, 2021 at 1:00 p.m.**

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

Thursday, May 20, 2021

Hearing Room 301

1:00 PM

CONT... Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

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

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, May 20, 2021

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; 4/9/20; 7/9/20, 7/16/20; 9/10/20; 10/15/20; 12/3/20(stip);
2/11/21(stip); 3/25/21; 4/8/21(stip); 4/22/21

Docket 1

Matter Notes:

Continued _____

Convert _____ Dismiss _____ Appoint Ch 11 Trustee _____

Claims bar date _____

Deadline to file Disclosure Statement _____

Evidentiary Hearing _____

Tentative Ruling:

See calendar no. 6.

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, May 20, 2021

Hearing Room 301

1:00 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#8.00 Status conference re: chapter 11 case
fr. 8/13/20; 9/10/20; 2/4/21; 4/22/21

Docket 1

Matter Notes:

Continued _____

Convert _____ Dismiss _____ Appoint Ch 11 Trustee _____

Claims bar date _____

Deadline to file Disclosure Statement _____

Evidentiary Hearing _____

Tentative Ruling:

The Court will continue this status conference to **1:00 p.m. on June 17, 2021.**

Appearances on May 20, 2021 are excused.

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, May 20, 2021

Hearing Room 301

1:00 PM

1:21-10500 Restorations

Chapter 11

#9.00 Status conference re chapter 11 case

Docket 1

Matter Notes:

Continued _____

Convert _____ Dismiss _____ Appoint Ch 11 Trustee _____

Claims bar date _____

Deadline to file Disclosure Statement _____

Evidentiary Hearing _____

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **July 16, 2021.**

Deadline to mail notice of Bar Date: **May 28, 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: **September 30, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on October 14, 2021.**

The debtor in possession or any appointed chapter 11 trustee must file a status report regarding the 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**

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**CONT... Restornations
documents.**

Chapter 11

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):

Restornations

Represented By
Michael E Plotkin

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

Thursday, May 20, 2021

Hearing Room 301

1:00 PM

1:21-10503 BAIC

Chapter 11

#10.00 Status conference re: chapter 11 voluntary case

Docket 1

Matter Notes:

Continued _____

Convert _____ Dismiss _____ Appoint Ch 11 Trustee _____

Claims bar date _____

Deadline to file Disclosure Statement _____

Evidentiary Hearing _____

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **July 16, 2021.**

Deadline to mail notice of Bar Date: **May 28, 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: **September 30, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on October 14, 2021.**

The debtor in possession or any appointed chapter 11 trustee must file a status report regarding the 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**

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**CONT... BAIC
documents.**

Chapter 11

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):

BAIC

Represented By
Michael E Plotkin

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

Thursday, May 20, 2021

Hearing Room 301

1:30 PM

1:13-16084 Holly Elizabeth Winzenburg

Chapter 7

#11.00 Order to show cause why Eric B. Gans should not be held in civil contempt for violations of the automatic stay and discharge injunction

Docket 22

Matter Notes:

Dismissed _____

Converted _____

Trustee Appt'd _____

Cause Shown _____

Continued _____

Other _____

Tentative Ruling:

Having considered the motion for sanctions [doc. 20], the response of Eric B. Gans [doc. 27] and submitted declarations, it is not apparent that Mr. Gans willfully violated the automatic stay and/or violated the discharge injunction. To determine whether Mr. Gans did so, and if sanctions are appropriate, the Court may require an evidentiary hearing.

At such an evidentiary hearing, among other witnesses, the Court would expect the debtor to produce Elise Gilliam for direct testimony and cross-examination, regarding respondent's provision of the documentation at issue and what Ms. Gilliam and her associates did with any such documentation received from the respondent.

The Court also would require in person direct testimony from Mr. Bodie, Ms. Winzenberg and Mr. Gans, each of whom also would be subject to cross-examination, unless such cross-examination is waived by the opposing party.

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1:30 PM

CONT... Holly Elizabeth Winzenburg

Chapter 7

Has the debtor's refinancing of her home closed?

Party Information

Debtor(s):

Holly Elizabeth Winzenburg

Represented By
Brett F Bodie
Ahren A Tiller

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 20, 2021

Hearing Room 301

1:30 PM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#12.00 Epps & Coulson, LLP's motion for order to disburse funds out of the bankruptcy courts registry to Epps & Coulson, LLP's trust account

Docket 335

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:

Deny.

I. BACKGROUND

On January 7, 2016, Duane Daniel Martin ("Duane") and Tisha Campbell Martin ("Tisha" and, together with Duane, "Debtors") filed a voluntary chapter 7 petition. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

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CONT... Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

A. Debtors' Settlement Agreements with the Trustee

On September 6, 2016, the Trustee and Debtors entered into a settlement agreement resolving a dispute over the estate's rights to certain payments and residuals (the "2016 Agreement") [doc. 115]. The 2016 Agreement included the following mutual release between the Trustee and Debtors—

Except for the Trustee's performance of his obligations as required herein, upon execution of this Agreement, the Debtors, on behalf of themselves and their successors and assigns, and each of them, do hereby release, remise, and discharge the Trustee and the Trustee's attorneys from any and all claims, demands, debts, liabilities, contracts, obligations, accounts, torts, causes of action, or claims for relief arising from or related to the Debtors and/or their Bankruptcy Case, whether known or unknown or suspected or unsuspected by these releasing Parties, or any of them, which these same releasing Parties may have, claim to have, or have at anytime heretofore had or claimed to have had, or that may hereafter accrue against any of these released Parties by reason of any transaction, occurrence, act, or omission prior to the execution of this Agreement.

2016 Agreement, § 7.2. On August 16, 2018, the Trustee and Tisha entered into another settlement agreement resolving an accounting dispute over the 2016 Agreement (the "2018 Agreement") [doc. 181]. The 2018 Agreement included the following release by Tisha—

Except as to rights or claims as may be created or preserved by this Agreement, effective upon the Effective Date, Ms. Campbell, on behalf of herself and her attorneys, advisors, agents, successors and assigns, releases, discharges and forever acquits the Trustee, the estate, and their respective attorneys, advisors, agents, employees, affiliates, predecessors, successors, assigns and related entities, from any and all claims, demands, liabilities, debts, obligations, responsibilities, suits, actions and causes of action, whether liquidated or unliquidated, fixed or contingent, known or unknown, past, present or future, or otherwise of any character, nature or kind whatsoever, in law or equity, arising

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CONT...

Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

from or relating to the Bankruptcy Case.... Ms. Campbell intends that the release included in this Section above includes any liability of any nature whatsoever whether any such claim, or any facts on which such claim might be based, is known or unknown....

2018 Agreement, § 6. Both the 2016 Agreement and the 2018 Agreement included a waiver under California Civil Code § 1542. 2016 Agreement, § 8; 2018 Agreement, § 6.

B. Tisha's Filing for Divorce and The Global Compromise

On February 22, 2018, Tisha filed a petition for dissolution of her marriage to Duane. *See Tisha Michelle Campbell-Martin v. Duane Daniel Martin*, Case No. 18CHFL000361 (the "Dissolution Action"). On November 13, 2018, Tisha recorded a lis pendens against the Property (the "Campbell Lis Pendens") [doc. 246, Exhibit A].

On September 17, 2018, the Trustee filed a complaint against Michael Martin ("Michael") and Roxe, LLC ("Roxe"), initiating adversary no. 1:18-ap-01106-VK (the "Roxe Adversary"). Michael and Roxe were represented by Epps & Coulson LLP ("Epps"). Through the Roxe Adversary, the Trustee sought to recover real property located at 22401 Summitridge Circle, Chatsworth, CA 91311 (the "Property") into the estate. In relevant part, the Trustee alleged that Roxe, which held title to the Property, was a sham entity controlled by Duane to conceal Duane's interest in the Property. The Trustee further alleged that Michael, Duane's brother and a member of Roxe, acted under the direction and control of Duane. Based on the Trustee's theory that Duane was the actual and beneficial owner of the Property, the Trustee asserted that the Property was property of the estate.

On August 12, 2019, the Trustee filed a motion to approve a compromise between the estate, on the one hand, and Michael, Roxe and Duane, among others, on the other hand (the "Global Compromise") [doc. 219]. Through the Global Compromise, the parties agreed that the Trustee would sell the Property; after sale, the estate would receive 74% of the net proceeds and Michael would receive 26% of the net proceeds (the "Michael Distribution"). The Global Compromise included the following release—

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Chapter 7

Except for Roxe's and Michael's performance of their obligations as required herein, *upon the later of*: (1) the Roxe Dismissal Date and (2) *Epps & Coulson, LLP's receipt of Michael's Distribution pursuant to the terms herein above...* the Trustee, on behalf of himself, the bankruptcy estate and its respective successors and assigns, [does] hereby release, remise and discharge Roxe and Michael, and each of them, their agents and attorneys from any and all liens, claims, demands, debts, liabilities, contracts, obligations, accounts, torts, causes of action, damages or claims for relief arising from or related to or in connection with the Debtors' bankruptcy case, and as alleged in the Roxe Adversary Proceeding, whether known or unknown or suspected or unsuspected by these releasing Parties, or any of them, which these same releasing Parties may have, claim to have, or have at any time heretofore had or claimed to have had, or that may hereafter accrue against any of these released Parties by reason of any transaction, occurrence, act, or omission prior to the execution of this Agreement.

Global Compromise, § 12.1 (emphases added). Concurrently with the motion to approve the Global Compromise (the "Global Compromise Motion"), the Trustee also filed a motion to sell the Property (the "Sale Motion") [doc. 223].

On August 19, 2019, Tisha opposed the Global Compromise Motion and the Sale Motion (the "Opposition to Compromise") [doc. 246]. In the Opposition to Compromise, Tisha alleged that: (A) Duane concealed his interest in the Property; (B) Michael acted as a proxy to conceal Duane's interest in the Property; and (C) the Michael Distribution was carved out of the estate for distribution to Duane's proxy. Through these allegations, Tisha asserted that the Campbell Lis Pendens, filed in connection with her divorce, encumbered the Michael Distribution. Tisha stated that she intended to litigate Duane's concealed interest in the Michael Distribution and her right to the same in connection with the Dissolution Action.

On September 12, 2019, the Court held hearings on the Global Compromise Motion and the Sale Motion. At that time, the Court issued a ruling granting the Global Compromise Motion. In relevant part, the Court ruled that, "[r]egarding any disputed sale proceeds distributed by the Trustee pursuant to the [Global Compromise], the

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CONT... Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

parties may pursue their rights and remedies to those distributed proceeds in the appropriate forum...." On September 18, 2019, the Court entered an order on the Global Compromise Motion (the "Global Compromise Order") [doc. 265]. In relevant part, the Global Compromise Order provides—

Michael's Distribution... 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. The liens, claims and interests of the Dispute Parties shall attach to Michael's Distribution to the same extent, validity and priority as such liens, claims and interests had in and to the Family Home, if any. Nothing herein creates any rights, claims or interests in favor of any of the Dispute Parties that did not exist in favor of any of the Dispute Parties in or to the Family Home.

Global Compromise Order, pp. 2-3.

C. The Motion to Deposit and Current Motion

On July 27, 2020, the Trustee filed a motion to deposit funds into the Court's Registry

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CONT... Duane Daniel Martin and Tisha Michelle Martin Chapter 7

(the "Motion to Deposit") [doc. 323]. In the Motion to Deposit, the Trustee argued that, because Tisha, Michael, Epps and Roxe had failed to resolve their dispute or adjudicate their rights, and because the estate has no interest in the Michael Distribution, the Trustee sought to transfer the funds from the Trustee's account to the Court's Registry. The Trustee contended that, upon transferring the funds, Debtors' estate would be fully administered and the Trustee would be ready to close Debtors' bankruptcy case.

On August 13, 2020, Epps filed an opposition to the Motion to Deposit (the "Deposit Opposition") [doc. 325]. In the Deposit Opposition, Epps argued that: (A) by operation of 11 U.S.C. § 541, Tisha does not have a pecuniary interest in the Property and its proceeds, including the Michael Distribution; and (B) Tisha previously released all claims arising from or related to this bankruptcy proceeding, which release extends to any claim to the Michael Distribution, because the Michael Distribution originated from a sale of property of the estate. On these bases, Epps asserted that the Michael Distribution should be deposited into Epps's trust account. On August 27, 2020, the Court held a hearing on the Motion to Deposit. At that time, the Court ruled that Epps's substantive arguments were beyond the scope of the Motion to Deposit, and granted the Motion to Deposit.

On March 22, 2021, Epps filed a motion for disbursement of the funds deposited in the Court's Registry (the "Motion") [doc. 335]. In the Motion, Epps repeats its arguments from the Deposit Opposition, adding that Epps maintains a lien against the Michael Distribution based on its retainer agreements with Michael and Roxe. Based on these arguments, Epps requests disbursement of the Michael Distribution to Epps.

On April 5, 2021, Tisha filed an opposition to the Motion (the "Opposition") [doc. 336]. In the Opposition, Tisha contends that the Motion is not the proper vehicle to adjudicate the parties' dispute over the Michael Distribution, and that, assuming this Court has subject matter jurisdiction, Epps must initiate an adversary proceeding. Tisha also challenges this Court's jurisdiction over the parties' dispute. On April 21, 2021, Epps filed a reply to the Opposition (the "Reply") [doc. 337]. For the first time in the Reply, Epps asserts that the recording of the Campbell Lis Pendens violated the automatic stay.

II. ANALYSIS

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CONT... Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

In the Motion, Epps contends that, pursuant to the Global Compromise and Global Compromise Order, the Property was property of the estate. As a result, Epps argues that Tisha does not have standing to recover funds generated by the Property, including the Michael Distribution. However, Epps misinterprets the Global Compromise and the Global Compromise Order.

Although the Trustee, in connection with the Roxe Adversary, alleged that the Property was property of the estate, the Court did not adjudicate the Roxe Adversary on the merits. Rather, the parties settled. As such, while the Global Compromise and Global Compromise Order treated the Property as property of the estate for purposes of the sale, the Court never held that the Property was property of the estate.

Moreover, through their Global Compromise, the parties agreed that the estate would have a 74% interest in the sale proceeds, and that Michael would have a 26% interest in the sale proceeds. The parties' settlement explicitly separated the Michael Distribution from funds earmarked for the estate. The Global Compromise Order also provided that the estate did not have any involvement with the dispute over the Michael Distribution. The Global Compromise Order stated that *Tisha, Michael, Roxe and Epps* would resolve their dispute over the Michael Distribution in a court of competent jurisdiction. Thus, the Global Compromise and the Global Compromise Order make clear that the estate never had an interest in the Michael Distribution. [FN1]. Because the Michael Distribution is not property of the estate, Epps's arguments under 11 U.S.C. § 362(a)(3) also are inapplicable.

The releases in the 2016 Agreement, the 2018 Agreement and the Global Compromise do not have an impact on the current dispute between Epps, Michael, Roxe and Tisha. The 2016 Agreement and the 2018 Agreement are between Tisha and the estate, and, as a result, involved releasing *Tisha* or *the estate* from claims held against each other. The releases covered disputes *between* Tisha and the estate. The Michael Distribution is not a dispute that involves property of the estate, and the dispute over the Michael Distribution will have no impact on Debtors' bankruptcy case.

With respect to the Global Compromise, the release related to Epps (as an agent of Michael and Roxe) provided that the release would become effective "*upon the later of: (1) the Roxe Dismissal Date and (2) Epps & Coulson, LLP's receipt of Michael's*

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CONT... Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

Distribution...." Global Compromise, § 12.1 (emphasis added). Epps not having received the Michael Distribution, it appears that this release provision has not taken effect. In any event, even if the release has taken effect, the release is only effective as between Epps and the estate. Tisha was not a party to the Global Compromise. Consequently, the release provision does not cover Tisha's claims against non-estate property in which Epps also asserts an interest.

Through the postpetition Dissolution Action, Tisha is prosecuting her rights vis-à-vis Duane by asserting, among other things, that Duane's allegedly concealed interest in the non-estate Michael Distribution gives Tisha a right, under California law, to the Michael Distribution. This Court does not have jurisdiction over this postpetition dispute over non-estate property. As such, Tisha may litigate her alleged interest in the Michael Distribution in the appropriate forum. Pursuant to the Global Compromise Order, unless the parties stipulate to transfer the funds to a different account, the Court will not disburse or release the Michael Distribution from the Court's Registry.

III. CONCLUSION

Unless the parties stipulate to transfer of the funds in the Court's Registry, the Court will deny the Motion. Absent a stipulation, prior to obtaining disbursement of the funds, the parties must resolve their disputes over the Michael Distribution in a forum that has jurisdiction over this matter, and that will instruct this Court concerning the disbursement of the funds.

The Court will prepare the Order.

FOOTNOTES

1. In fact, the Trustee filed the Motion to Deposit to transfer the Michael Distribution from the Trustee's account to the Court's Registry, noting that the transfer would allow the Trustee to close this case.

Party Information

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CONT... Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley
Joseph R Dunn

Movant(s):

Epps & Coulson, LLP

Represented By
Dawn M Coulson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong
Beth Ann R Young
Krikor J Meshefejian

**United States Bankruptcy Court
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Thursday, May 20, 2021

Hearing Room 301

1:30 PM

1:19-12866 Studio Production Center, Inc.

Chapter 7

#13.00 Debtor's objection to proof of claim No. 4 filed by Imagecraft Productions, Inc.

Docket 54

Matter Notes:

Sustained _____

Overruled _____

Withdrawn _____

Continued _____

Tentative Ruling:

The debtor, in this corporate chapter 7 case, may not have standing to prosecute this matter.

"The standing of owners to object to claims in a corporate chapter 7 case, like the standing of chapter 7 debtors to object to claims in their own cases, depends upon whether they would be 'injured in fact' by the allowance of the claim." *In re KRSM Properties, LLC*, 318 B.R. 712, 716 n.3 (B.A.P. 9th Cir. 2004); *see also In re Symka, Inc.*, 518 B.R. 888, 890 (Bankr. D. Colo. 2014) ("It is a long-standing principle of bankruptcy administration that where all claims of creditors will not be paid and there will be no surplus to the debtor, there is no standing to object to the administration for lack of any pecuniary interest in the liquidation of assets and distributions to creditors.").

On February 8, 2021, the Court entered an order affording the chapter 7 trustee an opportunity to prosecute this matter in place of the debtor (the "Order") [doc. 97]. In the Order, the Court stated that, if the chapter 7 trustee elected to intervene, the chapter 7 trustee must file and serve a supplemental brief no later than April 29, 2021.

The chapter 7 trustee did not timely file and serve a supplemental brief.

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CONT... Studio Production Center, Inc.

Chapter 7

At this time, when the debtor may lack standing to prosecute the objection, it appears premature for the Court to rule on the objection to claim.

Party Information

Debtor(s):

Studio Production Center, Inc.

Represented By
Mark E Brenner
Mark E Brenner

Movant(s):

Studio Production Center, Inc.

Represented By
Mark E Brenner
Mark E Brenner
Mark E Brenner
Mark E Brenner

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Thursday, May 20, 2021

Hearing Room 301

1:30 PM

1:20-10276 Hormoz Ramy

Chapter 7

#14.00 Trustee's Application to Employ Coldwell Banker Residential Brokerage
as Real Estate Broker

Docket 68

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 approve the application.

In connection with a motion to approve a sale of the subject property, if one is filed, the debtor's arguments regarding equity and the impact of any lease may be raised. At this time, it is premature to assess whether there is equity in the subject property; after the broker has had an opportunity to market the subject property, the Court may evaluate the value of the subject property, if pertinent to authorizing a sale by the chapter 7 trustee.

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CONT... Hormoz Ramy

Chapter 7

With respect to the debtor's arguments regarding the lease, if a party in interest contends that a lease precludes the sale of the subject property, that party may raise the issue in connection with a motion to approve a sale of the property.

If the chapter 7 trustee contends that the debtor is improperly withholding funds generated by the subject property, the chapter 7 trustee may file a motion for turnover of the funds. The Court need not decide these issues in order to grant the application to employ a real estate broker.

The debtor also asserts, in a conclusory fashion, that a 5% commission rate is standard; if the property is sold, the applicant requests a 6% commission rate. The debtor has provided no authority or evidence regarding standard commission rates in the industry. In fact, courts have recently noted that a 6% commission rate is within industry standards. *See Sec. & Exch. Comm'n v. Champion-Cain*, 2020 WL 6276188, at *6 (S.D. Cal. Oct. 23, 2020) ("[T]he Court finds Broker's 6% commission—which is within the range of industry standards—reasonable."). Consequently, the Court will approve the chapter 7 trustee's application to employ the real estate broker.

The chapter 7 trustee must submit an 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
Tamar Terzian

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Thursday, May 20, 2021

Hearing Room 301

1:30 PM

1:20-10659 Nasrin Nino

Chapter 7

#15.00 Motion by judgment creditor, Kamal Bilal, for an order directing the chapter 7 trustee acting as winding-up partner to satisfy judgment by paying judgment creditor

Docket 86

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:

Does the chapter 7 trustee intend to file a notice of abandonment of the estate's right, if any, to distribution from the funds held by the chapter 7 trustee? If so, in connection with the interpleader action initiated by the chapter 7 trustee, the Court intends to issue an Order to Show Cause why the Court has subject matter jurisdiction over the adversary proceeding or, if the Court has subject matter jurisdiction, why the Court should not abstain from presiding over the adversary proceeding.

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CONT...

Nasrin Nino

Chapter 7

Unless the Court enters an order allowing for the deposit, the chapter 7 trustee should not deposit funds with this Court's Registry. Alternatively, the parties may stipulate to transfer the funds elsewhere, and to litigate any disputes over the funds in the state court.

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Movant(s):

Kamal Bilal

Represented By
Robert M Ungar

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

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Hearing Room 301

1:30 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#16.00 Motion for Authority to Obtain Credit Under
Section 364(b), Rule 4001(c) or (d)

Docket 80

*** VACATED *** REASON: Continued by stip to 7/8/21 at 1:30 p.m. - jc

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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Thursday, May 20, 2021

Hearing Room 301

2:30 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

#17.00 Notice of Setting/Increasing Insider Compensation
fr. 4/8/21

Docket 1

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:

I. BACKGROUND

A. Debtor's Prepetition Payments to Doctor Rosenthal

On February 10, 2021, SteriWeb Medical, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition. Dr. Bertram Rosenthal is Debtor's managing member and owns a 97% equity interest in Debtor [Statement of Financial Affairs, doc. 3]. In its

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Hearing Room 301

2:30 PM

CONT... SteriWeb Medical LLC

Chapter 11

Statement of Financial Affairs, Debtor indicated that it paid Mr. Rosenthal a gross salary of \$277,000.00 in 2020, which amounts to approximately \$23,083.33 per month.

B. The Objection

On March 25, 2021, creditors Claudia Moncayo and Jessica Ojeda (collectively, "Creditors") filed an objection to Debtor's notice of setting insider compensation (the "Objection") [doc. 42]. In the Objection, Creditors contend that Debtor's request for setting Dr. Rosenthal's salary at \$15,000.00 per month is excessive. Creditors also argue that Dr. Rosenthal's proposed compensation falls under 11 U.S.C. § 503(c)(1) governing compensation to retain insiders.

On March 26, 2021, Debtor filed a projected six-month budget, which included monthly compensation payments to Dr. Rosenthal in the amount of \$11,000.00 [doc. 45, Exh. A]. The budget indicates that Debtor will be cash-flow positive, if Dr. Rosenthal is paid \$11,000.00 per month. On the other hand, if Dr. Rosenthal is paid \$15,000.00 per month, Debtor will be cash flow negative from June 2021 through August 2021.

On April 2, 2021, Debtor filed a reply to the Objection (the "Reply") [doc. 54]. In the Reply, Debtor argues that, based on an executive employment agreement, Dr. Rosenthal is entitled to receive a salary of at least \$15,000.00 per month, and that his services and knowledge are necessary to continue Debtor's operations.

II. DISCUSSION

A. Ordinary Course of Business

Section 363(c)(1) provides that, unless the Court orders otherwise, a debtor in possession may enter into transactions, including the use, sale or lease of estate property in the ordinary course of business, without notice and a hearing. 11 U.S.C. § 363(c)(1)

Payment of insider compensation is within the ordinary course of a debtor's business. "The continued employment of existing management of a debtor-in-possession

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constitutes a part of debtor's business and is within the ordinary course of business authorized by the Bankruptcy Code. Where post-petition operations are concerned, as long as it confines itself to operating within the ordinary course of business, a debtor-in-possession's actions are cloaked with an aura of propriety and, thus, the debtor is entitled to a presumption concerning the reasonableness of its decisions." *Matter of All Seasons Indus., Inc.*, 121 B.R. 822, 825 (Bankr. N.D. Ind. 1990); *see also In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007) ("[I]f the Court determines that a transaction is in the ordinary course of a debtor's business, the Court will not entertain an objection to the transaction, provided that the conduct involves a business judgment made in good faith upon a reasonable basis and within the scope of authority under the Bankruptcy Code.").

This presumption of reasonableness "extends to all aspects of the debtor's ordinary, day-to-day operations. At least where the proposal is to continue compensating management upon the same terms and conditions as existed prior to the case, the presumption extends to include the compensation of management insiders. This presumption is rebuttable, if 'exigent circumstances are present' or 'there is the potential for, and the prima facie appearance of, abuse.'" *Matter of All Seasons*, 121 B.R. at 825–26.

B. Compensation to Retain Key Employees

11 U.S.C. § 503(c)(1) provides:

(c) Notwithstanding subsection (b), there shall neither be allowed, nor paid—

(1) a transfer made to, or an objection incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent a finding by the court based on evidence in the record that—

(A) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;

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CONT... SteriWeb Medical LLC

Chapter 11

(B) the services provided by the person are essential to the survival of the business; and

(C) either—

(i) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or

(ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during each calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred.

"Section 503(c) was enacted to limit a debtor's ability to favor powerful insiders economically and at estate expense during a chapter 11 case." *In re Pilgrim's Pride Corp.*, 401 B.R. 229, 234 (Bankr. N.D. Tex. 2009). "Section 503(c) of the BAPCA restricts transfers or payments by debtors to the extent that such payments are outside the ordinary course. The predominate focus of the amendments to section 503(c) is on payments made to 'insiders' of the debtor(s). However, section 503(c) was not intended to foreclose a chapter 11 debtor from *reasonably* compensating employees, including 'insiders,' for their contribution to the debtor's reorganization." *In re Dana Corp.*, 358 B.R. 567, 575 (Bankr. S.D.N.Y. 2006) (emphasis in original).

Here, the proposed compensation to be paid to Dr. Rosenthal through May 2021 is not greater than he received in Debtor's ordinary course of business. The amount he is to be paid constitutes a salary to compensate Dr. Rosenthal for his services, which are

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CONT... SteriWeb Medical LLC

Chapter 11

necessary to enable Debtor's financial reorganization.

III. CONCLUSION

Although Dr. Rosenthal's receipt of monthly compensation in the amount of \$15,000.00 per month, commencing on June 1, 2021, appears to be within the ordinary course of business, the Court questions whether it is reasonable, if Dr. Rosenthal's receipt of compensation in this amount will result in Debtor operating on a cash-flow negative basis.

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton
Yi S Kim

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

**United States Bankruptcy Court
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1:21-10223 SteriWeb Medical LLC

Chapter 11

#18.00 Motion for order authorizing the debtor to enter
manufacturing outsourcing agreements

Docket 66

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.

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

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

Party Information

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CONT... SteriWeb Medical LLC

Chapter 11

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton
Yi S Kim

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

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Hearing Room 301

2:30 PM

1:21-10396 Advanced Sleep Medicine Services, Inc. and ASMS Holding

Chapter 11

#19.00 Status conference re: chapter 11 subchapter V voluntary case

Docket 1

Matter Notes:

Continued _____

Convert _____ Dismiss _____ Appoint Ch 11 Trustee _____

Claims bar date _____

Deadline to file Disclosure Statement _____

Evidentiary Hearing _____

Tentative Ruling:

The bar date has been set for **May 18, 2021 (general)** and **September 7, 2021 (gov't)**.

Pursuant to 11 U.S.C. § 1189(b), the debtor's deadline to file a proposed plan is **June 7, 2021**.

Continued chapter 11 case status conference to be held at **2:00 p.m. on June 24, 2021**.

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?

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CONT... Advanced Sleep Medicine Services, Inc. and ASMS Holding Chapter 11

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, 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.

Party Information

Debtor(s):

Advanced Sleep Medicine Services,

Represented By
Gregory M Salvato

ASMS Holding Company, Inc.

Represented By
Gregory M Salvato

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

United States Bankruptcy Court
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Thursday, May 20, 2021

Hearing Room 301

2:30 PM

1:21-10500 Restorations

Chapter 11

#20.00 Status conference re chapter 11 voluntary petition non-individual.

Docket 1

*** VACATED *** REASON: continued to 5/20/21 at 1:00 p.m. per order
entered on 5/5/21 [dkt 45]

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Restorations

Represented By
Michael E Plotkin

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Wednesday, May 26, 2021

Hearing Room 301

2:30 PM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1603410319>

Meeting ID: 160 341 0319

Password: 920359

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 341 0319

Password: 920359

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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2:30 PM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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Wednesday, May 26, 2021

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

#1.00 Motion For Summary Judgment or in the
alternative for Partial Summary Adjudication

fr. 5/19/21(stip)

Docket 101

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on June 9, 2021.**

Appearances on May 26, 2021 are excused.

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

Plaintiff(s):

Christopher Sabin Nassif

Represented By
Matthew D. Resnik

Robin Nassif

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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Wednesday, June 2, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1612674198>

Meeting ID: 161 267 4198

Password: 937097

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 267 4198

Password: 937097

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

**United States Bankruptcy Court
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9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Wednesday, June 2, 2021

Hearing Room 301

9:30 AM

1:21-10524 Jimmie Ceja

Chapter 7

#1.00 Motion for Relief from Stay [UD]

CNC PROPERTIES ON BEHALF OF BATEE INVESTMENT, INC.
VS
DEBTOR

Docket 10

Tentative Ruling:

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

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

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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

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9:30 AM

CONT... Jimmie Ceja

Chapter 7

Debtor(s):

Jimmie Ceja

Represented By
Sydell B Connor

Movant(s):

CNC Properties on behalf of Batee

Represented By
Sevan Gorginian

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, June 2, 2021

Hearing Room 301

9:30 AM

1:20-11163 Mario Alberto Orozco

Chapter 13

#2.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 40

Tentative Ruling:

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

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

The 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):

Mario Alberto Orozco

Represented By
William G Cort

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Hearing Room 301

9:30 AM

CONT... Mario Alberto Orozco

Chapter 13

Movant(s):

Toyota Motor Credit Corporation

Represented By
Kirsten Martinez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, June 2, 2021

Hearing Room 301

9:30 AM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#3.00 Motion for relief from stay [RP]

5AIF NUTMEG, LLC
VS
DEBTOR

Docket 122

Tentative Ruling:

The Court will grant relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

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9:30 AM

CONT... 1465V Donhill Drive, LLC

Chapter 11

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

Movant(s):

5AIF Nutmeg, LLC

Represented By
Michael J Gomez
Reed S Waddell

United States Bankruptcy Court
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Wednesday, June 2, 2021

Hearing Room 301

9:30 AM

1:18-13021 Nuritsa Bekaryan

Chapter 13

#3.10 Motion for relief from stay [PP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Stip filed 5/21/21

Docket 28

*** VACATED *** REASON: Order approving stip entered 5/24/21.
[Doc.#35]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nuritsa Bekaryan

Represented By
Aris Artounians

Movant(s):

U.S. Bank National Association

Represented By
Robert P Zahradka

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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Wednesday, June 2, 2021

Hearing Room 301

9:30 AM

1:21-10865 Starr F Taxman

Chapter 13

#3.20 Motion for relief from stay [AN]

GARY KURTZ
VS
DEBTOR

Docket 10

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 his remedies with respect to the subject real property in the nonbankruptcy forum, including having the debtor and other residents evicted from that property.

Movant may proceed against the debtor in the nonbankruptcy action.

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 bankruptcy case shall arise in that case as to the nonbankruptcy action.

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

Any other request for relief is denied.

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

Party Information

Debtor(s):

Starr F Taxman

Pro Se

Movant(s):

Gary Alan Kurtz

Represented By
Stephen L Burton

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CONT... Starr F Taxman

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Wednesday, June 2, 2021

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:20-01014 Adri v. Yaspan et al

#4.00 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; 7/1/20; 1/13/21

Docket 1

Tentative Ruling:

Pursuant to the Court's July 20, 2020 order [doc. 25], this proceeding is stayed until the conclusion of adversary proceedings nos. 1:19-ap-01128-VK and 1:19-ap-01088-VK (the "Proceedings"). The Court will continue this status conference to **1:30 p.m. on November 17, 2021**, to assess the status of the Proceedings.

Appearances on June 2, 2021 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
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1:30 PM

CONT... Deborah Lois Adri

Chapter 7

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta
Larry W Gabriel

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Wednesday, June 2, 2021

Hearing Room 301

1:30 PM

1:20-11952 Michael A Di Bacco
Adv#: 1:21-01010 Kline v. Di Bacco

Chapter 7

#5.00 Status conference re: complaint

fr. 3/24/21; 4/21/21

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: 11/1/21.

Deadline to complete one day of mediation: 11/19/21.

Deadline to file pretrial motions: 12/1/21.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 12/29/22.

Pretrial: 1/12/22 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

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1:30 PM

CONT... Michael A Di Bacco

Chapter 7

Debtor(s):

Michael A Di Bacco

Represented By
Leon Nazaretian

Defendant(s):

Michael A Di Bacco

Pro Se

Plaintiff(s):

Michael Kline

Represented By
David Brian Lally

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, June 2, 2021

Hearing Room 301

2:00 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#6.00 Plaintiff Alexander Ermakov's Motion for Summary Judgment

Docket 40

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on June 23, 2021.**

Appearances on June 2, 2021 are excused.

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Represented By
Elena Steers
Adam Stevens

Movant(s):

Alexander Ermakov

Represented By
Deian Kazachki

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

Trustee(s):

Amy L Goldman (TR)

Pro Se

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Wednesday, June 2, 2021

Hearing Room 301

2:00 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#7.00 Pretrial 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; 3/10/21; 4/7/21

Docket 15

Tentative Ruling:

The Court will continue this hearing to **2:30 p.m. on June 23, 2021.**

Appearances on June 2, 2021 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, June 2, 2021

Hearing Room 301

2:00 PM

1:20-10346 Alan Gene Lau

Chapter 7

Adv#: 1:20-01053 Prior et al v. Lau et al

#8.00 Plaintiffs' Motion for summary judgment

fr. 3/24/21

Docket 12

Tentative Ruling:

At the last hearing on this motion, the Court ruled that, if the state court judgment on which this motion is based is vacated, the Court will deny the plaintiff's request for summary judgment.

On May 5, 2021, the defendant filed a notice of ruling and attached the state court's ruling on the defendant's motion to vacate the state court judgment (the "State Court Ruling") [doc. 29]. As set forth in the State Court Ruling, the state court vacated the state court judgment. Consequently, the Court will deny the motion for summary judgment.

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

3/24/2021 Ruling:

What is the status of the defendant's motion to vacate the state court judgment?

The plaintiffs' motion for summary judgment is based on the preclusive effect of the state court judgment. Thus, if the state court vacates the state court judgment, the Court will deny the motion for summary judgment.

If the state court judgment is vacated, and to the extent the plaintiffs move for summary judgment based on the declarations submitted by the plaintiffs, the Court will not enter summary judgment. First, the declarations submitted by the plaintiffs in support of the current motion for summary judgment were filed in state court and, as a result, are hearsay. Fed. R. Evid. 801(c)(1). Next, even if the Court considered the declarations, "[w]here intent is at issue, summary judgment is seldom granted." *In re Gertsch*, 237 B.R. 160, 165 (B.A.P. 9th Cir. 1999) (citing *Provenz v. Miller*, 102 F.3d 1478, 1489

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(9th Cir. 1996)). The defendant asserts in his declaration that he disclosed settlement and drainage issues to the plaintiffs and, as a result, believed the plaintiffs were on notice regarding foundation issues. Declaration of Alan Lau [doc. 20], ¶¶ 4, 7. The defendant also contends that, prior to selling the subject property, the defendant obtained a Property Inspection Report, which report did not mention a foundation problem. *Id.*, ¶ 8.

In addition, the declarations are insufficient to demonstrate the amount of damages suffered by the plaintiffs. In the Declaration of Richard Prior, Mr. Prior contends that they received estimates for fixing the Property amounting to \$175,700.25. Request for Judicial Notice ("RJN") [doc. 17], Exhibit 3, ¶ 11. Mr. Prior also estimated that his displacement costs would amount to \$10,800. RJN, Exhibit 3, ¶ 15. However, in his declaration, the defendant testifies that the plaintiffs sold the property. Declaration of Alan Lau, ¶ 11. The plaintiffs have not shown that they actually paid \$175,700.25, or any amount, to repair the property or stay in hotels during renovation. In the alternative, if the plaintiffs did not repair the property, the plaintiffs have not shown that they could have sold the property for a higher price had the repairs been done; for instance, the plaintiffs have not provided appraisals or expert testimony showing that the property would have netted a greater sale price had the defects been repaired. Finally, although Mr. Prior's declaration notes that the plaintiffs request \$150,000 for loss of use and enjoyment damages, the plaintiffs have not offered any support for this number. RJN, Exhibit 3, ¶ 16. Consequently, if the state court judgment is vacated and the Court admitted the declarations, the plaintiffs would not meet their burden of proof.

In his opposition, the defendant contends that he has not yet commenced discovery and requires additional time to conduct discovery on the issues presented in the motion for summary judgment. However, in August 2020, the Court entered an order setting a discovery cutoff date of December 18, 2020 [doc. 8]. The defendant did not move for an extension of this deadline, and has not explained why he did not conduct discovery prior to the expiration of the discovery cutoff date.

The party seeking a continuance under Federal Rule of Civil Procedure ("Rule") 56(d) bears the burden of offering sufficient "facts to show that the evidence sought exists, and that it would prevent summary judgment." *Nidds v. Schindler Elevator Corp.*, 113 F.3d 912, 921 (9th Cir. 1996) (considering Rule 56(d)'s predecessor, Rule 56(f)). A court "does not abuse its discretion by denying further discovery if the movant has failed diligently to pursue discovery in the past." *Conkle v. Jeong*, 73 F.3d 909, 914 (9th Cir. 1995).

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Several courts within this circuit have denied Rule 56(d) motions filed after the discovery cutoff date. *See, e.g. Hunt v. City of Los Angeles*, 2021 WL 768248, at *9 (C.D. Cal. Jan. 26, 2021) ("[T]he purpose of Rule 56(d) -- to prevent a party from being "railroaded" by a premature motion for summary judgment -- would not be served here. Defendants' MSJ, filed... two months after the discovery cut-off, is in no way 'premature.' Most critically, however, Plaintiff admits that he did not even attempt to pursue any discovery prior to the discovery cut-off, and therefore cannot show diligence."); *Fed. Nat'l Mortg. Ass'n v. SFR Invs. Pool 1, LLC*, 2020 WL 3103897, at *2 (D. Nev. June 11, 2020) ("I deny SFR's request for Rule 56(d) relief because SFR's motion was filed after discovery had already closed, SFR did not move to extend the discovery period while it was still open, SFR has not shown good cause to extend the discovery deadline, and SFR has not shown excusable neglect for failing to file a motion to extend time before the discovery deadline expired."); and *Floyd v. Ada Cty.*, 2020 WL 1991400, at *12 (D. Idaho Apr. 27, 2020) ("The Court rejects Floyd's attempt to compel discovery through Rule 56(d) after both the discovery and dispositive motion deadlines have passed."). In fact, the Ninth Circuit Court of Appeals has affirmed denial of a Rule 56(d) motion even where a party began discovery prior to the discovery cutoff date—

[The plaintiff] waited nearly three years to commence discovery, on July 27, 2000, only two weeks prior to the discovery cutoff set by the court's pretrial order....

The court did not abuse its discretion in failing to grant [the plaintiff] a continuance pending additional discovery. The failure to conduct discovery diligently is grounds for the denial of a Rule 56(f) motion. *E.g., Mackey v. Pioneer Nat'l Bank*, 867 F.2d 520, 524 (9th Cir. 1989) ("A movant cannot complain if it fails diligently to pursue discovery before summary judgment"); *Landmark Dev. Corp. v. Chambers Corp.*, 752 F.2d 369, 372 (9th Cir. 1985) (concluding that court properly denied Rule 56(f) because the "[f]ailure to take further depositions apparently resulted largely from plaintiffs' own delay"). [The plaintiff] waited nearly three years to conduct any discovery and filed a defective request only two weeks prior to discovery cutoff.

Pfingston v. Ronan Eng'g Co., 284 F.3d 999, 1005 (9th Cir. 2002).

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Here, the defendant has not explained why he did not conduct discovery prior to the discovery cutoff date. The defendant has not offered an affidavit demonstrating that he diligently pursued discovery prior to expiration of the discovery deadline. Consequently, the Court will not extend the discovery cutoff date or allow the defendant to conduct additional discovery under Rule 56(d).

Party Information

Debtor(s):

Alan Gene Lau

Represented By
Kevin T Simon

Defendant(s):

Alan Gene Lau

Represented By
Andrew Edward Smyth

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Amber Ann Waddell Lau

Represented By
Kevin T Simon

Plaintiff(s):

Russell Prior

Represented By
Alana B Anaya

Cheryl Prior

Represented By
Alana B Anaya

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:20-10346 Alan Gene Lau

Chapter 7

Adv#: 1:20-01053 Prior et al v. Lau et al

#9.00 Pretrial conference re complaint to determine the dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)

fr. 7/29/20; 3/10/21; 3/24/21

Docket 1

Tentative Ruling:

In light of the Court's denial of the plaintiff's motion for summary judgment, the parties should be prepared to discuss the deadline for the parties to submit a joint pretrial stipulation and the date to attend a pretrial conference.

Party Information

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):

Russell Prior

Represented By
Alana B Anaya

Cheryl Prior

Represented By
Alana B Anaya

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Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01117 Lev Investments, LLC v. Lisitsa et al

#10.00 Motion to Quash Subpoena, or in the alternative, for protective order

fr. 6/16/21

Docket 24

Tentative Ruling:

Deny.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11 petition. On December 9, 2020, Debtor filed a complaint against Lisitsa Law, Inc. ("Lisitsa Law") and Yevgeniya Lisitsa (together, "Defendants"), asserting claims for legal malpractice and objection to Lisitsa Law's claim.

On March 16, 2021, Debtor served on Citibank, N.A. ("Citibank") a subpoena for production of records (the "Subpoena"). Declaration of Lisa D. Angelo ("Angelo Declaration") [doc. 25], ¶ 1. Through the Subpoena, Debtor requested the following documents from Citibank—

1. All account statements for any bank account held in the name of "Lisitsa Law, Inc., Attorney Trust" including but not limited to that certain account bearing Account Number XXXX-055 (the "Lisitsa Law Trust Account") from January 1, 2018 through June 1, 2020.
2. A copy of all documents which refer, relate or appertain to the deposit in the sum of \$119,000 to the Lisitsa Law Trust Account on December 28, 2018.
3. A copy of all wire transfer instructions for payments made from the Lisitsa Law Trust Account Lawyers Title Company regarding Escrow Number BUL25948-MM from December 1, 2018 through March 31, 2019.
4. Any and all bank accounts associated with Entity No. C3495615 or 46-1593868

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maintained in the name of Lisitsa Law, Inc.

Id. On April 8, 2021, Defendants filed a motion to quash the Subpoena (the "Motion") [doc. 24]. In the Motion, Defendants assert that: (A) Defendants already have produced documents to Debtor; (B) the discovery request is "oppressive, burdensome and expensive;" and (C) the requested documents are subject to the attorney-client, attorney work product and common interest privileges, as well as Defendants' "right to privacy."

Concurrently with the Motion, Defendants filed the Angelo Declaration. In the Angelo Declaration, signed under penalty of perjury, Ms. Angelo stated—

Attached hereto as Exhibit B is a true and correct copy of a letter dated March 30, 2021 from L. Angelo to D. Golubchik. The purpose and contents of said letter was to "meet and confer" about the March 16th Subpoena and the documents Plaintiff requested therein. To date, counsel for Lev Investments, Inc. have not responded to my March 30th letter.

...

As a result of Plaintiff's non-responsiveness, a stipulation by Local Bankruptcy Rule 7026-(C)(2)-(4) was not made possible and is not being concurrently filed with this motion. Defendants are willing to file a subsequent stipulation if the court requests the parties do so. In the meantime and because time is of the essence with respect to the outstanding subpoena that was served upon Citibank, N.A. more than three weeks ago, Defendants had no choice but to file their motion to quash and/or protective order at this time.

Angelo Declaration, ¶¶ 4-5. In the letter attached as Exhibit B (the "Letter"), Ms. Angelo requested that Plaintiff withdraw the Subpoena, and provided three days for Plaintiff to respond to Ms. Angelo. Angelo Declaration, ¶ 4, Exhibit B.

On April 21, 2021, Debtor and Defendants filed a stipulation pursuant to Local Bankruptcy Rule 7026-1(c)(2)-(4) (the "Stipulation") [doc. 29]. In the Stipulation, Debtor asserts that Defendants: (A) have not met their burden of showing that the documents requested are privileged or that Defendants are entitled to a protective order; (B) have not received a complete production of documents they requested; and (C) did not comply with Local Bankruptcy Rule ("LBR") 7026-1(c). [FN1].

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On April 22, 2021, Debtor filed the *Motion to Request an Order to Show Cause Why (1) Sanctions Should Not be Imposed Against Defendants and Their Attorney Lisa Angelo and Firm of Record Murchison & Cummings LLP and (2) Defendants' Motion to Quash Should Not be Stricken* (the "Motion for Issuance of an OSC") [doc. 34]. In the Motion for Issuance of an OSC, Debtor asserted that Ms. Angelo did not actually email the Letter or attempt to meet and confer in accordance with LBR 7026-1(c), and that, even if Ms. Angelo sent the Letter, Ms. Angelo did not provide Debtor sufficient time to respond to the Letter.

On May 6, 2021, the Court issued an Order to Show Cause why Ms. Angelo and her firm should not be sanctioned in accordance with LBR 7026-1(c), Federal Rules of Civil Procedure 26(c)(1) and 27 and/or 11 U.S.C. § 105(a) (the "OSC") [doc. 44]. In the OSC, the Court stated that it would hold an evidentiary hearing on the issues set forth in the OSC, including whether Ms. Angelo and her firm complied with LBR 7026-1(c), during the week of June 28, 2021.

II. ANALYSIS

A. Compliance with LBR 7026-1(c)

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.

Under LBR 7026-1(c)(2)—

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 specifying the terms of the discovery order to be sought.

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(emphases added). Should no resolution be reached, LBR 7026-1(c)(3) requires the parties provide a joint stipulation setting forth the disputed issues.

Although Debtor argues that the Motion should be denied for Defendants' failure to comply with LBR 7026-1(c), a determination regarding Defendants' compliance with LBR 7026-1(c) is premature. In response to Debtor's concerns regarding Defendants' compliance with LBR 7026-1(c), the Court issued the OSC. As stated in the OSC, the Court intends to hold an evidentiary hearing on the issues related to LBR 7026-1(c). At that time, the Court will assess whether Defendants violated LBR 7026-1(c) and/or whether Defendants are subject to sanctions for any such violation. In any event, as discussed below, the Court will deny the Motion on the merits. As such, the Court need not determine, at this time, whether Defendants complied with LBR 7026-1(c).

B. Merits of the Motion to Quash

Pursuant to Federal Rule of Civil Procedure ("FRCP") 45(d)(3)(A)—

On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

Under 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

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protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....

Regarding motions to quash, "[t]he party seeking to quash a subpoena has the 'burden of persuasion.'" *Soto v. Castlerock Farming & Transp., Inc.*, 282 F.R.D. 492, 504 (E.D. Cal. 2012). With respect to requests for protective orders, "[f]or good cause to exist, the party seeking protection bears the burden of showing specific prejudice or harm will result if no protective order is granted." *Phillips ex rel. Ests. of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002); *see also Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 283 (C.D. Cal. 1998) ("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.").

First, Defendants contend that, because Defendants furnished certain documents to Debtor, the Court should quash the Subpoena. Defendants have not supported this contention with a declaration. As such, the record does not reflect that Debtor received all of the documents Debtor requested. Next, Defendants have not cited any authority that would prevent Debtor from requesting records from a bank on the basis that Defendants produced some of those records. Debtor may, for instance, verify the authenticity of documents produced by Defendants by obtaining complete records from the bank.

Defendants also argue that the request for production is "oppressive, burdensome and expensive." However, the Subpoena requests production from Citibank, not Defendants. Defendants have not met their burden by articulating how Debtor's request for documents from a third party is oppressive, burdensome or expensive for Defendants.

Finally, Defendants assert, in a conclusory fashion, that the requested documents are subject to the attorney-client privilege, the attorney work product and common interest doctrines and to Defendants' "right to privacy." Defendants do not cite any authorities in support of their claim to these privileges and doctrines.

In *Reiserer v. U.S.*, 479 F.3d 1160 (9th Cir. 2007), the Ninth Circuit Court of Appeals held that the attorney-client privilege does not protect an attorney's trust account from disclosure. [FN2]. There, the plaintiff served a subpoena on a bank, requesting documents related to accounts maintained by the defendant's law firm, including client trust accounts. *Reiserer*, 479 F.3d at 1162. The defendant moved to quash the

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subpoena. *Id.* The trial court held that the disclosures were not subject to the attorney-client privilege. *Id.*

The Court of Appeals affirmed the trial court's holding. *Id.*, at 1165-66. First, the Court of Appeals noted that "[i]t is well settled that there is no privilege between a bank and a depositor." *Id.*, at 1165 (citing *Harris v. U.S.*, 413 F.2d 316, 319-20 (9th Cir. 1969)). The Court of Appeals reasoned—

[T]here is no confidentiality where a third party such as a bank either receives or generates the documents sought by the [plaintiff]. Because the attorney-client privilege applies only where the communication between attorney and client is confidential, there is no privilege protecting the documents the [plaintiff] seeks in the present action.

To the extent those documents disclose the identity of [the defendant's] clients, the attorney-client privilege does not protect that information. "[T]he attorney-client privilege ordinarily protects neither a client's identity nor information regarding the fee arrangements reached with that client." *United States v. Horn (In re Horn)*, 976 F.2d 1314, 1317 (9th Cir. 1992).

Id.; see also *Gusman v. Comcast Corp.*, 298 F.R.D. 592, 600 (S.D. Cal. 2014) ("Communications between attorney and client that concern the identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege.") (internal quotation omitted).

Like the plaintiff in *Reiserer*, Debtor requests documents related to accounts maintained by Defendants, including client trust accounts. Pursuant to the binding authority above, the requested documents are not subject to the attorney-client privilege. [FN3].

For the same reason, the common interest doctrine also does not apply. The common interest doctrine is an exception to the general rule that "[t]he attorney-client privilege is waived when the communication between the attorney and client is made in the presence of a third party." *In re Mortg. & Realty Tr.*, 212 B.R. 649, 652 (Bankr. C.D. Cal. 1997). "The common interest privilege protects a communication made when a non-party sharing the client's interest is a party to a confidential communication between attorney

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and client." *Id.*

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Here, as discussed above, the attorney-client privilege does not apply to the subject bank records. As discussed in *Reiserer*, the attorney-privilege is inapplicable not only because confidentiality does not exist where the third party bank is privy to the requested information, but because the information contained in the bank records, such as the client's identity and fee arrangements, is not covered by the attorney-client privilege. To the extent Defendants argue that the common interest doctrine preserves the confidentiality *Reiserer* held was waived, Defendants ignore the alternative basis for the holding in *Reiserer*, i.e., that the information in the bank records, even if never revealed to a third party such as a bank, is not confidential.

In any event, the "common interest privilege applies where (1) the communication was made by separate parties in the course of a matter of common interest, (2) the communication was designed to further that effort, and (3) the privilege has not been waived." *Id.*, at 653. Here, the bank is not a party in a matter of common interest, such as a joint defendant. Defendants have not met their burden of proving that either the attorney-client privilege or the common interest doctrine applies to the subject bank records.

Next, Defendants contend that the work product doctrine protects the requested records from disclosure. Pursuant to FRCP 26(b)(3), "a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative...." Here, the bank records were not prepared by Defendants or their counsel in anticipation of litigation, and do not qualify as "work product."

Finally, Defendants note that the bank records are protected by their "right to privacy." Once again, Defendants do not offer any authority regarding such a right or articulate why bank records relevant to the litigation between the parties are protected by a general right to privacy. In any event, the law in this circuit is clear: federal courts do not recognize a privilege for communications between bank and depositor and have "decline[d] to create such a privilege." *In re Yassai*, 225 B.R. 478, 483 (Bankr. C.D. Cal. 1998) (quoting *Harris*, 413 F.2d at 319). In light of the Ninth Circuit Court of Appeals' explicit refusal to protect bank records as privileged or private, Defendants have not met their burden of demonstrating that the bank records are subject to a general right of privacy.

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III. CONCLUSION

The Court will deny the Motion.

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

FOOTNOTES

1. On May 26, 2021, Defendants filed a reply [doc. 54], asserting that Debtor failed to oppose the Motion. However, Debtor set forth its position, supported by legal authorities, in the Stipulation. As such, Debtor was not required to file a duplicative opposition.
2. "Where there are federal question claims and pendent state law claims present, the federal law of privilege applies." *Agster v. Maricopa County*, 422 F.3d 836, 839 (9th Cir. 2005). Here, Debtor asserts both federal and California claims. As such, the federal law on privileges applies.
3. In fact, Defendants do not even contend that all deposits in the subject accounts were made by clients during the scope of and in connection with Defendants' representation of such clients. Nevertheless, even assuming all of the deposits were made under those circumstances, the attorney-client privilege does not apply.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Yevgeniya Lisitsa

Represented By
Lisa D Angelo
J Scott Bovitz
Richard P Steelman Jr

Lisitsa Law, Inc.

Represented By

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Lisa D Angelo
J Scott Bovitz
Richard P Steelman Jr

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik
Richard P Steelman Jr
Beth Ann R Young
Lisa D Angelo

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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1:20-11006 Lev Investments, LLC

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Adv#: 1:20-01117 Lev Investments, LLC v. Lisitsa et al

#11.00 Order to Show Cause why Lisa D. Angelo and Murchison & Cumming LLP Should Not Be Sanctioned in Accordance with 11 U.S.C. § 105(a), Federal Rules of Civil Procedure 26(c)(1) and 37, and/or LBR 7026-1(c) and 9011-3

Docket 44

Tentative Ruling:

Pursuant to the Court's Order to Show Cause [doc. 44], the parties should be prepared to discuss: (A) the parties' availability for an evidentiary hearing during the week of **June 28, 2021, during which week the Court is available from June 30 through July 2 (the Court also is available on July 6)**; and (B) the estimated amount of time each party will need to provide direct testimony, *including* from any attorneys who have submitted his or her declaration, and to cross-examine witnesses at the evidentiary hearing.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Yevgeniya Lisitsa

Represented By
Lisa D Angelo
J Scott Bovitz

Lisitsa Law, Inc.

Represented By
Lisa D Angelo
J Scott Bovitz

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh

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David B Golubchik
Richard P Steelman Jr
Beth Ann R Young

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#12.00 Hearing
RE: [40] Motion For Summary Judgment Notice of Motion and Motion for Summary Judgment; Memorandum of Points and Authorities (Kazachki, Deian)

Docket 40

***** VACATED *** REASON: Hearing rescheduled for 2:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Represented By
Elena Steers
Adam Stevens

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

Trustee(s):

Amy L Goldman (TR)

Pro Se

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Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#13.00 Pretrial 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; 3/10/21; 4/7/21

Docket 15

***** VACATED *** REASON: Hearing rescheduled for 2:00 PM.**

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, June 2, 2021

Hearing Room 301

2:30 PM

1:20-10346 Alan Gene Lau

Chapter 7

Adv#: 1:20-01053 Prior et al v. Lau et al

#14.00 Plaintiffs' Motion for summary judgment

fr. 3/24/21

Docket 12

***** VACATED *** REASON: Hearing rescheduled for 2:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alan Gene Lau

Represented By
Kevin T Simon

Defendant(s):

Alan Gene Lau

Represented By
Andrew Edward Smyth

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Amber Ann Waddell Lau

Represented By
Kevin T Simon

Plaintiff(s):

Russell Prior

Represented By
Alana B Anaya

Cheryl 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, June 2, 2021

Hearing Room 301

2:30 PM

CONT... Alan Gene Lau

Chapter 7

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

Wednesday, June 2, 2021

Hearing Room 301

2:30 PM

1:20-10346 Alan Gene Lau

Chapter 7

Adv#: 1:20-01053 Prior et al v. Lau et al

#15.00 Pretrial conference re complaint to determine the dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)

fr. 7/29/20; 3/10/21; 3/24/21

Docket 1

***** VACATED *** REASON: Hearing rescheduled for 2:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

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):

Russell Prior

Represented By
Alana B Anaya

Cheryl 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, June 2, 2021

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01117 Lev Investments, LLC v. Lisitsa et al

#16.00 Order to Show Cause why Lisa D. Angelo and Murchison & Cumming LLP Should Not Be Sanctioned in Accordance with 11 U.S.C. § 105(a), Federal Rules of Civil Procedure 26(c)(1) and 37, and/or LBR 7026-1(c) and 9011-3

Docket 44

***** VACATED *** REASON: Rescheduled for 2:00 PM [Doc.#47]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Yevgeniya Lisitsa

Represented By
Lisa D Angelo
J Scott Bovitz

Lisitsa Law, Inc.

Represented By
Lisa D Angelo
J Scott Bovitz

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik
Richard P Steelman Jr
Beth Ann R Young

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, June 2, 2021

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2:30 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, June 3, 2021

Hearing Room 301

10:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1608744195>

Meeting ID: 160 874 4195

Password: 955404

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 874 4195

Password: 955404

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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

Thursday, June 3, 2021

Hearing Room 301

10:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Thursday, June 3, 2021

Hearing Room 301

10:30 AM

1:16-13469 Children Are Our Future, Inc.

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

SLBiggs, A Division of SingerLewak, Accountants for Chapter 7 Trustee

Docket 45

Tentative Ruling:

Diane C. Weil, chapter 7 trustee – approve fees of \$7,436.59 and reimbursement of expenses of \$182.90, on a final basis. The trustee is authorized to collect 100% of the approved fees and reimbursement of expenses.

SLBiggs, accountant to chapter 7 trustee – approve fees of \$8,393.00 and reimbursement of expenses of \$178.59, pursuant to 11 U.S.C. § 330, on a final basis. SLBiggs is authorized to collect 100% of the approved fees and reimbursement of expenses.

No reply to the *Limited Objection to Trustee's Statutory Fee Requested in Trustee's Final Report, filed by the United States Trustee* [doc. 47], has been filed, and the Court has reduced the chapter 7 trustee's statutory fee as recommended in that objection. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required.

The chapter 7 trustee 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, June 3, 2021

Hearing Room 301

10:30 AM

1:20-11237 BGS WORKS, INC.

Chapter 11

#2.00 First Interim Application by Resnik Hayes Moradi LLP, General Bankruptcy Counsel for the Debtor, For Allowance of Fees and Reimbursement of Costs for the Period July 15, 2020 Through April 21, 2021

Docket 85

Tentative Ruling:

Although such information is to be provided in accordance with Local Bankruptcy Rule 2016-1(a)(1)(A), the First Interim Application does not state "whether the business of the debtor, if any, is being operated at a profit or a loss, whether the business has sufficient operating cash flow," and, given that a chapter 11 plan has not been filed, "the prospects for reorganization and the anticipated date for the filing of a plan."

In addition, the First Interim Application does not discuss "the estimated amount of other accrued expenses of administration."

Given that the funds in the estate are far less than the amount required to pay the billed fees and requested expenses, Resnik Hayes Moradi LLP ("Applicant") and the debtor and debtor in possession must address how the debtor anticipates being able to do so, and at what time.

In order for Applicant to submit this additional required information sufficiently in advance of the hearing, i.e., no later than **June 10, 2021**, the Court will continue this hearing to **10:30 a.m. on June 17, 2021**.

Appearances on June 3, 2021 are excused.

Party Information

Debtor(s):

BGS WORKS, INC.

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 3, 2021

Hearing Room 301

1:00 PM

1:20-11653 Altra Mortgage Capital LLC

Chapter 11

#3.00 Status conference re: chapter 11 case
fr. 10/22/20;

Docket 1

***** VACATED *** REASON: Order dismissing case entered 5/24/21 [doc. 67].**

Tentative Ruling:

- NONE LISTED -

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, June 3, 2021

Hearing Room 301

1:00 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#4.00 Motion for interim and final approval of postpetition financing pursuant to 11 U.S.C. §364(d)(1) and approval of priming lien against estate property

fr. 1/14/21, 1/28/21; 2/11/21; 3/4/21(stip); 4/22/21

Docket 38

Tentative Ruling:

Deny.

I. BACKGROUND

A. Debtor's Real Property and the Liens Against that Real Property

On July 15, 2020, BGS Works, Inc. ("Debtor") filed a voluntary chapter 11 petition. Debtor operates as a construction company and holds both contractor and electrical licenses. Declaration of Joseph Sternlib ("Sternlib Decl."), attached to the *Motion for Interim and Final Approval of Postpetition Financing Pursuant to 11 U.S.C. § 364(d)(1)* (the "Motion") [doc. 38], ¶ 5.

In its schedule A/B, Debtor disclosed an interest in residential real property located at 5099 Llano Drive, Woodland Hills, California 91364 (the "Property") [doc. 9]. Debtor describes the house on the Property as being "under construction and approximately 70% complete." Sternlib Decl., ¶¶ 6 and 8. Debtor represents that the project was delayed and over budget due to a conflict with the Los Angeles City inspector assigned to the project, which forced Debtor to make "make further alleged 'mandatory building requirements' that were not part of the original City approved plans." *Id.*, ¶ 8.

Debtor contends that the fair market value of the Property, as-is, is \$2.5 million. Debtor bases this valuation on two broker price opinions, neither of which is provided with the Motion (nor are the brokers identified). Sternlib Decl., ¶ 6. Debtor estimates that it will cost \$450,000 to \$500,000 to complete construction. *Id.*

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1:00 PM

CONT... BGS WORKS, INC.

Chapter 11

According to Debtor's CEO/President and sole shareholder, Mr. Sternlib, Debtor filed its bankruptcy case to stop a foreclosure sale of the Property by the senior lienholder Danmor Investments, Inc. ("Danmor"), and for Debtor to secure DIP financing in order to complete the construction of the house on the Property. Sternlib Decl., ¶ 7. Prior to filing its bankruptcy case, Debtor contends that Danmor refused to provide additional funds for Debtor to complete that construction. *Id.*, ¶ 9.

Based on the Sternlib Decl., the Property is encumbered as follows:

Property	Lien(s)	Priority	Amount
5099 Llano Drive (alleged FMV: \$2.5 million)	Danmor Investments, Inc. and USTDS, Inc.	First (outstanding principal amount)	\$1,350,000.00
	Rivera Hauling, Inc. (disputed lien)	Mechanic's	\$71,525.00
	Sunbelt Rentals (disputed lien)	Mechanic's	\$62,176.27
	Nichols Lumber & Hardware	Mechanic's	\$12,483.83
	Total Liens:		\$1,496,185.10

Doc. 9, pp. 11–13; Sternlib Decl., ¶¶ 6–7.

On November 30, 2020, Danmor filed proof of claim 6-1, which is secured by the Property, in the principal amount of \$625,000.00, and USTDS, Inc. filed proof of claim 7-1, which is secured by the Property, in the principal amount of \$725,000.00. As of December 31, 2020, the total amount owed to these secured creditors, excluding attorneys' fees and foreclosure costs, is \$1.555 million. Declaration of Elise Dabby, ("Dabby Decl.") attached to *Opposition to Motion for Interim and Final Approval of Financing and Approval of Priming Lien* [doc. 46], ¶ 7. Interest continues to accrue at the default rate of 13% per annum. *Id.*

B. The Motion

On December 2, 2020, Debtor filed the Motion. Debtor seeks an order authorizing final post-petition financing by Debtor's proposed lender, Aminem, LLC ("Lender"), in the amount of \$500,000.00 to be used for completing the construction of the Property. Sternlib Decl., ¶ 9.

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CONT... BGS WORKS, INC.

Chapter 11

Previously, on October 19, 2020, Lender presented a term sheet to Debtor, outlining its intent to enter a loan arrangement (the "Term Sheet") [doc. 42, Exh. A]. According to Debtor, the terms of the financing are more favorable than any other financing available to Debtor. Pursuant to 11 U.S.C. § 364(d)(1), Debtor seeks to secure this post-petition loan with a senior priority lien.

The relevant financing terms are as follows:

Principal Loan Amount	\$500,000.00
Lien position	First position priming loan
Maturity Date	18 months
Annual Interest Rate	11.0% fixed, built into the budget as interest impound account
Origination Fee	4% due at closing and \$1,0000 processing fee
Monthly Payment	Balloon payment due at the end of 18 months

Debtor asserts that with additional financing of \$500,000 and its current account receivables (much of which are over 90 days delinquent), the construction of the Property can be completed within the next 180 days. Sternlib Decl., ¶¶ 11 and 15 and Exh. D thereto. Debtor's authenticated appraisal report [Motion, doc. 38, Exh. B], represents that the Property's value, if completed, will increase to \$3,725,000.00.

Mr. Sternlib states that he "attempted to obtain financing from other lenders postpetition loans without requiring a security interest or with a junior lien on the Property. I have approached not less than two other lenders, but they were unwilling to lend monies to a corporation in bankruptcy without additional protection i.e., requiring a much high [sic] interest rate and/or a lien on the Property." *Id.*, ¶ 20.

C. The Opposition

On January 4, 2021, Danmor and USTDS (together, "Secured Creditors") filed an opposition to the Motion (the "Opposition") [doc. 46]. Secured Creditors contend that: (1) Debtor has not demonstrated that Debtor could not obtain financing other than by providing a priming lien under 11 U.S.C. § 364(d); (2) Debtor has not provided a copy of the loan agreement; and (3) the financing does not provide adequate protection to Secured Creditors, who will not have a sufficient equity cushion to protect their interest in the Property after the imposition of the proposed priming lien to secure \$500,000 in

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CONT... **BGS WORKS, INC.**

Chapter 11

post-petition financing.

Secured Creditors also contend that the Property's fair market value, as completed, based on an authenticated appraisal report, is \$2.107 million as of September 4, 2020. *Declaration of Morteza Tehrani Regarding 5099 Llano Drive, Woodland Hills*, attached to Opposition, ¶ 6. As of December 31, 2020, the aggregate amount of Secured Creditors' claims exceed \$1.555 million. Dabby Decl. [doc. 46], ¶ 7.

Lastly, Secured Creditors allege that Debtor has not shown that the post-petition financing would, in fact, complete construction of the Property. As noted by Secured Creditors: "Under the term sheet, the loan will include an interest reserve. The Term Sheet does not contain an attachment with a statement of the impound account, but would appear to calculate at 11 percent interest over 18 months to be \$80,000 and requires the payment of a 4% origination fee (\$20,000). This would leave only \$400,000 in net proceeds for the construction. But the debtor's new construction budget, as attached to the [Motion], states that \$497,350.00 to finish the project [sic]." Opposition, p. 7.

II. DISCUSSION

11 U.S.C. § 364(d) provides:

- (1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—
 - (A) the trustee is unable to obtain such credit otherwise; and
 - (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.
- (2) In any hearing under this subsection, the trustee has the burden on the issue of adequate protection.

Section 364(d) allows the granting of priority over all existing liens. *In re Carlisle Court, Inc.*, 36 B.R. 209, 219 (Bankr. D.C. 1983). Section 364(d) is intended to be a

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CONT... **BGS WORKS, INC.**

Chapter 11

last resort for financing. *In re Qualitech Steel Corp.*, 276 F.3d 245, 348 (3rd Cir. 2001).

The Bankruptcy Code defines "adequate protection" as requiring either: (1) cash or periodic payments equal to the lessening of a senior lienholder's position; or (2) an additional or replacement lien on the property of value equivalent to the decrease in value of the primed position; or (3) affording the senior lienholder with something having the "indubitable equivalent" of the lessened position. *See* 11 U.S.C. § 361. The term "indubitable" means "too evident to be doubted." *See In re Arnold & Baker Farms*, 85 F.3d 1415, 1421 (9th Cir. 1996).

As noted by the court in *In re Reading Tube Industries*, 72 B.R. 329, 334 (Bankr. E.D.Pa. 1987), a debtor has two burdens to carry before the court may authorize the use of a superpriority loan under Section 364(d). First, the debtor must prove that there was no other available financing. Second, the debtor must demonstrate the existence of adequate protection. *See also In re Swedeland Development Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) ("A debtor has the burden to establish that the holder of the lien to be subordinated has adequate protection.").

"The first prong requires the debtor to demonstrate that less onerous post-petition financing was unavailable." *Id.* at 332. Although a debtor is not required to seek credit from every possible source, a debtor must show that it made a reasonable effort to obtain post-petition financing from other potential lenders on less onerous terms and that such financing was unavailable. A court must make its decision as to "how extensive the debtor's efforts to obtain credit must be" on a case-by-case basis. *Suntrust Bank v. Den-Mark Construction, Inc.*, 406 B.R. 683, 691 (E.D.N.C. 2009), *quoting Reading Tube Industries*, 72 B.R. at 332.

Debtor's principal avers that Debtor was unable to obtain alternative financing on terms more favorable to the estate than the proposed financing. Sternlib Decl., ¶ 20. However, Debtor has not stated that the proposed lender, Aminam, is unwilling to offer unsecured credit or credit secured by a junior lien, nor has Debtor explained its process for finding alternative financing to complete construction or identified the names of other lenders which allegedly refused to provide more favorable financing, or their funding terms.

Although completing construction is likely to increase the Property's fair market value from what it is today (as partially completed), Debtor also has not demonstrated that the

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CONT...

BGS WORKS, INC.

Chapter 11

increase will be sufficient to adequately protect the Secured Creditors' interest in the Property, if Secured Creditors' first deed of trust is subordinated to substantial additional debt. Debtor's appraisal report of the Property's value, as completed, is based on comparable sales of several single family homes that are located in different neighborhoods than where the Property is located, and from 2.7 to 5.96 miles away. Two of these comparable sales also involve significant net adjustments to the comparables sales' prices, in the amount of \$450,000 and \$466,000. It also appears that the proposed financing may not be sufficient to complete the construction of the Property.

Given the prospect that the Property's value will not increase sufficiently to provide adequate protection to the Secured Creditors' interest in the Property, if that interest is subordinated to a lien to secure \$500,000 in financing, and that the proposed amount of the financing may be insufficient to complete the construction, the Court will not approve the proposed financing.

III. CONCLUSION

In light of the foregoing, the Court will deny the Motion.

Secured Creditors must submit the order within seven (7) days.

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
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Thursday, June 3, 2021

Hearing Room 301

1:00 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#5.00 Status conference re: chapter 11 case

fr. 9/10/20; 4/22/21

Docket 1

Tentative Ruling:

Given that the debtor has (belatedly) filed all monthly operating reports for the period through March 31, 2021, the Court will continue this status conference to **1:00 p.m. on June 17, 2021**, and no later than **June 3, 2021**, the debtor must file and serve a status report, supported by evidence, regarding its progress toward confirming a chapter 11 plan.

The debtor filed its chapter 11 petition on July 15, 2020. Having granted numerous previous extension requests, on June 2, 2021, the Court extended the deadline for the debtor to file a chapter 11 plan and related disclosure statement from June 1, 2021 to June 14, 2021.

Keeping in mind the apparent lack of any progress in achieving the debtor's reorganization, nearly one year after the debtor filed a chapter 11 petition and that the debtor's primary asset is a partially constructed, single family residence, **the Court will grant no further extensions of this deadline to file a chapter 11 plan and disclosure statement, absent extraordinary circumstances that could not have been anticipated by the parties, and the evidence of such circumstances must be filed with the Court.**

If the debtor does not meet this deadline, the Court will issue an order to show cause why this case should not be dismissed or converted, in accordance with 11 U.S.C. §§ 105 and 1112(b)(1) and (4)(E) and (J).

Appearances on June 3, 2021 are excused.

Party Information

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CONT... BGS WORKS, INC.

Chapter 11

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
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1:30 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#6.00 Order to show cause why this case should not be dismissed or converted to one under chapter 7

Docket 81

Tentative Ruling:

In order to assess if the debtor has timely filed its monthly operating report for May 2021, the Court will continue this hearing to **1:00 p.m. on June 17, 2021.**

Appearances on June 3, 2021 are excused.

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
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Thursday, June 3, 2021

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

#7.00 Debtor's objection to Jamshid Lavi's proof of claim no. 7

Docket 176

Tentative Ruling:

Sustain in part and overrule in part.

I. BACKGROUND

On July 3, 2019, Maryam Sheik ("Debtor") filed a voluntary chapter 11 petition. On November 6, 2019, Jamshid Lavi filed a claim against the estate, asserting a secured claim in the amount of \$602,075.15. The claim was based on a judgment against Debtor's husband (the "Hoseini Judgment") and a judgment lien against Debtor's real property located at 3946 Knob Hill Drive, Sherman Oaks, CA 91423 (the "Property").

On March 25, 2020, Debtor filed a complaint against, among others, Mr. Lavi, initiating adversary no. 1:20-ap-01041-VK (the "Complaint"). Through the Complaint, Debtor asserted claims for quiet title, slander of title and declaratory relief, requesting a judgment that Debtor owns the Property free and clear of Mr. Lavi's judgment lien. On August 17, 2020, after Mr. Lavi's failure to respond to the summons, Debtor filed a motion for default judgment against Mr. Lavi [1:20-ap-01041-VK, doc. 50]. On October 21, 2020, the Court entered a judgment against Mr. Lavi (the "Quiet Title Judgment") [doc. 61], holding that Mr. Lavi "has no valid interest in any portion of the title to or any lien against the... Property" and that "[t]he effect of this Judgment shall be to restore title to the... Property in the name of [Debtor], free and clear of any of the aforementioned judgment lien."

On April 30, 2021, Debtor filed an objection to Mr. Lavi's claim (the "Objection") [doc. 176]. In the Objection, Debtor contends that, because Debtor is not personally liable under the Hoseini Judgment, and that, because the Quiet Title Judgment removed Mr. Lavi's judgment lien against the Property, Mr. Lavi does not have a claim against the estate. Debtor also attaches a quitclaim deed, executed July 19, 2004 and recorded July 28, 2004, transferring the Property from Debtor's husband to Debtor, as her sole and separate property (the "Quitclaim Deed"). Declaration of Maryam Sheik, ¶ 6, Exhibit C.

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CONT... **Maryam Sheik**

Chapter 11

On May 20, 2021, Mr. Lavi filed an opposition to the Objection (the "Opposition") [doc. 183]. In the Opposition, Mr. Lavi asserts that, in accordance with California community property law, Debtor's and her husband's community estate remains liable on the Hoseini Judgment. Debtor did not timely file a reply to the Opposition.

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).").

Pursuant to 11 U.S.C. § 541(a)(2), a debtor's bankruptcy estate includes "[a]ll interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is (A) under the sole, equal, or joint management and control of the debtor; or (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable." Under 11 U.S.C. § 101(7), "[t]he term 'community claim' means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or

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CONT...

Maryam Sheik

Chapter 11

not there is any such property at the time of the commencement of the case."

"Three criteria must be met before an obligation has the status of a community claim: (1) it must be a debt owed by one of the spouses; (2) it must be satisfiable from community property under applicable state law; and (3) the community property from which the debt could be satisfied under state law must be included within the assets which would pass to the debtor's bankruptcy estate, whether or not such assets exist at the commencement of the case." *In re Soderling*, 998 F.2d 730, 733 (9th Cir. 1993) (internal quotation omitted). "The bottom line is that whether or not a creditor holds a community claim will be determined by state law." *Id.* (internal quotation omitted).

Here, the parties agree that the Hoseini Judgment is a debt owed by one of the spouses, i.e., Debtor's husband. As such, the dispute revolves around the second and third prongs identified above.

A. Whether Mr. Lavi's Debt is Satisfiable from Community Property under California Law

Under California Family Code § 910(a)—

Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.

Pursuant to California Code of Civil Procedure § 695.020(b)—

Unless the provision or context otherwise requires, if community property that is subject to enforcement of a money judgment is sought to be applied to the satisfaction of a money judgment:

- (1) Any provision of this division that applies to the property of the judgment debtor or to obligations owed to the judgment debtor also applies to the community property interest of the spouse of the judgment debtor and to obligations owed to the other spouse that are community property.

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Chapter 11

- (2) Any provision of this division that applies to property in the possession or under the control of the judgment debtor also applies to community property in the possession or under the control of the spouse of the judgment debtor.

"Under California law, it is helpful to distinguish between *in personam* liability and *in rem* liability. Creditors can reach community property to pay debts incurred by *either* spouse during marriage, regardless whether any right to reimbursement exists as between the spouses." *In re Cohen*, 522 B.R. 232, 241 (Bankr. C.D. Cal. 2014) (emphasis added) (citing *Lezine v. Sec. Pac. Fin.*, 14 Cal.4th 56, 64 (1996)).

"[T]he liability of community property is not limited to debts incurred for the benefit of the community, but extends to debts incurred by one spouse alone exclusively for his or her own personal benefit." *Lezine v. Sec. Pac. Fin.*, 14 Cal.4th 56, 63-64 (1996); *see also In re Landes*, 627 B.R. 144, 157 (Bankr. E.D. Cal. 2021) (holding that wife was not personally obligated under contract between husband and third party, but that community property of wife and husband could be used to satisfy the debt).

In light of the above, Mr. Lavi's claim may be enforced against any community property assets held by Debtor and her spouse. Under California law, the fact that Debtor is not named in the Hoseini Judgment does not absolve the community estate of liability on the debt. Debtor has not provided any authority to the contrary.

In the Objection, Debtor also contends that the Quiet Title Judgment operates to disallow Mr. Lavi's claim against the estate. However, although the Quiet Title Judgment removed Mr. Lavi's judgment lien from the *Property*, the Quiet Title Judgment did not invalidate Mr. Lavi's claim against the community estate, if any. The Quiet Title Judgment is silent as to Mr. Lavi's rights against Debtor's and her husband's community property. As such, Mr. Lavi's claim may be satisfied by community assets held by Debtor and her spouse, some of which assets may have entered the bankruptcy estate under § 541(a)(2).

***B. Whether the Community Property From Which the Debt Could be Satisfied
Passed to Debtor's Bankruptcy Estate***

The remaining issue is whether community assets became property of the estate, such that Mr. Lavi may assert a claim against the bankruptcy estate. By operation of § 541(a)

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(2), any community property assets in which Debtor had an interest on the petition date, under applicable California law, passed to Debtor's bankruptcy estate. In California, all property acquired during a marriage is presumed to be community property. *See* Cal. Fam. Code § 760; *In re Brace*, 9 Cal. 5th 903, 914 (2020). "[M]arried persons may change — i.e., transmute — the character of property from community to separate, or vice versa, if the transmutation is 'made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.'" *Id.* (quoting Cal. Fam. Code § 852(a)). Where a transmutation occurs by deed, courts "need only determine whether the deed, independent of any extrinsic evidence, contains a clear and unambiguous expression of intent to transfer an interest in the property." *Est. of Bibb*, 87 Cal.App.4th 461, 468 (Ct. App. 2001).

Here, the Quitclaim Deed expressly states that Debtor's husband "remises, releases and quitclaims" to Debtor any interest he may have had in the Property. The Quitclaim Deed is clear and unambiguous. Because the Quitclaim Deed was executed in 2004, many years before the petition date, the Property was not community property as of the commencement of this case. As such, Mr. Lavi's claim may not be satisfied from funds generated by the Property.

However, Debtor has not offered any evidence that the community property presumption should be rebutted as to any asset other than the Property. As such, the Court holds only that Mr. Lavi does not have a secured claim against the Property, and that the Property, being Debtor's separate property, may not be used to satisfy Mr. Lavi's claim. The Court will not make any findings as to whether any other property of the estate may be used to satisfy Mr. Lavi's claim and, as a result, cannot disallow Mr. Lavi's unsecured claim at this time.

III. CONCLUSION

The Court will sustain the Objection in part by designating Mr. Lavi's claim an unsecured claim and holding that the Property is not a community asset which may be used to satisfy the debt owed to Mr. Lavi. The Court will overrule the balance of the Objection.

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

Party Information

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Chapter 11

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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1:30 PM

1:19-11696 Peter M. Seltzer

Chapter 7

#8.00 Motion to disburse sale proceeds to secured creditor, Kimberly Seltzer
Re: Claim No. 14

Docket 206

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):

Peter M. Seltzer

Represented By
Misty A Perry Isaacson

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan
Jessica L Bagdanov
Tamar Terzian

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2:00 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

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

Docket 50

*** VACATED *** REASON: Voluntary dismissal entered on 5/27/21 [doc. 86].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton
Yi S Kim

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

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Chapter

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

Docket 0

Tentative Ruling:

- NONE LISTED -

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1:

Chapter

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Meeting ID: 161 408 5938

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Tentative Ruling:

- NONE LISTED -

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10:30 AM

1:17-10266 Cindy Park

Chapter 13

#18.00 Motion to dismiss case for failure to make plan payments

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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10:30 AM

1:17-12163 Cynthia Ann Donahue

Chapter 13

#19.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

fr. 4/6/21

Docket 60

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

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Tuesday, June 8, 2021

Hearing Room 301

10:30 AM

1:18-11504 Juan Pedro Torres

Chapter 13

#20.00 Trustee's Motion to dismiss case for failure to make plan payments
fr. 5/11/21

Docket 78

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

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10:30 AM

1:18-12232 Faun Thai

Chapter 13

#21.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 58

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Faun Thai

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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10:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#22.00 Trustee's Motion to dismiss case for failure to make plan payments

fr. 5/11/21

Docket 105

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mercedes Benitez

Represented By
Matthew D. Resnik

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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10:30 AM

1:19-11311 Carrol Sue Finister

Chapter 13

#23.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carrol Sue Finister

Represented By
Julie J Villalobos

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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10:30 AM

1:19-11856 Maria Menzi Cadelina

Chapter 13

#24.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

fr. 4/6/21

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Menzi Cadelina

Represented By
Hasmik Jasmine Papian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

10:30 AM

1:19-12073 Scott Alan Secor and Iman Secor

Chapter 13

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

fr. 5/11/21

Docket 58

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Alan Secor

Represented By
Stephen L Burton

Joint Debtor(s):

Iman Secor

Represented By
Stephen L Burton

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:19-12961 Andre Robert Janian

Chapter 13

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

fr. 1/12/21; 3/9/21; 5/11/21

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andre Robert Janian

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:19-13208 Elino Cometa Bukid

Chapter 13

#27.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elino Cometa Bukid

Represented By
Hasmik Jasmine Papian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:20-10269 John Goulter

Chapter 13

#28.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 53

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
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Tuesday, June 8, 2021

Hearing Room 301

10:30 AM

1:20-11045 Joe Lopez, Jr.

Chapter 13

#29.00 Motion to dismiss case for failure to make plan payments

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joe Lopez Jr.

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

1:20-11300 Gilbert Louis Villanueva

Chapter 13

#30.00 Trustee's Motion to dismiss case for failure to make plan payments
fr. 5/11/21

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gilbert Louis Villanueva

Represented By
Ramiro Flores Munoz

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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11:00 AM

1:17-10630 David Polushkin and Inessa Polushkin

Chapter 13

#31.00 JPMorgan Chase Bank's Motion for allowance and payment of administrative claim

fr. 5/11/21

Docket 127

***** VACATED *** REASON: stip and voluntary dismissal filed on 6/7/21
[doc 133, 134]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Polushkin

Represented By
Elena Steers

Joint Debtor(s):

Inessa Polushkin

Represented By
Elena Steers

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

11:30 AM

1:18-12232 Faun Thai

Chapter 13

#32.00 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):

Faun Thai

Represented By
Devin Sawdayi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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9:30 AM

1: -

Chapter

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Docket 0

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- NONE LISTED -

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1:30 PM

1:20-11952 Michael A Di Bacco

Chapter 7

Adv#: 1:21-01010 Kline v. Di Bacco

#0.10 Status conference re: complaint

fr. 3/24/21; 4/21/21; 6/2/21

Docket 1

***** VACATED *** REASON: Pretrial conference set for 1:30pm on
1/12/2022.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael A Di Bacco

Represented By
Leon Nazaretian

Defendant(s):

Michael A Di Bacco

Pro Se

Plaintiff(s):

Michael Kline

Represented By
David Brian Lally

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

1:30 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

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

- #1.00** 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

STIP TO CONTINUE FILED 4/23/21

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); 8/12/20 (stip); 2/10/21(stip); 2/17/21;
4/7/21

Docket 1

***** VACATED *** REASON: Hearing continued to 6/16/21 at 1:30 PM per
order at Document #108.**

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
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CONT... Christopher Sabin Nassif

Chapter 11

Plaintiff(s):

Christopher Sabin Nassif

Represented By
Matthew D. Resnik

Robin Nassif

Represented By
Matthew D. Resnik

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1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

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

#2.00 Pretrial conference re: complaint for breach of fiduciary duty

fr. 1/8/20; 3/4/20; 3/25/20; 5/6/20; 5/20/20; 2/10/21

Stip to continue filed 2/16/21

Docket 1

***** VACATED *** REASON: Hearing continued to 9/15/21 at 1:30 p.m.
per order entered on 2/17/21**

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
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Wednesday, June 9, 2021

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

#3.00 Status 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);
11/4/20(stip); 2/3/21(stip); 3/24/21; 4/21/21(stip)

Docket 1

***** VACATED *** REASON: Stipulated Judgment entered 4/30/21.
[Doc.#52]**

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
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Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 9, 2021

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, June 9, 2021

Hearing Room 301

1:30 PM

1:21-10179 Alex Foxman

Chapter 11

Adv#: 1:21-01014 Foxman et al v. Frandsen et al

#4.00 Status conference re: complaint

Docket 1

***** VACATED *** REASON: Amended complaint filed - new summons
issued 4/29/21.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Defendant(s):

Russell Frandsen	Pro Se
Christie Frandsen	Pro Se
Andre Berger	Pro Se
Tracy Berger	Pro Se
NATIONAL ACO, LLC, a	Pro Se
NACO MSO, LLC, a California	Pro Se
CCM Tenn, LLC, a Tennessee	Pro Se
NATIONAL CCM, LLC, a	Pro Se

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Plaintiff(s):

Alex Foxman

Represented By

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

Wednesday, June 9, 2021

Hearing Room 301

1:30 PM

CONT...

Alex Foxman

Chapter 11

Steven A Morris

Michal J Morey

Represented By
Steven A Morris

Trustee(s):

Susan K Seflin (TR)

Pro Se

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

Wednesday, June 9, 2021

Hearing Room 301

2:30 PM

1:19-11696 Peter M. Seltzer

Chapter 7

Adv#: 1:19-01151 Kessler v. Seltzer

#5.00 Plaintiff's Motion for Order: (1) Compelling Defendant to Respond to Plaintiffs First Set of Requests for Production of Documents and Interrogatories; (2) Compelling Defendant to Appear for Oral Examination; (3) Continuing Discovery Cutoff Deadline; and (4) Awarding Plaintiff Discovery Sanctions Against Defendant

fr. 4/21/21(stip); 5/5/21

STIP TO CONTINUE FILED 5/19/21

Docket 65

***** VACATED *** REASON: Order approving stipulation entered
5/24/21. Hearing continued to 8/18/21 at 2:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Misty A Perry Isaacson

Defendant(s):

Peter M. Seltzer

Represented By
Rebecca J Winthrop

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies
Noreen A Madoyan
Montserrat Morales

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

Wednesday, June 9, 2021

Hearing Room 301

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

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, June 9, 2021

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 Motion For Summary Judgment or in the
alternative for Partial Summary Adjudication

fr. 5/19/21(stip); 5/26/21

Docket 101

Tentative Ruling:

Based on the representations made by the remaining parties to this adversary proceeding in the *Pre-Trial Stipulation [Notice of Agreement to Settle Reached]* [doc. 115], the Court will continue this hearing to **1:30 p.m. on June 16, 2021.**

Appearances on June 9, 2021 are excused.

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

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**

Tuesday, June 15, 2021

Hearing Room 301

8:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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: 419078

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Meeting ID: 160 833 3145

Password: 419078

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Docket 0

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

Tuesday, June 15, 2021

Hearing Room 301

8:30 AM
CONT...

Chapter

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

Tuesday, June 15, 2021

Hearing Room 301

8:30 AM

1:21-10063 Yosef Y. Shabtay

Chapter 7

#1.00 Reaffirmation Agreement Between Debtor and
Capital One Auto Finance, a division of Capital One, N.A.

fr. 5/18/21

Docket 9

Party Information

Debtor(s):

Yosef Y. Shabtay

Represented By
Clifford Bordeaux

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 15, 2021

Hearing Room 301

8:30 AM

1:21-10291 Brazil Faygo

Chapter 7

#2.00 Reaffirmation Agreement Between Debtor and Anytime Rent A Car
dba Anytime Auto Group

Docket 10

Party Information

Debtor(s):

Brazil Faygo

Represented By
Nathan A Berneman

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 15, 2021

Hearing Room 301

8:30 AM

1:21-10353 Elida Marcelina Gachuzo

Chapter 7

#3.00 Reaffirmation Agreement Between Debtor and American Honda Finance Corporation

Docket 9

Party Information

Debtor(s):

Elida Marcelina Gachuzo 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 15, 2021

Hearing Room 301

8:30 AM

1:21-10418 Ajay Kumar Gambhir

Chapter 7

#4.00 Reaffirmation Agreement Between Debtor and
Technology Credit Union

fr. 5/18/21

Docket 11

Party Information

Debtor(s):

Ajay Kumar Gambhir

Represented By
David S Hagen

Trustee(s):

David Seror (TR)

Pro Se

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

Tuesday, June 15, 2021

Hearing Room 301

8:30 AM

1:21-10589 Juan Manuel Flores

Chapter 7

#5.00 Reaffirmation Agreement Between Debtor and Partners Federal Credit Union

Docket 11

Party Information

Debtor(s):

Juan Manuel Flores

Represented By
R Grace Rodriguez

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Wednesday, June 16, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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: 160 058 7929

Password: 939887

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Docket 0

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

Wednesday, June 16, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Wednesday, June 16, 2021

Hearing Room 301

9:30 AM

1:21-10866 Eran Shabtay

Chapter 7

#1.00 Motion for relief from stay [RP]

SCORPION INVESTMENTS 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.

This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.

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

Any other request for relief is denied.

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

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, June 16, 2021

Hearing Room 301

9:30 AM

CONT... Eran Shabtay

Chapter 7

Party Information

Debtor(s):

Eran Shabtay

Pro Se

Movant(s):

Scorpion Investments LLC

Represented By
Matthew D. Resnik

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Wednesday, June 16, 2021

Hearing Room 301

9:30 AM

1:20-12184 Julia Abrego

Chapter 13

#2.00 Motion for relief from stay [RP]

ROYAL PACIFIC FUNDING CORPORATION
VS
DEBTOR

STIP TO CONTINUE FILED 6/14/21 - jc

Docket 33

*** VACATED *** REASON: Order approving stip entered 6/14/21.
Hearing continued to 7/14/21 at 9:30 AM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julia Abrego

Represented By
Donald E Iwuchuku

Movant(s):

Royal Pacific Funding Corporation

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) 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 16, 2021

Hearing Room 301

9:30 AM

1:18-10983 Daniele C Kenney

Chapter 13

#3.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

Docket 73

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniele C Kenney

Represented By
David S Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, June 16, 2021

Hearing Room 301

9:30 AM

1:21-10809 RT Development, LLC

Chapter 11

#4.00 Motion for relief from stay [RP]

VICTORIA CAPITAL TRUST
VS
DEBTOR

Docket 28

Tentative Ruling:

The Court will continue the hearing in order for the movant to file and serve properly authenticated fair market value appraisals of the real properties at issue, including full interior inspections (if possible), and for the debtor also to submit such appraisals.

The parties should be prepared to discuss the timing for filing and serving such appraisals.

Party Information

Debtor(s):

RT Development, LLC

Represented By
Michael Jay Berger

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

Wednesday, June 16, 2021

Hearing Room 301

1:30 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

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

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

fr. 1/9/2019; 6/5/19(stip); 9/4/19; 12/4/19; 2/19/20; 3/18/20(stip);
4/29/20(stip); 6/10/20 (stip); 8/12/20 (stip); 2/10/21(stip); 2/17/21;
4/7/21; 6/9/21

Docket 1

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, June 16, 2021

Hearing Room 301

1:30 PM

CONT... Christopher Sabin Nassif

Chapter 11

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 16, 2021

Hearing Room 301

1:30 PM

1:16-13382 Christopher Sabin Nassif

Chapter 11

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

#5.10 Motion For Summary Judgment or in the
alternative for Partial Summary Adjudication

fr. 5/19/21(stip); 5/26/21; 6/9/21

Docket 101

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

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 16, 2021

Hearing Room 301

1:30 PM

1:17-10673 Hermann Muennichow

Chapter 7

Adv#: 1:18-01077 The Lincoln National Life Insurance Company, an In v. Duane Van Dyke

#6.00 Order to Show Cause Why This Court Should Not Abstain From
This Adversary Proceeding

Docket 134

Tentative Ruling:

The Court will abstain from this proceeding.

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").

On June 29, 2018, The Lincoln National Life Insurance Company ("Lincoln National") filed an interpleader complaint, initiating this adversary proceeding. Lincoln National named Duane Van Dyke Irrevocable Trust (the "Van Dyke Trust"), Helayne Muennichow and the Trustee as defendants to this interpleader action. In relevant part, Lincoln National alleged—

Lincoln National assumed responsibility for a life insurance policy issued on April 27, 2006 insuring the life of Debtor (the "Policy"). In the Policy, Debtor designated Helayne Muennichow, his wife at the time, as the sole primary beneficiary. On March 27, 2013, Debtor submitted an Ownership Change for Life Policy form transferring ownership of the Policy to the Van Dyke Trust. On April 25, 2013, the Van Dyke Trust modified the beneficiary designation under the Policy to designate the Van Dyke Trust as the sole primary beneficiary and removed Ms. Muennichow as a beneficiary.

On November 11, 2017, Debtor died. The amount due under the Policy is \$1,003,240.92, comprised of a \$1 million death benefit and a \$3,240.92 premium refund, which became payable to the proper beneficiary upon Debtor's death. In December 2017, Ms. Muennichow sent a letter to Lincoln National claiming an interest in the Policy; Ms.

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Central District of California
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Wednesday, June 16, 2021

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CONT...

Hermann Muennichow

Chapter 7

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 March 4, 2019, the Trustee filed an answer to the Complaint and a cross claim (the "Trustee's Cross Claim") [doc. 23]. Through the Trustee's Cross Claim, the Trustee sought to avoid the transfer of the Policy and recover the funds for the estate, and to obtain an order that the funds were property of the estate.

On March 13, 2019, the Van Dyke Trust filed an answer to the Complaint (the "Van Dyke Answer") [doc. 30]. In the Van Dyke Answer, the Van Dyke Trust alleges, among other things, that Debtor provided accounting services for Duane Van Dyke and Mr. Van Dyke's business entities. During the course of their professional relationship, Debtor allegedly embezzled \$800,000 from Mr. Van Dyke. Accordingly, Debtor and Mr. Van Dyke allegedly executed a promissory note for \$800,000 secured by business guarantees and deeds of trust. In addition, the Van Dyke Trust claims that Debtor transferred ownership of the Policy to the Van Dyke Trust to ensure that the funds were returned to Mr. Van Dyke if Debtor passed away.

On March 15, 2019, Ms. Muennichow filed an answer to the Complaint [doc. 33] and cross claims against the Van Dyke Trust and the Trustee (the "Muennichow Cross Claim") [doc. 34]. In the Muennichow Cross Claim, Ms. Muennichow asserts six claims for relief. The first and second claims are for avoidance of fraudulent transfer pursuant to 11 U.S.C. §§ 522 and 544 and Cal. Civ. Code § 3439. The third claim is for avoidance of transfer of marital assets under Cal. Fam. Code § 1101 and 11 U.S.C. §§ 522 and 544. The fourth claim for relief is to recover damages for breach of contract by the Van Dyke Trust. The fifth and sixth claims are for declaratory relief, through which Ms. Muennichow requests an order declaring that the Policy is Ms. Muennichow's property.

On May 26, 2020, the Court entered an order dismissing Lincoln National from this adversary proceeding. On March 19, 2021, the parties filed a stipulation for dismissal of

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, June 16, 2021

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1:30 PM

CONT... Hermann Muennichow

Chapter 7

the Trustee from this adversary proceeding (the "Stipulation") [doc. 127]. In the Stipulation, the parties provided that the Trustee, in his business judgment, decided that the estate was best served by abandoning the estate's cross-claims asserted in this action. As such, the parties agreed that the Trustee's cross-claims against the Van Dyke Trust and Ms. Muennichow, and the Van Dyke Trust's and Ms. Muennichow's claims against the estate, would be dismissed.

In light of the dismissal of the estate's claims involved in this adversary proceeding, and the dismissal of the other defendants' claims against the estate, the Court issued an Order to Show Cause why the Court should not abstain from this adversary proceeding (the "OSC") [doc. 134]. In the OSC, the Court instructed the parties to file a response to the OSC regarding whether this Court should abstain and, if so, whether the funds in the Court's Registry will be transferred.

On June 2, 2021, the Van Dyke Trust filed a response to the OSC (the "Van Dyke Response") [doc. 137]. In the Van Dyke Response, the Van Dyke Trust requests that this Court adjudicate this matter, citing concerns regarding "starting over" in a different forum and the transfer of funds from the Court's Registry; alternatively, the Van Dyke Trust requests proceeding with this action in state court. On the same day, Ms. Muennichow filed her response to the OSC (the "Muennichow Response") [doc. 138]. In the Muennichow Response, Ms. Muennichow requests transfer of this action to state court, where this matter may be consolidated with a related pending case before the state court. As an alternative, Ms. Muennichow also consents to this Court's adjudication of this matter.

II. ANALYSIS

Title 28, United States Code, § 1334(c)(1) states that "nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." Courts consider the following twelve factors under 28 U.S.C. § 1334(c)(1):

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding

**United States Bankruptcy Court
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San Fernando Valley
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CONT...

Hermann Muennichow

Chapter 7

commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990).

Here, the factors weigh in favor of abstention. First, state laws predominate over bankruptcy issues. Although the Van Dyke Trust contends that this proceeding involves federal questions, a review of the parties' pleadings demonstrates the opposite. The Van Dyke Trust asserts that it has a right to the interplead funds based on a prepetition promissory note and alleged embezzlement by Debtor, issues that would be decided by application of state law.

Most of Ms. Muennichow's claims also are based on California law. Although Ms. Muennichow references 11 U.S.C. § 544 in connection with her fraudulent transfer claims, Ms. Muennichow has not articulated why she has standing to avoid transfers on behalf of the estate. *See* 11 U.S.C. § 544(a) and (b)(1) (providing *the trustee* with the right and power to avoid transfers); *and In re Know Weigh, L.L.C.*, 576 B.R. 189, 206 (Bankr. C.D. Cal. 2017) ("Avoidance claims under the Bankruptcy Code empower a trustee in bankruptcy to avoid and recover, for the benefit of the estate, transfers of property by a debtor.... Creditors in a bankruptcy case typically are not vested with these powers."). In addition, Ms. Muennichow's fraudulent transfer claims also are based on California Civil Code § 3439 *et seq.* Ms. Muennichow may pursue these state law fraudulent transfer claims in state court.

Next, although the claims are not necessarily difficult or unsettled, Ms. Muennichow asserts a claim under California Family Code § 1101, and asserts community property rights to the funds in connection with other claims. "It is appropriate for bankruptcy courts to avoid incursions into family law matters out of consideration of court economy,

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Central District of California
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Wednesday, June 16, 2021

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CONT... Hermann Muennichow

Chapter 7

judicial restraint, and deference to our state court brethren and their established expertise in such matters." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985) (internal quotation omitted). In light of Ms. Muennichow's claims rooted in California community property law, it is especially appropriate for the Court to abstain from deciding those issues.

Further, because the issues remaining in this adversary proceeding do not involve bankruptcy, the state law dispute between two non-debtor parties will burden the bankruptcy court's docket. The Court's jurisdiction over this matter also is based exclusively on 28 U.S.C. § 1334. Moreover, the parties have not articulated why the remaining claims in this proceeding are constitutionally "core." *See Stern v. Marshall*, 564 U.S. 462, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011).

In their responses to the OSCs, both parties reference a related state court proceeding. Both parties also note that, in connection with that related proceeding, the parties are agreeable to having this matter heard in state court. Finally, given the estate's dismissal from this action, the outcome of this action will not impact the size of Debtor's estate. Although the resulting judgment *may* impact the amount of the Van Dyke Trust's claim against the estate, this possibility, in and of itself, is not sufficient to refrain from abstention.

The parties express concerns about starting anew in state court. However, if this matter is consolidated with the related state court case referenced by the parties, the parties will continue litigation before a court familiar with some of the facts and issues presented in this case. To prevent delay, the parties also may forego disputes over adequacy of the pleadings and, having already conducted discovery in connection with this proceeding, inform the state court of their readiness for trial. With respect to the parties' concern over the funds in the Court's Registry, the parties may stipulate to transfer the funds to an account chosen by the parties, or the parties may brief whether the state court may accept the funds and, if so, the procedure for transferring the funds to state court. The issue regarding the transfer of funds from is not cause to proceed with this action in this forum.

III. CONCLUSION

The Court will abstain from this matter.

The Court will prepare the Order.

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

Wednesday, June 16, 2021

Hearing Room 301

1:30 PM

CONT... Hermann Muennichow

Chapter 7

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone
Nicholas A West

Defendant(s):

Duane Van Dyke Irrevocable Trust

Represented By
Kelly Warren
Benjamin Blakeman

Helayne Muennichow

Represented By
Robert J McKennon
Gary A Kurtz
Nicholas A West

David Seror

Represented By
Richard Burstein
Jessica L Bagdanov

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
Jessica L Bagdanov

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

Wednesday, June 16, 2021

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 Pretrial 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; 6/3/20; 5/5/21

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:

- NONE LISTED -

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Defendant(s):

Duane Van Dyke Irrevocable Trust

Pro Se

Helayne Muennichow

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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CONT... Hermann Muennichow

Chapter 7

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 16, 2021

Hearing Room 301

1:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #8.00** Status conference re third amended complaint for:
- (1) Avoidance of Transfer in Fraud of Creditors [Cal Civ. Code sections 3439, *et seq.*];
 - (2) Breach of Written Contract;
 - (3) Reimbursement of Business Expenses [Cal. Lab. Code section 2802];
 - (4) Unlawful Deductions from Wages [Cal. Lab. Code sections 216, 221];
 - (5) Fraud & Deceit [Cal. Civ. Code sections 1572-1573, 1709-1710];
 - (6) Conversion;
 - (7) Declaratory Relief Re Nondischargeability of Fraud Damages [11 U.S.C. § 523(a)(2)]
Wrongful Constructive Termination in Violation of Public Policy;
 - (8) Waiting Time Penalties [Cal. Lab. Code § 203];
 - (9) Unlawful Retaliation [Cal. Lab. Code § 1102.5]
 - (10) Unlawful Retaliation [Cal. Lab. Code § 98.6]
 - (11) Failure to Maintain and Timely Produce Personnel Records [Cal. Lab. Code § 1198.5(k)];
 - (12) Failure to Maintain and Timely Produce Wage and Hour Records [Cal. Lab. Code § 226(f)];
 - (13) Wrongful Constructive Termination in Violation of Public Policy
 - (14) Unfair Business Practices [Cal. Bus. & Prof. Code, §§ 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; 11/4/20; 1/20/21; 3/24/21; 5/5/21

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

Wednesday, June 16, 2021

Hearing Room 301

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CONT...

Kenneth C. Scott

Chapter 13

Docket 62

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on July 21, 2021**, to be held with the hearing on the debtor's motion to dismiss [doc. 97].

Appearances on June 16, 2021 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, June 16, 2021

Hearing Room 301

2:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

Adv#: 1:19-01096 Frias et al v. Mizrahi, an Individual et al

#9.00 Motion to Dismiss Second Amended Adversary Complaint for Failure to State A Claim

Docket 96

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On July 2, 2019, Sharon Mizrahi ("Debtor") filed a chapter 13 petition. On August 1, 2019, Michael Frias and Patricia Bartlett filed a complaint against Debtor and other defendants, initiating this adversary proceeding. On December 16, 2019, Mr. Frias and Ms. Bartlett filed a first amended complaint (the "FAC") [doc. 25], requesting nondischargeability of the debt owed to them under 11 U.S.C. § 523(a)(2) and (a)(4).

On November 30, 2020, Debtor filed a motion to dismiss the FAC (the "First Motion") [doc. 75], on the basis that the plaintiffs failed to state a claim for relief. On March 10, 2021, the Court held a hearing on the First Motion. At that time, the Court issued a ruling (the "Prior Ruling") [doc. 89]. In the Prior Ruling, the Court held that Mr. Frias adequately stated a claim for relief based on allegations that Debtor induced Mr. Frias to pay \$500 for a building permit without intent obtain such a permit. The Court otherwise dismissed the FAC for failure to state a claim for relief. Specifically, the Court held that the plaintiffs did not adequately allege fraud, and that the plaintiffs' claim for breach of the implied covenant of good faith and fair dealing did not establish a claim for nondischargeability under 11 U.S.C. § 523(a)(2)(A).

On April 6, 2021, Mr. Frias ("Plaintiff") filed a second amended complaint (the "SAC") [doc. 93], requesting nondischargeability of the debt owed to him under 11 U.S.C. § 523(a)(2). [FN1]. In relevant part, Plaintiff alleges:

In April 2017, Plaintiff contacted a remodeling company to improve his home. Plaintiff met with Ido Mor and another man. At that time, Mr. Mor suggested that Plaintiff do business with Divine Builders (Debtor's business) instead of the remodeling company Plaintiff contacted. Mr. Mor introduced himself as a

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CONT...

Sharon Mizrahi

Chapter 13

representative of Divine Builders.

During the meeting, Mr. Mor placed Plaintiff on a call with Debtor, who represented that Mr. Mor was an agent of Divine Builders. Plaintiff agreed to move forward with Divine Builders; as such, Mr. Mor gave Plaintiff estimates of \$17,000 to replace windows, \$2,500 to replace doors, and \$29,500 for exterior coating. Renew Financial approved a loan for the total amount. In addition, Plaintiff paid \$500 to obtain a building permit and \$2,000 for a cement patio. Divine Builders then installed replacement windows, replacement doors and the cement patio.

The doors leak, peel, and are largely inoperable. Moreover, Divine Builders coated the exterior of Plaintiff's home with a sticky substance that attracts bugs. After Plaintiff complained, Divine Builders painted over the external coating in an unsuccessful effort to cure the issue. However, Divine Builders did not take corrective action as to the windows, and Plaintiff did not receive a warranty for the windows, door, or external coating, as promised by Mr. Mor. In addition, Plaintiff learned from the City of Pasadena that neither Debtor nor Divine Builders applied for or received a mandatory home improvement permit, despite Plaintiff having paid for the permit.

Moreover, Plaintiff filed a claim with Divine Builders' insurance company. The insurance company rejected the claim; in a letter to Plaintiff, the insurance company stated that they were informed that Mr. Mor was not an employee or agent of Divine Builders. Only Debtor could or would provide the insurance company with false information regarding Mr. Mor's status as an agent.

On these allegations, Plaintiff asserts claims for misrepresentation and breach of the covenant of good faith and fair dealing, asserting that the claims establish nondischargeability of the debt owed to him under 11 U.S.C. § 523(a)(2).

On April 20, 2021, Debtor filed a motion to dismiss the SAC (the "Motion") [doc. 96], asserting that Plaintiff failed to state a claim for relief. On May 26, 2021, Plaintiffs filed an opposition to the motion to dismiss (the "Opposition") [doc. 103]. On June 2, 2021, Debtor filed a reply to the opposition (the "Reply") [doc. 105].

II. ANALYSIS

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Central District of California
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Judge Victoria Kaufman, Presiding
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CONT...

Sharon Mizrahi

Chapter 13

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 to dismiss, 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

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CONT... Sharon Mizrahi

Chapter 13

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 Plaintiff must allege:

- (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)).

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Chapter 13

1. The Allegations Regarding Substandard Work

Regarding the quality of the home improvement installation work completed by Divine Builders, Plaintiff alleges that the installation work was "substandard" and that the installed improvements "presently leak, are largely inoperable, or have peeling perlites." SAC, ¶¶ 20, 22. Plaintiff further alleges that Debtor "falsely misrepresented to [Plaintiff] her intent regarding substandard work by Divine Builders because [Debtor] did not re-communicate with [Plaintiff] or cure the problem." SAC, ¶ 27.

As with the FAC, the allegations in the SAC do not meet the heightened pleading standard of Rule 9(b). Once again, Plaintiff does not allege any misrepresentations, omissions or other conduct, by Debtor *or* agents of Debtor, regarding the quality of goods and/or services. In addition, Plaintiff does not allege, even generally, that Debtor intended to deceive Plaintiff by, for instance, entering into the renovation agreement while intending to install substandard improvements. As such, the allegations do not establish a claim under § 523(a)(2)(A).

In the Opposition, Plaintiff references his allegations regarding Debtor's alleged failure to cure the faulty improvements and/or to communicate with Plaintiff about the issues. However, Plaintiff must establish that Debtor possessed fraudulent intent at the time Debtor allegedly induced Plaintiff to incur the debt, i.e., when Plaintiff entered into an agreement to pay Divine Builders for improvement of his home. *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."). As such, the allegations regarding Debtor's, or Debtor's agent's, conduct *after* the parties entered into the home improvement agreement do not establish fraudulent inducement. Consequently, the Court will dismiss Plaintiff's claim based on allegedly substandard work.

2. The Allegations Regarding Warranties

Regarding the allegations about warranties, Plaintiff alleges that Mr. Mor falsely represented that the defective doors and windows would be covered by warranty. SAC, ¶ 23. Plaintiff does not include any other allegations regarding this allegedly false representation. The singular sentence, without any context or discussion regarding the other elements of § 523(a)(2)(A), falls far short of the specificity requirement of Rule 9(b). Thus, the Court also will dismiss Plaintiff's claim based on the alleged false

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CONT... Sharon Mizrahi
representation of warranty.

Chapter 13

3. *The Allegations Regarding Mr. Mor's Status as an Agent*

In the SAC, Plaintiff also alleges that Debtor made misrepresentations regarding Mr. Mor's status as an agent of Divine Builders. SAC, ¶¶ 14, 17, 29-32. Specifically, Plaintiff contends that, in connection with the parties' home improvement agreement, Debtor held Mr. Mor out as an agent of Divine Builders; Plaintiff alleges that Debtor subsequently represented to Divine Builders' insurance company that Mr. Mor is not an agent Divine Builders. *Id.*

However, Plaintiff alleges that the *latter* representation, to the insurance company, was false. SAC, ¶ 31. Plaintiff does not allege that, at the time Debtor allegedly induced Plaintiff to enter into the home improvement contract, Debtor misrepresented Mr. Mor's status as an agent. In fact, Plaintiff alleges that Mr. Mor *is* an agent of Divine Builders, SAC, ¶ 7, and that, at the time Debtor allegedly induced Plaintiff to enter into the home improvement contract, Debtor informed Plaintiff that Mr. Mor was an agent. SAC, ¶ 17. In other words, Plaintiff alleges that, at the time the parties entered into the home improvement agreement, Debtor accurately represented Mr. Mor's status as an agent of Divine Builders. Once again, Plaintiff must establish that Debtor possessed fraudulent intent at the time Plaintiff allegedly paid for improvement of his home. *Lee*, 536 B.R. at 855. The allegations above do not meet this requirement.

To the extent Plaintiff attempts to rest his § 523(a)(2)(A) claim on the alleged misrepresentation to the insurance company, Plaintiff has failed to state a claim for relief. Even assuming that Debtor (or an agent of Debtor) made the alleged misrepresentation, Plaintiff has not articulated how he relied on a representation made to the *insurance company*. [FN2]. The alleged misrepresentation also occurred long after Debtor allegedly induced Plaintiff to incur the alleged debt, presenting the same causation issue discussed above. Plaintiff incurred the damages alleged in the SAC prior to the alleged representation to the insurance company; Plaintiff has not separately asserted damages arising from the representation to the insurance company, or the nature and extent of any such damages. As a result, Plaintiff did not adequately state a claim for relief based on the alleged misrepresentation to the insurance company.

4. *The Allegations Regarding the \$500 Building Permit*

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CONT...

Sharon Mizrahi

Chapter 13

As with the FAC, Plaintiff alleges that Divine Builders' agent requested, and Plaintiff paid, \$500 to obtain a building permit, and that Divine Builders never applied for such a permit. SAC, ¶¶ 19, 24. In the Motion and the Reply, Debtor argues that the \$500 could have been applied towards the home improvement contract. This argument is speculative and exceeds the four corners of the complaint. Debtor does not provide any other basis for deviating from the Prior Ruling and dismissing Plaintiff's claim based on the \$500 building permit.

In fact, Debtor requests that, if this claim is the sole claim surviving the Motion, Debtor agrees to have a \$500 judgment entered against him. Because the Court is dismissing all other claims with prejudice, the Court will enter a nondischargeability judgment against Debtor in the amount of \$500. The Court will dismiss the remainder of the SAC. [FN3].

C. Breach of the Implied Covenant of Good Faith and Fair Dealing

In the Prior Ruling, the Court held that, even if a party adequately alleges a claim for breach of the implied covenant of good faith and fair dealing, such breach does not establish a claim under 11 U.S.C. § 523(a)(2)(A). Nevertheless, Plaintiff once again asserts a claim for breach of the implied covenant of good faith and fair dealing as a basis for nondischargeability. For the reasons stated in the Prior Ruling, the claim will be dismissed as grounds for exception to discharge under § 523(a)(2)(A).

To the extent Plaintiff asserted this claim to liquidate the amount Debtor owes to Plaintiff, as explained in the Prior Ruling, "the Court will not liquidate [this] claim through this adversary proceeding." Prior Ruling, p. 9. If Plaintiff wishes to assert a claim against the estate, Plaintiff may follow the instructions set forth in the Prior Ruling. For purposes of this adversary proceeding, the Court is adjudicating nondischargeability; as such, Plaintiff's claim for breach of the implied covenant of good faith and fair dealing has no viability in this action. The Court will dismiss this claim.

III. CONCLUSION

With respect to the \$500 building permit, the Court will deny the Motion. Based on Debtor's agreement to have judgment entered against him as to this claim, the Court will enter a \$500 nondischargeability judgment against Debtor. The Court will grant the balance of the Motion and dismiss the SAC without leave to amend.

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CONT... Sharon Mizrahi

Chapter 13

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

FOOTNOTES

1. Ms. Bartlett is not named as a plaintiff in the SAC.

2. In the SAC, Plaintiff alleges that the insurance company was informed that Mr. Mor was not an agent of Divine Builders, and that it must have been Debtor who falsely represented Mr. Mor's status to the insurance company. SAC, ¶¶ 30-31. There is no factual support for this inference. However, even if the Court infers that Debtor made the alleged representation, Plaintiff has not stated a claim for relief.

3. In the SAC, Plaintiff also alleges that Debtor filed her bankruptcy case to "avoid legal responsibility" for the debt. SAC, ¶ 35. Debtor's bankruptcy filing has no bearing on whether the debt owed to Plaintiff was incurred by Debtor's fraud. Any contention that Debtor fraudulently filed her bankruptcy case is more appropriately raised in a request for dismissal of the bankruptcy case, not as a basis for nondischargeability of a particular debt.

Party Information

Debtor(s):

Sharon Mizrahi

Represented By
Shai S Oved

Defendant(s):

Sharon Mizrahi dba Divine Builders

Represented By
Shai S Oved

Does 1 Through 10, Inclusive

Pro Se

Sharon Mizrahi, an Individual

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, June 16, 2021

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CONT... Sharon Mizrahi

Chapter 13

Plaintiff(s):

Michael Frias

Represented By

Ezedrick S Johnson III

E. Samuel Johnson

Patricia Bartlett

Represented By

E. Samuel Johnson

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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2:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

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

- #10.00** Status conference re: second amended complaint for:
1. Misrepresentation;
2. Breach of implied covenant of good faith and fair dealing

Demand for jury trial

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); 12/23/20;
1/21/20; 3/10/21

Docket 93

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharon Mizrahi

Represented By
Shai S Oved

Defendant(s):

Ido Mor

Pro Se

Sharon Mizrahi, an Individual

Pro Se

Sharon Mizrahi dba Divine Builders

Pro Se

Divine Builders

Pro Se

GHR Divine Remodeling

Pro Se

Does 1 Through 10, Inclusive

Pro Se

Plaintiff(s):

Michael Frias

Represented By

**United States Bankruptcy Court
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CONT... Sharon Mizrahi

Chapter 13

Ezedrick S Johnson III

Patricia Bartlett

Represented By
E. Samuel Johnson

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
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Wednesday, June 16, 2021

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2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01117 Lev Investments, LLC v. Lisitsa et al

#11.00 Motion to Quash Subpoena Or, in the Alternative, For Protective Order

Docket 24

*** VACATED *** REASON: advanced to 6/2/21 at 2:30 p.m. per order
entered on 5/5/21 [dkt 42]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Yevgeniya Lisitsa

Represented By
Lisa D Angelo
J Scott Bovitz
Richard P Steelman Jr

Lisitsa Law, Inc.

Represented By
Lisa D Angelo
J Scott Bovitz
Richard P Steelman Jr

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik
Richard P Steelman Jr
Beth Ann R Young
Lisa D Angelo

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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CONT... Lev Investments, LLC

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
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Thursday, June 17, 2021

Hearing Room 301

10:30 AM

1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the June 17, 2021 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1607011380>

Meeting ID: 160 701 1380

Password: 832801

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 701 1380

Password: 832801

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, June 17, 2021

Hearing Room 301

10:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Thursday, June 17, 2021

Hearing Room 301

10:30 AM

1:19-13189 Christine Penaranda

Chapter 7

#1.00 Trustee's final report and applications for compensation

Amy Goldman, Chapter 7 Trustee

Docket 3

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee – approve fees of \$745.00 and reimbursement of expenses of \$3.05.

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):

Christine Penaranda

Represented By
Barry E Borowitz

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, June 17, 2021

Hearing Room 301

10:30 AM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#2.00 First and Final Application by General Bankruptcy Counsel for Debtor in Possession for Compensation and Reimbursement of Expenses for the Period July 21, 2020 through May 7, 2021

Docket 95

Tentative Ruling:

Sklar Kirsh LLP ("Applicant"), counsel to the debtor and debtor in possession – given the stipulation between Applicant and the United States Trustee [doc. 101], approve fees in the amount of \$176,670.00 and reimbursement of expenses in the amount of \$3,283.50, pursuant to 11 U.S.C. § 330, for the period between July 21, 2020 through May 7, 2021, on a final basis. Applicant may collect 100% of the approved fees and 100% of the approved expenses.

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

Appearances on June 17, 2021 are excused.

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, June 17, 2021

Hearing Room 301

10:30 AM

1:20-11237 BGS WORKS, INC.

Chapter 11

#3.00 First Interim Application by Resnik Hayes Moradi LLP, General Bankruptcy Counsel for the Debtor, For Allowance of Fees and Reimbursement of Costs for the Period July 15, 2020 Through April 21, 2021

fr. 6/3/21

Docket 85

Tentative Ruling:

Resnik Hayes Moradi, LLP ("Applicant"), counsel to the debtor and debtor in possession – approve fees in the amount of \$51,365.50 and reimbursement of expenses in the amount of \$2,214.89, pursuant to 11 U.S.C. § 331, for the period between July 15, 2020 through April 21, 2021, on an interim basis. Applicant may collect 80% of the approved fees and 100% of the approved expenses at this time. The Court will not approve \$40.50 in fees for the reasons stated below.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this chapter 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.

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re*

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

Thursday, June 17, 2021

Hearing Room 301

10:30 AM

CONT... **BGS WORKS, INC.**

Chapter 11

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 Applicant for the services identified below:

Category	Date	Timekeeper	Description	Rate	Time	Fee
Case Administration	7/16/21	Rosario Zubia	Called Trustee Company and gave verbal notice of CH 11 filing.	\$135.00	0.10	\$13.50
Case Administration	7/16/21	Rosario Zubia	As requested by Trustee Co. drafted fax cover sheet for notice and attached Notice of CH 11 filing.	\$135.00	0.20	\$27.00

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

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

Party Information

Debtor(s):

BGS WORKS, INC.

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 17, 2021

Hearing Room 301

1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#4.00 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; 12/3/20; 1/21/21; 3/25/21; 4/8/21

Docket 1

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (4)(E) and (J), the Court will dismiss this case. Contrary to the Court's order [doc. 156], the debtor did not timely file a second amended disclosure statement. The debtor also did not timely file a status report. As such, there is cause to dismiss this case.

Having reviewed the debtor's assets and liabilities, dismissal is in the best interest of creditors and the estate.

The Court will prepare the Order dismissing this case.

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 17, 2021

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; 11/5/20; 1/21/21; 4/22/21

Docket 36

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on July 22, 2021**, to be held in connection with the debtors' objection to the claim filed by the Internal Revenue Service. The debtors must file and serve a status report regarding their progress toward confirming a chapter 11 plan, supported by evidence, **no later than July 15, 2021**.

Appearances on June 17, 2021 are excused.

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, June 17, 2021

Hearing Room 301

1:00 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#6.00 U.S. Trustee Motion to dismiss or convert case Under 11 U.S.C. § 1112(b)

Docket 125

Tentative Ruling:

Grant. Having reviewed the order approving the stipulation for *in rem* relief from the automatic stay [doc. 121] and the debtor's assets and liabilities, dismissal is in the best interest of creditors and the 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):

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, June 17, 2021

Hearing Room 301

1:00 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#7.00 Status conference re: chapter 11 case

fr. 8/13/20; 9/10/20; 2/4/21; 4/22/21; 5/20/21

Docket 1

Tentative Ruling:

See calender no. 7.

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, June 17, 2021

Hearing Room 301

1:00 PM

1:20-11653 Altra Mortgage Capital LLC

Chapter 11

#8.00 U.S. Trustee Motion to dismiss or convert case Under 11 U.S.C. § 1112(b)

Docket 60

***** VACATED *** REASON: Case dismissed on 5/24/21 [doc. 67].**

Tentative Ruling:

- NONE LISTED -

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, June 17, 2021

Hearing Room 301

1:00 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#9.00 Status conference re chapter 11 case

fr. 1/14/21; 2/4/21

Docket 1

Tentative Ruling:

Contrary to the Court's order [doc. 52], the debtor did not file a disclosure statement by the deadline of June 1, 2021.

Given the proposed lender's withdrawal, the Court cannot grant the debtor's motion for post-petition financing [doc. 80]. The debtor should withdraw the motion. If the debtor reaches an agreement to obtain financing from another lender, the debtor may file a new motion.

The Court will set a deadline of **November 5, 2021** for the debtor to confirm a chapter 11 plan.

The Court will prepare the order.

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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

Thursday, June 17, 2021

Hearing Room 301

1:00 PM

1:21-10005 JANA, LLC

Chapter 11

#10.00 Status conference re: chapter 11 petition
fr. 2/18/21

Docket 1

Tentative Ruling:

On March 30, 2021, the debtor filed its January 2021 and February 2021 monthly operating reports [docs. 53, 54]. To date, the debtor has not filed its March 2021, April 2021 and May 2021 MORs.

In light of the debtor's failure to file its MORs, the Court will prepare an order to show cause why this case should not be dismissed or converted to a case under chapter 7.

The Court will continue this status conference to **Thursday, July 8, 2021 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 **Thursday, June 24, 2021**. The status report must be supported by evidence in the form of declarations and supporting documents.

Appearances on June 17, 2021 are excused.

Party Information

Debtor(s):

JANA, LLC

Represented By
Matthew Abbasi

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

Thursday, June 17, 2021

Hearing Room 301

1:00 PM

1:21-10809 RT Development, LLC

Chapter 11

#11.00 U.S. Trustee Motion to Dismiss Case Under 11 U.S.C. § 1112(b) with
180 Day Bar Against Refiling Another Bankruptcy Petition

Docket 12

***** VACATED *** REASON: Voluntary dismissal of motion entered on
6/9/21 [doc. 43].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

RT Development, 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, June 17, 2021

Hearing Room 301

1:30 PM

1:21-10358 Berta Tuc Rodriguez

Chapter 7

#12.00 Debtor's Motion to vacate dismissal

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):

Berta Tuc Rodriguez

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**

Thursday, June 17, 2021

Hearing Room 301

1:30 PM

1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#13.00 Epps & Coulson, LLP's motion for order to disburse funds out of the bankruptcy courts registry to Epps & Coulson, LLP's trust account

fr. 5/20/21

Docket 335

***** VACATED *** REASON: Settled pursuant to Stipulation [doc. 342]
and orders entered on 6/14/21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Stella A Havkin

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley
Joseph R Dunn

Movant(s):

Epps & Coulson, LLP

Represented By
Dawn M Coulson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong
Beth Ann R Young
Krikor J Meshefejian

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

Thursday, June 17, 2021

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

#14.00 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); 12/10/20

STIP TO CONTINUE FILED 6/8/21 - jc

Docket 335

***** VACATED *** REASON: Order approving stip entered 6/9/21.
Hearing continued to 10/21/21 at 1:30 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, June 17, 2021

Hearing Room 301

2:00 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#15.00 Debtor's Motion To Estimate Claim For Purposes Of Setting Aside Reserve (Claim No. 15)

Docket 326

Tentative Ruling:

The Court will continue this hearing to **2:00 p.m. on July 8, 2021.**

Appearances on June 17, 2021 are excused.

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, June 17, 2021

Hearing Room 301

2:00 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#16.00 Debtor's Motion To Estimate Claim For Purposes Of Setting Aside Reserve (Claim No. 16)

Docket 327

Tentative Ruling:

The Court will continue this hearing to **2:00 p.m. on July 8, 2021.**

Appearances on June 17, 2021 are excused.

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, June 17, 2021

Hearing Room 301

2:00 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

#17.00 Status conference re: chapter 11, subchapter V case

fr. 3/25/21; 4/8/21; 5/6/21

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:00 p.m. on August 12, 2021**, to be held in connection with the hearing on confirmation of the debtor's chapter 11, subchapter V plan.

Appearances on June 17, 2021 are excused

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton

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

Thursday, June 17, 2021

Hearing Room 301

2:30 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

#18.00 Status conference re: chapter 11, subchapter V case
fr. 3/25/21; 4/8/21; 5/6/21

Docket 1

***** VACATED *** REASON: Rescheduled for 2:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton

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

Wednesday, June 23, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1614106079>

Meeting ID: 161 410 6079

Password: 954578

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 410 6079

Password: 954578

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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

Wednesday, June 23, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Wednesday, June 23, 2021

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; 12/9/20; 3/3/21(stip); 4/21/21(stip); 5/19/21(stip)

Docket 73

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 include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

Debtor(s):

Hermann Muennichow

Represented By

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

Wednesday, June 23, 2021

Hearing Room 301

9:30 AM

CONT... Hermann Muennichow

Chapter 7

Stuart R Simone

Movant(s):

Wilmington Savings Fund Society,

Represented By
Jenelle C Arnold

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov

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

Wednesday, June 23, 2021

Hearing Room 301

9:30 AM

1:18-11945 Rosa Aminta Cordova de Rodriguez

Chapter 13

#2.00 Motion for relief from stay [PP]

ALLY FINANCIAL
VS
DEBTOR

fr. 4/7/21(stip); 5/19/21

Stip to continue filed 6/22/21

Docket 57

*** VACATED *** REASON: continued to 7/28/21 at 9:30 a.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rosa Aminta Cordova de Rodriguez

Represented By
R Grace Rodriguez

Movant(s):

Ally Financial

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) 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 23, 2021

Hearing Room 301

9:30 AM

1:17-12299 Timothy Lee Weaver and Mary Jane Weaver

Chapter 13

#3.00 Motion for relief from stay [RP]

SELECT PORTFOLIO SERVICING INC.
VS
DEBTOR

fr. 5/19/21

Stip to continue filed 6/22/21

Docket 76

*** VACATED *** REASON: continued to 7/28/21 at 9:30 am

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy Lee Weaver

Represented By
Kenneth A Freedman

Joint Debtor(s):

Mary Jane Weaver

Represented By
Kenneth A Freedman

Movant(s):

Select Portfolio Servicing Inc., as

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) 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 23, 2021

Hearing Room 301

9:30 AM

1:20-10971 Benjamin Marsh

Chapter 13

#4.00 Motion for relief from stay [RP]

CIT BANK, N.A.
VS
DEBTOR

fr. 4/14/21(stip); 5/19/21

Docket 74

*** VACATED *** REASON: continued to 7/28/21 at 9:30 a.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Benjamin Marsh

Represented By
Natalya Vartapetova

Movant(s):

CIT Bank, N.A.

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) 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 23, 2021

Hearing Room 301

9:30 AM

1:20-12097 Philip H. Lee

Chapter 7

#5.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 51

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Philip H. Lee

Represented By
Matthew Abbasi

Movant(s):

Toyota Motor Credit Corporation

Represented By
Austin P Nagel

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

Wednesday, June 23, 2021

Hearing Room 301

9:30 AM

CONT... Philip H. Lee

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 23, 2021

Hearing Room 301

9:30 AM

1:21-10833 Rogelio Angel

Chapter 7

#6.00 Motion for relief from stay [PP]

LOS ANGELES FEDERAL CREDIT UNION
VS
DEBTOR

Docket 11

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Rogelio Angel

Represented By
Marc C Rosenberg

Movant(s):

Los Angeles Federal Credit Union

Represented By
Bruce P. Needleman

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

Wednesday, June 23, 2021

Hearing Room 301

9:30 AM

CONT... Rogelio Angel

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, June 23, 2021

Hearing Room 301

1:30 PM

1:19-11696 Peter M. Seltzer

Chapter 11

Adv#: 1:19-01151 Kessler v. Seltzer

#7.00 Pretrial 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; 9/23/20; 4/21/21

Docket 15

***** VACATED *** REASON: Continued by Stip to 8/18/21 at 1:30 pm - jc**

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, June 23, 2021

Hearing Room 301

1:30 PM

1:19-13145 Daniel Michael Uzan

Chapter 7

Adv#: 1:20-01035 Mitchell et al v. Uzan

#8.00 Motion to set new deadlines and date for pretrial status conference

fr. 5/19/21

STIP TO DISMISS FILED 6/10/21 - jc

Docket 42

*** VACATED *** REASON: Order dismissing adversary entered 6/14/21
[doc. 51].

Tentative Ruling:

- NONE LISTED -

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, June 23, 2021

Hearing Room 301

1:30 PM

1:19-13145 Daniel Michael Uzan

Chapter 7

Adv#: 1:20-01035 Mitchell et al v. Uzan

#9.00 Pretrial 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; 12/9/20; 5/19/21

STIP TO DISMISS FILED 6/10/21 - jc

Docket 31

*** VACATED *** REASON: Order dismissing adversary entered 6/14/21 [doc. 51].

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

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1:20-10659 Nasrin Nino

Chapter 7

Adv#: 1:21-01019 Gottlieb v. Bilal et al

#10.00 Status conference re: Complaint for interpleader

Docket 1

***** VACATED *** REASON: Continued by stip to 8/25/21 at 1:30 p.m. - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Defendant(s):

Kamal A. Bilal

Pro Se

Jeffrey Siegel

Pro Se

Terry M. Magady

Pro Se

Jacob N. Segura

Pro Se

Hayes and Bell

Pro Se

Ingenious Asset Group, Inc.

Pro Se

Internal Revenue Service

Pro Se

State of California Franchise Tax

Pro Se

Plaintiff(s):

David K. Gottlieb

Represented By
Carmela Pagay

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CONT... Nasrin Nino

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

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1:21-10179 Alex Foxman

Chapter 11

Adv#: 1:21-01014 Foxman et al v. Frandsen et al

#11.00 Status conference re: first amended complaint

Docket 3

***** VACATED *** REASON: Order approving stip entered 6/1/21.
Hearing continued to 12/15/21 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Defendant(s):

Russell Frandsen	Pro Se
Christie Frandsen	Pro Se
Andre Berger	Pro Se
Tracy Berger	Pro Se
NATIONAL ACO, LLC, a	Pro Se
NACO MSO, LLC, a California	Pro Se
CCM Tenn, LLC, a Tennessee	Pro Se
NATIONAL CCM, LLC, a	Pro Se

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

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CONT... Alex Foxman

Chapter 11

Plaintiff(s):

Alex Foxman

Represented By
Steven A Morris
Stella A Havkin

Michal J Morey

Represented By
Steven A Morris
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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Hearing Room 301

2:30 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#12.00 Plaintiff Alexander Ermakov's Motion for Summary Judgment

fr. 6/2/21

Docket 40

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On January 10, 2020, Husnutkin K. Zairov ("Debtor") filed a voluntary chapter 7 petition. On March 23, 2020, Alexander Ermakov ("Plaintiff") filed a complaint against Debtor, requesting nondischargeability of the debt owed to him under 11 U.S.C. § 523(a)(2)(A) and (a)(4). Plaintiff now moves for summary judgment.

A. *The State Court Action and Judgment*

Prepetition, on July 25, 2014, Plaintiff filed a complaint against Debtor in state court. Declaration of Deian V. Kazachki ("Kazachki Declaration") [doc. 40], ¶ 2, Exhibit 1. [FN1]. On September 29, 2014, Debtor filed an answer to the state court complaint. *Id.*, ¶ 3, Exhibit 2. On January 21, 2015, Debtor appeared at a hearing before the state court. *Id.*, ¶ 4. Counsel for Debtor also appeared at a hearing in the state court action. *Id.*, ¶¶ 5-6.

On April 7, 2016, Plaintiff filed a verified first amended complaint (the "FAC"). *Id.*, ¶ 7, Exhibit 6. In the FAC, Plaintiff asserted claims for breach of contract, breach of fiduciary duty, fraud and conversion. *Id.* Subsequently, after Plaintiff's request for terminating sanctions, the state court struck Debtor's answer. Supplemental Declaration of Deian V. Kazachki [doc. 53], ¶ 6. On December 13, 2016, Plaintiff filed an application for default judgment, supported by a declaration. Kazachki Declaration, ¶ 8, Exhibit 7. On April 14, 2017, the state court entered judgment against Debtor (the "State Court Judgment"). *Id.*, ¶ 9, Exhibit 8. In the State Court Judgment, the state court held, in relevant part—

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[Debtor] made statements to Plaintiff... knowing that these statements were false and did so with the intent to have Plaintiff rely upon those statements in order for the Defendants... to misappropriate [Plaintiff's] shares in the Company. At the time [Debtor] made these false statements he intended to defraud [Plaintiff]. [Plaintiff] relied upon these false statements.

The court finds for Plaintiff... on all four (4) causes of action, and awards Plaintiff compensatory damages in the sum of \$93,000.00 on the fraud cause of action against all defendants, jointly and severally.

The Court further finds that Defendant... 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.

...

Judgment is entered for Plaintiff... against [Debtor] and AAA Plus Limousine and Transportation Services Inc. on Count Three, Fraud.

...

The Court awards judgment against Defendants... jointly and severally, in favor of the Plaintiff... for the following damages:

- a. Ninety-three Thousand Dollars (\$93,000) in compensatory damages for the fraud cause of action.
- b. Nine Thousand Eight Hundred Dollars (\$9,800) in prejudgment interest.
- c. Five Thousand Eight Hundred and Seventy-one Dollars and Sixty-seven cents (\$5,871.67) in court costs.
- d. Thirty-four Thousand Nine Hundred and Ninety-two Dollars and Forty-seven cents (\$34,992.47) in attorney fees based on the Declaration submitted by Plaintiff's counsel.
- e. One Thousand Five Hundred Dollars (\$1,500.00) in court imposed sanctions pursuant to C.C.P. §§ 2023.010 et seq. and the July 15, 2015 Court Ruling.

The Court awards Plaintiff... Fifteen Thousand Dollars (\$15,000.00) in

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punitive damages against Defendant....

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State Court Judgment, pp. 2-3.

B. Debtor's Bankruptcy Filing and this Proceeding

On January 10, 2020, Debtor filed his bankruptcy petition. On March 23, 2020, Plaintiff filed his complaint against Debtor, initiating this adversary proceeding. On February 19, 2021, Plaintiff filed a motion for summary judgment (the "Motion") [doc. 40]. In the Motion, Plaintiff asserts that the State Court Judgment precludes relitigation of Plaintiff's claims under 11 U.S.C. § 523(a)(2)(A) and (a)(4). On May 13, 2021, Debtor filed an opposition to the Motion [doc. 63].

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

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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. Summary Judgment Based on 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;

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

In re Harmon, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990)). "The party asserting preclusion bears the burden of establishing the threshold requirements." *Id.*

"The mere fact that [a party] obtained a judgment by default does not, in itself, foreclose the possibility that the resolution of some issues in the litigation would later have preclusive effect." *Id.*, at 1246. Default judgments are preclusive where a defendant "has been personally served with summons or has actual knowledge of the existence of the litigation." *Id.*, at 1247 (citing *Williams v. Williams*, 36 Cal.2d 289, 297 (1950)). In addition, the default judgment will "have preclusive effect 'only where the record shows an express finding upon the allegation' for which preclusion is sought." *Id.* (quoting *Williams*, 36 Cal.2d at 297).

i. Issues Identical to Those Decided in Former Proceeding

a. 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, a plaintiff must show:

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

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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)).

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 *In re Younie*, 211 B.R. 367, 373-74 (B.A.P. 9th Cir. 1997) ("The elements of § 523(a)(2)(A) 'mirror the elements of common law fraud' and match those for actual fraud under California law.")).

Here, the state court explicitly entered judgment against Debtor for fraud. Under the authorities above, a claim under § 523(a)(2)(A) presents identical elements to a California fraud cause of action. In the Opposition, Debtor asserts that, because the State Court Judgment does not reference specific misrepresentations by Debtor, the State Court Judgment is insufficient to establish fraud. Debtor does not cite any authority that supports the proposition that state courts must include verbatim misrepresentations in a judgment for that judgment to have preclusive effect.

Debtor's citation to *In re Cole*, 226 B.R. 647 (B.A.P. 9th Cir. 1998), is inapposite. In *Cole*, a creditor filed a prepetition lawsuit for nonpayment under a promissory note; thereafter, the creditor obtained a writ of attachment (the "Writ"). *Cole*, 226 B.R. at 649. Subsequently, the creditor agreed to release the Writ; the debtor and the creditor then executed a stipulated judgment through which the debtor waived his right to obtain a discharge of the debt owed to the creditor. *Id.*, at 650. The stipulated judgment also included a clause providing that, if the debtor filed for bankruptcy and attempted to discharge the debt, the debtor agreed that the release of the Writ was obtained under false pretenses and nondischargeable under § 523(a)(2)(A). *Id.*

The debtor filed for bankruptcy protection. *Id.* The creditor then filed a complaint requesting nondischargeability of the debt based on the preclusive effect of the stipulated judgment. *Id.* The bankruptcy court held that: (A) the waiver to discharge was unenforceable; and (B) the stipulated judgment did not have preclusive effect because, among other things, the state court complaint did not allege fraud. *Id.*

On appeal, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") affirmed these holdings. *Id.*, at 655. With respect to issue preclusion, the BAP held—

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We have already concluded that the portion of the Stipulated Judgment that purported to waive Appellee's right to obtain a discharge of the Debt was unenforceable as against public policy. However, if the parties stipulated to the underlying facts that support a finding of nondischargeability, the Stipulated Judgment would then be entitled to collateral estoppel application.

Here, the Complaint was based entirely on the facts asserted in the Stipulated Judgment. It stated that the occurrence of a future act (i.e., the act of filing for bankruptcy and attempting to discharge the Debt) would be deemed an admission that the release of the Writ of Attachment was obtained under false pretenses for purposes of § 523(a)(2)(A) and that the Appellant reasonably relied on Appellee's deemed fraud. This stipulated fact was just another attempt by Appellant to have Appellee prospectively waive his right to discharge the Debt in bankruptcy, and thus, was unenforceable.

...

The stipulated facts relate to a possible future cause of action in a possible future bankruptcy case. Thus, the stipulated facts have nothing to do with the merits of [the creditor's] state court lawsuit against [the debtor]. Indeed, it would not have been possible to litigate the issue of fraud (dependent upon a future bankruptcy) in [the creditor's] state court lawsuit.

Therefore, the stipulated facts could not have been necessary to the Judgment. In addition, since not relevant to it, the stipulated facts could not have been actually litigated.

Id., at 655-56 (internal citation omitted).

These issues are not present in this case. Plaintiff and Debtor did not agree to an unenforceable waiver of Debtor's right to a discharge. In addition, the State Court Judgment is not based on hypothetical future acts; rather, the state court made findings based on Plaintiff's state court fraud claim, which were based on events that already happened, and entered a judgment of fraud on the merits. Thus, this case is distinguishable from *Cole*.

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Under the applicable authorities above, it is clear that the state court held that Debtor committed fraud based on misrepresentations. *See* State Court Judgment, ¶ 5 ("[Debtor] made statements to Plaintiff... knowing that these statements were false.... At the time [Debtor] made these false statements he intended to defraud Plaintiff.... Plaintiff relied upon these false statements."); *and* State Court Judgment, ¶ 6 ("The Court...awards Plaintiff compensatory damages in the sum of \$93,000.00 on the fraud cause of action...."). As such, the court not only held that Debtor is liable for fraud, which would be sufficient to preclude this Court from relitigating Plaintiff's fraud-based claim under § 523(a)(2)(A), but the Court also made findings related to each element of § 523(a)(2)(A). As such, the issues related to Plaintiff's § 523(a)(2)(A) claim before this Court are identical to the fraud issues decided by the state court.

b. Punitive Damages

Under California law, "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." Cal. Civ. Code § 3294(a). Pursuant to Cal. Civ. Code § 3294(c)(3), fraud is defined as "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury."

Here, although the state court awarded punitive damages in connection with Plaintiff's breach of fiduciary duty and conversion causes of action, the state court held that Debtor "is guilty of oppression, malice *and* fraud." State Court Judgment, ¶ 7 (emphasis added). Where a state court finds that a debtor acted with "malice, oppression *and* fraud," the judgment is preclusive with respect to a claim under § 523(a)(2)(A). *See In re Javahery*, 2017 WL 971780, at *7 (B.A.P. 9th Cir. Mar. 14, 2017), *aff'd*, 742 F. App'x 307 (9th Cir. 2018) (holding that a state court judgment that specified that the debtor acted with "malice, oppression, *and* fraud" established a claim under § 523(a)(2)(A)). In light of the state court's holding, in connection with the court's award of punitive damages, that Debtor acted fraudulently, the State Court Judgment also establishes the nondischargeability of the punitive damages award.

c. 11 U.S.C. § 523(a)(4)

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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. 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)).

With respect to Plaintiff's claim under § 523(a)(4), Plaintiff has not established that the

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state court action presented identical issues to this proceeding. Although, as discussed above, the State Court Judgment establishes fraud, the FAC and the State Court Judgment do not reference fiduciary duties *arising from a trust*. *Ragsdale*, 780 F.2d at 796.

In the Motion, Plaintiff argues that Debtor owed him fiduciary duties as a co-owner, shareholder and officer of AAA Plus Limousine and Transportation Services Inc. However, corporate officers "are not trustees with respect to corporate assets," and, as a result, do not owe the type of fiduciary duties contemplated by § 523(a)(4). *Cantrell*, 329 F.3d at 1127. California law also "does not hold that a majority shareholder is a trustee of the corporate assets or any interests that shareholders may have in the corporate *res*." *Id.*, at 1127 n.5 (internal quotation omitted). As such, the state court's findings related to a breach of fiduciary duties are not identical to the trust-related fiduciary duties pertinent to a claim under § 523(a)(4). The State Court Judgment is silent as to the existence of any trust, and the state court did not specify that the fiduciary duties Debtor breached arose from the existence of a trust. Consequently, the State Court Judgment does not preclude litigation of Debtor's claim under § 523(a)(4).

ii. Issues Actually Litigated and Necessarily Decided

Under California law, an issue is "actually litigated" when it is "properly raised by a party's pleadings or otherwise, when it is submitted to the court for determination, and when the court actually determines the issue." *Harmon*, 250 F.3d at 1247. In the alternative, if an issue was necessarily decided in a prior proceeding, it was actually litigated." *Id.*, at 1248.

In the FAC, Plaintiff asserted a fraud case of action against Debtor. The state court made explicit findings regarding each element of fraud. *See* State Court Judgment, ¶ 5. In addition, the state court separately designated damages resulting from the fraud cause of action. *Id.*, ¶¶ 6, 13. Thus, the court actually litigated and necessarily decided the issues before this Court. Moreover, because the State Court Judgment includes express findings regarding the issues before this Court, the State Court Judgment also satisfies the "express finding" requirement for default judgments to have preclusive effect.

iii. Prior Decision Final and on the Merits

The State Court Judgment was entered on April 14, 2017, i.e., prepetition. In addition,

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given the state court's findings in support of the fraud cause of action, the State Court Judgment is on the merits. The State Court Judgment also is final. "Under California law, a judgment is not final for the purposes of collateral estoppel until it is free from the potential of a direct attack, i.e. *until no further direct appeal can be taken.*" *Geographic Expeditions, Inc. v. Est. of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1106 (9th Cir. 2010) (emphasis added). Pursuant to California Rule of Court 8.822(a)(1), Debtor did not timely appeal the State Court Judgment. As a result, the State Court Judgment is a prior, final decision on the merits.

iv. Privity

There is no dispute that the State Court Judgment was against Debtor. As such, the parties in state court are identical to the parties in this action.

v. Defendant's Knowledge of the Litigation

As noted above, because the State Court Judgment is a default judgment, Plaintiffs also must show that Defendant "has been personally served with summons or has actual knowledge of the existence of the litigation." *Harmon*, 250 F.3d at 1247 (citing *Williams*, 36 Cal.2d at 297). Here, Debtor filed an answer to the original state court complaint. In addition, Debtor and Debtor's state court counsel appeared before the state court. As such, Plaintiff has established that Debtor had actual knowledge of the litigation. [FN2].

III. CONCLUSION

The Court will enter judgment under 11 U.S.C. § 523(a)(2)(A). The Court will deny the Motion as to 11 U.S.C. § 523(a)(4). Plaintiff should be prepared to discuss if he intends to proceed to trial on his claim under § 523(a)(4). If Plaintiff elects not to proceed to trial, Plaintiff should be prepared to discuss a deadline by which Plaintiff will file a notice of dismissal of his claim under § 523(a)(4).

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

FOOTNOTES

1. Debtor did not object to Plaintiff's evidence, and did not dispute any of

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Plaintiff's facts.

2. The parties also argue whether the Rooker-Feldman doctrine is applicable to this case. Under the *Rooker-Feldman* doctrine, this Court is barred from questioning the validity of state court judgments. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). "*Rooker-Feldman* prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004); see also *Epps v. Creditnet, Inc.*, 320 F.3d 756, 759 (7th Cir. 2003) (holding that a federal court action whose success "would require overturning the state court decision...is barred by the *Rooker-Feldman* doctrine"). Here, the parties are not attempting an appeal of the State Court Judgment. Rather, Plaintiff filed suit to establish the nondischargeability of the debt owed to him based on the preclusive effect of the findings in the State Court Judgment. The Rooker-Feldman doctrine is not pertinent to the Motion.

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Represented By
Elena Steers
Adam Stevens

Movant(s):

Alexander Ermakov

Represented By
Deian Kazachki

**United States Bankruptcy Court
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2:30 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
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1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#13.00 Pretrial 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; 3/10/21; 4/7/21;
6/2/21

Docket 15

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
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Wednesday, June 23, 2021

Hearing Room 301

2:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#14.00 Motion to Withdraw as Debtor's Counsel in the Adversary Case

Docket 53

Tentative Ruling:

Grant.

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

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

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
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1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1614356975>

Meeting ID: 161 435 6975

Password: 304151

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 435 6975

Password: 304151

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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Chapter

Tentative Ruling:

- NONE LISTED -

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1:18-11729 Richard Philip Dages

Chapter 7

#1.00 Order to show cause why debtor's counsel should not be ordered to disgorge fees

fr. 3/12/20; 4/30/20; 10/22/20; 3/18/21; 4/8/21; 4/22/21

Docket 136

Tentative Ruling:

The Court will continue this hearing to **1:00 p.m. on September 23, 2021**, to be held with the continued status conference.

Appearances on June 24, 2021 are excused.

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Jeffrey J Hagen

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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1:18-11729 Richard Philip Dages

Chapter 7

#2.00 Status conference re: Trustee Diane C. Weil's progress with administration of the estate

Docket 226

Tentative Ruling:

In light of the chapter 7 trustee's status report [doc. 231], the Court will continue this status conference to **1:00 p.m. on September 23, 2021**. The chapter 7 trustee must file and serve a status report **no later than September 9, 2021**.

Appearances on June 24, 2021 are excused.

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Jeffrey J Hagen

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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1:21-10736 Top Flight Investments, LLC

Chapter 11

#3.00 Status conference re chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **September 15, 2021.**

Deadline to mail notice of Bar Date: **July 2, 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: **October 15, 2021.**

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

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):

Top Flight Investments, LLC

Represented By
Matthew Abbasi

United States Bankruptcy Court
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1:21-10809 RT Development, LLC

Chapter 11

#4.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline for debtor and/or debtor in possession to file proposed plan and related disclosure statement: **February 28, 2022.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on March 10, 2022.**

The debtor in possession or any appointed chapter 11 trustee must file a status report addressing the debtor's progress to 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.

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.

Party Information

Debtor(s):

RT Development, LLC

Represented By
Michael Jay Berger

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1:13-16084 Holly Elizabeth Winzenburg

Chapter 7

#5.00 Order to show cause why Eric B. Gans should not be held in civil contempt for violations of the automatic stay and discharge injunction

fr. 5/20/21

Docket 22

Tentative Ruling:

If the parties have not resolved the matter prior to the continued hearing date of June 24, 2021, the Court will schedule an evidentiary hearing, with witness testimony to be provided in person, in Courtroom 301.

The parties should discuss their availability for the following dates:

June 30 and/or July 1

July 9

July 26, July 27 and/or July 30

August 30 - September 3

Furthermore, the parties should discuss the expected number of witnesses at the evidentiary hearing, expected time for cross-examination to be completed and any other matters related to holding the evidentiary hearing.

May 20, 2021 Tentative Ruling

Having considered the motion for sanctions [doc. 20], the response of Eric B. Gans [doc. 27] and submitted declarations, it is not apparent that Mr. Gans willfully violated the automatic stay and/or violated the discharge injunction. To determine whether Mr. Gans did so, and if sanctions are appropriate, the Court may require an evidentiary hearing.

At such an evidentiary hearing, among other witnesses, the Court would expect the

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CONT... Holly Elizabeth Winzenburg Chapter 7

debtor to produce Elise Gilliam for direct testimony and cross-examination, regarding respondent's provision of the documentation at issue and what Ms. Gilliam and her associates did with any such documentation received from the respondent.

The Court also would require in person direct testimony from Mr. Bodie, Ms. Winzenberg and Mr. Gans, each of whom also would be subject to cross-examination, unless such cross-examination is waived by the opposing party.

Has the debtor's refinancing of her home closed?

Party Information

Debtor(s):

Holly Elizabeth Winzenburg

Represented By
Brett F Bodie
Ahren A Tiller

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:21-10809 RT Development, LLC

Chapter 11

#6.00 Application for order authorizing debtor to employ general bankruptcy counsel

Docket 18

Tentative Ruling:

The Court will approve the employment of the Law Offices of Michael J. Berger ("Berger") as bankruptcy counsel to the debtor and debtor in possession, conditioned on no further payments being made to Berger through creditors or insiders of the debtor, without prior Court approval.

I. BACKGROUND

On May 3, 2021, RT Development ("Debtor") filed a voluntary chapter 11 petition. Brett P. Miles is Debtor's managing member, sole officer and equity holder [Statement of Financial Affairs, item 28, doc. 17].

On May 18, 2021, Debtor filed an application to employ Berger as its general bankruptcy counsel (the "Application to Employ") [doc. 18]. On May 26, 2021, the United States Trustee ("UST") filed an objection to the Application to Employ (the "Objection") [doc. 27]. In the Objection, the UST contends that Applicant has a conflict of interest based on: (1) Berger receiving a prepetition retainer in the amount of \$18,262.00 and a filing fee advanced in the amount of \$1,738.00 by a secured creditor, Christopher Kreidel (the beneficiary of a sixth deed of trust); and (2) the Application to Employ fails to discuss the terms of this arrangement with Mr. Kreidel and whether Berger understands that its duty is owed to Debtor, and not to Mr. Kreidel.

On June 17, 2021, Debtor filed a reply and supplemental declarations in response to the Objection (the "Reply") [doc. 52]. In his supplemental declaration attached to the Reply, Mr. Miles represents that, on April 25, 2021, he and another individual, Zhang Li (who is not a creditor of Debtor), executed a promissory note, payable to Mr. Kreidel, in the principal sum of \$20,000.00 (the "Note"). Supplemental Declaration of Brett P. Miles ("Miles Decl.") [doc. 52], ¶ 5–6; doc. 52, Exh. A, Note. According to Mr. Miles, although it indicates to the contrary, the Note is not secured by Debtor's real properties. Miles Decl., ¶ 5. Mr. Miles also represents that the loan proceeds are a gift contribution to Debtor, and that he does not seek repayment of those proceeds from Debtor. *Id.*, ¶ 7.

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In his supplemental declaration, Mr. Berger represents that he has no prior connection with Mr. Kreidel, Mr. Miles or Ms. Li and that he does not represent their interests in Debtor's case. Supplemental Declaration of Michael Jay Berger [doc. 52], ¶¶ 5, 8. In addition, in their supplemental declarations, Mr. Miles and Mr. Kreidel represent that they were informed or understand that Berger's sole duty of loyalty and attorney-client relationship is with Debtor. Miles Decl. [doc. 52], ¶ 6; Supplemental Declaration of Christopher Kreidel [doc. 52], ¶ 4.

II. DISCUSSION

A. 11 U.S.C § 327

11 U.S.C. § 327(a) provides that:

- (a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, ***that do not hold or represent an interest adverse to the estate, and that are disinterested persons***, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a) (emphasis added). Under the Bankruptcy Code, a debtor in possession has all of the rights and powers of a trustee, including the right to employ estate professionals under § 327. 11 U.S.C. § 1107(a). The purpose of § 327 "is to assure that a professional employed in the case will devote undivided loyalty to the client." *In re Wheatfield Business Park LLC*, 286 B.R. 412, 417–18 (Bankr. C.D. Cal. 2002).

"Section 327(a) imposes a two-pronged test for the employment of professionals. The professional (1) must not hold or represent any interest adverse to the estate, and (2) must be a 'disinterested person.'" *In re Wheatfield Business Park LLC*, 286 B.R. at 418.

"Section 327(a) prohibits an attorney (or other professional) from representing a debtor in a chapter 11 case if the attorney has or represents an *actual* conflicting interest. This prohibition is absolute, and is not subject to waiver or consent." *Id.* at 420–21 (emphasis in original). "In addition, § 327 also prohibits an attorney from holding or representing a certain level of *potential* conflict of interest. Employment may not be approved where a

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potential conflict creates a meaningful incentive to act contrary to the best interests of the estate and its various creditors." *Id.* at 421.

Case law has defined an "adverse interest" to mean: "(1) possession or assertion of an economic interest that would tend to lessen the value of the bankruptcy estate; or (2) possession or assertion of an economic interest that would create either an actual or potential dispute in which the estate is a rival claimant; or (3) possession of a predisposition under circumstances that create a bias against the estate." *In re AFI Holdings, Inc.*, 530 F.3d 832, 845 (9th Cir. 2008).

The Bankruptcy Code, in pertinent part, defines a "disinterested person" as a "a person that . . . does not have an interest materially adverse to the interest of the estate . . . by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason." 11 U.S.C. § 101(14)(C). "A disinterested professional is one that can make unbiased decisions, free from personal interest, in any matter pertaining to the debtor's estate." *In re CIC Inv. Corp.*, 192 B.R. 549, 553–54 (B.A.P. 9th Cir. 1996) (internal quotation marks omitted).

B. Retainer Funded by the Debtor's Creditor

"All facts that may be pertinent to a court's determination of whether an attorney is disinterested or holds an adverse interest to the estate must be disclosed." *In re Hathaway Ranch Partnership*, 116 B.R. 208, 219 (Bankr. C.D. Cal. 1990).

"Courts have taken two approaches when deciding if payment of a bankruptcy retainer by a third-party is a disqualifying interest. Some courts have found that payment of a retainer by a third party is a per se disqualification, while other courts have held that the totality of the circumstances surrounding the retainer payment must be scrutinized before deciding if a disqualifying conflict exists." *In re American Inter. Refinery, Inc.*, 676 F.3d 455, 462 (5th Cir. 2012) (citing *In re Lotus Properties LP*, 200 B.R. 388, 391–96 (Bankr. C.D. Cal. 1996)).

When the retention of counsel for the debtor is funded by the debtor's creditors, courts which assess the totality of the circumstances have followed a five-part test to determine whether there is an actual conflict to disqualify counsel:

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- (1) The arrangement must be fully disclosed to the debtor/client and the third-party payor/insider;
- (2) The debtor must expressly consent to the arrangement;
- (3) The third-party payor/insider must retain independent legal counsel and must understand that the attorney's duty of undivided loyalty is owed exclusively to the debtor/client;
- (4) The factual and legal relationship between the third-party payor/insider, the debtor, the respective attorneys, and their contractual arrangement concerning the fees, must be fully disclosed to the Court at the outset of the debtor's bankruptcy representation;
- (5) The debtor's attorney/applicant must demonstrate and represent to the Court's satisfaction the absence of facts which would otherwise create non-disinterestedness, and actual conflict, or impermissible potential for a conflict of interest.

Lotus Properties, 200 B.R. at 393 (citing *In re Kelton Motors, Inc.*, 109 B.R. 641, 658 (Bankr. D. Vt. 1989)).

Regarding the *Kelton* factors, first, Berger has fully disclosed the terms of the arrangement to Debtor, Mr. Miles and Mr. Kreidel. Second, Debtor apparently has consented to the funding mechanism for Berger's retainer. Third, Mr. Miles and Mr. Kreidel are aware that Berger owes a duty of loyalty and retains an attorney-client relationship exclusively with Debtor. [FN1]. Fourth, the identity of the borrowers under the Note has been disclosed, and Mr. Miles and Mr. Kreidel do not seek repayment from Debtor. Finally Mr. Berger has stated that Berger will not represent the interests of the lender and/or borrowers under the Note in Debtor's case and that Mr. Berger has no prior connection with these individuals.

Taking all of this into account, at this point in time, the Court concludes that Berger's employment as general bankruptcy counsel satisfies the pertinent *Kelton* factors.

III. CONCLUSION

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The Court will grant the Application to Employ, conditioned on no further payments being made to Berger through creditors or insiders of Debtor, without prior Court approval.

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

FOOTNOTE

FN 1. Although Berger has not addressed whether Mr. Miles, Ms. Li and Mr. Kreidel have independent legal counsel, i.e., to represent their respective interests in Debtor's case, given the facts of this case, the Court will not require that they have such counsel, in order for Berger to establish that it is eligible to be employed as general bankruptcy counsel.

Party Information

Debtor(s):

RT Development, LLC

Represented By
Michael Jay Berger

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1:15-12608 Stacie Silver

Chapter 11

#7.00 Debtor's Motion For Entry of Discharge and Entry of Final Decree

Docket 165

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):

Stacie Silver

Represented By
Andy C Warshaw
Richard L. Sturdevant

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1:20-11006 Lev Investments, LLC

Chapter 11

#8.00 Motion For Order Disallowing Claim No. 13 Filed By Michael Leizerovitz

Docket 319

Tentative Ruling:

Grant.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition. On August 10, 2020, Michael Leizerovitz filed proof of claim no. 13 (the "POC"), asserting an unsecured claim for \$1,316,441.36 against the estate. In an attachment to the POC, Mr. Leizerovitz explained that his claim against the estate is based on the following facts—

On August 3, 2018, Coachella Vineyard Luxury RV Park LLC ("RV Park") executed an unsecured promissory note, in the amount of \$400,000, in favor of Mr. Leizerovitz (the "\$400,000 Note"). RV Park also executed the *Cross-Collateral Promissory Note Secured by Deed of Trust*, in the amount of \$500,000, in favor of Mr. Leizerovitz (the "\$500,000 Note"). On February 6, 2019, RV Park executed an amendment of the \$400,000 Note, agreeing to secure the \$400,000 Note with the collateral securing the \$500,000 Note. On the same day, RV Park executed another instrument promising to pay Mr. Leizerovitz another \$50,000 (the "\$50,000 Note"). As such, as of February 6, 2019, Mr. Leizerovitz believes he was owed a principal balance of \$950,000, plus accrued interest, costs and fees, secured by real property.

The deed of trust securing the instruments above was junior to a deed of trust securing an obligation in favor of Debtor. After RV Park did not meet its obligations to Debtor, Debtor initiated foreclosure proceedings.

Subsequently, RV Park filed a lawsuit in state court; through the lawsuit, RV Park obtained a temporary restraining order precluding the foreclosure sale. However, the state court did not grant a request for a

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preliminary injunction. As a result, on November 6, 2019, the temporary restraining order dissolved.

On November 7, 2019, Debtor's foreclosure trustee conducted a foreclosure sale. Debtor was the successful bidder and acquired title to the real property. On November 8, 2019, Debtor recorded a Trustee's Deed. On May 29, 2020, Debtor recorded a rescission of the Trustee's Deed.

Around the time Debtor was conducting its foreclosure sale, RV Park was negotiating a sale of the real property which, if consummated, would have paid all claims asserted by Mr. Leizerovitz in full. However, as a result of Debtor's wrongful foreclosure, the proposed buyer terminated the proposed transaction and did not express any further interest in acquiring the real property. As a result of the wrongful foreclosure, Mr. Leizerovitz believes he will be unable to recover the amount he is owed.

Attachment to POC, pp. 1-3.

In support of the contention that RV Park was negotiating a sale of the real property, Mr. Leizerovitz attached a joint venture agreement (the "JVA"). POC, Exhibit H. The JVA is dated November 15, 2019 and signed by a representative of Global Finance GFM DOO, a representative of Global Finanz America, Inc (together, the "Global Finance Parties") and the president of RV Park. *Id.* Mr. Leizerovitz is not a party to the JVA. *Id.* Through the JVA, the parties to the JVA agreed that the Global Finance Parties would invest \$200 million to improve, over a period of seven years, the real property owned by RV Park. *Id.* The JVA is silent as to whether any of the funds would be used to pay off liens against the real property.

On May 24, 2021, Debtor filed a motion to disallow Mr. Leizerovitz's claim against the estate (the "Motion") [doc. 319]. In the Motion, Debtor contends that Mr. Leizerovitz has not provided credible evidence that, at the time Debtor initiated foreclosure proceedings, RV Park was negotiating a sale of the real property. As such, Debtor contends that Mr. Leizerovitz's claim that the foreclosure interfered with such a sale is not supported by evidence. In a declaration attached to the Motion, Debtor's principal also contends that Debtor was never informed of any agreement to sell or refinance the real property. Declaration of Dmitri Lioudkouski, ¶ 14.

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On June 9, 2021, Mr. Leizerovitz filed an opposition to the Motion (the "Opposition") [doc. 336]. In the Opposition, Mr. Leizerovitz asserts that: (A) Debtor did not provide sufficient evidence to shift the burden of proof to Mr. Leizerovitz; (B) the declaration of Abraham Gottlieb, attached to the Opposition (the "Gottlieb Declaration"), adequately supports Mr. Leizerovitz's claim; and (C) the parties are litigating these issues in an adversary proceeding before the Court [1:21-ap-01020-VK].

In the Gottlieb Declaration, Mr. Gottlieb, who is the manager of RV Park, states that, in November 2019, he had "an investor that was willing to refinance the [real property] and provide funds for the development of the RV park." Gottlieb Declaration, ¶ 4. Mr. Gottlieb further contends that, with the investment funds, "RV [Park] was going to payoff [Debtor] to prevent the foreclosure or buy the [real property] at the foreclosure sale," but was unable to because of the "early foreclosure" by Debtor. *Id.* Mr. Gottlieb also contends that, in 2018, the value of the real property was \$6.5 million; in support, Mr. Gottlieb attaches a partial lender/purchaser disclosure statement with a loan broker's opinion of value (the "Lender Disclosure Statement"). Gottlieb Declaration, ¶ 5.

Mr. Gottlieb also attaches a past declaration filed in connection with a state court action (the "Past Declaration"), asserting that the declaration sets forth the basis of Mr. Leizerovitz's claim. Gottlieb Declaration, Exhibit 1. In the Past Declaration, Mr. Gottlieb contends that Debtor: (A) did not fully fund the loan to RV Park; (B) failed to convey property in Lake Elsinore to RV Park; and (C) made an excessive payoff demand in connection with the foreclosure. Past Declaration, ¶¶ 4-13. On June 16, 2021, Debtor filed a reply to the Opposition [doc. 344].

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

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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). "If the creditor does not provide information or is unable to support its claim, then that 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." *In re Heath*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005).

Here, Mr. Leizerovitz bases his claim on a wrongful foreclosure theory. Specifically, Mr. Leizerovitz contends that Debtor's premature foreclosure, in violation of California Civil Code ("CCC") § 2924g(d), resulted in the Global Finance Parties rescinding the JVA, which would have paid Mr. Leizerovitz's claims in full. Pursuant to CCC § 2924g(d)—

The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for sale. A public declaration of postponement shall also set forth the new date, time, and place of sale and the place of sale shall be the same place as originally fixed by the trustee for the sale. No other notice of postponement need be given. However, the sale shall be conducted no sooner than on the seventh day after the earlier of (1) dismissal of the action or (2) expiration or termination of the injunction, restraining order, or stay that required postponement of the sale, whether by entry of an order by a court of competent jurisdiction, operation of law, or otherwise, unless the injunction, restraining order, or subsequent order expressly directs the conduct of the sale within that seven-day period. For purposes of this subdivision, the seven-day period shall not include the day on which the action is dismissed, or the day on which the injunction, restraining order, or stay expires or is terminated. If the sale had been scheduled to occur, but this subdivision precludes its conduct during that seven-day period, a new notice of postponement shall be given if the sale had been scheduled to occur during that seven-day period. The trustee shall maintain records of each postponement and the reason therefor.

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"This provision provides, in relevant part, that a foreclosure sale may not be conducted within seven days of the expiration or termination of an 'injunction, restraining order, or stay that required postponement of the sale.'" *Fung v. BSI Fin. Servs.*, 2018 WL 1569725, at *5 (N.D. Cal. Mar. 30, 2018) (citing CCC § 2924g(d)).

In the POC, Mr. Leizerovitz asserts that the injunction preventing the foreclosure sale dissolved on November 6, 2019. The seven-day stay under CCC § 2924g(d) would prevent Debtor from conducting a foreclosure sale until November 13, 2019. However, in this case, it appears Debtor conducted the foreclosure sale on November 7, 2019, one day after the expiration of the temporary restraining order. As such, the POC establishes a violation of CCC § 2924g(d). However, as discussed below, neither the POC nor the Opposition prove that Mr. Leizerovitz was damaged by this violation.

To successfully bring a wrongful foreclosure claim pursuant to California law, Mr. Leizerovitz must prove that: "(1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering." *Sciarratta v. U.S. Bank Nat'l Assn.*, 247 Cal.App.4th 552, 561–62 (Ct. App. 2016) (internal quotation omitted). "Mere technical violations of the foreclosure process will not give rise to a tort claim; the foreclosure must have been entirely unauthorized on the facts of the case." *Id.*

"In order to prove it was damaged by the irregularities in the foreclosure sale which dissuaded or prevented a higher bid, the junior lienor would have to produce a ready, willing and able buyer who would have paid the higher price but for the wrongful conduct. Otherwise, damages alleged would be speculative." *FPCI RE-HAB 01 v. E & G Invs., Ltd.*, 207 Cal.App.3d 1018, 1023 (Ct. App. 1989). "It is the burden of the party challenging the trustee's sale to prove such irregularity and thereby overcome the presumption of the sale's regularity." *Lona v. Citibank, N.A.*, 202 Cal. App. 4th 89, 105, 134 Cal. Rptr. 3d 622, 635 (2011).

In the Motion, Debtor does not dispute the violation of CCC § 2924g(d). However, Debtor challenges Mr. Leizerovitz's evidence in support of his claim for damages. In the POC, Mr. Leizerovitz supports his claim for damages by referencing the attached JVA, arguing that Debtor's premature foreclosure under CCC § 2924g(d) prevented the

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Global Finance Parties from performing under the JVA.

As set forth by Debtor, the JVA does not demonstrate that Mr. Leizerovitz suffered damages from the wrongful foreclosure. First, the JVA is dated November 15, 2019. The seven-day stay under CCC § 2924g(d) expired on November 13, 2019, i.e., prior to execution of the JVA. As such, even if Debtor had complied with CCC § 2924g(d), Debtor could have foreclosed on the subject property before RV Park and the Global Finance Parties executed the JVA.

To the extent Mr. Leizerovitz asserts that Debtor's premature foreclosure interfered with the pre-November 15, 2019 negotiations of the JVA, the testimony by Debtor's principal indicates that Debtor was unaware of any such negotiations. However, even if Debtor was aware of the negotiations, the JVA does not establish that the Global Finance Parties were a "ready, willing and able buyer" of the subject property. The JVA is silent as to whether the Global Finance Parties' investment would be used to pay off the liens against the subject property, such as Mr. Leizerovitz's lien. The JVA also does not establish that the Global Finance Parties would purchase the subject property; instead, through the JVA, the Global Finance Parties would invest \$200 million towards improvement of the subject property, such as by building a hotel, luxury RV parking facilities and a 100-unit apartment building. These terms do not indicate that the Global Finance Parties would have, for example, overbid Debtor at a foreclosure sale.

In light of the above, the Motion successfully shifts the burden of proof to Mr. Leizerovitz, who has the ultimate burden of persuasion on his claim. *Lundell*, 223 F.3d at 1039. Mr. Leizerovitz does not meet this burden. In the Opposition, Mr. Leizerovitz provides a declaration by Mr. Gottlieb, in which Mr. Gottlieb contends that "an investor" was willing to refinance the subject property. This testimony is hearsay. Mr. Leizerovitz has not provided a declaration by a representative of Global Finance Parties with personal knowledge about the purported transaction. In addition, even Mr. Gottlieb does not contend that the foreclosure caused the Global Finance Parties' decision to back out of the JVA; instead, Mr. Gottlieb merely testifies that "RV [Park] was unable to [pay off Debtor] because of the early foreclosure by [Debtor]." Gottlieb Declaration, ¶ 4.

The Past Declaration also does not serve as adequate proof of the validity of Mr. Leizerovitz's claim. Mr. Leizerovitz has not articulated how the testimony regarding funding of the loan to RV Park or the unrelated transaction related to the Lake Elsinore property impacted Mr. Leizerovitz's lien. With respect to the testimony regarding

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Debtor's excessive payoff demand, Mr. Gottlieb testified that Debtor's excessive demand prevented RV Park from finding investors willing to provide financing. However, once again, there is no evidence that, but for Debtor's allegedly excessive demand, an investor would have refinanced the subject property. Mr. Leizerovitz has not presented a declaration from a "ready, willing and able buyer who would have paid the higher price but for the wrongful conduct. Otherwise, damages alleged would be speculative." *FPCI RE-HAB 01*, 207 Cal.App.3d at 1023. Mr. Gottlieb's testimony is speculative.

Finally, Mr. Gottlieb testifies that, in 2018, the subject property was worth \$6.5 million. Notwithstanding the fact that Mr. Gottlieb is not the proper party to authenticate the Lender Disclosure Statement, the Lender Disclosure Statement does not qualify as competent evidence of the value of the property. The Lender Disclosure Statement does not identify the loan broker or set forth the loan broker's qualifications to estimate the value of the subject property. In addition, the Lender Disclosure Statement provides that "[a]n estimate of fair market value is to be determined by an independent appraisal," and that the broker must provide "objective data upon which the broker's estimate is based." Neither the Lender Disclosure Statement nor any other evidence provided by Mr. Leizerovitz contains any such objective data or an independent appraisal by a qualified appraiser. [FN1]. As such, the Lender Disclosure Statement does not prove the value of the subject property.

In light of the above, Mr. Leizerovitz has not met his burden of proving that he suffered damages from Debtor's premature foreclosure of the subject property. Consequently, the Court will disallow Mr. Leizerovitz's claim against the estate. [FN2].

III. CONCLUSION

The Court will grant the Motion.

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

FOOTNOTES

1. Moreover, the foreclosure occurred in November 2019. Even if the Lender Disclosure Statement proved the value of the property, the statement, dated in 2018, does not relate to the relevant time period.

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2. In the Opposition, Mr. Leizerovitz asks the Court to deny the Motion and adjudicate these issues in connection with adversary proceeding no. 1:21-ap-01020-VK. However, the issues in that adversary proceeding are different from the issues raised in the Motion, and this decision will not impact the substantive issues raised in the adversary proceeding.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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1:20-11006 Lev Investments, LLC

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#9.00 Motion For Order Disallowing Claim No. 5 Filed By FR, LLC

Docket 314

Tentative Ruling:

Grant.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition. On July 18, 2020, FR L.L.C. ("FR") filed proof of claim no. 5 against the estate (the "POC"), asserting a secured claim in the amount of \$195,621.39. FR indicated its claim was based on an investment, and secured by a "constructive trust" against Debtor's real property. As support for its claim, FR attached: (A) a statement of itemization; (B) a redacted bank account statement showing a deposit, from an unidentified source, of \$119,000; and (C) a buyer's/borrower's settlement statement from sale of real property (the "Closing Statement").

On June 5, 2020, FR removed a state court action against Debtor and other defendants to this Court (the "Adversary Proceeding") [1:20-ap-01060-VK]. On January 15, 2021, Plaintiff filed a second amended complaint (the "SAC") [1:20-ap-01060-VK, doc. 52]. Through the SAC, Plaintiff requested declaratory judgment that: (A) Debtor holds net sale proceeds from the sale of Debtor's real property (the "Sale Proceeds") in a resulting trust for the benefit of Plaintiff; (B) Plaintiff's interest in the Sale Proceeds is not property of Debtor's bankruptcy estate; and (C) Plaintiff is entitled to payment from the Sale Proceeds in an amount equal to the proportion of the amount Kevin Moda (Plaintiff's alleged assignor) allegedly made available, in order for Debtor to acquire title to the real property.

On February 16, 2021, Debtor filed a motion to dismiss the SAC (the "Motion to Dismiss") [1:20-ap-01060-VK, doc. 53]. On April 21, 2021, the Court held a hearing on the Motion to Dismiss. At that time, the Court issued a ruling granting the Motion to Dismiss without leave to amend (the "Dismissal Ruling") [1:20-ap-01060-VK, doc. 62].

On May 20, 2021, Debtor filed a motion to disallow FR's claim against the estate (the

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"Motion") [doc. 314]. Debtor supported the Motion with a declaration by Dmitri Lioudkouski, Debtor's manager (the "Lioudkouski Declaration"). In the Lioudkouski Declaration, Mr. Lioudkouski testifies that: (A) Mr. Lioudkouski is the only person with authority to cause Debtor to enter into any agreements, including financing agreements; (B) Mr. Lioudkouski never authorized Debtor to enter into any financial agreement or transactions with Mr. Moda or FR; and (C) Debtor never engaged in any business dealings with FR or Mr. Moda, or authorized a third party to do so. Lioudkouski Declaration, ¶¶ 5-6. Mr. Lioudkouski also testifies that Debtor has no record of any amounts which may be owed to FR or Mr. Moda. Lioudkouski Declaration, ¶ 7.

On June 10, 2021, FR filed an opposition to the Motion (the "Opposition") [doc. 340]. In support of the Opposition, FR provided a declaration by Kevin Moda, as the managing member of FR (the "Moda Declaration"). In the Moda Declaration, Mr. Moda contends that Yevgeniya Lisitsa approached him about investing in real estate, and represented to Mr. Moda that he would own a proportional equity interest in the real estate and share in the profits generated by the real estate. Moda Declaration, ¶ 1. Mr. Moda further states that he is "informed and believe[s]" that Ms. Lisitsa approached him on behalf of Debtor, and that Mr. Moda invested \$119,000 which Ms. Lisitsa used to acquire the real estate, on Debtor's behalf. Moda Declaration, ¶¶ 2-3. On June 16, 2021, Debtor filed a reply to the Opposition [doc. 343].

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.*

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(internal citations omitted). "If the creditor does not provide information or is unable to support its claim, then that 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." *In re Heath*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005).

Here, Debtor provided evidence that is, by probative force, equal to that of the allegations in FR's proof of claim. Specifically, Mr. Lioudkouski testified that is the only one with authority to bind Debtor to financing agreements or obligations, that he never entered into any such agreement with Mr. Moda or FR and that Debtor has no record of any such transaction with Mr. Moda or FR. Given the scant evidence in support of the POC (i.e., a redacted, unauthenticated account statement that does not identify FR or Mr. Moda as the depositor and the Closing Statement, which also does not identify FR or Mr. Moda anywhere in the statement), the testimony by Mr. Lioudkouski serves to shift the burden to prove the validity of its claim to FR.

The evidence provided by FR in connection with its Opposition does not meet this burden. The only evidence provided by FR to is the Moda Declaration. [FN1]. The Moda Declaration is inadequate to prove, by a preponderance of the evidence, that FR has a valid claim against the estate. In the Moda Declaration, Mr. Moda testifies only that *Ms. Lisitsa* approached him about investing in real property. This testimony does not demonstrate that *Debtor* or *the estate* is liable to Mr. Moda and/or FR.

Mr. Moda does not have personal knowledge about the remaining statements in the Moda Declaration. For instance, Mr. Moda's testimony that he is "informed and believe[s] that Ms. Lisitsa approached [Mr. Moda] on behalf of Debtor" lacks foundation and is not substantiated by a party with personal knowledge, such as Ms. Lisitsa. In addition, Mr. Moda would not have personal knowledge regarding whether "Ms. Lisitsa used [the funds] to acquire the [real property] on behalf of Debtor."

In the Opposition, FR contends that the Motion "creates a disputed material factual issue that should be decided at an evidentiary hearing." Opposition, p. 3. However, under *Campbell*, once the Motion shifted the burden of proof to FR, FR had an obligation to provide competent evidence via the Opposition. *Lundell*, 223 F.3d at 1039. FR did not provide any such evidence and, as a result, the Court does not need an evidentiary hearing to hold that FR did not meet its burden of proving the validity of its claim. FR's additional argument that it "can assert several legal theories to recovery payment from

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Debtor" also is unpersuasive. FR had an obligation to assert such theories, and support them with evidence, in an effort to satisfy its burden of proof in connection with its Opposition. FR did not, and FR's several hypothetical, unsupported claims against Debtor are not a basis to expend resources on an evidentiary hearing.

As conceded by FR, the Court already dismissed, through the Adversary Proceeding, FR's claims related to whether FR held a security interest in the Sale Proceeds and/or other assets of the estate. FR concedes that, in light of the dismissal of the Adversary Proceeding, it no longer has a secured claim against the estate. Through the Motion, Debtor successfully shifted the burden of proving the validity of FR's claim to FR. FR did not meet that burden, and the Court will disallow FR's unsecured claim against the estate.

III. CONCLUSION

The Court will grant the Motion.

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

FOOTNOTES

1. FR also attaches the unverified SAC. The allegations in the SAC do not hold any evidentiary value.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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1:21-10844 Michael Chulak

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#10.00 Status Conference re: Chapter 11, Subchapter V Case

Docket 1

***** VACATED *** REASON: Case converted on 6/2/21 [doc. 30].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Chulak

Represented By
Michael R Totaro

Trustee(s):

Andrew W. Levin (TR)

Pro Se

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#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1612717293>

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Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 271 7293

Password: 990576

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

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Tentative Ruling:

- NONE LISTED -

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1:20-11006 Lev Investments, LLC

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Adv#: 1:20-01117 Lev Investments, LLC v. Lisitsa et al

#1.00 Order to Show Cause why Lisa D. Angelo and Murchison & Cumming LLP Should Not Be Sanctioned in Accordance with 11 U.S.C. § 105(a), Federal Rules of Civil Procedure 26(c)(1) and 37, and/or LBR 7026-1(c) and 9011-3

fr. 6/2/21

Docket 44

Tentative Ruling:

The Court will award Plaintiff \$24,839.48 in attorneys' fees and costs, payable by Lisa D. Angelo, Esq. and Murchison & Cumming, LLP.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Plaintiff") filed a voluntary chapter 11, subchapter V petition. On December 9, 2020, Plaintiff filed a complaint against Yevgeniya Lisitsa and Lisitsa Law, Inc. ("Defendants"), initiating the above-captioned adversary proceeding.

On March 16, 2021, Plaintiff served on Citibank, N.A. a subpoena for production of records (the "Subpoena"). Declaration of Beth Ann R. Young ("Young Declaration") [doc. 35], ¶ 8. On April 8, 2021, Defendants filed a motion to quash the Subpoena (the "Motion to Quash") [doc. 24]. Concurrently with the Motion to Quash, Defendants filed a declaration by Lisa D. Angelo, Defendants' counsel (the "Angelo Declaration") [doc. 25]. In the Angelo Declaration, signed under penalty of perjury, Ms. Angelo stated—

Attached hereto as Exhibit B is a true and correct copy of a letter dated March 30, 2021 from L. Angelo to D. Golubchik. The purpose and contents of said letter was to "meet and confer" about the March 16th Subpoena and the documents Plaintiff requested therein. To date, counsel for Lev Investments, Inc. have not responded to my March 30th letter.

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As a result of Plaintiff's non-responsiveness, a stipulation by Local Bankruptcy Rule 7026-(C)(2)-(4) was not made possible and is not being concurrently filed with this motion. Defendants are willing to file a subsequent stipulation if the court requests the parties do so. In the meantime and because time is of the essence with respect to the outstanding subpoena that was served upon Citibank, N.A. more than three weeks ago, Defendants had no choice but to file their motion to quash and/or protective order at this time.

Angelo Declaration, ¶¶ 4-5. In the letter attached as Exhibit B (the "Letter"), Ms. Angelo requested that Plaintiff withdraw the Subpoena, and provided *three days* for Plaintiff to respond to Ms. Angelo. Angelo Declaration, ¶ 4, Exhibit B.

On April 21, 2021, weeks after filing the Motion to Quash, Plaintiff and Defendants filed a stipulation in accordance with Local Bankruptcy Rule ("LBR") 7026-1(c) (the "Stipulation") [doc. 29]. On April 22, 2021, Plaintiff filed the *Motion to Request an Order to Show Cause Why (1) Sanctions Should Not be Imposed Against Defendants and Their Attorney Lisa Angelo and Firm of Record Murchison & Cummings LLP and (2) Defendants' Motion to Quash Should Not be Stricken* (the "OSC Motion") [doc. 34]. Through the OSC Motion, and in accordance with the contempt procedures set forth in LBR 9020-1, Plaintiff requested issuance of an Order to Show Cause. Plaintiff based its request for an Order to Show Cause on its assertion that Ms. Angelo: (A) did not comply with the meet and confer requirement of LBR 7026-1; and (B) fabricated the email to which the Letter was attached. Concurrently with the OSC Motion, Plaintiff filed two declarations in support of its request for issuance of an Order to Show Cause [docs. 35, 36].

Federal Rule of Civil Procedure ("Rule") 26(c)(1) requires that a party filing a motion for a protective order "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." (emphasis added). In addition, pursuant to LBR 7026-1(c)(2), "[p]rior to the filing of any motion relating to discovery, the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, the opposing party must meet with the moving party within 7 days of service upon the opposing party of a letter requesting such meeting and specifying the terms of the discovery order to be sought." Rule 37 and

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LBR 9011-3 provide for sanctions against an attorney that fails to comply with Rule 26 or the LBRs, respectively.

Pursuant to these authorities, on May 6, 2021, the Court issued an Order to Show Cause why Ms. Angelo and Murchison & Cumming LLP ("Murchison"), Ms. Angelo's law firm, should not be sanctioned in accordance with 11 U.S.C. § 105(a), Rule 26(c)(1) and 37 and LBR 7026-1(c) and 9011-3 (the "OSC") [doc. 44]. On May 26, 2021, Ms. Angelo and Murchison filed a response to the OSC (the "OSC Response") [doc. 56]. Ms. Angelo and Murchison also filed declarations in support of the OSC Response (the "Declarations") [docs. 57, 58].

On June 2, 2021, the Court held a hearing on the Motion to Quash and the OSC. At that time, the Court issued an oral ruling (the "Oral Ruling"): (A) denying the Motion to Quash on the basis that binding Ninth Circuit law did not support Defendants' position; and (B) holding that Ms. Angelo and Murchison violated Rule 26(c)(1) and LBR 7026-1(c). With respect to the violation of Rule 26(c)(1) and LBR 7026-1(c), the Court held that Ms. Angelo did not meet and confer with Plaintiff in good faith because Ms. Angelo: (A) did not provide adequate time for Plaintiff to respond to the Letter and did not follow up before filing the Motion to Quash; (B) demanded that Plaintiff withdraw the Subpoena without supporting the request with law; and (C) did not timely file a stipulation as required by LBR 7026-1(c). The Court did not make any findings regarding the authenticity of the email containing the Letter; in fact, the Court explicitly noted that the Oral Ruling was not based on those issues.

On June 14, 2021, the Court entered a scheduling order [doc. 70], instructing Plaintiff to file a declaration regarding the attorneys' fees and costs incurred as a result of Ms. Angelo's and Murchison's violation of Rule 26(c)(1) and LBR 7026-1(c). The Court also provided a deadline for Ms. Angelo and Murchison to file a response regarding the reasonableness of attorneys' fees and costs requested by Plaintiff.

On June 17, 2021, Plaintiff filed a summary of attorneys' fees and costs Plaintiff contends it incurred in connection with the OSC (the "Summary") [doc. 72]. [FN1]. On June 25, 2021, Ms. Angelo and Murchison filed their response to the Summary (the "Response") [doc. 73]. [FN2].

II. ANALYSIS

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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). Courts in the Ninth Circuit 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. *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.

"The time to be compensated in an award must be 'reasonable in relation to the success achieved.'" *McGinnis v. Kentucky Fried Chicken of California*, 51 F.3d 805, 810 (9th Cir. 1994) (quoting *Hensley*, 461 U.S. at 434). If the plaintiff achieved only partial or limited success, then the court may 'reduce the award to account for the limited success.'" *Stonebrae, L.P. v. Toll Bros., Inc.*, 2011 WL 1334444, at *18 (N.D. Cal. Apr. 7, 2011) (quoting *Hensley*, 461 U.S. at 436-37). For instance, in *PSM Holding*, the court reduced the movants' fees by 30% "to reflect [the movants'] limited success on" certain matters. *PSM Holding*, 2015 WL 11652518, at *25. Similarly, in *Rodriguez v. Barrita, Inc.*, 53 F.Supp.3d 1268 (N.D. Cal. 2014), the court reduced the lodestar by 20% because the movant "could have achieved the same result without pursuing" many of the motions that were filed.

In the Oral Ruling, the Court held that Ms. Angelo and Murchison violated Rule 26(c) and LBR 7026-1(c) by failing to meet and confer with Plaintiff in good faith. As discussed above, this holding was not based on Plaintiff's allegation that Ms. Angelo (or another employee of Murchison) fabricated the email containing the Letter. Because the arguments related to the authenticity of the email were unnecessary to the Oral Ruling, and because Plaintiff could have requested discovery sanctions through its opposition to the Motion to Quash (as opposed to initiating contempt proceedings), the Court will not award the full amount of attorneys' fees associated with the OSC Motion.

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CONT... Lev Investments, LLC

Chapter 11

In Exhibit B to the Summary, Plaintiff requests \$21,426 in attorneys' fees related to the OSC Motion. Given that the OSC Motion was based partly on the violation of LBR 7026-1(c) and partly on the issues about the authenticity of the email, the Court will award 50% of the total amount requested by Plaintiff, i.e., \$10,713.

As to the billing entries related to the Motion to Quash, attached as Exhibit A to the Summary, the Court will not award the fees billed for the following entries, because they also involve work on the email issue identified above and were unnecessary:

Date	Attorney	Entry	Amount
4/11/21	RPS	Draft and review email correspondence to opposing counsel Lisa Angelo about providing the .eml file of the alleged meet and confer letter and including all plaintiff's counsel on case correspondence	\$310.00
4/12/21	RPS	Analysis of email correspondence with opposing counsel Lisa Angel, Dan Longo, and assistant Chris Thomas about providing the metadata for the alleged meet and confer letter	\$62.00
4/14/21	RPS	Analysis of email correspondence to opposing counsel Lisa Angelo about the request for the purported March 30 email metadata	\$62.00
4/15/21	BRY	Follow up with atty Longo re production of metadata and exchange emails thereon	\$186.00
4/15/21	RPS	Analysis of email correspondence with opposing counsel Dan Longo about the request for the metadata for the alleged March 30, 2021 email on the motion to quash meet and confer	\$62.00

Plaintiff also requests a total of \$3,472, or 5.6 hours, billed by Richard P. Steelman, Jr. for drafting the Stipulation. This amount of time appears to be excessive. The Court will allow 3.5 hours for this task.

Finally, the Court will not allow the fees set forth below, as they arise from duplicative efforts by multiple senior-level attorneys, including more than one of Plaintiff's attorneys attending a hearing:

Date	Attorney	Entry	Amount
5/5/21	DBG	Analysis of order advancing hearing on motion to quash	\$63.50
5/26/21	DBG	Analysis of Lisitsa reply re: motion to quash	\$63.50

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5/26/21	DBG	Preparation of objection to reply as improper filing	\$63.50
6/1/21	DBG	Research re: Court tentative on motion to quash Citibank subpoena	\$63.50
6/2/21	RPS	Attend hearing on Defendants' motion to quash the Citibank subpoena	\$372.00

III. CONCLUSION

The Court will award Plaintiff \$22,692.50 in attorneys' fees and \$2,146.98 in costs, for a total of \$24,839.48.

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

FOOTNOTES

1. In the Summary, Plaintiff requests an order preventing Defendants' insurance carrier from reducing the policy limits based on the award of attorneys' fees and costs. This issue is not properly before the Court and, in any event, Ms. Angelo notes, in the Response, that she and Murchison do not intend to have Defendants' insurer pay for the award of sanctions.
2. In the Response, Ms. Angelo and Murchison argue that the Court should not award attorneys' fees and costs because Ms. Angelo did not willfully disobey a court order or "perpetrate fraud upon the court." However, the Court's award is based on specific provisions of the Federal Rules of Civil Procedure and Local Bankruptcy Rules referenced above, i.e. Rules 26 and 37 and LBR 7026-1 and 9011-3. Pursuant to those Rules and LBRs, Ms. Angelo and/or Murchison are subject to sanctions. First, the Court denied Defendants' Motion to Quash, which was not substantially justified. Second, at the hearing on the OSC, the Court held that Ms. Angelo violated Rule 26(c) and LBR 7026-1 by failing to meet and confer in good faith to resolve the discovery dispute and that, without substantial justification, Ms. Angelo also made an improper certification that she had made the required effort to meet and confer in good faith. These determinations are sufficient to subject Ms. Angelo and Murchison to sanctions, i.e., paying Plaintiff's reasonable attorney's fees and costs.

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CONT... Lev Investments, LLC

Chapter 11

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Yevgeniya Lisitsa

Represented By
Lisa D Angelo
J Scott Bovitz

Lisitsa Law, Inc.

Represented By
Lisa D Angelo
J Scott Bovitz

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik
Richard P Steelman Jr
Beth Ann R Young

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, July 7, 2021

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9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1601613898>

Meeting ID: 160 161 3898

Password: 818905

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 161 3898

Password: 818905

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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Chapter

Tentative Ruling:

- NONE LISTED -

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Hearing Room 301

9:30 AM

1:21-10403 Teresa Louise Noto

Chapter 13

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

fr. 4/7/21

Docket 10

Tentative Ruling:

Grant.

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

April 7, 2021 Ruling

The Court will grant the motion on an interim basis up to date of the continued hearing. The Court will continue this hearing to **July 7, 2021 at 9:30 a.m.**

I. BACKGROUND

On March 10, 2021, Teresa Louise Noto ("Debtor") filed a voluntary chapter 13 petition.

A. The Deed of Trust and the Granada Property

Prior to filing her most recent chapter 13 petition, on February 3, 2006, Debtor executed a promissory note in the principal sum of \$310,000.00 (the "Note"), which was made payable to Downey Savings and Loan Association ("Downey"). 1:14-bk-15350-VK (the "First Case"), doc. 38, Exh. 1. The Note is secured by a deed of trust (the "Deed of Trust") encumbering residential real property located at 10828 Aqueduct Avenue, Granada Hills, California 91344 (the "Granada Property"). *Id.*, at Exh. 2. On February 9, 2006, the Deed of Trust was recorded in the Los Angeles County Recorder's Office. *Id.*

On May 20, 2013, Downey recorded an assignment deed of trust in the Los Angeles County Recorder's Office, transferring its interest in the Granada Property to U.S. Bank.

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CONT... Teresa Louise Noto
First Case, doc. 38, Exh. 3.

Chapter 13

B. The First Case

On November 30, 2014, Debtor filed a voluntary chapter 13 petition, initiating the First Case. In her petition, Debtor listed the Granada Property as her residence and, in her schedule A, Debtor listed an interest in the Granada Property. First Case, docs. 1, 10.

On March 25, 2015, the Court entered an order confirming Debtor's chapter 13 plan. First Case, doc. 29 (the "First Case Plan"). In the First Case Plan, Debtor was to make plan payments in the amount of \$884.00 for 60 months, which would provide for payment of 100% of allowed nonpriority unsecured claims.

On May 5, 2017, based on Debtor's failure to make seven (7) postpetition postconfirmation deed of trust payments, the Court entered an order granting U.S. Bank's motion for relief from stay. First Case, doc. 42.

On September 26, 2017, the chapter 13 trustee filed a motion to dismiss the First Case based on delinquent plan payments in the amount of \$3,536.00 (the "Motion to Dismiss"). First Case, doc. 44. On January 24, 2018, the Court entered an order granting the Motion to Dismiss and dismissing the First Case. First Case, doc. 46.

C. The Second Case

On October 21, 2020, Debtor filed another chapter 13 petition, initiating case 1:20-bk-11888-VK (the "Second Case").

On November 3, 2020, Debtor filed her schedules and Statement of Financial Affairs. Second Case, doc. 14. In her schedule A, Debtor listed an interest in the Granada Property with a fair market value of \$575,000.00. In her schedule C, Debtor claimed a homestead exemption in the amount of \$175,000.00.

In her schedule D, Debtor indicated that the Granada Property is encumbered by: (1) a first position deed of trust to Rushmore Loan Management Service, loan servicer for U.S. Bank, in the amount of \$362,788.00; and (2) a second position deed of trust to Green Tree Servicing LLC in the amount of \$35,000.00. In her schedule E/F, Debtor listed no priority unsecured claims and listed aggregate nonpriority unsecured claims in the

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CONT... Teresa Louise Noto
amount of \$30,094.00.

Chapter 13

In her schedules I and J, Debtor listed her monthly income as \$2,790.96 and her monthly expenses as \$2,451.51, leaving a net monthly income of \$339.45.

On November 3, 2020, Debtor filed a proposed chapter 13 plan (the "Second Case Plan"). Second Case, doc. 15. In the Second Case Plan, Debtor proposed plan payments in the amount of \$340.00 from months 1 through 12, then \$1,500.00 from months 13 through 60; this would pay approximately 31% of nonpriority unsecured claims. The Second Case Plan would pay \$50,117.59 in arrears to Rushmore Loan Management Service.

On November 19, 2020, U.S. Bank filed claim 3-2, asserting a claim secured by the Deed of Trust in the amount of \$364,041.64, with prepetition arrears in the amount of \$49,981.66. Second Case, claim 3-2. On December 23, 2020, U.S. Bank filed an objection to the Second Case Plan (the "U.S. Bank Objection"). Second Case, doc. 25. In its Objection, U.S. Bank asserted that the Second Case Plan was infeasible because Debtor lacking sufficient disposable income to make step-up plan payments. Second Case, doc. 25.

The chapter 13 trustee also filed objections to confirmation of the Second Case Plan, noting, among other things, that Debtor, at that time, may not have been entitled to a \$175,000 homestead exemption and that the Second Case Plan may be infeasible. The chapter 13 trustee stated that Debtor should "file [a] declaration with court explaining how will increase plan payment from \$340 to \$1,500 in month 13." Second Case, doc. 22.

On January 8, 2021, Debtor filed a Declaration that she had made three postpetition deed of trust payments to U.S. Bank, representing the payments due on November 1, 2020, December 1, 2020 and January 1, 2021. Second Case, doc. 28.

On February 22, 2021, Debtor filed a notice of non-opposition to the U.S. Bank Objection. Second Case, doc. 30. On March 11, 2021, the Court entered an order dismissing the Second Case. Second Case, doc. 31.

D. The Pending Chapter 13 Case

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CONT... Teresa Louise Noto

Chapter 13

On March 10, 2021, Debtor filed another chapter 13 petition, initiating this case.

On March 15, 2021, Debtor filed a motion to continue the automatic stay under 11 U.S.C. § 362 (the "Motion") [doc. 10]. Debtor states that, because her income was insufficient to propose a 100% plan, Debtor acquiesced to dismissal of the Second Case. Declaration of Teresa Louise Noto, attached to the Motion, doc. 12, ¶ 9–10. Debtor also represents that she intends to propose a feasible chapter 13 plan based on her current disposable income, as well as potential future sources of income, such as renting rooms in the Granada Property. *Id.*, at ¶ 11–12.

On March 24, 2021, U.S. Bank filed an opposition to the Motion (the "Opposition") [doc. 14]. In the Opposition (which is not supported by a declaration), U.S. Bank contends that Debtor filed her pending case in bad faith because: (1) Debtor filed the pending case on the same day that the Second Case was dismissed; (2) Debtor failed to make mortgage payments between January 2021 to March 2021; (3) Debtor has yet to file her schedules or chapter 13 plan in the pending case; and (4) Debtor has not shown that her financial situation has significantly changed to ensure plan feasibility and performance.

On March 24, 2021, Debtor filed her schedules and Statement of Financial Affairs [doc. 18]. In her schedule A, Debtor lists an interest in the Granada Property with a fair market value of \$642,700.00. In her schedule C, Debtor claims a homestead exemption in the amount of \$243,658.36 (based on a substantial increase in the statutory homestead exemption).

In her schedule D, Debtor indicates that the Granada Property is encumbered by: (1) a first position deed of trust to Rushmore Loan Management Service, loan servicer for U.S. Bank, in the amount of \$364,041.64; and (2) a second position deed of trust to Green Tree Servicing LLC in the amount of \$35,000.00. In her schedule E/F, Debtor lists no priority unsecured claims and lists aggregate nonpriority unsecured claims in the amount of \$30,094.00.

In her schedule I, Debtor states that she is a senior accounting clerk, where she has been employed for the last 21 years, that her spouse is disabled and collects Social Security, and that Debtor has a 12-year old child.

In her schedules I and J, Debtor sets forth monthly income of \$3,215.43 and monthly

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CONT...

Teresa Louise Noto

Chapter 13

expenses of \$2,451.51, leaving a net monthly income of \$763.92. Since the Second Case, the income of Debtor and her spouse has not materially changed. The primary difference is Debtor's net monthly income, in comparison with her net income in the Second Case, arises from a reduction in Debtor's payroll deductions.

On March 24, 2021, Debtor filed a proposed chapter 13 plan (the "Third Case Plan") [doc. 15]. In the Third Case Plan, Debtor proposes to make plan payments in the amount of \$765.00 from months 1 through 12, then \$1,555.00 from months 13 through 60, which Debtor estimates will pay 52% of nonpriority unsecured claims. The Third Case Plan provides for payment of \$49,982.00 in arrears to Rushmore Loan Management Service.

II. 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. The presumption may be rebutted by "clear and convincing" evidence to the contrary.

In the Motion, Debtor states that she agreed to dismissal of the Second Case because she was unable to propose a feasible chapter 13 plan, given that her homestead exemption was significantly less and her income was insufficient to propose a plan which would pay 100% of nonpriority unsecured claims.

In her pending case, Debtor's monthly income is \$3,215.43 and her monthly expenses are \$2,451.51, leaving a net monthly income of \$763.92. Debtor further states that she intends to rent out rooms in the Granada Property to generate additional income.

Like in the Second Case, despite her significantly increased homestead exemption, Debtor's proposed chapter 13 plan may remain infeasible. Debtor has not yet sufficiently demonstrated how she can make step-up plan payments in the amount of \$1,555.00.

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**CONT... Teresa Louise Noto
III. CONCLUSION**

Chapter 13

In light of the foregoing, the Court will grant the Motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **July 7, 2021 at 9:30 a.m.**

Prior to the continued hearing, Debtor must pay: (1) her April 2021, May 2021 and June 2021 deed of trust payments in the amount of \$1,716.54; and (2) her April 2021, May 2021 and June 2021 plan payments in the amount of \$765.00 as stated in the Third Case Plan [doc. 15].

No later than July 2, 2021, Debtor must file and serve on Rushmore Loan Management Service: (1) a completed and substantiated Declaration Setting Forth Postpetition, Preconfirmation Deed of Trust Payments Official Form F 3015-1.4 to demonstrate that she made her required post-petition deed of trust payments; (2) a separate declaration with evidence that she made her April 2021, May 2021 and June 2021 Third Case Plan payments; and (3) a separate declaration with evidence demonstrating that Debtor has received, or made progress to obtain, rental income from the Granada Property.

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

Party Information

Debtor(s):

Teresa Louise Noto

Represented By
Nima S Vokshori

Movant(s):

Teresa Louise Noto

Represented By
Nima S Vokshori

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:21-10754 Ronald Albert Contreras

Chapter 7

#2.00 Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC.
VS
DEBTOR

Docket 8

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Ronald Albert Contreras

Represented By
Daniel King

Movant(s):

Santander Consumer USA Inc.

Represented By
Sheryl K Ith

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CONT... Ronald Albert Contreras

Chapter 7

Trustee(s):

Diane C Weil (TR)

Pro Se

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Hearing Room 301

9:30 AM

1:21-10878 Scott Carl St. Peter

Chapter 11

#3.00 Motion for relief from stay [UD]

HARRY DOT, LLC
VS
DEBTOR

Docket 17

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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Party Information

Debtor(s):

Scott Carl St. Peter

Represented By
Lionel E Giron

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CONT... Scott Carl St. Peter

Chapter 11

Movant(s):

Harry Dot, LLC

Represented By
Michael A Cisneros

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1:30 PM

1:20-10910 Thomas A Perez

Chapter 7

Adv#: 1:20-01067 ZAMORA v. Perez

- #4.00** 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; 12/16/20; 4/21/21

Docket 1

Tentative Ruling:

In light of the plaintiff's status report [doc. 23], the Court will continue this status conference to **1:30 p.m. on September 15, 2021**, to provide the parties an opportunity to finalize their settlement agreement and obtain approval of the agreement by the Court. Unless the parties stipulate to dismiss this adversary proceeding, no later than **September 1, 2021**, the parties must file a joint status report updating the Court on the status of their settlement agreement.

Appearances on July 7, 2021 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

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CONT... Thomas A Perez

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:21-01020 Lev Investments, LLC v. Feygenberg et al

#5.00 Status conference re complaint objecting to claim and counterclaims

Docket 1

Tentative Ruling:

If the defendants are able to serve notice of the hearing no later than **July 7, 2021**, the Court will set the defendants' motion to dismiss [doc. 5] for hearing at **2:30 p.m. on July 28, 2021**. The Court also will continue this status conference to the same time and date.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Ruvyn Feygenberg

Pro Se

Michael Leizerovitz

Pro Se

Sensible Consulting and

Pro Se

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

1:30 PM

1:20-11850 Mariyan Khosravizadeh

Chapter 7

Adv#: 1:21-01005 US OPPS LLC, an Oregon Limited Liability Company v. Khosravizadeh et

#6.00 Status conference re: complaint for non-dischargeability of debt
11 U.S.C. § 523(a)(2)(A); (a)(6), and of discharge 11 U.S.C. § 727(a)(2), (4);
(a)(3); (a)(4)(A)

fr. 3/24/21; 5/5/21

Docket 1

Tentative Ruling:

The parties have not filed any updates regarding the status of their settlement agreement and/or the status of filing a notice regarding the dismissal of claims under 11 U.S.C. § 727, as discussed by the Court at the prior status conference. The parties should be prepared to discuss these issues.

5/5/2021 Tentative:

When do the parties anticipate that they can finalize their settlement agreement?

Given that the complaint includes claims under 11 U.S.C. § 727, if the parties intend to dismiss this adversary proceeding in connection with their settlement agreement, the plaintiff must provide notice in accordance with Federal Rule of Bankruptcy Procedure 7041. After the parties finalize their settlement agreement, the plaintiff must file and serve a notice on the U.S. Trustee, the chapter 7 trustee and all creditors (the "Notice"). The Notice must include a 14-day deadline by which a party in interest may substitute into this action, and inform the parties in interest that, unless there is a substitution, this adversary proceeding will be dismissed. The Court will not dismiss this adversary proceeding unless there is a properly filed and served Notice.

Party Information

Debtor(s):

Mariyan Khosravizadeh

Represented By
Stephen L Burton

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CONT... Mariyan Khosravizadeh

Chapter 7

Defendant(s):

Mariyan Khosravizadeh Pro Se

Does 1-100 Pro Se

Plaintiff(s):

US OPSS LLC, an Oregon Limited Represented By
Jason D Ahdoot

Trustee(s):

David Keith Gottlieb (TR) Pro Se

**United States Bankruptcy Court
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Wednesday, July 7, 2021

Hearing Room 301

1:30 PM

1:21-10161 Julia M. Arreygue

Chapter 7

Adv#: 1:21-01022 Arreygue v. Higher Education Loan Authority of the State of Mi

#7.00 Status conference re: complaint

Docket 1

Tentative Ruling:

In light of the plaintiff's status report [doc. 5], the Court will continue this status conference to provide the plaintiff an opportunity to substitute the proper party in interest as the defendant. The Court will continue this status conference to **1:30 p.m. on August 25, 2021**. No later than **August 11, 2021**, the plaintiff and substituted defendant must file and serve a joint status report.

Appearances on July 7, 2021 are excused.

The Court will prepare the order.

Party Information

Debtor(s):

Julia M. Arreygue

Represented By
Michael Rice

Defendant(s):

Higher Education Loan Authority of

Pro Se

Plaintiff(s):

Julia Arreygue

Represented By
Michael Rice

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 8, 2021

Hearing Room 301

10:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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).

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Password: 903918

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Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

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Password: 903918

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

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CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Thursday, July 8, 2021

Hearing Room 301

10:30 AM

1:20-11653 Altra Mortgage Capital LLC

Chapter 11

#1.00 Second and Final Application for Compensation and Reimbursement of Expenses of Michael Jay Berger, Debtor's Attorney

Docket 74

Tentative Ruling:

The Law Offices of Michael Jay Berger ("Applicant"), counsel to the debtor and debtor in possession – based on the Court's previous order for interim fees [doc. 55], Applicant is authorized to receive \$18,029.50 in fees and \$754.91 in reimbursement of expenses pursuant to 11 U.S.C. § 330, for the period between September 11, 2020 through January 31, 2021, on a final basis. In addition, the Court will approve fees in the amount of \$4,744.50 and reimbursement of expenses in the amount of \$123.64 pursuant to 11 U.S.C. § 330, for the period between February 1, 2021 through May 26, 2021.

In accordance with Applicant's agreement with the debtor, for allowed, unpaid fees and expenses, Applicant may receive up to \$6,000.00.

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

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

Party Information

Debtor(s):

Altra Mortgage Capital LLC

Represented By
Michael Jay Berger

Movant(s):

Altra Mortgage Capital LLC

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
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Thursday, July 8, 2021

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#2.00 Confirmation hearing re first amended chapter 11 plan of reorganization and adequacy of related disclosure statement

Stip to continue filed 7/6/21

Docket 175

***** VACATED *** REASON: Order approving stip entered 7/8/21.
Hearing continued to 8/5/21 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
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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; 8/13/20; 10/8/20; 11/5/20(stip); 12/17/20; 2/4/21;
3/25/21, 4/8/21; 5/20/21

Stip to continue filed 7/6/21

Docket 1

***** VACATED *** REASON: Order approving stip entered 7/8/21.
Hearing continued to 8/5/21 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
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Thursday, July 8, 2021

Hearing Room 301

1:00 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#4.00 Order to show cause why this case should not be dismissed or converted to one under chapter 7

Docket 81

Tentative Ruling:

Given that the debtor timely filed its May 2021 monthly operating report [doc. 105], proposed chapter 11 plan [doc. 117] and related disclosure statement [doc. 116], the Court will discharge its Order to Show Cause [doc. 81].

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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1:00 PM

1:20-11237 BGS WORKS, INC.

Chapter 11

#5.00 Status conference re: chapter 11 case

fr. 9/10/20; 4/22/21; 6/3/21

Docket 1

Tentative Ruling:

Proposed dates and deadlines regarding "Debtor's Disclosure Statement Describing Debtor's Chapter 11 Plan of Reorganization," filed on July 1, 2021

Hearing to consider approval of the proposed disclosure statement: **1:00 p.m. on August 26, 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: **July 8, 2021.** 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: **August 12, 2021.**

Deadline to file and serve any reply to any objections to Court's approval of disclosure statement: **August 19, 2021.**

Status Conference to be continued to **August 26, 2021 at 1:00 p.m.**

The debtor must submit an order incorporating the above dates, times and deadlines within seven (7) days.

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By

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CONT... BGS WORKS, INC.

Matthew D. Resnik

Chapter 11

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1:00 PM

1:21-10005 JANA, LLC

Chapter 11

#6.00 Order to show cause why this case should not be dismissed or converted to one under chapter 7

Docket 76

Tentative Ruling:

See calendar no. 7.

Party Information

Debtor(s):

JANA, LLC

Represented By
Matthew Abbasi

**United States Bankruptcy Court
Central District of California
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Thursday, July 8, 2021

Hearing Room 301

1:00 PM

1:21-10005 JANA, LLC

Chapter 11

#7.00 Status conference re: chapter 11 petition

fr. 2/18/21; 6/17/21

Docket 1

Tentative Ruling:

Pursuant to 11 U.S.C. § 1112(b)(1) and (4)(E) and (J), the Court will dismiss this case.

On February 19, 2021, the Court entered an order setting June 1, 2021 as the deadline to file a proposed chapter 11 plan and related disclosure statement [doc. 42]. On June 9, 2021, the Court entered an order extending the deadline to file the proposed chapter 11 plan and disclosure statement to June 23, 2021 [doc. 74]. On June 17, 2021, the Court issued an order to show cause why this cause should not be dismissed or converted to chapter 7 [doc. 76].

Contrary to the Court's order, the debtor has not timely filed its proposed chapter 11 plan and related disclosure statement by the continued deadline of June 23, 2021.

Given this failure, the Court finds that there is "cause" to dismiss or convert this case under 11 U.S.C. § 1112(b). "[T]he Code contains a non-exclusive list of examples of cause in § 1112(b)(4)." *In re Serron Investments*, 2012 WL 2086501, at *5 (B.A.P. 9th Cir. June 8, 2012); *In re Mense*, 509 B.R. 269 (Bankr. C.D. Cal. 2014) ("Cause" is defined in § 1112(b)(4), but the list contained in § 1112(b)(4) is illustrative, not exhaustive.").

Section 1112(b) requires a two-step analysis, "[f]irst, 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) (quoting *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)). Regarding the second prong, "the court must consider the interest of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 960 (9th Cir.

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CONT... JANA, LLC
2009).

Chapter 11

Here, because the debtor failed to comply with the Court's order to file a proposed chapter 11 plan and disclosure statement, there is cause to dismiss or convert the case pursuant to 11 U.S.C. § 1112(b)(1) and (4)(E) and (J).

Furthermore, it appears that dismissal of this chapter 11 case is in the best interest of creditors and the estate. Based on the debtor's own appraisal report, dated March 25, 2021 [doc. 84, Exh. D], the debtor's real property located at 10 Stagecoach Road, Bell Canyon, California 91307 (the "Property"), which is the debtor's only significant asset, has a fair market value of \$510,000.00. Based on two separate repair estimations [doc. 84, docs. D, E], the cost to rebuild the foundation of the Property ranges from \$555,600.00 to \$886,057.00. The debtor lacks the financial resources required to repair the Property.

As indicated in the debtor's schedule D, the Property is encumbered by a single deed of trust in favor of PS Funding, securing a claim in the amount of \$1,139,391.00 [doc. 1]. If the debtor's case is converted to one under chapter 7, there would be insufficient assets that could be administered for the benefit of any unsecured creditors.

The Court will prepare the order.

Party Information

Debtor(s):

JANA, LLC

Represented By
Matthew Abbasi

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1:21-10878 Scott Carl St. Peter

Chapter 11

#8.00 U.S. Trustee Motion to dismiss or convert case Under 11 U.S.C. § 1112(b)

Docket 19

Tentative Ruling:

Pursuant to 11 U.S.C. § 1112(b)(1) and (4)(C), (F), (H) and (K), the Court will dismiss this case with a 180-day bar to the debtor being a debtor in another bankruptcy case.

I. BACKGROUND

On May 17, 2021, Scott Carl St. Peter ("Debtor") filed a voluntary chapter 11 petition. This is Debtor's third bankruptcy case in less than three years. Debtor had previously filed two chapter 13 petitions in 2019; Debtor did not receive a discharge for the reasons outlined below.

A. Debtor's First Bankruptcy Case

On February 1, 2019, the United States District Court entered a judgment in favor of the United States of America (the "United States") against Debtor in the amount of \$470,110.91, plus additional costs, and an order of sale (together, the "Judgment") against residential real property located at 590 North Daisy Avenue, Pasadena, California 91107 (the "Pasadena Property") [*Joinder of the United States of America to the United States Trustee's Motion to Dismiss or Convert Case Under 11 U.S.C. § 1112(b)* (the "Joinder"), doc. 33, Exh. A, Judgment].

On March 28, 2019, Debtor filed a voluntary chapter 13 petition, initiating case no. 2:19-bk-13472-NB (the "First Case"). On April 2, 2019, the United States District Court filed an amended Judgment (the "Amended Judgment"). Joinder, Exh. B, Amended Judgment.

On May 7, 2019, the Court entered an order dismissing the First Case based on Debtor's failure to appear at the 341(a) meeting. First Case, doc. 13. Based on the Amended Judgment, the Internal Revenue Service Property Appraisal and Liquidation

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CONT... Scott Carl St. Peter

Chapter 11

Specialty ("IRS PALS") scheduled the sale of the Pasadena Property for June 25, 2019. Declaration of Melissa Briggs ("Briggs Decl.") [doc. 33], attached to the Joinder, ¶ 4.

B. Debtor's Second Bankruptcy Case

On June 18, 2019, Debtor filed another voluntary chapter 13 petition, initiating case no. 2:19-bk-17089-VZ (the "Second Case"). On February 24, 2020, the Court entered an order [Second Case, doc. 36] granting the chapter 13 trustee's motion to dismiss [Second Case, doc. 34] based on, among other things, Debtor's failure to meet the eligibility requirements for chapter 13 and evidence of post-petition mortgage payments. Based on the Amended Judgment, IRS PALS rescheduled the sale of the Pasadena Property for May 18, 2021. Briggs Decl., ¶ 5.

C. Debtor's Pending Bankruptcy Case

On June 1, 2021, Debtor filed his schedules and Statement of Financial Affairs [doc. 13]. In his schedule A/B, Debtor scheduled an interest in the Pasadena Property, with a fair market value of \$750,000.00 and personal property with an aggregate value of \$85,266.00. In his schedule C, Debtor claimed exemptions in the amount of \$38,498.00 for his personal property.

As set forth in Debtor's schedule D, the Pasadena Property is encumbered by secured debts totaling \$1,555,517.64. In his schedule E/F, Debtor listed two priority tax debts totaling \$8,510.80; Debtor also scheduled nonpriority unsecured debts totaling \$198,376.07.

On June 9, 2021, the United States Trustee ("UST") filed a *Motion to Dismiss or Convert Case under 11 U.S.C. § 1112(b)* (the "Motion") [doc. 19]. The UST states that Debtor failed to provide: (1) amended schedules and statements with holographic signatures; (2) proof of rental income deposited in the debtor in possession account; (3) a final bank account statement evidencing closure of a Chase Bank account; (4) proof of opening a debtor in possession account; (5) proof of vehicle insurance for Debtor's mechanic and vehicle restoration business; (6) proof of Debtor's mechanic's and business license; (7) proof of filed tax returns for the last two years; (8) proof of recording a chapter 11 petition; (9) prepetition financial statements for Debtor's

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CONT... Scott Carl St. Peter

Chapter 11

business; and (10) monthly operating report for May 2021.

On June 24, 2021, the United States, on behalf of the Internal Revenue Service, filed the Joinder [doc. 33]. The United States argues that the Motion should be granted because Debtor has demonstrated a pattern of abusing the bankruptcy system by filing three separate bankruptcy petitions in less than three years, none of which conform to basic bankruptcy procedures, for the purpose of preventing the sale of the Pasadena Property. The United States requests dismissal with a 180-day bar to refile, or conversion to chapter 7.

On June 27, 2021, Debtor filed his amended schedules and Statement of Financial Affairs with holographic signatures [doc. 35]. On that same day, Debtor filed an untimely response to the Motion (the "Response") [doc. 34]. Debtor states that he has since filed his amended schedules and statements with holographic signatures and will file a declaration updating the Court on his progress in filing the remaining documents.

II. DISCUSSION

11 U.S.C. § 1112(b), in pertinent part, provides:

- (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

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CONT...

Scott Carl St. Peter

Chapter 11

establishes that—

(A) there is a reasonable likelihood that a plan will be confirmed . . . within a reasonable period of time; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph 4(A)—

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

...

(4) For purposes of this subsection, the term ‘cause’ includes . . .

...

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

...

(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;

...

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any). . . .

(K) failure to pay any fees or charges required under chapter 123 of title 28 . . .

"[T]he Code contains a non-exclusive list of examples of cause in § 1112(b)(4)." *In re Serron Investments*, 2012 WL 2086501, at *5 (B.A.P. 9th Cir. June 8, 2012); *In re Mense*, 509 B.R. 269 (Bankr. C.D. Cal. 2014) ("‘Cause’ is defined in § 1112(b)(4),

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CONT... Scott Carl St. Peter

Chapter 11

but the list contained in § 1112(b)(4) is illustrative, not exhaustive."). The movant bears the burden of establishing by a preponderance of the evidence that cause exists. *In re Sullivan*, 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014).

Motions to dismiss under 11 U.S.C. § 1112(b) require a two-step analysis. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *In re Nelson*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006).

Here, it appears that the UST has met its burden to prove "cause" by preponderance of the evidence. Though Debtor has filed his amended schedules with holographic signatures, Debtor has not submitted the missing documents discussed in the Motion such as tax returns, proof of insurance and licenses to operate his business. Moreover, as shown above, Debtor previously has filed chapter 13 petitions to prevent the court-ordered sale of the Pasadena Property, when he was not eligible to file a chapter 13 petition, and after which Debtor did not properly prosecute those cases.

It appears that dismissal of this chapter 11 case is in the best interest of creditors and the estate. Based on Debtor's schedules, Debtor has assets in the amount of \$835,266.00 and secured debt in the amount of \$1,555,517.54, including a federal tax lien. If Debtor's case is converted, it appears that there would be insufficient assets in Debtor's estate that could be administered for the benefit of unsecured creditors.

III. CONCLUSION

The Court will grant the Motion with a 180-day bar.

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

Party Information

Debtor(s):

Scott Carl St. Peter

Represented By
Lionel E Giron

Movant(s):

United States Trustee (SV)

Represented By

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Scott Carl St. Peter

Katherine Bunker

Chapter 11

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1:20-12046 Buena Park Drive LLC

Chapter 11

#9.00 Motion for Post-Petition Financing

fr. 5/20/21

Docket 80

***** VACATED *** REASON: Voluntary dismissal of motion filed 6/29/21.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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1:20-11006 Lev Investments, LLC

Chapter 11

#10.00 Debtor's Motion To Estimate Claim For Purposes Of Setting Aside Reserve (Claim No. 15)

fr. 6/17/21

Docket 326

Tentative Ruling:

Deny.

I. BACKGROUND

A. The Claim and Debtor's Chapter 11 Plan of Reorganization

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition. On August 10, 2020, GA&TV Inc. ("GA&TV") filed proof of claim no. 15-1, asserting a \$500,000 claim against the estate. GA&TV based its claim on a state court complaint filed by GA&TV against Debtor, LDI Ventures, LLC ("LDI"), Real Property Trustee, Inc. and Dmitri Lioudkovski. In the state court complaint, GA&TV alleges that it entered into a sale agreement with LDI, which LDI fraudulently breached. In relevant part, GA&TV alleges that Debtor and LDI are alter egos and co-conspirators and, as a result, Debtor is liable for the damages incurred by GA&TV.

On August 28, 2020, Debtor filed a chapter 11 plan of reorganization (the "Plan") [doc. 156]. To fund the Plan, Debtor proposed, among other things, selling the real property located at 13854 Albers Street, Sherman Oaks, CA 91401 (the "Albers Property") and foreclosing on the vacant land located in Coachella, California (the "Coachella Property"). In relevant part, Debtor provided for the following treatment of claims—

Class	Claim	Treatment
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Lev Investments, LLC

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1	Sensible Consulting & Management, LLC ("Sensible")	Secured claim. Will receive \$722,675 on Effective Date. The balance of the claim will be paid after entry of a final and nonappealable order allowing the claim. Claim will be paid from net proceeds of sale of the Albers Property.
4	FR, LLC	Secured claim. To be paid after entry of a final and nonappealable order allowing the claim. Claim will be paid from net proceeds of sale of the Albers Property.
5a	General Unsecured Claims	Unsecured claims. Will receive pro rata share of sale proceeds from Albers Property after payment of all allowed administrative claims and all allowed Class 1, Class 2, Class 3 and Class 4 claims, as well as proceeds from the sale of the Coachella Property, to the extent any claims remain unpaid.
5b	General Unsecured Claims of Insider LDI	Insider unsecured claim. Will receive any remaining proceeds from sales of Albers Property and Coachella Property.
6	Interest Holders	Will retain rights and interests without impairment.

In a claims chart attached to the Plan, Debtor identified a number of unsecured claims, including unsecured claims in favor Lisitsa Law, Inc. ("Lisitsa Law") and Ruvin Feygenberg. The Plan contemplated post-confirmation litigation and objections to certain claims against the estate. On January 20, 2021, the Court entered an order confirming the Plan [doc. 286].

B. Post-Confirmation Litigation and the Motion for Estimation

On December 9, 2020, Debtor filed a complaint against Lisitsa Law and Yevgeniya Lisitsa (the "Lisitsa Adversary") [1:20-ap-01117-VK]. Through the Lisitsa Adversary, Debtor objected to the claim filed by Lisitsa Law and asserted a claim for malpractice against Lisitsa Law and Ms. Lisitsa. On April 21, 2021, the Court held a hearing on a motion for abstention filed by the defendants, at which time the Court denied the defendants' request for abstention [1:20-ap-01117-VK, doc. 38]. Currently, the parties in the discovery stage of the Lisitsa Adversary.

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CONT... Lev Investments, LLC

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On April 8, 2021, Debtor filed a post-confirmation status report supported by a declaration from Mr. Lioudkouski [doc. 302]. In the declaration, Mr. Lioudkouski noted that Debtor had foreclosed on the Coachella Property, and was preparing to market the Coachella Property for sale.

On May 4, 2021, Debtor filed a complaint against Sensible, Mr. Feygenberg and Michael Leizerovitz (the "Sensible Adversary") [1:21-ap-01020-VK]. Through the Sensible Adversary, Debtors requests, among other things, disallowance of the claims filed by Sensible and Mr. Feygenberg. On June 5, 2021, the defendants filed a motion to dismiss the complaint [1:21-ap-01020-VK, doc. 5]; as such, the Sensible Adversary is in its pleading stage.

On May 20, 2021, Debtor filed a motion for disallowance of the claim filed by FR, LLC (the "Motion to Disallow Claim") [doc. 314]. During a hearing on the Motion to Disallow Claim, FR, LLC requested an opportunity to cross-examine Debtor's witness, and to present rebuttal testimony. As such, the Court will set an evidentiary hearing on the Motion to Disallow Claim.

On May 26, 2021, Debtor filed a motion to estimate the claim filed by GA&TV (the "Motion") [doc. 326]. In the Motion, Debtor contends that the state court litigation with GA&TV will unduly delay distribution to creditors under the Plan. On June 3, 2021, GA&TV filed an opposition to the Motion [doc. 334], arguing that, in light of Debtor's involvement in multiple post-confirmation disputes with claimants, litigation with GA&TV will not unduly delay distribution.

II. ANALYSIS

Pursuant to 11 U.S.C. § 502(c)(1), "[t]here shall be estimated for purpose of allowance under this section... any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case...." "The language of Section 502(c) is mandatory... *where the actual liquidation of the claim would unduly delay closing of the case.*" *In re Curtis*, 40 B.R. 795, 801 n.7 (Bankr. D. Utah 1984) (emphasis added).

From the plain language of § 502(c), it is clear that estimation does not become mandatory merely because liquidation may take longer and

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Lev Investments, LLC

Chapter 11

thereby delay administration of the case. Liquidation of a claim, in fact, will almost always be more time consuming than estimation. Nonetheless, bankruptcy law's general rule is to liquidate, not to estimate. For estimation to be mandatory, then, the delay associated with liquidation must be "undue."

Something is "undue" if it is "unjustifiable." Random House College Dictionary, at 1433 (rev. ed.1980). Inquiry into whether liquidating... claims would be unjust, due to any case delay that may result therefrom, dictates that the Court perform a kind of cost-benefit analysis by considering the time, costs and benefits associated with both estimation and liquidation.

In re Dow Corning Corp., 211 B.R. 545, 563 (Bankr. E.D. Mich. 1997).

Here, Debtor contends that waiting for resolution of the state court action, on which GA&TV's claim is based, will unduly delay distribution of payments under the Plan. The record contradicts Debtor's assertion.

Post-confirmation, Debtor: (A) commenced the Sensible Adversary, which involves objections to claims in Class 1 and Class 5a; (B) filed the Motion to Disallow Claim, which will be set for an evidentiary hearing; and (C) continued prosecution of the Lisitsa Adversary, which impacts a claim in Class 5a. The Sensible Adversary is in its infancy, with a pending motion to dismiss the initial complaint, and the Lisitsa Adversary recently entered the beginning stages of discovery. Moreover, as indicated by Debtor in its last post-confirmation status report, Debtor has yet to liquidate the Coachella Property.

Pursuant to the Plan, general unsecured creditors in Class 5a, which class includes GA&TV's claim, will not be paid from proceeds of the Albers Property until all allowed secured claims in Classes 1-4 are paid. After payment from proceeds of the Albers Property, if claims remain unpaid, Class 5a may receive distributions from the proceeds of the sale of the Coachella Property. Because Debtor is engaged in litigation with several claimants in a number of classes, and in light of Debtor's ongoing efforts to market and sell the Coachella Property, there is no indication that Debtor is prepared to make distributions under the Plan. As such, the state court

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lawsuit to liquidate GA&TV's claim will not unduly delay distribution to other creditors. [FN1].

In addition, although Debtor argues that GA&TV's state court complaint attempts to hold Debtor liable as an affiliate of LDI, which Debtor contends was the entity that contracted with GA&TV, the state court complaint includes allegations that Debtor is an alter ego and co-conspirator of LDI. To estimate GA&TV's claim, the Court likely would require additional briefing and evidence related to the alter ego and conspiracy allegations; depending on the nature of the evidence submitted, the Court also may require an evidentiary hearing. *See In re Chemtura Corp.*, 448 B.R. 635, 650 (Bankr. S.D.N.Y. 2011) ("Bankruptcy courts have employed a wide variety of methods to estimate claims, including summary trial, a full-blown evidentiary hearing, and a review of pleadings and briefs followed by oral argument of counsel."). As such, estimating GA&TV's claim would not necessarily diminish any delay caused by the state court litigation. Consequently, the Court will deny Debtor's request to estimate this claim.

III. CONCLUSION

The Court will deny the Motion.

GA&TV must submit an order within seven (7) days.

FOOTNOTES

1. Debtor's reference to *In re Lane*, 68 B.R. 609 (Bankr. D. Haw. 1986), is inapposite. In *Lane*, the bankruptcy court held that undue delay existed because the case had been pending for years and the debtor could not confirm a plan until the subject claim was liquidated or estimated. *Lane*, 68 B.R. at 611. Here, the Court already entered an order confirming the Plan, and there is no analogous delay.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By

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David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
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1:20-11006 Lev Investments, LLC

Chapter 11

#11.00 Debtor's Motion To Estimate Claim For Purposes Of Setting Aside Reserve (Claim No. 16)

fr. 6/17/21

Docket 327

Tentative Ruling:

Deny.

I. BACKGROUND

A. The Claim and Debtor's Chapter 11 Plan of Reorganization

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition. On August 10, 2020, Coachella Vineyard Luxury RV Park LLC ("RV Park") filed proof of claim no. 16-1, asserting a \$3,500,000 claim against the estate. RV Park based its claim on a state court complaint filed by RV Park against Debtor and other defendants. In the state court complaint, RV Park asserts claims against Debtor for quiet title, cancellation of instruments, wrongful title and slander of title.

On August 28, 2020, Debtor filed a chapter 11 plan of reorganization (the "Plan") [doc. 156]. To fund the Plan, Debtor proposed, among other things, selling the real property located at 13854 Albers Street, Sherman Oaks, CA 91401 (the "Albers Property") and foreclosing on the vacant land located in Coachella, California (the "Coachella Property"). In relevant part, Debtor provided for the following treatment of claims—

Class	Claim	Treatment
1	Sensible Consulting & Management, LLC ("Sensible")	Secured claim. Will receive \$722,675 on Effective Date. The balance of the claim will be paid after entry of a final and nonappealable order allowing the claim. Claim will be paid from net proceeds of sale of the Albers Property.

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4	FR, LLC	Secured claim. To be paid after entry of a final and nonappealable order allowing the claim. Claim will be paid from net proceeds of sale of the Albers Property.
5a	General Unsecured Claims	Unsecured claims. Will receive pro rata share of sale proceeds from Albers Property after payment of all allowed administrative claims and all allowed Class 1, Class 2, Class 3 and Class 4 claims, as well as proceeds from the sale of the Coachella Property, to the extent any claims remain unpaid.
5b	General Unsecured Claims of Insider LDI	Insider unsecured claim. Will receive any remaining proceeds from sales of Albers Property and Coachella Property.
6	Interest Holders	Will retain rights and interests without impairment.

In a claims chart attached to the Plan, Debtor identified a number of unsecured claims, including unsecured claims in favor Lisitsa Law, Inc. ("Lisitsa Law") and Ruvin Feygenberg. The Plan contemplated post-confirmation litigation and objections to certain claims against the estate. On January 20, 2021, the Court entered an order confirming the Plan [doc. 286].

B. Post-Confirmation Litigation and the Motion for Estimation

On December 9, 2020, Debtor filed a complaint against Lisitsa Law and Yevgeniya Lisitsa (the "Lisitsa Adversary") [1:20-ap-01117-VK]. Through the Lisitsa Adversary, Debtor objected to the claim filed by Lisitsa Law and asserted a claim for malpractice against Lisitsa Law and Ms. Lisitsa. On April 21, 2021, the Court held a hearing on a motion for abstention filed by the defendants, at which time the Court denied the defendants' request for abstention [1:20-ap-01117-VK, doc. 38]. Currently, the parties in the discovery stage of the Lisitsa Adversary.

On April 8, 2021, Debtor filed a post-confirmation status report supported by a declaration from Mr. Lioudkouski [doc. 302]. In the declaration, Mr. Lioudkouski noted that Debtor had foreclosed on the Coachella Property, and was preparing to market the Coachella Property for sale.

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On May 4, 2021, Debtor filed a complaint against Sensible, Mr. Feygenberg and Michael Leizerovitz (the "Sensible Adversary") [1:21-ap-01020-VK]. Through the Sensible Adversary, Debtors requests, among other things, disallowance of the claims filed by Sensible and Mr. Feygenberg. On June 5, 2021, the defendants filed a motion to dismiss the complaint [1:21-ap-01020-VK, doc. 5]; as such, the Sensible Adversary is in its pleading stage.

On May 20, 2021, Debtor filed a motion for disallowance of the claim filed by FR, LLC (the "Motion to Disallow Claim") [doc. 314]. During a hearing on the Motion to Disallow Claim, FR, LLC requested an opportunity to cross-examine Debtor's witness, and to present rebuttal testimony. As such, the Court will set an evidentiary hearing on the Motion to Disallow Claim.

On May 26, 2021, Debtor filed a motion to estimate the claim filed by RV Park (the "Motion") [doc. 327]. In the Motion, Debtor contends that the state court litigation with RV Park will unduly delay distribution to creditors under the Plan. On June 3, 2021, RV Park filed an opposition to the Motion (the "Opposition") [doc. 335], arguing that, in light of Debtor's involvement in multiple post-confirmation disputes with claimants, litigation with RV Park will not unduly delay distribution.

On June 22, 2021, Debtor filed a supplement in support of the Motion [doc. 345], attaching a notice of a ruling by the state court (the "Notice of Ruling"). In the Notice of Ruling, RV Park notified parties to the state court action that the state court provided RV Park leave to amend the state court complaint, conditioned on RV Park "remov[ing] all changes to allegations as to claims against" Debtor. Debtor contends that this language indicates that Debtor will be dismissed from the amended complaint.

On June 24, 2021, RV Park filed a supplemental declaration in support of the Opposition (the "Supplemental Declaration") [doc. 346]. On June 29, 2021, Debtor filed a motion to strike the Supplemental Declaration as untimely filed (the "Motion to Strike") [doc. 353].

II. ANALYSIS

Pursuant to 11 U.S.C. § 502(c)(1), "[t]here shall be estimated for purpose of

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allowance under this section... any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case...." "The language of Section 502(c) is mandatory... *where the actual liquidation of the claim would unduly delay closing of the case.*" *In re Curtis*, 40 B.R. 795, 801 n.7 (Bankr. D. Utah 1984) (emphasis added).

From the plain language of § 502(c), it is clear that estimation does not become mandatory merely because liquidation may take longer and thereby delay administration of the case. Liquidation of a claim, in fact, will almost always be more time consuming than estimation. Nonetheless, bankruptcy law's general rule is to liquidate, not to estimate. For estimation to be mandatory, then, the delay associated with liquidation must be "undue."

Something is "undue" if it is "unjustifiable." Random House College Dictionary, at 1433 (rev. ed.1980). Inquiry into whether liquidating... claims would be unjust, due to any case delay that may result therefrom, dictates that the Court perform a kind of cost-benefit analysis by considering the time, costs and benefits associated with both estimation and liquidation.

In re Dow Corning Corp., 211 B.R. 545, 563 (Bankr. E.D. Mich. 1997).

Here, Debtor contends that waiting for resolution of the state court action, on which RV Park's claim is based, will unduly delay distribution of payments under the Plan. The record contradicts Debtor's assertion.

Post-confirmation, Debtor: (A) commenced the Sensible Adversary, which involves objections to claims in Class 1 and Class 5a; (B) filed the Motion to Disallow Claim, which will be set for an evidentiary hearing; and (C) continued prosecution of the Lisitsa Adversary, which impacts a claim in Class 5a. The Sensible Adversary is in its infancy, with a pending motion to dismiss the initial complaint, and the Lisitsa Adversary recently entered the beginning stages of discovery. Moreover, as indicated by Debtor in its last post-confirmation status report, Debtor has yet to liquidate the Coachella Property.

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Pursuant to the Plan, general unsecured creditors in Class 5a, which class includes RV Park's claim, will not be paid from proceeds of the Albers Property until all allowed secured claims in Classes 1-4 are paid. After payment from proceeds of the Albers Property, if claims remain unpaid, Class 5a may receive distributions from the proceeds of the sale of the Coachella Property. Because Debtor is engaged in litigation with several claimants in a number of classes, and in light of Debtor's ongoing efforts to market and sell the Coachella Property, there is no indication that Debtor is prepared to make distributions under the Plan. As such, the state court lawsuit to liquidate RV Park's claim will not unduly delay distribution to other creditors. [FN1].

Debtor also contends that the Notice of Ruling indicates that Debtor may be dismissed from the state court action. However, the Notice of Ruling provides only that RV Park must remove "changes to allegations" in its proposed amended state court complaint. The Notice of Ruling does not indicate that Debtor will be dismissed from the state court action. In any event, the Court having held that there is no reason to estimate this claim, if Debtor believes RV Park's claim is subject to disallowance, Debtor may file a motion requesting such relief.

III. CONCLUSION

The Court will deny the Motion. Because the Supplemental Declaration is not timely filed, pursuant to Local Bankruptcy Rule 9013-1(f), the Court will not consider and did not rely on the Supplemental Declaration for this ruling. Consequently, the Court will deny the Motion to Strike as moot.

RV Park must submit an order on the Motion within seven (7) days.

FOOTNOTES

1. Debtor's reference to *In re Lane*, 68 B.R. 609 (Bankr. D. Haw. 1986), is inapposite. In *Lane*, the bankruptcy court held that undue delay existed because the case had been pending for years and the debtor could not confirm a plan until the subject claim was liquidated or estimated. *Lane*, 68 B.R. at 611. Here, the Court already entered an order confirming the Plan, and there is no analogous delay.

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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

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1:20-11006 Lev Investments, LLC

Chapter 11

#11.10 Motion For Order Disallowing Claim No. 5 Filed By FR, LLC

fr. 6/24/21 (re setting evid. hrg. 9/27 - 10/1)

Docket 314

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

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#12.00 Confirmation hearing re chapter 11 subchapter V plan and related deadlines

STIP TO CONTINUE FILED 6/16/21 - jc

Docket 88

***** VACATED *** REASON: Order approving stip entered 6/17/21.
Hearing continued to 11/18/21 at 2:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:00-00000

Chapter

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

Docket 0

Tentative Ruling:

- NONE LISTED -

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Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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.

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Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 483 3076

Password: 788080

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

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- NONE LISTED -

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1:16-10925 Josue Soncuya Villanueva

Chapter 13

#20.00 Trustee's motion to dismiss case due to material default of plan: failure to submit all tax refunds

fr. 3/9/21; 5/11/21

Docket 127

***** VACATED *** REASON: Motion withdrawn 5/26/21 - jc**

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

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1:16-13545 Luwana Ramos Alvarado

Chapter 13

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

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luwana Ramos Alvarado

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:17-10025 Amelia Quezada Velasquez

Chapter 13

#22.00 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 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amelia Quezada Velasquez

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:17-10266 Cindy Park

Chapter 13

#23.00 Trustee's Motion to dismiss case for failure to make plan payments
fr. 6/8/21

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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10:30 AM

1:17-10942 Shamiram E Chochian

Chapter 13

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

Docket 47

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shamiram E Chochian

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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1:17-11521 Solyman Davidesfahani and Sharzad Davidesfahani

Chapter 13

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

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Solyman Davidesfahani

Represented By
Ali R Nader

Joint Debtor(s):

Sharzad Davidesfahani

Represented By
Ali R Nader

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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1:17-12163 Cynthia Ann Donahue

Chapter 13

#26.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

fr. 4/6/21; 6/8/21

Docket 60

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

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1:17-12875 Mady Lysse and Robert Lysse

Chapter 13

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

Docket 53

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mady Lysse

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Robert Lysse

Represented By
Jeffrey J Hagen

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-10831 Jose Reynaldo Juarez

Chapter 13

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

Docket 97

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

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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

Docket 132

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Neli Maria Negrea

Represented By
Stella A Havkin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-12372 Philip John Giannino and Anne Frances Giannino

Chapter 13

#30.00 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 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philip John Giannino

Represented By
Maria C Hehr

Joint Debtor(s):

Anne Frances Giannino

Represented By
Maria C Hehr

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-10022 Gus Albert Bolona and Deirdre Marie Bolona

Chapter 13

#31.00 Trustee's Motion to dismiss case for failure to make plan payments
fr. 5/11/21

Docket 88

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

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1:19-10137 Tadeh Mansouri and Christine Ohanes Mansouri

Chapter 13

#32.00 Motion to Dismiss Case for Failure to Make Plan Payments

Docket 36

*** VACATED *** REASON: Withdrawal of motion filed 6/22/21. [Doc. #42]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tadeh Mansouri

Represented By
Michael Jay Berger

Joint Debtor(s):

Christine Ohanes Mansouri

Represented By
Michael Jay Berger

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-10806 Abrahan Moran

Chapter 13

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

fr. 3/9/21; 5/11/21

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Abrahan Moran

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-11311 Carrol Sue Finister

Chapter 13

#34.00 Trustee's Motion to dismiss case for failure to make plan payments
fr. 6/8/21

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carrol Sue Finister

Represented By
Julie J Villalobos

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-11615 Jose E Martinez

Chapter 13

#35.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

fr. 4/6/21

Docket 30

***** VACATED *** REASON: Motion withdrawn 5/26/21 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose E Martinez

Represented By
Joshua L Sternberg

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-11917 Brenda Medina

Chapter 13

#36.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

fr. 4/6/21

Docket 86

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brenda Medina

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-11963 Lana Petrosyan

Chapter 13

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

fr. 3/9/21; 4/6/21

Docket 61

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lana Petrosyan

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, July 13, 2021

Hearing Room 301

10:30 AM

1:19-11963 Lana Petrosyan

Chapter 13

#38.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

fr. 4/6/21

Docket 70

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lana Petrosyan

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, July 13, 2021

Hearing Room 301

10:30 AM

1:19-12073 Scott Alan Secor and Iman Secor

Chapter 13

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

fr. 5/11/21; 6/8/21

Docket 58

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Alan Secor

Represented By
Stephen L Burton

Joint Debtor(s):

Iman Secor

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, July 13, 2021

Hearing Room 301

10:30 AM

1:19-12350 Gregorio Alberto Driotez and Maryella Driotez

Chapter 13

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

Docket 36

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregorio Alberto Driotez

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Maryella Driotez

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
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Tuesday, July 13, 2021

Hearing Room 301

10:30 AM

1:19-12554 Martin Vincent Hisey

Chapter 13

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

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Vincent Hisey

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Tuesday, July 13, 2021

Hearing Room 301

10:30 AM

1:19-12947 Ronaldo Garcia

Chapter 13

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

Docket 49

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, July 13, 2021

Hearing Room 301

10:30 AM

1:19-12961 Andre Robert Janian

Chapter 13

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

fr. 1/12/21; 3/9/21; 5/11/21; 6/8/21

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andre Robert Janian

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
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Tuesday, July 13, 2021

Hearing Room 301

10:30 AM

1:20-10131 Flora Young-Jones

Chapter 13

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

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Flora Young-Jones

Represented By
David Samuel Shevitz

Trustee(s):

Elizabeth (SV) 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 13, 2021

Hearing Room 301

10:30 AM

1:20-10460 Veronica E Pledger

Chapter 13

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

fr. 12/8/20; 3/9/21; 5/11/21

Docket 45

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, July 13, 2021

Hearing Room 301

10:30 AM

1:20-10546 Luis Lugo Duenez and Maria Dolores Duenez

Chapter 13

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

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luis Lugo Duenez

Represented By
Jaime A Cuevas Jr.

Joint Debtor(s):

Maria Dolores Duenez

Represented By
Jaime A Cuevas Jr.

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Tuesday, July 13, 2021

Hearing Room 301

10:30 AM

1:20-10619 Reginald Vergial Liddell

Chapter 13

#47.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 5/11/21

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Reginald Vergial Liddell

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, July 13, 2021

Hearing Room 301

10:30 AM

1:20-10868 Stanley LaMont Engelson and Lola Falana Engelson-Webb Chapter 13

#48.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 5/11/21

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stanley LaMont Engelson

Represented By
Michael E Clark

Joint Debtor(s):

Lola Falana Engelson-Webb

Represented By
Michael E Clark

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, July 13, 2021

Hearing Room 301

10:30 AM

1:20-11024 Frank Roy Adame

Chapter 13

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

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Roy Adame

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, July 13, 2021

Hearing Room 301

10:30 AM

1:20-11045 Joe Lopez, Jr.

Chapter 13

#50.00 Motion to dismiss case for failure to make plan payments
fr. 6/8/21

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joe Lopez Jr.

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, July 13, 2021

Hearing Room 301

10:30 AM

1:20-11501 Gorden Eugene Campbell, Jr.

Chapter 13

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

Docket 45

***** VACATED *** REASON: Motion withdrawn 6/14/21 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gorden Eugene Campbell Jr.

Represented By
Jeffrey J Hagen

Movant(s):

Elizabeth (SV) F Rojas (TR)

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
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Tuesday, July 13, 2021

Hearing Room 301

10:30 AM

1:21-10011 Noemi Griselda Zaragoza

Chapter 13

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

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Noemi Griselda Zaragoza

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, July 13, 2021

Hearing Room 301

11:00 AM

1:16-10126 Angela Cordero Britton

Chapter 13

#53.00 Debtor's Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Docket 116

Tentative Ruling:

Has the debtor submitted her 2019 and 2020 tax returns to the chapter 13 trustee and paid any required 2019 and 2020 tax refunds into the plan?

Party Information

Debtor(s):

Angela Cordero Britton

Represented By
Kevin T Simon

Movant(s):

Angela Cordero Britton

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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Tuesday, July 13, 2021

Hearing Room 301

11:00 AM

1:17-11521 Solyman Davidesfahani and Sharzad Davidesfahani

Chapter 13

#54.00 Debtors' Motion for hardship discharge and waiver to file education certificate

Docket 51

Tentative Ruling:

For the reasons discussed below, the Court will deny the motion for hardship discharge.

I. BACKGROUND

A. Debtor's Bankruptcy Case and Chapter 13 Plan

On June 7, 2017, Solyman Davidesfahani and Sharzad Davidesfahani ("Debtors") filed a chapter 13 petition. In their schedule A/B, Debtors listed total assets in the amount of \$676,800.00 [doc. 1] and, in their amended schedule D, filed on August 5, 2017, Debtors listed total secured debts in the amount of \$481,019.00 [doc. 18].

In their schedule I, filed on June 7, 2017, Debtors stated that they had monthly income in the amount of \$4,173.00, including \$2,300.00 in rental income [doc. 1]. In their amended schedule J, Debtors stated that they have monthly expenses in the amount of \$3,874.79, resulting in a monthly net income of \$298.21 [doc. 17].

On September 21, 2017, the Court entered an order confirming Debtors' first amended chapter 13 plan [doc. 30]. Debtors' confirmed plan has a term of 5 years. It provides for monthly payments of \$264.00 starting on July 7, 2017, then \$297.00 per month from November 7, 2017 until the end of the plan term.

According to Debtors' liquidation analysis, in a chapter 7 case, nonpriority unsecured creditors would receive \$12,102.90, which Debtors represented to be a distribution of 3.44% of the scheduled nonpriority unsecured debt [doc. 19]. Under the confirmed plan, the class of nonpriority unsecured creditors is to receive \$14,281.94.

On June 7, 2021, Debtors filed a *Motion for Hardship Discharge and Waiver to File Education Certificate* (the "Motion") [doc. 51].

B. The Motion

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CONT... Solyman Davidesfahani and Sharzad Davidesfahani

Chapter 13

In the Motion, Debtors request a hardship discharge. Debtors represent that they lost their renter, who was paying \$2,300.00 per month, and that their only other source of income is social security. Specifically, Debtors state that "[d]ue to the loss of this renter, Debtors are unable to continue to make the plan payments in the Chapter 13 and *do not want to rent* during this pandemic." Declaration of Solyman and Shazad Davidesfahani [doc. 51], attached to the Motion, ¶ 3 (emphasis added; errors in original).

II. DISCUSSION

A. Legal Standards

11 U.S.C. §1328(b) states that, subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if:

- (1) The debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) The value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; *and*
- (3) Modification of the plan under section 1329 of this title is not practicable.

The granting of a hardship discharge is a matter for exercise of the court's discretion. *In re Bandilli*, 231 B.R. 836, 838 (1st Cir. B.A.P. 1999). The court must make its determination on the facts of each individual case. *In re Perkins*, 381 B.R. 530, 537 (Bankr. S.D. Ill. 2007). The debtor bears the burden of proof, and must satisfy the court on all three elements of § 1328(b). *In re Spencer*, 301 B.R. 730, 733 (8th Cir. B.A.P. 2003).

A request for a hardship discharge must be accompanied with evidence that the debtor's

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CONT... Solyman Davidesfahani and Sharzad Davidesfahani Chapter 13

failure to complete his plan is due to "circumstances for which the debtor should not justly be held accountable." While the circumstances need not be catastrophic, § 1328(b)(1) is generally interpreted as requiring a showing of involuntary adverse circumstances. Alan N. Resnick and Henry J. Sommer, eds., 8 COLLIER ON BANKRUPTCY, ¶ 1328.03[2][a] (16th ed. 2016).

Courts may consider the following factors to determine whether a debtor should not be held justly accountable for the failure to make plan payments:

- a) whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;
- b) whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;
- c) whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;
- d) whether the intervening event or events are expected to continue in the reasonably foreseeable future;
- e) whether the debtor had control, direct or indirect, of the intervening event or events; and
- f) whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Bandilli, 231 B.R. at 840.

Pursuant to 11 U.S.C. § 1328(f), a hardship discharge is not available if the debtor has received a discharge—

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or
- (2) in a case filed under chapter 13 of this title during the 2-year period

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CONT... **Solyman Davidesfahani and Sharzad Davidesfahani**
preceding the date of such order.

Chapter 13

Furthermore, pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 4007(d):

On motion by a debtor for a discharge under §1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under §523(a)(6) and shall give no less than 30 days' notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

B. Section 1328(f)

Debtors have filed no prior bankruptcy cases and have received no prior discharges. Thus, pursuant to § 1328(f), Debtors are eligible for a hardship discharge.

C. Section 1328(b)(1)

The legislative history of § 1328(b) indicates that if a debtor suffers severe problems (such as a natural disaster, a long-term layoff, family illness, or accident with attendant medical bills) that make plan modification impracticable, the debtor should not be held accountable for his failure to make plan payments. *See* H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 128 (1977). Such "determination of whether a debtor is justly accountable for his or her failure to make payments under his or her Chapter 13 plan is necessary fact-driven, with the emphasis properly focused on the nature and quality of the intervening event or events upon which the debtor relies." *In re Bandilli*, 231 B.R. at 840.

Here, despite satisfying some of the *Bandilli* factors, Debtors have not satisfied 11 U.S.C. § 1328(b)(1). Debtors materially performed under their chapter 13 plan for over three years. At the time of plan confirmation, the circumstances surrounding Covid-19 were not reasonably foreseeable. Debtors, however, have not shown that Covid-19 is expected to continue in the foreseeable future, as well as constitutes a sufficient and proximate cause for their inability to continue to make plan payments.

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CONT... Solyman Davidesfahani and Sharzad Davidesfahani

Chapter 13

In their declaration, Debtors state that they do not want to rent a portion of their house because of the pandemic; this means that Debtors have *decided* not to generate that rental income. Debtors have not explained why they cannot rent to an individual who is fully vaccinated, nor have they demonstrated that they have underlying health problems which prevent them from renting.

Under these facts, Debtors have failed to demonstrate that their inability to make plan payments going forward is from circumstances beyond their control. *See In re Dior*, 2017 Bankr. LEXIS 1046 (Bankr. S.D. Ind. Apr. 14, 2017) ("[W]here a debtor is unable to complete payments under a chapter 13 plan due to economic circumstances beyond the debtor's control that did not exist nor were foreseeable at the time of confirmation of the plan, and where the debtor has made serious efforts to overcome those circumstances but is unable to complete his or her plan payments, the requirement of § 1328(b)(1) has been met.").

D. Section 1328(b)(2)

Debtors have not shown that the value of property which Debtors already have distributed under their confirmed plan is not less than the amount that would have been paid to unsecured creditors in a hypothetical chapter 7 liquidation. Debtors' plan states that the amount which would be distributed to nonpriority unsecured creditors through a chapter 7 case is \$12,102.90 [doc. 19].

Based on the chapter 13 trustee's periodic accounting report for June 2021 [doc. 59], Debtors have paid \$10,366.72 to nonpriority unsecured creditors. This amount is less than the \$12,102.90 that nonpriority unsecured creditors would have received in chapter 7. Accordingly, nonpriority unsecured creditors have not received as much as they would have in a hypothetical chapter 7 liquidation. Therefore, Debtors have not satisfied § 1328(b)(2).

E. Section 1328(b)(3)

Plan modification does not appear impracticable. In their schedule I, Debtors indicated that their combined monthly income was \$4,173.00; \$2,300.00 of that amount was rental income [doc. 1]. In their amended schedule J, Debtors indicated that their monthly net income was \$298.21 [doc. 17]. Without having a renter paying \$2,300.00 per month, Debtors' income is insufficient to make their plan payments.

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CONT... Solyman Davidesfahani and Sharzad Davidesfahani

Chapter 13

However, as discussed above, Debtors' inability to make plan payments apparently arises from their refusal to continue to rent part of their home, in order to generate rental income. Moreover, if the pandemic is the cause of Debtors' loss of rental income, Debtors have not shown why they cannot modify their plan under the Cares Act to suspend plan payments and extend their plan term beyond five years. Accordingly, it appears that Debtors have not satisfied § 1328(b)(3).

III. CONCLUSION

The Court will deny the Motion.

The Court will prepare the order.

Party Information

Debtor(s):

Solyman Davidesfahani

Represented By
Ali R Nader

Joint Debtor(s):

Sharzad Davidesfahani

Represented By
Ali R Nader

Movant(s):

Solyman Davidesfahani

Represented By
Ali R Nader

Sharzad Davidesfahani

Represented By
Ali R Nader
Ali R Nader

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

11:00 AM

1:17-12163 Cynthia Ann Donahue

Chapter 13

#55.00 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 63

Tentative Ruling:

On March 16, 2021, the chapter 13 trustee (the "Trustee") filed a motion to dismiss Cynthia Ann Donahue's case ("Debtor") for Debtor's failure to turn over her 2019 federal tax refund (the "Motion to Dismiss") [doc. 60]. On June 8, 2021, the Court held a hearing on the Motion to Dismiss. Contrary to Local Bankruptcy Rule 3015-1(u), Debtor's counsel did not appear at the hearing.

On June 9, 2021, the Court issued an *Order to Show Cause why Debtor's Counsel Should Not be Sanctioned for Failure to Appear at Hearing on Trustee's Motion to Dismiss* (the "OSC") [doc. 63], on the grounds that Debtor's counsel failed to appear at the hearing on the Motion to Dismiss. 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 June 29, 2021. On July 11, 2021, Debtor's counsel filed a response to the OSC.

If Debtor's counsel or an appearance attorney appears at the continued Motion to Dismiss hearing on July 13, 2021 at 10:30 a.m., the Court will discharge the OSC. If no appearance by Debtor's counsel is made at the continued Motion to Dismiss hearing, the Court may impose sanctions on Debtor's counsel.

Party Information

Debtor(s):

Cynthia Ann Donahue

Represented By
Russ W Ercolani

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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Hearing Room 301

11:00 AM

1:20-10131 Flora Young-Jones

Chapter 13

#56.00 Debtor's Motion for hardship discharge under 11 USC §1328(b)

Docket 42

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Flora Young-Jones

Represented By

David Samuel Shevitz

Movant(s):

Flora Young-Jones

Represented By

David Samuel Shevitz

David Samuel Shevitz

David Samuel Shevitz

David Samuel Shevitz

David Samuel Shevitz

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

11:00 AM

1:20-11369 Mitchell S. Cohen

Chapter 13

#57.00 Application for attorney for debtor for allowance of fees and expenses following dismissal or conversion of chapter 13 case subject to a rights and responsibilities agreement (RARA)

Docket 58

Tentative Ruling:

On August 3, 2020, Mitchell S. Cohen ("Debtor") filed a voluntary chapter 13 petition. On April 9, 2021, the Court entered an order dismissing Debtor's case (the seventh chapter 13 case filed by Debtor, and subsequently dismissed, without Debtor's receipt of a discharge) [doc. 56].

On April 13, 2021, Debtor's counsel, Kevin T. Simon, filed an *Application of Attorney for Debtor for Allowance of Fees and Expenses Following Dismissal or Conversion of Chapter 13 Case Subject to a Rights and Responsibilities Agreement (RARA)* (the "Application") [doc. 58]. In the Application, Mr. Simon requests fees in the amount of \$6,000.00, pursuant to the terms of the RARA [doc. 2].

On May 27, 2021, the Court entered an order setting a hearing on the Application (the "Order") [doc. 66], given that Mr. Simon did not provide a breakdown of services to Debtor, nor sufficient justification for allowance of fees in this amount, given Debtor's failure to confirm a chapter 13 plan and subsequent dismissal of Debtor's **seventh** chapter 13 case, when Debtor's counsel represented Debtor in each of Debtor's prior chapter 13 cases. Debtor's counsel was ordered to file a written response to the Order no later than June 29, 2021.

On June 29, 2021, Mr. Simon timely filed a response to the Order [doc. 69]. On June 30, 2021, Mr. Simon filed an amended response (the "Response") [doc. 70]. In the Response, Mr. Simon attaches a breakdown of services provided to Debtor during his seventh bankruptcy case and an explanation for Debtor's numerous bankruptcy filings and subsequent dismissals.

Although the Court questions whether Debtor's counsel has properly represented Debtor's interests, by repeatedly filing chapter 13 petitions on his behalf, and **failing to obtain a discharge for Debtor, for over 12 years**, based on the representations made in the

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11:00 AM

CONT... Mitchell S. Cohen

Chapter 13

Response and attached evidence, the Court will grant the Application.

Appearances on July 13, 2021 are excused.

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
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Wednesday, July 14, 2021

Hearing Room 301

9:30 AM

1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the July 14, 2021 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1615753425>

Meeting ID: 161 575 3425

Password: 233373

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 575 3425

Password: 233373

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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Hearing Room 301

9:30 AM

1:18-10983 Daniele C Kenney

Chapter 13

#1.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

fr. 6/16/21

Docket 73

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniele C Kenney

Represented By
David S Hagen

Movant(s):

U.S. Bank National Association

Represented By
Jamie D Hanawalt
Raymond Jereza
Jenelle C Arnold
Jennifer C Wong

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Wednesday, July 14, 2021

Hearing Room 301

9:30 AM

1:20-12184 Julia Abrego

Chapter 13

#2.00 Motion for relief from stay [RP]

ROYAL PACIFIC FUNDING CORPORATION
VS
DEBTOR

fr. 6/16/21(stip)

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julia Abrego

Represented By
Donald E Iwuchuku

Movant(s):

Royal Pacific Funding Corporation

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) 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 14, 2021

Hearing Room 301

9:30 AM

1:21-11033 George A Zepeda

Chapter 7

#3.00 Motion for relief from stay (PP)

AMERICAN HONDA FINANCE CORPORATION
VS
DEBTOR

Docket 8

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

George A Zepeda

Represented By
Daniel King

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
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Wednesday, July 14, 2021

Hearing Room 301

9:30 AM

CONT... George A Zepeda

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, July 14, 2021

Hearing Room 301

9:30 AM

1:21-10705 Edward Kudaverdian

Chapter 7

#4.00 Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA
VS
DEBTOR

Docket 10

*** VACATED *** REASON: No chambers copy of motion provided.
Motion is not on calendar.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Kudaverdian

Represented By
Roland H Kedikian

Movant(s):

BMW Bank of North America

Represented By
Marjorie M Johnson

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Wednesday, July 14, 2021

Hearing Room 301

9:30 AM

1:21-10652 Gerardo Uribe Arteaga

Chapter 7

#5.00 Motion for relief from stay [AN]

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
VS
DEBTOR

Docket 10

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.

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

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

Party Information

Debtor(s):

Gerardo Uribe Arteaga

Represented By
Steven A Alpert

Movant(s):

State Farm Mutual Automobile

Represented By
Richard L Mahfouz

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

Wednesday, July 14, 2021

Hearing Room 301

9:30 AM

CONT... Gerardo Uribe Arteaga

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

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

Wednesday, July 14, 2021

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

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

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

fr. 8/21/19; 10/2/19; 11/6/19; 1/15/20; 11/18/20; 4/21/21; 5/19/21

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on September 22, 2021**. In accordance with Local Bankruptcy Rule 7016-1(a), no later than **September 8, 2021**, the parties must file a joint status report; alternatively, the plaintiff must file and serve a unilateral status report, with the required declaration.

If the parties do not timely file a joint status report, or if the plaintiff does not timely file a unilateral status report, with the required declaration, the Court may dismiss this adversary proceeding for failure to prosecute.

The Court will prepare a scheduling order.

Appearances on July 15, 2021 are excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Gary R Wallace

Defendant(s):

Deborah Adri

Pro Se

Plaintiff(s):

Moshe Adri

Pro Se

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

Wednesday, July 14, 2021

Hearing Room 301

1:30 PM

CONT... Deborah Lois Adri

Chapter 7

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, July 14, 2021

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

#7.00 Status conference re: complaint to deny discharge

fr. 10/2/19; 11/6/19; 1/15/20; 10/14/20;11/18/20; 4/21/21
5/19/21

Docket 1

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on September 22, 2021**. Unless the Court has approved the settlement agreement between the parties, no later than **September 8, 2021**, the parties must file a joint status report updating the Court on the status of their settlement.

Appearances on July 15, 2021 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, July 14, 2021

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

#8.00 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; 12/9/20(stip); 3/24/21(stip)
5/12/21

Docket 27

***** VACATED *** REASON: Continued by Stip to 9/15/21 at 1:30 PM - 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

**United States Bankruptcy Court
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Hearing Room 301

1:30 PM

CONT...

Antoine R Chamoun

Richard Burstein
Jorge A Gaitan

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, July 14, 2021

Hearing Room 301

1:30 PM

1:18-11620 Antoine R Chamoun

Chapter 7

Adv#: 1:21-01013 Seror v. Chamoun

#9.00 Status conference re: complaint by David Seror
against Antoine R Chamoun

fr. 5/12/21

Docket 1

***** VACATED *** REASON: Continued by Stip to 8/18/21 at 1:30 p.m. -
jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Defendant(s):

Antoine R Chamoun

Pro Se

Plaintiff(s):

David Seror

Represented By
Ryan Coy

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol
Ryan Coy

**United States Bankruptcy Court
Central District of California
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Wednesday, July 14, 2021

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

- #10.00** 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; 12/23/20; 3/10/21; 5/19/21

Stip to dismiss filed 6/22/21

Docket 1

*** VACATED *** REASON: Order approving stip entered 6/23/21. [Dkt. 35]

Tentative Ruling:

- NONE LISTED -

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
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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, July 14, 2021

Hearing Room 301

1:30 PM

1:19-11634 Sharon Mizrahi

Chapter 13

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

- #11.00 Status conference re: second amended complaint for:
1. Misrepresentation;
2. Breach of implied covenant of good faith and fair dealing

Demand for jury trial

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); 12/23/20;
1/21/20; 3/10/21; 6/16/21

Docket 93

*** VACATED *** REASON: complaint dismissed per order entered on
6/21/21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharon Mizrahi

Represented By
Shai S Oved

Defendant(s):

Ido Mor

Pro Se

Sharon Mizrahi, an Individual

Pro Se

Sharon Mizrahi dba Divine Builders

Pro Se

Divine Builders

Pro Se

GHR Divine Remodeling

Pro Se

Does 1 Through 10, Inclusive

Pro Se

**United States Bankruptcy Court
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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
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Wednesday, July 14, 2021

Hearing Room 301

1:30 PM

1:19-13155 Shobert Vartan

Chapter 7

Adv#: 1:20-01040 Alvarez et al v. Vartan

#12.00 Pretrial 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; 12/09/20; 2/3/21; 3/3/21

Docket 4

Tentative Ruling:

Contrary to the Court's scheduling order [doc. 44] and Local Bankruptcy Rule 7016-1(b), the parties did not file a joint pretrial stipulation; alternatively, the plaintiff did not timely file a unilateral pretrial statement. Consequently, the Court will dismiss this adversary proceeding for failure to prosecute.

The Court will prepare the order.

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
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1:30 PM

CONT... Shobert Vartan

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

1:00 PM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1602871826>

Meeting ID: 160 287 1826

Password: 083780

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 287 1826

Password: 083780

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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1:00 PM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
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Thursday, July 15, 2021

Hearing Room 301

1:00 PM

1:20-10924 Tikran Eritsyan

Chapter 11

#1.00 Confirmation hearing re: chapter 11 plan of reorganization
fr. 3/18/21; 4/22/21

Docket 52

Tentative Ruling:

Deny. The debtor has not timely sold his real property located at 1356 Elm Avenue, Glendale CA 91201, as provided under his proposed plan. Consequently, in May 2021, the Court granted relief from the automatic stay to the creditor which holds a claim secured by that real property [doc. 117].

The Court will prepare the order.

Party Information

Debtor(s):

Tikran Eritsyan

Represented By
Vahe Khojayan

**United States Bankruptcy Court
Central District of California
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Thursday, July 15, 2021

Hearing Room 301

1:00 PM

1:21-10500 Restorations

Chapter 11

#2.00 Application for order authorizing debtor to employ attorneys under an hourly retainer

Docket 60

Tentative Ruling:

See calendar no. 3.

Party Information

Debtor(s):

Restorations

Represented By
Michael E Plotkin

Movant(s):

Restorations

Represented By
Michael E Plotkin

**United States Bankruptcy Court
Central District of California
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Thursday, July 15, 2021

Hearing Room 301

1:00 PM

1:21-10503 BAIC

Chapter 11

#3.00 Application for order authorizing debtor to employ attorneys under an hourly retainer

Docket 57

Tentative Ruling:

For the reasons discussed below, the Court will not approve the application to employ Michael E. Plotkin as general bankruptcy counsel for the debtor and debtor in possession.

I. BACKGROUND

On March 24, 2021, BAIC ("Debtor") filed a voluntary chapter 11 petition. Steve Awadalla is Debtor's president and sole equity holder [doc. 11, Statement of Financial Affairs, item 28]. Mr. Awadalla also is the president of Restornations, a related entity which filed a chapter 11 petition on March 24, 2021, initiating case no. 1:21-bk-10500-VK. Michael E. Plotkin is the proposed general bankruptcy counsel for Debtor and Restornations.

A. The Deed of Trust and Debtor's Previous Bankruptcy Case

Prepetition, on August 13, 2012, Debtor executed a promissory note in the principal sum of \$65,000.00 (the "Note"), which was made payable to Lot 12 Alma Real Corporation ("Lot 12") [*Motion to Dismiss or Convert*, doc. 16, Exh. 1]. The Note is secured by a deed of trust (the "Deed of Trust") encumbering residential real property located at 2820 North Eastern Avenue, Los Angeles, California 90032 (the "Eastern Property"). *Id.*, at Exh. 2. On August 14, 2012, the Deed of Trust was recorded in the Los Angeles County Recorder's Office. *Id.*

On January 30, 2014, Debtor filed a voluntary chapter 11 petition, initiating case no. 2:14-bk-11784-BB. In its schedule A, Debtor listed an interest in the Eastern Property [2:14-bk-11784-BB, doc. 12]. According to Debtor's schedule D, filed in its prior chapter 11 case, the Eastern Property is encumbered by two deeds of trusts: (1) a deed of trust in favor of Lot 12, securing a claim in the amount of \$65,000.00 (incurred in

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1:00 PM

CONT...

BAIC

Chapter 11

August 2012); and (2) a deed of trust in favor of Oscar Sanchez, securing a claim in the amount of \$15,000.00 (incurred in February 2014). *Id.*

On March 13, 2015, Debtor executed a settlement agreement (the "Settlement Agreement") with Lot 12 and its president, Harlan Helvey [*United States Trustee's Objection to Application for Order Authorizing Debtor to Employ Attorneys Under an Hourly Retainer* (the "Objection"), doc. 64, Exh A, Settlement Agreement]. In relevant part, the Settlement Agreement provides that:

1. The obligation which is the subject of this Stipulation is the promissory note secured by a deed of trust executed by or on behalf of BAIC in favor of Mr. Helvey and/or any of his entities on the property located at 2820 Eastern Avenue, Los Angeles, California in the principal amount of Sixty Five Thousand Dollar (\$65,000.00).
2. The promissory note and to the extent applicable the deed of trust executed by or on behalf of BAIC in favor of Mr. Helvey and/or any of his entities is hereby modified as follows:
 - a. The original principal amount of \$65,000 will bear simple interest at 4% per annum commencing on the first day of the first full month after the date that an order approving this stipulation becomes final or May 1, 2015, whichever comes earlier (all interest prior to that date being waived);
 - b. BAIC's plan shall provide for monthly interest only payments on the first day of the first full month after the date that the order approving BAIC's Chapter 11 plan becomes final and continue for a period of 59 months;
- ...
4. The Helvey Creditors agree to vote in favor of, and otherwise support, a plan of reorganization for BAIC in its Chapter 11 case that incorporates terms reflective of this agreement, and shall take any and all reasonable and appropriate steps to facilitate

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CONT...

BAIC

Chapter 11

confirmation of such plan.

Objection, Exh. A, Settlement Agreement, ¶ 1, 2 and 4. On May 18, 2015, Debtor filed a motion to dismiss its prior bankruptcy case [2:14-bk-11784-BB, doc. 153]. On June 15, 2015, the Court entered an order dismissing that case. *Id.*, doc. 175.

B. Debtor's Pending Bankruptcy Case

a. Debtor's and Restorations' Initial Bankruptcy Schedules

On April 7, 2021, Debtor filed its schedules and Statement of Financial Affairs [doc. 11]. In its schedule A/B, Debtor listed an interest in the Eastern Property, valued at \$400,000.00. As set forth in Debtor's schedule D, the Eastern Property is encumbered by two "mortgages": (1) a first mortgage in favor of Oscar Sanchez, securing a claim in the principal amount of \$17,000.00; and (2) a second mortgage in favor of Morris McQueen, securing a claim in the principal amount of \$15,000.00. In its schedule E/F, Debtor listed no priority unsecured claims and listed nonpriority unsecured claims in the aggregate amount of \$475.00.

On that same day, Restorations filed its schedules and Statement of Financial Affairs [1:21-bk-10500-VK, doc. 13]. In its schedule A/B, Restorations listed an interest in: (1) residential real property located at 550 Orange Avenue, Unit 223, Long Beach, California 90802, valued at \$320,000.00; (2) residential real property located at 10 Atlantic Avenue, Unit 306, Long Beach, California 90802, valued at \$320,000.00; and (3) residential real property located at 3557 Delta Avenue, Long Beach, California 90810, valued at \$420,000.00. *Id.*

In its schedule E/F, Restorations set forth no priority unsecured claims and listed nonpriority unsecured claims in the aggregate amount of \$65,750.00, including a disputed claim of Lot 12, in the amount of \$65,000.00, incurred in April 2012. In this schedule, Restorations states that this claim arose from "a Personal Loan" to Restorations [1:21-bk-10500-VK, doc. 13]. The other \$750.00 in nonpriority unsecured claims listed in this schedule are for "handyman services."

b. Debtor's and Restorations' Amended Bankruptcy Schedules

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CONT... BAIC

Chapter 11

On April 27, 2021, Mr. Awadalla appeared at the 341(a) meeting for Debtor and Restorations. Declaration of Katherine C. Bunker ("Bunker Decl.") [doc. 64], attached to the *United States Trustee's Objection to Application for Order Authorizing Debtor to Employ Attorneys under an Hourly Retainer* (the "Objection"), ¶ 2. At the meeting, Mr. Awadalla represented that: (1) Lot 12 recorded a deed of trust in the amount of \$65,000.00 against the Eastern Property; (2) Lot 12 never funded a \$65,000.00 loan (the "Loan") to Debtor; (3) Lot 12 agreed to lend, on an unsecured basis, \$65,000.00 to Restorations; and (4) there is no written document evidencing this transaction with Restorations. *Id.* Based on Mr. Adawalla's representations, the United States Trustee continued the 341(a) meeting and directed Debtor to amend its schedules to reflect the Loan and the Deed of Trust. *Id.* at ¶ 3.

On May 18, 2021, Debtor filed amended schedules. In its amended schedule A/B, Debtor indicated that a "loan was contracted with Lot 12 Alma Real Corp. for \$65,000.00. A Deed of Trust was recorded on the [Eastern Property] by Lot 12 on 8/14/12. Debtor never received any loan funds. Instead Lot 12 sent the \$65,000.00 to [Restorations]" [doc. 54]. As set forth in its amended schedule E/F, Debtor states that the claim of Lot 12 arises from a "Personal Loan to Restorations which is disputed by Creditor as being a secured loan against property owned by BAIC" [doc. 53].

On May 18, 2021, Restorations also filed amended schedules. In its amended schedule A/B, Restorations states that it "received \$65,000.00 from Lot 12 Alma Real Corporation on November 10, 2021 and considers this money as an unsecured debt" [1:21-bk-10500-VK, doc. 57]. Similarly, in its amended schedule E/F, Restorations states that the claim of Lot 12 arises from a "Personal Loan to [Restorations] (money received by wire transfer 8 months after said monies were supposed to be paid to BAIC . . .)" [1:21-bk-10500-VK, doc. 56].

c. Debtor's and Restorations' Second Amended Bankruptcy Schedules

On June 1, 2021, Mr. Awadalla appeared at the continued 341(a) meeting for Debtor. Bunker Decl., ¶ 4. At the meeting, Mr. Awadalla represented that the \$65,000.00 Restorations received from Lot 12 constitutes a separate transaction not related to the Loan. *Id.*

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CONT... BAIC

Chapter 11

Mr. Helvey, Lot 12's president, contends that the \$65,000.00 given to Restornations represents the funding for the Loan, as evidenced by the executed Settlement Agreement signed by Mr. Awadalla and Mr. Helvey in 2015. *Id.*, ¶ 5.

On June 7, 2021, Debtor filed its second amended schedules. In its second amended schedule A/B, Debtor lists an interest in the Eastern Property and states that a "loan was contracted for by Debtor with Lot 12 Alma Real Corp. for \$65,000.00. Lot 12 recorded a Deed of Trust on the property on 8/14/12 but never tendered or delivered the loan funds to Debtor" [doc. 66]. In its second amended schedule D, Debtor indicates that the Eastern Property is encumbered by an improperly recorded deed of trust in favor of Lot 12 [doc. 67]. Similarly, in its second amended schedule E/F, Debtor states that Lot 12 "never tendered or delivered any loan funds to Debtor" and the "Deed of Trust is improper and should be canceled and withdrawn and no monies are owed to Lot 12."

On June 7, 2021, Restornations filed its second amended schedules. In its second amended schedule A/B, Restornations no longer mentions the \$65,000.00 in funds received by Restornations [1:21-bk-10500-VK, doc. 68]. Instead, in its second amended schedule E/F, Restornations indicates that Lot 12's nonpriority unsecured claim represents a "personal loan to [Restornations] money received by wire transfer on 11/10/12" [1:21-bk-10500-VK, doc. 69].

C. The Application to Employ

On May 20, 2021, Debtor filed an application to employ Michael E. Plotkin as its general bankruptcy counsel (the "Application") [doc. 57]. On June 3, 2021, the United States Trustee ("UST") filed the Objection [doc. 64]. In the Objection, the UST notes that the Application fails to disclose Mr. Plotkin's concurrent representation as general bankruptcy counsel to Restornations.

The UST further contends that, based on Mr. Awadalla's representations and information contained in Debtor's amended schedules, there is a potential conflict of interest arising from the dispute among Debtor, Restornations and Mr. Helvey concerning: (1) whether the Loan is secured by the Eastern Property; (2) whether the \$65,000.00 provided to Restornations represents the funding for the Loan; (3)

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Debtor's liability to Mr. Helvey; and (4) if it is determined that the \$65,000.00 was loaned to Restorations (and not to BAIC), because BAIC granted a deed of trust in favor of Lot 12, BAIC would be a creditor of Restorations. The UST argues that: (1) the Application should be denied for failure to disclose such information; and (2) Mr. Plotkin has a conflict of interest in representing both Debtor and Restorations.

On June 8, 2021, Mr. Helvey filed the Joinder [doc. 68]. In the Joinder, Mr. Helvey asserts that the \$65,000.00 provided to Restorations represents the funding for the Loan, meant for BAIC. According to Mr. Helvey, as evidenced by the Settlement Agreement, the Loan is secured by the Eastern Property, and BAIC agreed to make repay the Loan.

On July 11, 2021, Debtor filed an untimely opposition to the Objection (the "Opposition") [doc. 71]. In the Opposition, Debtor states that there is no potential conflict of interest because: (1) any potential conflict of interest is speculative; (2) Debtor does not intend to assert a claim against Restorations; and (3) after being informed of any potential conflict of interests that may arise, in order to retain Mr. Plotkin as general bankruptcy counsel for Debtor and Restorations, Mr. Awadalla signed a consent form to waive any potential conflicts of interest.

II. DISCUSSION

A. 11 U.S.C § 327

11 U.S.C. § 327(a) provides that:

- (a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, ***that do not hold or represent an interest adverse to the estate, and that are disinterested persons***, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a) (emphasis added). Under the Bankruptcy Code, a debtor in possession has all of the rights and powers of a trustee, including the right to employ estate professionals under § 327. 11 U.S.C. § 1107(a). The purpose of § 327 "is to

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assure that a professional employed in the case will devote undivided loyalty to the client." *In re Wheatfield Business Park LLC*, 286 B.R. 412, 417–18 (Bankr. C.D. Cal. 2002).

"Section 327(a) imposes a two-pronged test for the employment of professionals. The professional (1) must not hold or represent any interest adverse to the estate, and (2) must be a 'disinterested person.'" *In re Wheatfield Business Park LLC*, 286 B.R. at 418. "Section 327(a) prohibits an attorney (or other professional) from representing a debtor in a chapter 11 case if the attorney has or represents an *actual* conflicting interest. This prohibition is absolute, and is not subject to waiver or consent." *Id.* at 420–21 (emphasis in original). "In addition, § 327 also prohibits an attorney from holding or representing a certain level of *potential* conflict of interest. Employment may not be approved where a potential conflict creates a meaningful incentive to act contrary to the best interests of the estate and its various creditors." *Id.* at 421.

Case law has defined an "adverse interest" to mean: "(1) possession or assertion of an economic interest that would tend to lessen the value of the bankruptcy estate; or (2) possession or assertion of an economic interest that would create either an actual or potential dispute in which the estate is a rival claimant; or (3) possession of a predisposition under circumstances that create a bias against the estate." *In re AFI Holdings, Inc.*, 530 F.3d 832, 845 (9th Cir. 2008).

The Bankruptcy Code, in pertinent part, defines a "disinterested person" as a "a person that . . . does not have an interest materially adverse to the interest of the estate . . . by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason." 11 U.S.C. § 101(14)(C). "A disinterested professional is one that can make unbiased decisions, free from personal interest, in any matter pertaining to the debtor's estate." *In re CIC Inv. Corp.*, 192 B.R. 549, 553–54 (B.A.P. 9th Cir. 1996) (internal quotation marks omitted).

B. Fed. R. Bankr. P. 2014

Rule 2014 of the Federal Rules of Bankruptcy Procedure ("FRBP") provides the application procedure for the employment of professionals. Rule 2014 requires an application to disclose "to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective

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attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee." Fed. R. Bankr. P. 2014(a). The application also must include a verified statement by the proposed professional that makes these disclosures. *Id.*

A professional seeking employment under § 327 has an affirmative duty to disclose all facts and connections concerning the debtor:

Professionals must disclose all connections with the debtor, creditors and parties in interest, no matter how irrelevant or trivial those connections may seem. The disclosure rules are not discretionary. The duty to disclose is not vitiated by negligent or inadvertent omissions. A court may sanction a professional for disclosure violations regardless of actual harm to the estate.

Mehdipour v. Marcus & Millichap (In re Mehdi-pour), 202 B.R. 474, 480 (B.A.P. 9th Cir. 1996).

"The disclosures must appear in the application and declaration required by [FRBP] 2014(a). It is not sufficient that the information might be mined from petitions, schedules, section 341 meeting testimony or other sources." *In re B.E.S. Concrete Prod., Inc.*, 93 B.R. 228, 236–37 (Bankr. E.D. Cal. 1988) (citing *In re Haldeman Pipe & Supply Co.*, 417 F.2d 1302, 1304 (9th Cir. 1969)). "The purpose of Rule 2014 is to assure that both the court and the parties in interest receive full disclosure of all actual or potential conflicts that might affect the professional's representation of a trustee, committee or debtor in possession." *In re Wheatfield Business Park LLC*, 286 B.R. at 419.

Here, contrary to FRBP 2014(a), Mr. Plotkin has not disclosed all connections with Debtor, Restornations and Mr. Helvey, nor disclosed a potential conflict of interest arising from the disputed Loan, and the \$65,000.00 provided to Restornations. Mr. Plotkin's failure to disclose such information provides sufficient grounds for disqualification from representing Debtor and Restornations. *See In re Lee*, 94 B.R. 172, 176–77 (Bankr. C.D. Cal. 1988) ("Disclosure is required of any application to represent more than one related party, including the representation of debtors in related cases . . . The failure to disclose the employment application in a related case

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is alone a sufficient basis for disqualifying counsel in both cases.").

Mr. Plotkin also has not met the two-prong test under 11 U.S.C. § 327(a). Under the adverse interest prong, Mr. Plotkin has not shown that he does not represent an interest adverse to Debtor's estate. The estates of Debtor and Restornations have conflicting interests as to which of the estates is liable for the Loan, and if the Loan is secured by Debtor's real property.

At a minimum, Mr. Plotkin has a potential conflict of interest that could ripen into an actual conflict of interest between Debtor and Restornations. *See In re Wheatfield Business Park LLC*, 286 B.R. at 421 ("A potential conflict of interest may also require the disqualification of a professional if, in the judgment of the court, the conflict is sufficiently important and there is a sufficient likelihood that it will ripen into an actual conflict.").

Therefore, under these facts, the Court finds that Debtor and Restornations should have separate general bankruptcy counsel to prevent any potential conflict of interest that should arise during the pendency of these two cases, regarding the Loan. *See In re Sonya D. Intern., Inc.*, 484 B.R. 773, 779 (Bankr. C.D. Cal. 2012) ("If an actual conflict develops, or if there is a sufficiently troubling potential conflict of interest, then it may be necessary for those various parties to retain separate counsel.").

C. Cal. R. Prof. Conduct 1.7

Rule 1.7 of the California Rules of Professional Conduct, in relevant part, provides that:

- (a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or separate matter.

...

- (d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and

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- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; and
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Cal. R. Prof. Conduct 1.7(a) and (d).

Here, Mr. Adawalla's consent to waive any potential conflict of interest between Debtor and Restornations is inapposite. California Rule of Professional Conduct 1.7(d) states that an attorney may represent a client when "the representation is not prohibited by law." As shown, Mr. Plotkin has not met the requirements of 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014. Because Mr. Plotkin has not met the stringent requirements to be retained as general bankruptcy counsel under the Bankruptcy Code, despite Mr. Adawalla's consent to waive any potential conflict of interest, Mr. Plotkin cannot represent both Debtor and Restornations.

Moreover, a debtor in possession has a fiduciary obligation to assert a claim on behalf of the estate, which cannot be waived. *See In re Lee*, 94 B.R. at 178–79 ("As a debtor in possession, [the debtor] has a fiduciary duty to assert any such claim on [creditors'] belief. The filing of the bankruptcy case terminated [its] power to unilaterally to waive claims . . ."). As a fiduciary, Mr. Adawalla cannot waive Debtor's potential claim against Restornations to the detriment of Debtor's bankruptcy estate and its creditors.

III. CONCLUSION

The Court will deny the Application to Employ.

Debtor and Restornations must retain separate general bankruptcy counsel.

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

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Party Information

Debtor(s):

BAIC

Represented By
Michael E Plotkin

Movant(s):

BAIC

Represented By
Michael E Plotkin

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1:13-14209 Mike M Ahmadshahi and Katayoun M Ahmadshahi

Chapter 11

#4.00 Motion for entry of discharge, final decree and order closing debtors' chapter 11 case

Docket 197

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):

Mike M Ahmadshahi

Represented By
Giovanni Orantes

Joint Debtor(s):

Katayoun M Ahmadshahi

Represented By
Giovanni Orantes

Movant(s):

Mike M Ahmadshahi

Represented By
Giovanni Orantes

Katayoun M Ahmadshahi

Represented By
Giovanni Orantes
Giovanni Orantes

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1:11-11603 Kevan Harry Gilman

Chapter 7

#5.00 Chapter 7 trustee's notice of intention to abandon real property

Docket 794

Tentative Ruling:

Overrule objection to abandonment.

I. BACKGROUND

On February 7, 2011, Kevan Harry Gilman ("Debtor") filed a voluntary chapter 7 petition. Amy L. Goldman was appointed the chapter 7 trustee (the "Trustee"). In his latest-amended schedule A [doc. 35], Debtor identified a fee simple interest in two real properties located at: (A) 6553 Varna Avenue, Van Nuys, CA 91401 (the "Varna Property"); and (B) 9010 Corbin Avenue, Suite 16, Northridge, CA 91324 (the "Corbin Property"). In his schedule C, Debtor asserted a homestead exemption in the Varna Property. [FN1]. In his schedule D, Debtor identified two deeds of trust encumbering the Varna Property [doc. 5].

On June 21, 2011, the Trustee filed a no asset report. From 2011 through present day, a span of over ten years, Debtor and Tammy R. Phillips and Tammy R. Phillips, a Prof. Law Corp. ("Creditors") engaged in extensive litigation.

On November 26, 2020, Creditors filed a motion to direct the Trustee to administer estate assets or, in the alternative, remove the Trustee (the "Administration Motion") [doc. 761]. On December 10, 2020, to help the Trustee address the assertions in the Administration Motion, the Trustee filed an application to employ counsel [doc. 765]. Upon employing counsel, the Trustee and her attorneys analyzed Debtor's schedules, proofs of claim filed against the estate and debt obligations secured by the Varna Property and the Corbin Property. Declaration of Amy L. Goldman ("Goldman Declaration") [doc. 811], ¶ 9. The obligations include multiple loans secured by deeds of trust, judgment liens and tax liens. *Id.* As noted above, Debtor also asserted

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a homestead exemption in the Varna Property.

On January 28, 2021, the Trustee filed a Notice of Assets [doc. 783] for the purpose of setting a claims bar date. Goldman Declaration, ¶ 6. The claims bar date was set for May 3, 2021.

On May 3, 2021, Creditors filed claims against the estate in the amounts of \$1,127,907.14 and \$809,974.71, respectively. Creditors assert that part of these claims are secured by the Varna Property and the Corbin Property.

On May 13, 2021, the Trustee filed a notice of her intent to abandon the Varna Property and the Corbin Property (the "Abandonment Notice") [doc. 794]. In the Abandonment Notice, the Trustee stated that she had investigated the current market value of the properties, as well as the encumbrances against both, and determined that the properties were of inconsequential value and burdensome to the estate.

On May 27, 2021, Creditors filed an *ex parte* application for a seven-day extension of the deadline to respond to the Abandonment Notice (the "Ex Parte Application") [doc. 797]. On May 28, 2021, Creditors filed an opposition to the Abandonment Notice (the "Opposition") [doc. 800]. In the Opposition, Creditors assert that they "do not believe a[] meaningful analysis has taken place." Creditors also note that, in accordance with their request for an extension of time to respond to the Abandonment Notice, Creditors intend to file a supplemental brief.

On June 7, 2021, the Court entered an order granting the Ex Parte Application and approving a seven-day extension of the deadline to respond to the Abandonment Notice [doc. 807]. Creditors did not timely file a supplemental brief. On July 8, 2021, the Trustee filed a reply to the Opposition (the "Reply") [doc. 811]. To the Reply, the Trustee attached a declaration by a real estate agent, who valued the Varna Property as "\$690,000 to \$730,000" and the Corbin Property as "\$290,000 to \$310,000." Declaration of Steve Flores, ¶¶ 4-5. The Trustee also provided a calculation of the liens against each property, as well as estimated costs of sale, demonstrating that there is no equity in either the Varna Property or the Corbin Property.

II. ANALYSIS

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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." To approve a request to abandon property, the court must find that "(1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate" by a preponderance of the evidence. *In re Viet Vu*, 245 B.R. 644, 647, 650 (B.A.P. 9th Cir. 2000).

Here, the Trustee demonstrated that the Varna Property and the Corbin Property are burdensome to the estate and of inconsequential value and inconsequential benefit. The Trustee established that there is no equity in either property and that, even with the appraiser's higher estimates, sale of the properties would not generate sufficient proceeds to pay unsecured creditors of the estate.

Creditors have not provided any argument or evidence to the contrary; rather, Creditors' barebones Opposition merely asserts that they believe the Trustee has not engaged in a "meaningful analysis." Creditors also do not address the claim of an exemption or the encumbrances against the properties, including Creditors' own significant liens against the real properties. Moreover, although Creditors noted that they would file a supplemental brief, Creditors did not timely file such a brief by the extended deadline set by the Court. There being no evidence or analysis contradicting the Trustee's showing that the properties are burdensome and of inconsequential value and benefit, the Court will allow abandonment of the properties.

III. CONCLUSION

The Court will allow abandonment of the real properties.

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

FOOTNOTES

1. The Court allowed the claim of a homestead exemption in the amount of \$100,000 [doc. 692].

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Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Trustee(s):

Amy L Goldman (TR)

Represented By
Anthony A Friedman

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1:11-11603 Kevan Harry Gilman

Chapter 7

#6.00 Chapter 7 trustee's notice of intention to abandon personal property

Docket 795

Tentative Ruling:

Overrule objection to abandonment.

I. BACKGROUND

On February 7, 2011, Kevan Harry Gilman ("Debtor") filed a voluntary chapter 7 petition. Amy L. Goldman was appointed the chapter 7 trustee (the "Trustee").

On June 21, 2011, the Trustee filed a no asset report. From 2011 through present day, a span of over ten years, Debtor and Tammy R. Phillips and Tammy R. Phillips, a Prof. Law Corp. ("Creditors") engaged in extensive litigation.

On November 26, 2020, Creditors filed a motion to direct the Trustee to administer estate assets or, in the alternative, remove the Trustee (the "Administration Motion") [doc. 761]. On December 10, 2020, to help the Trustee address the assertions in the Administration Motion, the Trustee filed an application to employ counsel [doc. 765]. Upon hiring counsel, the Trustee investigated certain alleged malpractice claims held by the estate. Declaration of Amy L. Goldman [doc. 812], ¶ 7.

On January 28, 2021, the Trustee filed a Notice of Assets [doc. 783] for the purpose of setting a claims bar date. Goldman Declaration, ¶ 6. The claims bar date was set for May 3, 2021. On May 3, 2021, Creditors filed claims against the estate in the amounts of \$1,127,907.14 and \$809,974.71.

On May 13, 2021, Debtor's counsel filed a notice of Debtor's death [doc. 793]. On the same day, the Trustee filed a notice of her intent to abandon alleged claims held by the estate (the "Abandonment Notice") [doc. 795]. In the Abandonment Notice, the Trustee stated that she intended to abandon Debtor's interests in an alleged

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malpractice claim in connection with prepetition legal representation of Debtor. The Trustee also stated that, in investigating these alleged claims, the Trustee learned that Debtor's attorneys resolved any prepetition malpractice claim by agreeing to represent Debtor for free (the "Representation Agreement"), and that, in any event, the Trustee's investigation revealed that the alleged malpractice claims are time barred.

On May 27, 2021, Creditors filed an opposition to the Abandonment Notice (the "Opposition") [doc. 799] and a declaration by Charles Jakob, Creditors' counsel (the "Jakob Declaration") [doc. 798]. In the Opposition and the Jakob Declaration, Creditors allege that Debtor's counsel committed malpractice for the following reasons: (A) counsel took an untimely appeal from a 2007 judgment entered against Debtor; (B) in 2008, counsel appealed fee awards in favor of Creditors, which appeals were unsuccessful because counsel did not preserve a record adequate for review; and (C) counsel made arguments that were wrong, and, in March 2020, an appellate court agreed with Creditors. Creditors also argue that the Representation Agreement was either ineffective for lack of adequate disclosure, or, if effective, settled only one of the alleged malpractice claims. Creditors also argue that the alleged malpractice claim are not time barred.

On July 8, 2021, the Trustee filed a reply to the Opposition (the "Reply") [doc. 812]. In the Reply, the Trustee reiterates that the claims are time barred, and asserts that: (A) Debtor settled the malpractice claims with his counsel; and (B) certain of the claims did not ripen until after the petition date and, as a result, are not property of the estate; and (C) to recover damages for malpractice, the Trustee would have to prove that, but for the alleged acts of malpractice, Debtor would not have incurred the damages owed to Creditors.

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." To approve a request to abandon property, the court must find that "(1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate" by a preponderance of the evidence. *In re Viet Vu*, 245 B.R. 644, 647, 650 (B.A.P. 9th Cir. 2000).

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Here, the record shows that the alleged malpractice claims are burdensome to the estate and of inconsequential value and benefit to the estate. In their Opposition, Creditors focus on the merits of the alleged malpractice claims. However, Creditors do not provide any analysis regarding the value of the alleged claims to the estate.

In fact, Creditors' own lengthy statement of the facts and legal commentary on the several alleged claims undermine Creditors' opposition to abandonment. Apparently, in Creditors' own view, pursuit of the alleged claims will involve several disputed issues. In reviewing the Opposition and the Reply, those issues include, among other disputes: (A) whether Debtor was damaged by the alleged malpractice, including whether Debtor would have been successful but for the alleged acts of malpractice; (B) whether the alleged claims are time barred; (C) whether the alleged claims are property of the estate; (C) whether the Representation Agreement resolved some or all prepetition claims that would otherwise be property of the estate; and (D) whether, to the extent the Representation Agreement does not preclude future malpractice claims, Debtor's counsel's years of representation of Debtor creates a setoff right against any damages incurred by Debtor.

Assuming the Trustee had the resources, in the estate, to engage counsel to pursue the alleged malpractice claims *and* succeeded in establishing that malpractice took place and caused damages to Debtor (also that those damages belong to the estate), litigation of these issues would be burdensome to the estate. *See* 11 § 554(a) (requiring a showing that the property is burdensome to the estate *or* of inconsequential value and benefit). Debtor has now died, taking with him relevant testimony regarding, among other things, the terms of his Representation Agreement. Moreover, this case has been pending for over ten years. Even if the Court ignores the evidentiary issues presented by the death of a relevant witness, expending additional years of time to litigate the alleged malpractice claims, when such claims may be time barred or may not be property of the estate, is burdensome to this estate. Creditors have not made a showing to the contrary. Consequently, the Court will allow abandonment of the alleged malpractice claims.

III. CONCLUSION

The Court will allow abandonment of the alleged malpractice claims.

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

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Trustee(s):

Amy L Goldman (TR)

Represented By
Anthony A Friedman

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1:17-10673 Hermann Muennichow

Chapter 7

#7.00 Trustee's application for authority to employ Coldwell Banker Residential Brokerage and Help-U-Sell Inland Valley as real estate broker

Docket 106

Tentative Ruling:

The Court will approve the application to employ a real estate broker.

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").

On July 28, 2017, the Trustee filed a complaint against Ms. Muennichow, asserting claims for actual and constructive fraudulent transfer (the "Adversary Proceeding") [1:17-ap-01069-VK]. The Trustee sought to recover, among other things, real property located at 38685 Calle de Lobo, Murrieta, California 92562 (the "Property"). In August and September 2019, the Court held trial. Ms. Muennichow testified. On September 6, 2019, after trial, the Court issued an oral ruling (the "Oral Ruling") [1:17-ap-01069-VK, doc. 116]. In the Oral Ruling, the Court stated, in relevant part—

On September 29th, 2016, Debtor and Ms. Muennichow executed a stipulation where Ms. Muennichow transferred her 49 percent [interest] in the Debtor's accounting practice to the Debtor. Per the stipulation, the Debtor and Ms. Muennichow also agreed to transfer the [Property] to Ms. Muennichow but noted the [Property] would retain its community property characteristic. The Debtor and Ms. Muennichow indicated in the stipulation that the purpose of the transfer of the [Property] was to refinance the property, and that's also in keeping with Ms. Muennichow's testimony, which was to help to pay the IRS liens that were attached to the property from the tax nonpayment.

...

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Hermann Muennichow

Chapter 7

On November 3rd, 2016, Mr. Muennichow recorded a quitclaim deed transferring the [Property] to Ms. Muennichow. ...On October 31st, 2017, Ms. Muennichow filed a schedule of assets and debts before the Family Court. She indicated the [Property] was community property.

Based on these findings, and after consideration of many other factors, the Court held that Debtor and Ms. Muennichow did not execute the stipulation and quitclaim deed with intent to hinder, delay or defraud Debtor's creditors.

On June 10, 2021, the Trustee filed an application to employ a broker to market the Property (the "Application") [doc. 106]. In the Application, the Trustee contends that, through the Oral Ruling, the Court held that the Property is community property and, as a result, property of the estate. On June 15, 2021, Ms. Muennichow filed an opposition to the Application (the "Opposition") [doc. 108], arguing that: (A) the Oral Ruling did not contain any findings regarding the characterization of the Property; (B) *res judicata* bars the Trustee from asserting that the Property is community property; and (C) contending that, in light of the stipulation between Debtor and Ms. Muennichow and the resulting quitclaim deed, the Property is Ms. Muennichow's sole and separate property.

On July 8, 2021, the Trustee filed a reply to the Opposition [doc. 116]. On July 12, 2021, Ms. Muennichow filed a sur-reply (the "Sur-Reply") [doc. 118].

II. ANALYSIS

As a preliminary matter, the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules do not provide for the filing of sur-replies. As such, the Court need not consider the Sur-Reply.

In their briefs, the parties focus heavily on the impact of the Oral Ruling on the Property's characterization. However, the Oral Ruling does not determine that the Property is community property. Rather, in assessing whether Debtor and Ms. Muennichow intended to hinder, delay or defraud creditors by executing the stipulation and quitclaim deed, the Court noted that the parties' continued characterization of the Property as community property (including after execution of the stipulation and quitclaim deed) belied the Trustee's assertion that the Debtor

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and/or Ms. Muennichow intended to shield the Property from Debtor's creditors. The Court considered Debtor's and Ms. Muennichow's representations regarding the characterization of the Property as a factor, among many other factors, negating actual intent to hinder, delay or defraud Debtor's creditors. As such, this Court has not previously held that the Property is community property, or that the Property is property of the estate. [FN1].

In addition, the doctrine of *res judicata* does not bar the Trustee from asserting that the Property is property of the estate. Under federal law, which applies to the preclusive effect of this Court's Oral Ruling, 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).

Here, the "same claim or cause of action" is not involved in this matter as in the Adversary Proceeding. Courts in the Ninth Circuit use a four-factor test for determining whether there is an identity of claims: "(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts." *Harris v. Cty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012).

In the Adversary Proceeding, the Court assessed whether the execution of the stipulation and quitclaim deed qualified as a fraudulent transfer. The Court's determination that a fraudulent transfer did not occur will not be "destroyed or impaired" by the current dispute over whether, as of the petition date, the Property was community property. Nor would an analysis of the Property's characterization involve the same rights or the same transactional nucleus of facts presented in the Adversary Proceeding. In the Adversary Proceeding, the Trustee attempted to recover alleged transfers that, in the Trustee's view, were used to shield property of the estate from creditors. Here, the Trustee is merely characterizing the Property as property of

**United States Bankruptcy Court
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Thursday, July 15, 2021

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1:30 PM

CONT... **Hermann Muennichow**

Chapter 7

the estate, to market and sell the Property for the benefit of the estate. Finally, although the parties presented potentially overlapping evidence during trial, the parties were not called upon to prove the characterization of the Property as of the petition date, and have not had an opportunity to do so.

In fact, the Court is not currently presented with a "claim" or "cause of action" at all; the Trustee is not stating an affirmative claim for relief against Ms. Muennichow. Rather, the parties dispute the characterization of the Property. A holding that *res judicata* prevents the Court from determining the nature of the Property would lead to an absurd result; because the Court never adjudicated the nature of the Property, preventing litigation of the issue would leave the parties in limbo, with one party arguing that the Property is property of the estate and the other asserting that it is not. Consequently, *res judicata* does not prevent the Court from assessing the nature of the Property. [FN2].

At this time, the Court will approve employment of the broker. If the Trustee elects to sell the Property, the parties may file briefs discussing whether the Property is property of the estate. The parties must support their briefs with evidence.

III. CONCLUSION

The Court will approve the Application.

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

FOOTNOTES

1. In the Reply, the Trustee also references certain statements made by Ms. Muennichow in opposition to a motion for relief from the automatic stay [doc. 67]. None of the statements made by Ms. Muennichow in that filing establish that the Property is community property.
2. On July 23, 2020, after the Court issued the Oral Ruling, the Supreme Court of California decided *In re Brace*, 9 Cal.5th 903 (2020). In *Brace*, the Supreme Court of California clarified the application and scope of community property presumptions under California law, as well as the requirements necessary for

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CONT... **Hermann Muennichow**
transmutation.

Chapter 7

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone
Nicholas A West

Movant(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov

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1:30 PM

1:20-12097 Philip H. Lee

Chapter 7

#8.00 Creditor Keybank National Association's Motion for extension of time to object to entry of discharge and deadline to file a nondischargeability complaint

fr. 4/22/21; 5/13/21

Docket 39

***** VACATED *** REASON: Matter resolved at 5/13/21 hearing.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philip H. Lee

Represented By
Matthew Abbasi

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Tuesday, July 20, 2021

Hearing Room 301

8:30 AM

1: -

Chapter

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Docket 0

**United States Bankruptcy Court
Central District of California
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8:30 AM
CONT...

Chapter

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, July 20, 2021

Hearing Room 301

8:30 AM

1:21-10604 Grace Martinez

Chapter 7

#1.00 Reaffirmation agreement between debtor and
American Honda Finance Corporation

Docket 15

Party Information

Debtor(s):

Grace Martinez

Represented By
Raymond Perez

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Tuesday, July 20, 2021

Hearing Room 301

8:30 AM

1:21-10667 Grigorios Papoutsian

Chapter 7

#2.00 Reaffirmation agreement between debtor and Wescom Central Credit Union

Docket 10

Party Information

Debtor(s):

Grigorios Papoutsian

Represented By
Navid Kohan

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 20, 2021

Hearing Room 301

8:30 AM

1:21-10749 Mikhail Arkhipov

Chapter 7

#3.00 Reaffirmation agreement between debtor and Toyota Motor Credit Corporation

Docket 9

Party Information

Debtor(s):

Mikhail Arkhipov

Represented By
Elena Steers

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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San Fernando Valley
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Tuesday, July 20, 2021

Hearing Room 301

8:30 AM

1:21-10822 Robert Dean Bouchard

Chapter 7

#4.00 Reaffirmation agreement between debtor and SAG - AFTRA Federal
Credit Union

Docket 10

Party Information

Debtor(s):

Robert Dean Bouchard

Represented By
Peter M Lively

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

8:30 AM

1:21-10976 Jorge Alberto Villalvazo Lopez

Chapter 7

#5.00 Reaffirmation agreement between debtor and TD Auto Finance LLC

Docket 12

Party Information

Debtor(s):

Jorge Alberto Villalvazo Lopez

Represented By
Peter M Lively

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, July 20, 2021

Hearing Room 301

8:30 AM

1:21-10987 Nicole Moore

Chapter 7

#6.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation

Docket 8

Party Information

Debtor(s):

Nicole Moore

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
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9:30 AM

1: -

Chapter

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Docket 0

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Chapter

Tentative Ruling:

- NONE LISTED -

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Hearing Room 301

9:30 AM

1:21-10976 Jorge Alberto Villalvazo Lopez

Chapter 7

#1.00 Motion for relief from stay [PP]

LOGIX FEDERAL CREDIT UNION
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):

Jorge Alberto Villalvazo Lopez

Represented By
Peter M Lively

Movant(s):

Logix Federal Credit Union

Represented By
Karel G Rocha

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Hearing Room 301

9:30 AM

CONT... Jorge Alberto Villalvazo Lopez

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, July 21, 2021

Hearing Room 301

9:30 AM

1:21-11033 George A Zepeda

Chapter 7

#2.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORORATION
VS
DEBTOR

Docket 11

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

George A Zepeda

Represented By
Daniel King

Movant(s):

Toyota Motor Credit Corporation

Represented By
Austin P Nagel

**United States Bankruptcy Court
Central District of California
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9:30 AM

CONT... George A Zepeda

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

United States Bankruptcy Court
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Wednesday, July 21, 2021

Hearing Room 301

9:30 AM

1:17-10681 Sandra Murray

Chapter 13

#3.00 Motion for relief from stay [RP]

PNC BANK, NATIONAL ASSOCIATION
VS
DEBTOR

Stip to continue filed 7/7/21

Docket 71

***** VACATED *** REASON: Order approving stip entered 7/8/21.
Hearing continued to 8/25/21 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Murray

Represented By
Todd J Roberts

Movant(s):

PNC Bank, National Association

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, July 21, 2021

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

#4.00 Order to Show Cause Why This Court Should Not Abstain From
This Adversary Proceeding

fr. 6/16/21

Docket 134

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone
Nicholas A West

Defendant(s):

Duane Van Dyke Irrevocable Trust

Represented By
Kelly Warren
Benjamin Blakeman

Helayne Muennichow

Represented By
Robert J McKennon
Gary A Kurtz
Nicholas A West

David Seror

Represented By
Richard Burstein
Jessica L Bagdanov

Plaintiff(s):

The Lincoln National Life Insurance

Represented By
Erin Illman
David W. Meadows

**United States Bankruptcy Court
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Wednesday, July 21, 2021

Hearing Room 301

1:30 PM

CONT... Hermann Muennichow

Chapter 7

Robert R Marcus

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov

**United States Bankruptcy Court
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Wednesday, July 21, 2021

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

#5.00 Pretrial 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; 6/3/20; 5/5/21;
6/16/21

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

***** VACATED *** REASON: Per order entered on 6/22/21 doc [142]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone

Defendant(s):

Duane Van Dyke Irrevocable Trust

Pro Se

Helayne Muennichow

Pro Se

**United States Bankruptcy Court
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Wednesday, July 21, 2021

Hearing Room 301

1:30 PM

CONT... Hermann Muennichow

Chapter 7

David Seror

Represented By
Richard Burstein

Plaintiff(s):

The Lincoln National Life Insurance

Represented By
Erin Illman

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

**United States Bankruptcy Court
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Wednesday, July 21, 2021

Hearing Room 301

1:30 PM

1:20-11286 Transpine, Inc.

Chapter 7

Adv#: 1:21-01024 GOTTlieb v. Tepper et al

#6.00 Status conference re: complaint for turnover of property of the estate

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 12/15/21.

Deadline to complete one day of mediation: 12/31/21.

Deadline to file pretrial motions: 1/31/22.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 2/16/22.

Pretrial: 3/2/22 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

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Hearing Room 301

1:30 PM

CONT... Transpine, Inc.

Chapter 7

Debtor(s):

Transpine, Inc.

Represented By
Leslie A Cohen
Paul M Kelley

Defendant(s):

Daniel Tepper

Pro Se

Oren Tepper

Pro Se

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Ron Bender
Carmela Pagay
Beth Ann R Young

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ron Bender

**United States Bankruptcy Court
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San Fernando Valley
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Wednesday, July 21, 2021

Hearing Room 301

1:30 PM

1:20-11305 Francisco Matthew Canchola, Jr.

Chapter 7

Adv#: 1:21-01027 Canchola, Jr. v. AFNI, Inc.

#7.00 Status conference re: complaint for willful automatic stay violation (11 U.S.C. §362 (a)(6) and §362(k)) and violation of the discharge injunction (11 U.S.C. §524)

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 13, 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 **September 15, 2021.**

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 21, 2021 is excused.

The Court will prepare a scheduling order.

Party Information

Debtor(s):

Francisco Matthew Canchola Jr.

Represented By
Barry E Borowitz
Joseph Brian Angelo

Defendant(s):

AFNI, Inc.

Pro Se

Plaintiff(s):

Francisco Canchola, Jr.

Represented By

**United States Bankruptcy Court
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Wednesday, July 21, 2021

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1:30 PM

CONT... Francisco Matthew Canchola, Jr.

Chapter 7

Joseph Brian Angelo

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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

Wednesday, July 21, 2021

Hearing Room 301

2:30 PM

1:20-11166 Lanny Jay Dugar

Chapter 7

Adv#: 1:20-01083 Bjornbak et al v. Dugar

#8.00 Motion to extend deadlines for completion of fact discovery and incorporated

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):

Lanny Jay Dugar	Pro Se
-----------------	--------

Defendant(s):

Lanny Jay Dugar	Pro Se
-----------------	--------

Plaintiff(s):

David Bjornbak	Represented By Qiang Bjornbak
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Qiang Bjornbak	Represented By Qiang Bjornbak
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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
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Wednesday, July 21, 2021

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#9.00 Defendants' Motion to dismiss pursuant to FRCP 12(b) and motion to strike pursuant to FRCP 12(f)

Stip to continue filed 7/9/21

Docket 97

***** VACATED *** REASON: Order approving stip. entered 7/9/21.
Hearing continued to 7/28/21 at 2:30 PM.**

Tentative Ruling:

- NONE LISTED -

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
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Wednesday, July 21, 2021

Hearing Room 301

2:30 PM

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

- #10.00** Status conference re third amended complaint for:
- (1) Avoidance of Transfer in Fraud of Creditors [Cal Civ. Code sections 3439, *et seq.*];
 - (2) Breach of Written Contract;
 - (3) Reimbursement of Business Expenses [Cal. Lab. Code section 2802];
 - (4) Unlawful Deductions from Wages [Cal. Lab. Code sections 216, 221];
 - (5) Fraud & Deceit [Cal. Civ. Code sections 1572-1573, 1709-1710];
 - (6) Conversion;
 - (7) Declaratory Relief Re Nondischargeability of Fraud Damages [11 U.S.C. § 523(a)(2)]
Wrongful Constructive Termination in Violation of Public Policy;
 - (8) Waiting Time Penalties [Cal. Lab. Code § 203];
 - (9) Unlawful Retaliation [Cal. Lab. Code § 1102.5]
 - (10) Unlawful Retaliation [Cal. Lab. Code § 98.6]
 - (11) Failure to Maintain and Timely Produce Personnel Records [Cal. Lab. Code § 1198.5(k)];
 - (12) Failure to Maintain and Timely Produce Wage and Hour Records [Cal. Lab. Code § 226(f)];
 - (13) Wrongful Constructive Termination in Violation of Public Policy
 - (14) Unfair Business Practices [Cal. Bus. & Prof. Code, §§ 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; 11/4/20; 1/20/21; 3/24/21; 5/5/21; 6/16/21

**United States Bankruptcy Court
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San Fernando Valley
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Hearing Room 301

2:30 PM

CONT... Kenneth C. Scott

Chapter 13

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on July 28, 2021**, to be held with the hearing on the debtor's motion to dismiss.

Appearances on July 21, 2021 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**

Thursday, July 22, 2021

Hearing Room 301

10:30 AM

1: -

Chapter

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Meeting ID: 160 240 5624

Password: 718097

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Docket 0

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, July 22, 2021

Hearing Room 301

10:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Thursday, July 22, 2021

Hearing Room 301

10:30 AM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

#1.00 Greenberg Glusker Fields Claman & Machtinger LLP's Interim Application for Compensation and Reimbursement of Expenses for June 25, 2016 through April 30, 2021

Docket 195

Tentative Ruling:

Greenberg Glusker Fields Claman & Machtinger LLP (“Greenberg Glusker”), counsel to chapter 7 trustee – approve fees of \$467,518.50 and reimbursement of expenses of \$6,745.05 for the period covering June 25, 2016 through April 30, 2021, pursuant to 11 U.S.C. § 331, on an interim basis.

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

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee 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):

Dean Albert Maury Cazares

Represented By
Andrew Edward Smyth
Stephen S Smyth

Movant(s):

Greenberg Glusker Fields Claman &

Pro Se

Trustee(s):

Diane C Weil (TR)

Represented By
C John M Melissinos
Jeffrey A Krieger
Keith Patrick Banner

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1:16-10543 Dean Albert Maury Cazares

Chapter 7

#2.00 Application for Interim Fees and/or Expenses for LEA Accountancy, LLP,
Accountant, Period: 10/20/2020 to 6/16/2021

Docket 199

Tentative Ruling:

LEA Accountancy LLP ("LEA"), accountant to chapter 7 trustee – approve fees of \$9,973.00 and reimbursement of expenses of \$640.03, for the period covering October 20, 2020 through June 16, 2021, pursuant to 11 U.S.C. § 331, on an interim basis.

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

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee 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):

Dean Albert Maury Cazares

Represented By
Andrew Edward Smyth
Stephen S Smyth

Movant(s):

LEA Accountancy, LLP

Pro Se

Trustee(s):

Diane C Weil (TR)

Represented By
C John M Melissinos
Jeffrey A Krieger
Keith Patrick Banner

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1:00 PM

1:11-14106 Salvador Zepeda-Ortega and Maria Zepeda

Chapter 7

#3.00 Debtors' Motion to Avoid Lien with Creditors Trade Association

Docket 29

Tentative Ruling:

The Court will not reconsider its order denying the debtors' motion to avoid lien under 11 U.S.C. § 522(f).

I. BACKGROUND

A. Debtors' Bankruptcy Case and the Lien Avoidance Motion

On April 4, 2011, Salvador Zepeda-Ortega and Maria Zepeda ("Debtors") filed a voluntary chapter 7 petition. On July 14, 2011, the Court entered an order granting Debtors a discharge [doc. 12]. On July 19, 2011, the Court closed the case [doc. 14].

On May 11, 2021, the Court entered an order granting Debtors' motion to reopen their bankruptcy case [doc. 27]. On May 18, 2021, Debtors filed a *Motion to Avoid Lien Under 11 U.S.C. § 522(f)*, regarding a judgment entered in favor of Creditors Trade Association, Inc. (the "Lien Avoidance Motion") [doc. 29]. On May 25, 2021, based on several deficiencies related to insufficient notice and evidence, the Court entered an order denying the Lien Avoidance Motion (the "Order to Deny") [doc 30].

On June 1, 2021, Debtors lodged an order requesting the Court to reconsider its Order to Deny. Specifically, Debtors allege that Creditors Trade Association, Inc. ("Creditor") failed to provide proper notification to Debtors, and as a result, Creditors improperly obtained a judgment against Mr. Zepeda-Ortega in 2018.

On July 29, 2021, the Court entered an order setting a hearing on the Lien Avoidance Motion and directing Debtors to file a response no later than July 8, 2021 (the "Order Setting Hearing") [doc. 33].

B. The Response

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CONT... Salvador Zepeda-Ortega and Maria Zepeda

Chapter 7

On July 8, 2021, Debtors filed a response to the Order Setting Hearing (the "Response") [doc. 36]. In the Response, Debtors allege, without attaching any new written evidence in support of their allegations, that Creditor failed to provide proper notification to Debtors and, thus, improperly obtained a judgment against Mr. Zepeda-Ortega in 2018. Debtors also contend that, because Creditor obtained this judgment after Debtors received a discharge in 2011, Creditor violated the discharge injunction pursuant to 11 U.S.C. § 524(a).

II. DISCUSSION

In relevant part, 11 U.S.C. § 522(f) provides that "[n]otwithstanding 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" 11 U.S.C. § 522(f)(1).

Pursuant to 11 U.S.C. § 524(a):

A discharge in a case under this title—

- (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
- (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and
- (3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from

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Chapter 7

discharge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

"Section 727(b) of the Bankruptcy Code states in part: 'Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose *before the date of the order for relief* under this chapter [i.e., the date of the bankruptcy filing]....' [A] pre-bankruptcy debt is discharged, whether or not it is scheduled.'" *In re Beezley*, 994 F.2d 1433, 1436 (9th Cir. 1993) (quoting *In re Mendiola*, 99 B.R. 864, 865 (Bankr. N.D. Ill. 1989) (emphasis added)). "Thus, unless section 523 dictates otherwise, every prepetition debt becomes discharged under section 727." *Id.*

Pursuant to the above cited authorities, Debtors cannot *invalidate* Creditor's judgment under 11 U.S.C. § 522(f). Moreover, in the Response, Debtors contend that there is no property to which a judgment lien can attach; thus there is no lien to avoid.

If Debtors seek to invalidate the judgment in favor of Creditor, *based on an alleged violation of the discharge injunction*, Debtors must file *and properly serve* on Creditor a motion for an order to show cause, *supported by written evidence*, that discusses when Creditor's claim against Debtors, or either of them, allegedly arose (which must be *before Debtors filed their bankruptcy petition*), and why Creditor should not be held in contempt and sanctioned for violating the discharge injunction pursuant to 11 U.S.C. § 524.

III. CONCLUSION

The Court will not reconsider its Order to Deny.

The Court will prepare the order.

Party Information

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CONT... Salvador Zepeda-Ortega and Maria Zepeda

Chapter 7

Debtor(s):

Salvador Zepeda-Ortega Pro Se

Joint Debtor(s):

Maria Zepeda Pro Se

Movant(s):

Salvador Zepeda-Ortega Pro Se

Trustee(s):

Amy L Goldman (TR) Pro Se

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1:00 PM

1:19-12810 Blanca Mohd

Chapter 11

#4.00 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; 12/3/20; 1/21/21; 3/25/21; 4/8/21; 6/17/21

Docket 1

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (4)(E) and (J), the Court will dismiss this case. Contrary to the Court's order [doc. 164], the debtor did not timely file a second amended disclosure statement. The debtor also did not timely file a status report. As such, there is cause to dismiss this case.

Having reviewed the debtor's assets and liabilities, dismissal is in the best interest of creditors and the estate.

The Court will prepare the Order dismissing this case.

Party Information

Debtor(s):

Blanca Mohd

Represented By
Dana M Douglas

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1:20-10924 Tikran Eritsyan

Chapter 11

#5.00 U.S. Trustee Motion to dismiss or convert case Under 11 U.S.C. § 1112(b)
With 180 Day Bar Against Refiling Another Bankruptcy Petition

Docket 119

Tentative Ruling:

The Court will dismiss this case with a 180-day bar to refiling.

I. BACKGROUND

A. Debtor's Bankruptcy Case

On May 18, 2020, Tikran Eritsyan ("Debtor") filed a voluntary chapter 11 petition. On June 1, 2020, Debtor filed his schedules and Statement of Financial Affairs [doc. 12]. In his schedule A/B, Debtor stated he held interests in residential real properties located at: (1) 15632 Viewridge Lane, Granada Hills, CA 91344 (the "Viewridge Property"), valued at \$420,000.00; and (2) 1356 Elm Avenue, Glendale, CA 91201 (the "Elm Property"), valued at \$1.1 million. Debtor scheduled personal property with an aggregate value of \$4,700.00. In his schedule C, Debtor claimed exemptions in the amount of \$4,700.00 of his personal property.

As set forth in Debtor's schedule D, the Elm Property is encumbered by deeds of trust which secure claims totaling in excess of \$1,001,891.04 (to the extent interest has accrued, post-petition). In his schedule E/F, Debtor listed no priority unsecured debts, and he listed one nonpriority unsecured debt, for a Costco Visa card, in the amount of \$8,710.00.

On November 18, 2020, the Court entered an order approving the sale of the Viewridge Property [doc. 64]. On December 17, 2020, the Court entered an order approving the sale of the Elm Property [doc. 72].

On October 30, 2020, Debtor filed a proposed chapter 11 plan (the "Plan") [doc. 52] and related disclosure statement [doc. 51]. The Plan was premised on Debtor's sale of his real properties. On March 8, 2021, Debtor filed a brief in support of confirmation

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CONT...

Tikran Eritsyan

Chapter 11

of the Plan (the "Brief") [doc. 96]. In the Brief, Debtor stated that the sale of the Viewridge Property had closed, and that claims which were fully secured by liens against the Viewridge Property had been paid in full. Debtor projected that the sale of the Elm Property would close by March 18, 2021.

On May 25, 2021, because the sale of the Elm Property had not closed, Debtor was not making postpetition deed of trust payments and there was no equity in the Elm Property, the Court entered an order granting stay relief, with respect to the Elm Property, to secured creditors Red Dragon Investment and Platinum Business Management [doc. 117]. On July 16, 2021, the Court entered an order denying confirmation of Debtor's chapter 11 plan (the "Order Denying Confirmation") [doc. 123].

B. The Motion

On June 17, 2021, the United States Trustee ("UST") filed a *Motion to Dismiss or Convert Case under 11 U.S.C. § 1112(b) with 180 Day Bar Against Refiling Another Bankruptcy Petition* (the "Motion") [doc. 119]. In the Motion, the UST states that, under 11 U.S.C. § 1112(b)(4)(F) and (K), Debtor failed to: (1) file his monthly operating reports ("MORs") for April, May and June 2021; and (2) pay U.S. Trustee fees in the amount of \$4,878.27. To date, Debtor has not filed an opposition or response to the Motion.

II. DISCUSSION

11 U.S.C. § 1112(b), in pertinent part, provides:

- (1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause. . . .

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Tikran Eritsyan

Chapter 11

(2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that—

(A) there is a reasonable likelihood that a plan will be confirmed . . . within a reasonable period of time; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph 4(A)—

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

...

(4) For purposes of this subsection, the term ‘cause’ includes . . .

...

(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;

...

(K) failure to pay any fees or charges required under chapter 123 of title 28 . . .

"[T]he Code contains a non-exclusive list of examples of cause in § 1112(b)(4)." *In re Serron Investments*, 2012 WL 2086501, at *5 (B.A.P. 9th Cir. June 8, 2012); *In re Mense*, 509 B.R. 269 (Bankr. C.D. Cal. 2014) ("‘Cause’ is defined in § 1112(b)(4), but the list contained in § 1112(b)(4) is illustrative, not exhaustive."). The movant bears the burden of establishing by a preponderance of the evidence that cause exists.

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CONT... Tikran Eritsyan

Chapter 11

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, it appears that the UST has met his burden to prove "cause" by preponderance of the evidence. Debtor has not filed his April, May and June 2021 MORs, nor has Debtor filed a timely response to the Motion indicating that he is in the process of filing his missing MORs or has paid the U.S. Trustee fees in the amount of \$4,878.27.

For the following reasons, it appears that dismissal of this chapter 11 case is in the best interest of creditors and the estate: (1) some secured creditors have been paid in full from the sale of the Viewridge Property; (2) the Court entered an order granting stay relief in favor of secured creditors Red Dragon Investment and Platinum Business Management regarding the Elm Property; and (3) Debtor's scheduled personal property is wholly exempt. If Debtor's case is converted, it appears that there would be insufficient assets in Debtor's estate that could be administered for the benefit of nonpriority unsecured creditors.

III. CONCLUSION

The Court will grant the Motion pursuant to 11 U.S.C. § 1112(b)(4)(F) and (K) with a 180-day bar to refileing.

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

Party Information

Debtor(s):

Tikran Eritsyan

Represented By
Vahe Khojayan

Movant(s):

United States Trustee (SV)

Represented By
Katherine Bunker

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CONT...

Tikran Eritsyan

Chapter 11

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1:20-10924 Tikran Eritsyan

Chapter 11

#6.00 Status conference re: chapter 11 case

fr. 7/2/20; 11/19/20; 1/14/21; 3/18/21; 4/22/21

Docket 1

Tentative Ruling:

See calendar no. 5.

Party Information

Debtor(s):

Tikran Eritsyan

Represented By
Vahe Khojayan

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1:21-10878 Scott Carl St. Peter

Chapter 11

#7.00 Status conference hearing re chapter 11 case

Docket 1

Tentative Ruling:

Contrary to the Court's *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* [doc. 22], the debtor did not support his status report with a declaration and did not discuss the status of the debtor's tax returns. In addition, the debtor has not timely filed a June 2021 monthly operating report.

In July 2021, the Court granted relief from stay to a lessor with respect to commercial real property which the debtor had leased, located at 812 W. Santa Anita St. and 813 W. Mission Road, San Gabriel CA 91776 [doc. 43]. Before the debtor filed his chapter 11 petition, the lessor had obtained entry of an unlawful detainer judgment [doc. 17]. The debtor has not listed this lease in his Schedule G nor listed the claim of the lessor in his Schedule F [doc. 35].

On August 19, 2021, the Court is holding a continued hearing on the motion of the United States Trustee to dismiss this case.

Party Information

Debtor(s):

Scott Carl St. Peter

Represented By
Lionel E Giron

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1:18-10886 Exotic Euro Cars, Inc. and Kain Kumar

Chapter 7

#8.00 Chapter 7 Trustee's motion re claim no. 4-1 filed by BM Car Wash, Inc.

Docket 138

Tentative Ruling:

Sustain objection to the claim.

I. BACKGROUND

On April 10, 2018, Exotic Euro Cars, Inc. ("Debtor") filed a voluntary chapter 7 petition. Amy L. Goldman was appointed the chapter 7 trustee (the "Trustee").

On December 27, 2018, BM Car Wash, Inc. ("BM") filed proof of claim no. 4-1, asserting a \$10,000 claim and designating \$8,000 of the claim as a priority claim. As the basis of the claim, BM provided the following description: "Car Wash employee Labor and wages." In support of the claim, BM attached: (A) a Notice of Entry of Judgment, dated October 3, 2017 and entered by a small claims court, in the amount of \$5,155; and (B) an invoice, for services rendered between December 2016 and June 2017, in the amount of \$8,000, and for collection and legal fees, in the amount of \$2,000.

On June 22, 2021, the Trustee filed a motion to reclassify BM's claim as an unsecured claim (the "Motion") [doc. 138]. In the Motion, the Trustee contends that neither BM nor BM's employees were employees of Debtor, and that BM has not otherwise specified a specific subsection of 11 U.S.C. § 507 that would entitle BM to assert a priority claim.

On July 7, 2021, BM filed a response to the Motion (the "Response") [doc. 146]. In the Response, BM reference 11 U.S.C. § 507(a)(4)(A) and (B), and contends that Debtor did not pay the wages, salaries and tips of car wash employees. The Response is not supported by a declaration. On July 15, 2021, the Trustee filed a reply to the Response (the "Reply") [doc. 147]. In the Reply, the Trustee asserts that § 507(a)(4) does not apply to BM.

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CONT... Exotic Euro Cars, Inc. and Kain Kumar

Chapter 7

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). "If the creditor does not provide information or is unable to support its claim, then that 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." *In re Heath*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005).

Pursuant to 11 U.S.C. § 507(a)(4), the following claims are entitled to priority treatment over general unsecured claims—

[A]llowed unsecured claims, but only to the extent of \$13,650... for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the

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Exotic Euro Cars, Inc. and Kain Kumar

Chapter 7

debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

Here, the record does not demonstrate that BM's claim falls under the purview of either 11 U.S.C. § 507(a)(4)(A) or (a)(4)(B). With respect to § 507(a)(4)(B), BM has not provided evidence that it is a "corporation with only 1 employee." In fact, BM contends, in the Response, that several employees worked on washing cars owned by Debtor. BM also does not qualify as an "individual." *See* 11 U.S.C. § 101(41) (differentiating between "individual[s]" and "corporation[s]" when defining the term "person"). In addition, BM does not contend that it earned commissions from Debtor. As such, 11 U.S.C. § 507(a)(4)(B) is inapplicable to BM's claim.

As to § 507(a)(4)(A), once again, BM is not an individual. With respect to BM's allegations regarding the individuals who washed cars for Debtor, BM has not demonstrated that those individuals were employees earning "wages, salaries, or commissions" from Debtor. As such, BM has not carried its ultimate burden of persuasion on its claim. Consequently, the Court will designate BM's claim as a general unsecured claim.

III. CONCLUSION

The Court will grant the Motion.

The Trustee must submit an 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

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1:30 PM

1:20-10678 John Michael Smith, Jr and Rebecca Phelps Smith

Chapter 11

#9.00 Debtor's Motion re Objection to Claim Number 1 filed on behalf of Creditor Department of Treasury - Internal Revenue Service

Docket 145

Tentative Ruling:

The Court will continue this hearing to **1:30 p.m. on August 5, 2021.**

Appearances on July 22, 2021 are excused.

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):

John Michael Smith Jr

Represented By
Louis J Esbin

Rebecca Phelps Smith

Represented By
Louis J Esbin
Louis J Esbin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:20-10678 John Michael Smith, Jr and Rebecca Phelps Smith

Chapter 11

#10.00 Status conference re chapter 11 case

fr. 7/16/20; 11/5/20; 1/21/21; 4/22/21; 6/17/21

Docket 36

Tentative Ruling:

The Court will continue this chapter 11 case status conference to **1:30 p.m. on August 5, 2021.**

Appearances on July 22, 2021 are excused.

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

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1:20-11237 BGS WORKS, INC.

Chapter 11

#11.00 Debtor's Motion for Interim and Final Approval of Postpetition Financing Pursuant to 11 U.S.C. §364(d)(1) and Approval of Priming Lien Against Estate Property

Docket 110

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 movants will be so notified.

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Movant(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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2:00 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#12.00 Post-confirmation status conference re: chapter 11 subchapter V case
fr.09/10/20; 11/5/20; 1/14/21; 1/21/21; 3/25/21; 4/8/21

Docket 1

Tentative Ruling:

Based on the debtor's *Post Confirmation Status Report* [doc. 106], the Court will continue the post-confirmation status conference to **October 21, 2021 at 2:00 p.m.** On or before **October 7, 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.**

The Court will vacate the continued post-confirmation status conference if an order granting the reorganized debtor a final decree and closing the case is entered prior to the continued hearing date.

Appearances on July 22, 2021 are excused.

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, July 22, 2021

Hearing Room 301

2:00 PM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#13.00 Status conference re: chapter 11 subchapter V case
fr. 3/25/21; 4/8/21; 4/22/21; 4/29/21

Docket 1

Tentative Ruling:

The debtors did not timely file a June 2021 monthly operating report. The debtors also did not support their status report with a declaration.

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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

Thursday, July 22, 2021

Hearing Room 301

2:00 PM

1:21-10396 Advanced Sleep Medicine Services, Inc. and ASMS Holding Chapter 11

#14.00 Status conference re: chapter 11 subchapter V voluntary case

fr. 5/20/21

Docket 1

Tentative Ruling:

The Court will set a hearing on confirmation of the first amended chapter 11 plan (the "Plan") for hearing at **2:00 p.m. on September 23, 2021.**

Deadline for the debtors 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 deadlines to return completed ballots to the debtors and to file objections to confirmation: **August 6, 2021.**

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

Deadline to return completed ballots to the debtors: **August 13, 2021.**

Deadline for the debtors to file and serve the debtors' brief and evidence, including declarations, the returned ballots and a ballot analysis, in support of confirmation: **August 27, 2021.** Among other things, the debtors' brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1191, including, if applicable, § 1191(b) and (c)(2), are satisfied. These materials must be served on the Office of the U.S. Trustee, the subchapter V trustee and any creditor who rejects the Plan.

Deadline to file and serve any objections to confirmation: **September 3, 2021.**

Deadline for the debtors to file and serve a reply to any objections to confirmation: **September 13, 2021.**

Party Information

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

Thursday, July 22, 2021

Hearing Room 301

2:00 PM

CONT... Advanced Sleep Medicine Services, Inc. and ASMS Holding

Chapter 11

Debtor(s):

Advanced Sleep Medicine Services,

Represented By
Gregory M Salvato

ASMS Holding Company, Inc.

Represented By
Gregory M Salvato

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, July 22, 2021

Hearing Room 301

2:00 PM

1:21-10978 Scott Tarnol and Amanda Tarnol

Chapter 11

#15.00 Status conference re: chapter 11 subchapter V voluntary case

Docket 1

Tentative Ruling:

The parties should address the following:

When do the debtors anticipated filing their 2020 income tax returns? Do they require the assistance of an accountant or other professional to prepare those income tax returns?

The bar date has been set for **August 6, 2021 (general)** and **February 2, 2022 (gov't)**.

Pursuant to 11 U.S.C. § 1189(b), the debtors' deadline to file a chapter 11 plan is **August 26, 2021**.

Continued chapter 11 case status conference to be held at **2:00 p.m. on September 9, 2021**.

The debtors must file a status report, to be served on the debtors' 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 have the debtors made so far to obtain the consent of creditors for a consensual plan?

If the debtors expect that the plan will be a nonconsensual plan, i.e., a plan confirmed under 11 U.S.C. § 1191(b), why do they expect that?

Any additional information the debtors would like to disclose to the Court concerning this chapter 11 case or the plan (e.g., any changes in their post-petition gross and net

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

Thursday, July 22, 2021

Hearing Room 301

2:00 PM

CONT... **Scott Tarnol and Amanda Tarnol**
income and their post-petition employment).

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):

Scott Tarnol

Represented By
Michael Jones

Joint Debtor(s):

Amanda Tarnol

Represented By
Michael Jones

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

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

Thursday, July 22, 2021

Hearing Room 301

2:30 PM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#16.00 Post-confirmation status conference re: chapter 11 subchapter V case
fr.09/10/20; 11/5/20; 1/14/21; 1/21/21; 3/25/21; 4/8/21

Docket 1

***** VACATED *** REASON: Rescheduled for 2:00 PM.**

Tentative Ruling:

- NONE LISTED -

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, July 22, 2021

Hearing Room 301

2:30 PM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#17.00 Status conference re: chapter 11 subchapter V case

fr. 3/25/21; 4/8/21; 4/22/21; 4/29/21

Docket 1

***** VACATED *** REASON: Rescheduled for 2:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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

Wednesday, July 28, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1605597928>

Meeting ID: 160 559 7928

Password: 526603

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 559 7928

Password: 526603

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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

Wednesday, July 28, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

1:18-11945 Rosa Aminta Cordova de Rodriguez

Chapter 13

#1.00 Motion for relief from stay [PP]

ALLY FINANCIAL
VS
DEBTOR

fr. 4/7/21(stip); 5/19/21, 6/23/21

Docket 57

Tentative Ruling:

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

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

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

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

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party 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, July 28, 2021

Hearing Room 301

9:30 AM

CONT... Rosa Aminta Cordova de Rodriguez

Chapter 13

Party Information

Debtor(s):

Rosa Aminta Cordova de Rodriguez	Represented By R Grace Rodriguez
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Movant(s):

Ally Financial	Represented By Jenelle C Arnold
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Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se
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1:21-11098 John Carmen Esposito

Chapter 7

#1.10 Motion for relief from [PP]

CREDITOR COLLECT CO
VS
DEBTOR

Docket 13

Tentative Ruling:

Deny.

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

Party Information

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

Wednesday, July 28, 2021

Hearing Room 301

9:30 AM

CONT... John Carmen Esposito

Chapter 7

Debtor(s):

John Carmen Esposito Pro Se

Trustee(s):

Amy L Goldman (TR) Pro Se

1:20-10971 Benjamin Marsh

Chapter 13

#2.00 Motion for relief from stay [RP]

CIT BANK, N.A.
VS
DEBTOR

fr. 4/14/21(stip); 5/19/21; 6/23/21

Stip to continue filed 7/27/21

Docket 74

***** VACATED *** REASON: Order approving stip entered 7/27/21.
Hearing continued to 9/22/21 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Benjamin Marsh

Represented By
Natalya Vartapetova

Movant(s):

CIT Bank, N.A.

Represented By

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

Wednesday, July 28, 2021

Hearing Room 301

9:30 AM

CONT... Benjamin Marsh

Jenelle C Arnold

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

1:17-12299 Timothy Lee Weaver and Mary Jane Weaver

Chapter 13

#3.00 Motion for relief from stay [RP]

SELECT PORTFOLIO SERVICING INC.
VS
DEBTOR

fr. 5/19/21, 6/23/21

Stip to continue filed 7/27/21

Docket 76

***** VACATED *** REASON: Order approving stip entered 7/27/21.
Hearing continued to 9/1/21 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy Lee Weaver

Represented By
Kenneth A Freedman

Joint Debtor(s):

Mary Jane Weaver

Represented By
Kenneth A Freedman

Movant(s):

Select Portfolio Servicing Inc., as

Represented By
Jenelle C Arnold

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

Wednesday, July 28, 2021

Hearing Room 301

9:30 AM

CONT... Timothy Lee Weaver and Mary Jane Weaver Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR) Pro Se

1:21-10217 Ela Koc Stankiewicz Chapter 7

#4.00 Motion for relief from stay [RP]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
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.

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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party 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, July 28, 2021

Hearing Room 301

9:30 AM

CONT... Ela Koc Stankiewicz

Chapter 7

Party Information

Debtor(s):

Ela Koc Stankiewicz

Represented By
Matthew D. Resnik

Trustee(s):

David Seror (TR)

Pro Se

1:21-10437 Sergey Tsoi

Chapter 7

#5.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Docket 37

Tentative Ruling:

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

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

Wednesday, July 28, 2021

Hearing Room 301

9:30 AM

CONT... Sergey Tsoi

Chapter 7

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

Debtor(s):

Sergey Tsoi

Represented By
Elena Steers

Movant(s):

Wells Fargo Bank, N.A., as trustee,

Represented By
Robert P Zahradka

Trustee(s):

Amy L Goldman (TR)

Pro Se

1:18-10710 Freddy Moreno and Maria Teresa Moreno

Chapter 13

#6.00 Motion for relief from stay [PP]

AMERICAN HONDA FINANCE CORPORATION
VS
DEBTOR

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

Wednesday, July 28, 2021

Hearing Room 301

9:30 AM

CONT... Freddy Moreno and Maria Teresa Moreno

Chapter 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):

Freddy Moreno

Represented By
Phillip Myer - SUSPENDED -

Joint Debtor(s):

Maria Teresa Moreno

Represented By
Phillip Myer - SUSPENDED -

Movant(s):

AMERICAN HONDA FINANCE

Represented By
Vincent V Frounjian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

1:21-10960 Baruch Glickstein

Chapter 13

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

Wednesday, July 28, 2021

Hearing Room 301

9:30 AM

CONT... Baruch Glickstein

Chapter 13

#7.00 Motion for relief from stay [RP]

ONslow BAY FINANCIAL LLC
VS
DEBTOR

Docket 26

Tentative Ruling:

For the reasons discussed below, the Court will grant movant relief from the automatic stay under 11 U.S.C. § 362(d) (4).

I. BACKGROUND

On May 27, 2021, Baruch Glickstein ("Debtor") filed a chapter 13 petition. This commenced Debtor's fourth bankruptcy case filed in three years involving residential real property located at 23401 Schoenborn Street, Los Angeles, California 91304 (the "Property").

On June 14, 2021, based on Debtor's failure to file his schedules and statements, the Court entered an order dismissing Debtor's latest chapter 13 case [doc. 22]. On July 2, 2021, Onslow Bay Financial, LLC ("Movant") filed a *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") [doc. 26].

A. The Deed of Trust and Debtor's Prepetition Default

Prepetition, on July 29, 2004, Debtor executed a promissory note in the principal sum of \$554,000.00 (the "Note"), which was made payable to American Internet Mortgage, Inc. ("American Internet"). Motion, Exh. 1. The Note is secured by a deed of trust (the "Deed of Trust") encumbering the Property. *Id.*, Exh. 2. On August 11, 2004, the Deed of Trust was recorded in the Los Angeles County Recorder's office. *Id.*

On June 29, 2012, American Internet recorded an assignment deed of trust, transferring its interest in the Property to U.S. Bank National Association, as Trustee for Bear Stearns Arm Trust, Grantor Trust Certificates, Series 2005-5, Mortgage

**United States Bankruptcy Court
Central District of California
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Wednesday, July 28, 2021

Hearing Room 301

9:30 AM

CONT... **Baruch Glickstein**

Chapter 13

Backed Notes, by Wells Fargo Bank, N.A. ("U.S. Bank"). Motion, Exh. 3, pp. 45–46.

On July 20, 2017, junior lienholder, JPMorgan Chase Bank, N.A. ("JPMorgan Chase") had a notice of default recorded against the Property. Motion, p. 14; Exh. 4. On May 4, 2018, U.S. Bank recorded a corporate assignment deed of trust, transferring its interest in the Property to Movant. *Id.*, Exh. 3, pp. 50–51. On June 4, 2018, JPMorgan Chase had a notice of sale recorded against the Property. *Id.*, Exh. 5.

B. Debtor's First Bankruptcy Case

On June 22, 2018, Debtor filed a chapter 13 petition, commencing case no. 1:18-bk-11584-MB (the "First Case"). In his schedule A/B, Debtor listed an interest in the Property. First Case, doc. 10. On August 3, 2018, because Debtor failed to make the required chapter 13 payments, the Court entered an order dismissing the First Case. *Id.*, doc. 17.

On August 22, 2018, Movant had a notice of default recorded against the Property. Motion, p. 14; Exh. 7. On February 20, 2019, Movant had a notice of sale recorded against the Property. *Id.*, p. 15; Exh. 8.

C. Debtor's Second Bankruptcy Case

On March 22, 2019, Debtor and Limor Benisty (together, "Debtors") filed a voluntary chapter 7 petition, commencing case no. 1:19-bk-10668-VK (the "Second Case"). In their schedule A/B, Debtors listed an interest in the Property. Second Case, doc. 9. On July 1, 2019, the Court entered an order granting Debtors a discharge. *Id.*, doc. 33. On November 26, 2019, the Court entered an order closing the Second Case. *Id.*, doc. 46. On January 26, 2021, Movant had a renewed notice of sale recorded against the Property. Motion, Exh. 10.

D. Debtor's Third Bankruptcy Case

On March 7, 2021, Debtor filed a voluntary chapter 13 petition, commencing case no. 1:21-bk-10379-VK (the "Third Case"). In his schedule A/B, Debtor listed an interest in the Property. Third Case, doc. 15. On March 30, 2021, based on Debtor's failure to file his schedules and statements, the Court entered an order dismissing the Third Case. *Id.*, doc. 23.

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

Wednesday, July 28, 2021

Hearing Room 301

9:30 AM

CONT... Baruch Glickstein

Chapter 13

E. Debtor's Fourth and Recently Dismissed Bankruptcy Case

On May 31, 2021, Debtor filed some of his schedules for his latest chapter 13 case [doc. 8]. In his schedule A/B, Debtor lists an interest in the Property and states that the Property has a value of \$850,000.00.

As set forth in Debtor's schedule D, the Property is encumbered by: (1) a first position deed of trust to Movant, securing a claim in the amount of \$468,309.00; (2) a second position deed of trust to JPMorgan Chase, securing a claim in the amount of \$86,022.79; (3) aggregate property taxes owed to the California Franchise Tax Board in the amount of \$553,565.06; and (4) two secured claims in unknown amounts. *Id.* In his schedule E/F, Debtor lists aggregate priority unsecured debts in the amount of \$1,284.56; Debtor lists no nonpriority unsecured debts. *Id.* Debtor did not timely file his schedule J, Statement of Financial Affairs and other remaining documents.

On June 1, 2021, Debtor filed a chapter 13 plan, which proposes to pay \$300.00 per month for five months (the "Plan") [doc. 16]. The only claims for which the Plan provides payment are priority unsecured claims. On June 14, 2021, because Debtor failed to file his remaining schedules and statements, the Court entered an order dismissing the case [doc. 22].

F. The Motion

On July 2, 2021, Movant filed the Motion pursuant to 11 U.S.C. § 362(d)(1) and (4) [doc. 26]. Movant states that Debtor has not made postpetition deed of trust payments in the total amount of \$3,593.43. Furthermore, Movant argues that Debtor filed his bankruptcy case in bad faith, because Debtor's previous bankruptcy filings demonstrate a pattern of abusing the bankruptcy system. To date, Debtor has not filed an opposition or response to the Motion.

II. DISCUSSION

11 U.S.C. § 362(d) (4) provides, in pertinent part:

(d) On request of a party in interest and after notice and a hearing, the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, July 28, 2021

Hearing Room 301

9:30 AM

CONT...

Baruch Glickstein

Chapter 13

court shall grant the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

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

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

(B) Multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362(d)(4).

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).

Though the term "scheme" is not defined in the Bankruptcy Code, courts have defined the term in the context of 11 U.S.C. § 364(d)(4) to mean an "intentional artful plot or plan to delay, hinder or defraud creditors." *In re Jimenez*, 613 B.R. 537, 545 (B.A.P. 9th Cir. 2020) (quoting *In re Duncan & Forbes Dev., Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2006)). As such, "[a] scheme is an intentional construct. It does not happen by misadventure or negligence." *Id.* A bankruptcy court usually must rely on circumstantial evidence to infer the existence of a scheme, considering that direct evidence is not always available. *Duncan*, 368 B.R. at 32.

Here, the Court concludes that Debtor's filing of the chapter 13 petition in his latest chapter 13 case was part of a scheme to delay, hinder or defraud creditors that involved multiple bankruptcy filings impacting the Property. Apart from this case, Debtor has filed three bankruptcy petitions. In Debtor's previous chapter 13 case, 1:21-bk-10379-VK, commenced in March 2021, Debtor failed to file his schedules and statements. Consequently, on March 30, 2021, the Court entered an order

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, July 28, 2021

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9:30 AM

CONT...

Baruch Glickstein

Chapter 13

dismissing that case. On May 27, 2021, Debtor filed his instant petition, 1:21-bk-10960-VK, and this case was later dismissed for the same reason: Debtor's failure to file his schedules and statements.

Debtor has filed multiple chapter 13 cases regarding the Property, apparently intending to prevent the Property's foreclosure, without Debtor properly prosecuting the chapter 13 cases. Therefore, pursuant to § 362(d)(4), the Court will grant relief from the automatic stay.

III. CONCLUSION

The Court will grant relief from the automatic stay under 11 U.S.C. § 362(d) (4).

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

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

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

Any other request for relief is denied.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

Debtor(s):

Baruch Glickstein

Represented By

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

Wednesday, July 28, 2021

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9:30 AM

CONT... Baruch Glickstein

Stephen L Burton

Chapter 13

Movant(s):

Onslow Bay Financial LLC

Represented By
Daniel K Fujimoto

Trustee(s):

Elizabeth (SV) 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 28, 2021

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

#8.00 Pretrial conference re complaint to determine the dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)

fr. 7/29/20; 3/10/21; 3/24/21; 6/2/21

Docket 1

***** VACATED *** REASON: continued to 9/22/21 at 1:30 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

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):

Russell Prior

Represented By
Alana B Anaya

Cheryl Prior

Represented By
Alana B Anaya

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, July 28, 2021

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CONT... Alan Gene Lau Chapter 7

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

#9.00 Motion For Summary Judgment or in the
alternative for Partial Summary Adjudication

fr. 5/19/21(stip); 5/26/21; 6/9/21; 6/16/21

Stip to dismiss filed 7/21/21

Docket 101

*** VACATED *** REASON: Order of dismissal entered 7/21/21. [Dkt.
118]

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

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
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Wednesday, July 28, 2021

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1:16-13382 Christopher Sabin Nassif

Chapter 11

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

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

fr. 1/9/2019; 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); 8/12/20 (stip); 2/10/21(stip); 2/17/21;
4/7/21; 6/9/21; 6/16/21

Stip to dismiss filed 7/21/21

Docket 1

*** VACATED *** REASON: Order of dismissal entered 7/21/21. [Dkt.
118]

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

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CONT... Christopher Sabin Nassif

Chapter 11

Plaintiff(s):

Christopher Sabin Nassif

Represented By
Matthew D. Resnik

Robin Nassif

Represented By
Matthew D. Resnik

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1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#11.00 Defendants' Motion to dismiss pursuant to FRCP 12(b) and motion to strike pursuant to FRCP 12(f)

fr. 7/21/21(stip)

Docket 97

Tentative Ruling:

Deny.

I. BACKGROUND

On December 18, 2018, Kenneth C. Scott ("Debtor") filed a chapter 13 petition. On April 19, 2019, H. Samuel Hopper ("Plaintiff") filed a complaint against Debtor and other defendants, initiating this adversary proceeding.

On June 17, 2020, Plaintiff filed a second amended complaint (the "SAC") [doc. 62]. On July 17, 2020, Debtor filed a motion to dismiss the SAC (the "Motion to Dismiss SAC") [doc. 73]. On May 5, 2021, the Court held a hearing on the Motion to Dismiss SAC. At that time, the Court denied the Motion to Dismiss SAC [doc. 90]; however, the Court entered an order (the "Amendment Order") [doc. 92] requiring Plaintiff to file a third amended complaint and holding that the denial of the Motion to Dismiss SAC was contingent on the following—

[P]laintiff must file and serve a third amended complaint no later than May 19, 2021, which: (a) specifically references 11 U.S.C. § 523(a)(2) and/or (a)(4), to the extent plaintiff contends that any debt owed to the plaintiff from [Debtor] (the "Debt") is nondischargeable based on 11 U.S.C. § 523(a)(2) and/or (a)(4); AND (b) includes the required allegations to state a claim for nondischargeability of the applicable portion of the Debt under 11 U.S.C. § 523(a)(2) and/or (a)(4)....

Amendment Order, p. 2.

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On May 19, 2021, Plaintiff filed a third amended complaint (the "TAC") [doc. 93]. In the "Seventh Cause of Action" of the TAC, Plaintiff references 11 U.S.C. § 523(a)(2) and § 1328(a)(2) and (a)(4) as grounds for nondischargeability of the debt owed to Plaintiff.

On May 28, 2021, Debtor filed a motion to dismiss the claims against Debtor (the "Motion") [doc. 97]. In the Motion, Debtor argues that Plaintiff did not adequately allege claims for nondischargeability. Debtor also asserts that Plaintiff did not include sufficient allegations regarding the Court's jurisdiction and whether certain claims are core or noncore.

On July 7, 2021, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 110]. In the Opposition, Plaintiff asserts that he has adequately stated claims for relief under 11 U.S.C. § 523(a)(2) and § 1328(a)(4). On July 13, 2021, Debtor filed a reply to the Opposition (the "Reply") [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 requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted) (citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct.

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1955, 167 L.Ed. 2d 929 (2007); *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).

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)

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As a preliminary matter, the Court specified that the sole outstanding issues related to the TAC would be whether Plaintiff adequately alleges claims for nondischargeability. In fact, the Court already entered an order denying the Motion to Dismiss SAC. As such, the Court will disregard Debtor's arguments regarding additional deficiencies, such as Debtor's assertion that Plaintiff did not provide sufficient allegations regarding the Court's jurisdiction, because they are beyond the scope of the Court's order.

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, a plaintiff must allege the following five elements:

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

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

Here, pursuant to the Court's order, in the TAC's "Seventh Cause of Action," Plaintiff specifically referenced § 523(a)(2). In addition, the TAC includes sufficient allegations to support a claim under § 523(a)(2). In the TAC, Plaintiff alleges that, at the time Debtor hired Plaintiff, Debtor knew he would not pay Plaintiff all wages and reimbursements owed to him, and either intentionally misrepresented or omitted information from Plaintiff. TAC, ¶¶ 78-100. Plaintiff also alleges that he relied on Debtor, and that such reliance caused Plaintiff to suffer damages. *Id.* [FN1]. These allegations establish a claim for relief under § 523(a)(2)(A).

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Under his nondischargeability claim, i.e., the TAC's "Seventh Cause of Action," Plaintiff incorporates all allegations in the preceding paragraphs, including the allegations of fraud under the "Fifth Cause of Action" for "Fraud and Deceit," under Cal. Civ. Code § 1572-1573 and 1709-1710. Consequently, the TAC has adequately asserted a claim for relief under § 523(a)(2). [FN2].

C. 11 U.S.C. § 1328(a)(4)

Pursuant to 11 U.S.C. § 1328(a)—

Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

...

- (4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

"The vast majority of courts define 'personal injury' as harm both physical and nonphysical (such as defamation and intentional infliction of emotional distress)." *In re Ang*, 589 B.R. 165, 180 (Bankr. S.D. Cal. 2018) (collecting cases). As noted by the *Ang* court—

[11 U.S.C. § 1328(a)(4)'s] text differs from § 522(d)(11)(D)'s, which employs the phrase "personal bodily injury." 11 U.S.C. § 522(d)(11)(D) (property may not be exempt if it is traceable to a payment "on

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account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss."). "On a plain language basis, it is significant that Congress used the term 'personal bodily injury' in § 522(d)(11) to exclude personal injury that is not bodily injury." *In re Grossman*, 538 B.R. at 41-42; *see also In re Adams*, 478 B.R. at 486 ("Congress knew how to say 'personal *bodily* injury' when it wanted to.") (emphasis in original) (quotation omitted)). Thus, "when Congress used the term 'personal injury' in § 1328(a)(4) without the qualifier 'bodily,' it must have meant a class of 'personal injury' not limited to 'bodily.'" *In re Grossman*, 538 B.R. at 41-42.

Id. "[U]nder § 1328(a)(4), Plaintiff's injury cannot be to property. But it does not necessarily have to be a bodily harm or even a traditional tort." *Id.*, at 182 (citing *In re Grossman*, 538 B.R. 34, 42 (Bankr. E.D. Cal. 2015)); *see also In re Adams*, 478 B.R. 476, 487 (Bankr. N.D. Ga. 2012) ("[T]he Court defines 'personal injury' in § 1328(a)(4) to exclude injuries to property, but to include nonphysical injuries such as... emotional distress.").

Whether an injury is a personal injury "depends on whether the claim upon which the damages were awarded primarily protects a 'personal' as opposed to 'property, financial or business' right." *In re Szewc*, 568 B.R. 348, 358 (Bankr. D. Or. 2017); *see also In re Ice Cream Liquidation, Inc.*, 281 B.R. 154, 161 (Bankr. D. Conn. 2002) (distinguishing between personal injury claims and "financial, business or property tort" claims and holding that claim of sexual harassment in the workplace constitutes a "personal injury claim" under § 1328(a)(4)). "To determine whether Plaintiff's injury meets this standard, the court looks to state law." *Ang*, 389 B.R. at 182.

In *Grossman*, a creditor filed a complaint against the debtor for nondischargeability of the debt owed to her under, among other statutes, 11 U.S.C. § 1328(a)(4). *Grossman*, 538 B.R. at 38. Prepetition, the debtor and the creditor had been in a relationship. *Id.* During the relationship, based on the debtor's promise that the video would remain private, the creditor allowed the debtor to make a video of the creditor engaging in sexual acts with the debtor. *Id.* After the end of their relationship, the debtor uploaded the private video to a pornography website. *Id.* By the time the creditor discovered the video, it had been viewed over 6,900 times. *Id.*

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After her discovery, the creditor sued the debtor in state court. *Id.* The debtor then filed a chapter 13 petition. *Id.* In filing her complaint for nondischargeability, the creditor argued that the debtor's invasion of the creditor's privacy and intentional infliction of emotional distress caused "personal injury" to the creditor, making her damages nondischargeable under 11 U.S.C. § 1328(a)(4). *Id.*, at 39.

Under these facts, the *Grossman* court held that, where a plaintiff establishes a claim for intentional infliction of emotional distress under California law, the claim is a "personal injury" for purposes of § 1328(a)(4). *Grossman*, 538 B.R. at 42. Under California law, the "elements of intentional infliction of emotional distress are: (1) extreme and outrageous conduct with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." *Id.* "Conduct, to be outrageous, must be so extreme as to exceed all bounds of conduct that are usually tolerated in a civilized community." *Id.*

Here, Plaintiff asserts that his request for emotional distress damages is nondischargeable under 11 U.S.C. § 1328(a)(4). In the TAC, Plaintiff alleges that he suffered "severe" emotional distress as a result of Debtor "intentionally, willfully, fraudulently and maliciously [doing] the things herein alleged to defraud and oppress Plaintiff." TAC, ¶¶ 107-108. Throughout the TAC, Plaintiff also alleges that he has sought "psychological treatment" as a result of the emotional distress allegedly intentionally caused by Debtor. *See, e.g.* TAC, ¶¶ 133, 142, 163. The Court must construe the TAC in the light most favorable to Plaintiff. *Fayer*, 649 F.3d at 1064. Assessing the TAC in such a light, Plaintiff has adequately stated a claim for relief under § 1328(a)(4).

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

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Cir. 1997).

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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)).

Through the Amendment Order, the Court made survival of any claim under § 523(a)(4) contingent on Plaintiff *explicitly* referencing § 523(a)(4) and including specific allegations regarding the elements of § 523(a)(4). Plaintiff did not satisfy these conditions. The TAC is devoid of any mention of § 523(a)(4). In addition, Plaintiff has not made any allegations regarding the existence of a trust. Moreover, the Opposition is silent as to § 523(a)(4). As such, to the extent Plaintiff sought to assert

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Chapter 13

a claim under § 523(a)(4), the Court will dismiss the § 523(a)(4) claim with prejudice.

E. 11 U.S.C. § 523(a)(6)

In the Motion, Debtor asserts that Plaintiff has not stated a claim for relief under 11 U.S.C. § 523(a)(6). However, in the TAC, Plaintiff does not assert a claim under 11 U.S.C. § 523(a)(6). In any event, 11 U.S.C. § 523(a)(6) does not apply in chapter 13 cases, unless and until the debtor seeks a hardship discharge. *See* 11 U.S.C. § 1328(a)(2); *and Ang*, 589 B.R. at 171 n.4. In fact, prior to any request for a hardship discharge, a claim under § 523(a)(6) is not ripe for adjudication, and the Court lacks jurisdiction to adjudicate the claim. *Ang*, 589 B.R. at 172 n.6 (citing *In re Toste*, 2014 WL 3908139, at *3 (B.A.P. 9th Cir. Aug. 12, 2014)).

F. Plaintiff's Reference to 11 U.S.C. § 1328(a)(2)

In the TAC, Plaintiff also generally references 11 U.S.C. § 1328(a)(2). Under § 1328(a)(2), in chapter 13 cases, debts specified in § 523(a)(1)(B), (a)(1)(C), (a)(2), (a)(3), (a)(4), (a)(5), (a)(8) and (a)(9) are nondischargeable. In the Amendment Order, the Court required Plaintiff to specify under which subsections Plaintiff is requesting nondischargeability of the debt owed to him. Plaintiff's general reference to § 1328(a)(2), which includes *eight* subsections of § 523(a), does not satisfy the Court's requirement of a specific citation. Plaintiff also does not discuss § 1328(a)(2) in his Opposition. Consequently, with respect to Debtor's nondischargeable liability to Plaintiff, the Court will allow Plaintiff to proceed only as to his claims under § 523(a)(2) and § 1328(a)(4).

III. CONCLUSION

The Court will deny the Motion. The Court will adjudicate whether the debt owed to Plaintiff is nondischargeable under 11 U.S.C. § 523(a)(2) and/or § 1328(a)(4). Subject to any preclusive impact the Court's decision on nondischargeability may have on those claims, the Court may require the parties to litigate the remaining claims against the other defendants in a different forum.

No later than **August 11, 2021**, Debtor must file and serve an answer to the TAC.

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

FOOTNOTES

1. To recover damages for fraud, as opposed to breach of contract, Plaintiff must prove that the damages were "proximately caused by [his] reliance on the debtor's statement or conduct." *Weinberg*, 410 B.R. at 35. Plaintiff must show, for example, that he forfeited other employment opportunities, and the income that he would have received in such alternative positions, because of his reliance on Debtor's statements or conduct.
2. In the Motion, Debtor questions whether Plaintiff is seeking nondischargeability of the damages flowing from Plaintiff's fraudulent transfer claim. The Court bifurcated this adversary proceeding, such that Plaintiff's fraudulent transfer claim, which involves the other entity defendants as well as Debtor, will not be adjudicated until after resolution of Plaintiff's other claims under 11 U.S.C. § 523(a)(2)(A) and § 1328(a)(4).

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

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Chapter 13

Arash Shirdel

Plaintiff(s):

H. Samuel Hopper

Represented By
Daniel Parker Jett

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

1:18-13024 Kenneth C. Scott

Chapter 13

Adv#: 1:19-01046 Hopper v. Scott et al

#11.10 Status conference re third amended complaint for:

- (1) Avoidance of Transfer in Fraud of Creditors [Cal Civ. Code sections 3439, *et seq.*];
- (2) Breach of Written Contract;
- (3) Reimbursement of Business Expenses [Cal. Lab. Code section 2802];
- (4) Unlawful Deductions from Wages [Cal. Lab. Code sections 216, 221];
- (5) Fraud & Deceit [Cal. Civ. Code sections 1572-1573, 1709-1710];
- (6) Conversion;
- (7) Declaratory Relief Re Nondischargeability of Fraud Damages [11 U.S.C. § 523(a)(2)]
Wrongful Constructive Termination in Violation of Public Policy;
- (8) Waiting Time Penalties [Cal. Lab. Code § 203];
- (9) Unlawful Retaliation [Cal. Lab. Code § 1102.5]
- (10) Unlawful Retaliation [Cal. Lab. Code § 98.6]
- (11) Failure to Maintain and Timely Produce Personnel Records [Cal. Lab. Code § 1198.5(k)];

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(12) Failure to Maintain and Timely Produce Wage and Hour Records [Cal. Lab. Code § 226(f)];

(13) Wrongful Constructive Termination in Violation of Public Policy

(14) Unfair Business Practices [Cal. Bus. & Prof. Code, §§ 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; 11/4/20; 1/20/21; 3/24/21; 5/5/21; 6/16/21

Docket 62

Tentative Ruling:

The Court will continue this status conference to **1:30 p.m. on September 15, 2021**. No later than **September 1, 2021**, the parties must file a joint status report in which they discuss their preferred dates and deadlines for the following: (A) the discovery cutoff date; (B) the date for a pretrial conference; and (C) the date by which the parties anticipate they will be ready for trial.

Regarding the parties' dispute concerning the last status report filed, the Court advises the parties to consider the following applicable Federal Rules of Civil Procedure.

Pursuant to Federal Rule of Civil Procedure ("Rule") 26(a)(1)(A)—

[A] party must, without awaiting a discovery request, provide to the other parties:

- (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information--along with the subjects of that information--that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
- (ii) a copy--or a description by category and location--of all documents, electronically stored information, and tangible things that the disclosing

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Wednesday, July 28, 2021

Hearing Room 301

2:30 PM

CONT...

Kenneth C. Scott

Chapter 13

party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

- (iii) a computation of each category of damages claimed by the disclosing party--who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and
- (iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Under Rule 26(a)(3)(A)—

In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

- (i) the name and, if not previously provided, the address and telephone number of each witness--separately identifying those the party expects to present and those it may call if the need arises;
- (ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and
- (iii) an identification of each document or other exhibit, including summaries of other evidence--separately identifying those items the party expects to offer and those it may offer if the need arises.

In accordance with Rule 37(c), if either party fails to make or supplement disclosures in accordance with Rule 26, among other things, the Court may enter

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CONT... Kenneth C. Scott

Chapter 13

an order excluding the evidence at issue from consideration by the Court.

The Court will not award sanctions based on the debtor's discussion of settlement offers and/or the parties' conduct regarding the mediation with Judge Zive. The failure to settle is not sanctionable, and the debtor's emails concerning settlement discussions are irrelevant to the Court's adjudication of this adversary proceeding.

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

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:21-01020 Lev Investments, LLC v. Feygenberg et al

#12.00 Defendants' motion to dismiss complaint and counterclaims

**United States Bankruptcy Court
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Wednesday, July 28, 2021

Hearing Room 301

2:30 PM

CONT...

Lev Investments, LLC

Chapter 11

Docket 5

*** VACATED *** REASON: continued to 8/18/21 at 2:30 p.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC

Represented By

David B Golubchik

Juliet Y Oh

Richard P Steelman Jr

Defendant(s):

Ruvyn Feygenberg

Represented By

John Burgee

Michael Leizerovitz

Represented By

John Burgee

Sensible Consulting and

Represented By

John Burgee

Movant(s):

Ruvyn Feygenberg

Represented By

John Burgee

Michael Leizerovitz

Represented By

John Burgee

Sensible Consulting and

Represented By

John Burgee

Plaintiff(s):

Lev Investments, LLC

Represented By

Juliet Y Oh

David B Golubchik

**United States Bankruptcy Court
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2:30 PM

CONT... Lev Investments, LLC

Chapter 11

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:21-01020 Lev Investments, LLC v. Feygenberg et al

#13.00 Status conference re complaint objecting to claim and counterclaims

fr. 7/7/21

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on August 18, 2021**, to be held with the hearing on the defendants' motion to dismiss [doc. 5].

Appearances on July 28, 2021 are excused.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Ruvn Feygenberg

Pro Se

Michael Leizerovitz

Pro Se

Sensible Consulting and

Pro Se

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik

**United States Bankruptcy Court
Central District of California
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Wednesday, July 28, 2021

Hearing Room 301

2:30 PM

CONT... Lev Investments, LLC

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, August 4, 2021

Hearing Room 301

9:30 AM

1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for the August 4, 2021 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1614111561>

Meeting ID: 161 411 1561

Password: 501531

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 411 1561

Password: 501531

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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Wednesday, August 4, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, August 4, 2021

Hearing Room 301

9:30 AM

1:21-10705 Edward Kudaverdian

Chapter 7

#1.00 Amended Motion for relief from stay [PP]

BMW BANK OF NORTH AMERICA
VS
DEBTOR

Docket 14

Tentative Ruling:

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

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):

Edward Kudaverdian

Represented By
Roland H Kedikian

Movant(s):

BMW Bank of North America

Represented By
Marjorie M Johnson

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, August 4, 2021

Hearing Room 301

9:30 AM

CONT... Edward Kudaverdian

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
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Wednesday, August 4, 2021

Hearing Room 301

9:30 AM

1:21-11159 Roberto C Hernandez

Chapter 13

#2.00 Motion for relief from stay [AN]

RAFAEL HERNANDEZ
VS
DEBTOR

Docket 8

Tentative Ruling:

Deny.

The Court will prepare the order.

Party Information

Debtor(s):

Roberto C Hernandez

Represented By
Craig B. Forry

Movant(s):

Roberto C Hernandez

Represented By
Craig B. Forry
Craig B. Forry

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, August 4, 2021

Hearing Room 301

9:30 AM

1:20-10131 Flora Young-Jones

Chapter 13

#3.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

Docket 56

***** VACATED *** REASON: No chambers copy of motion provided.
Motion is not on calendar.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Flora Young-Jones

Represented By
David Samuel Shevitz

Movant(s):

Deutsche Bank National Trust

Represented By
Sean C Ferry

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 4, 2021

Hearing Room 301

9:30 AM

1:21-11038 Geneva Placia Richardson

Chapter 13

#4.00 Motion for relief from stay [RP]

TRINITY FINANCIAL SERVICES, LLC
VS
DEBTOR

Docket 17

Tentative Ruling:

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

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

The co-debtor stay of 11 U.S.C. § 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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

**United States Bankruptcy Court
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Wednesday, August 4, 2021

Hearing Room 301

9:30 AM

CONT... Geneva Placia Richardson

Chapter 13

Debtor(s):

Geneva Placia Richardson

Represented By
Allan S Williams

Movant(s):

Trinity Financial Services, LLC

Represented By
JaVonne M Phillips

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, August 4, 2021

Hearing Room 301

9:30 AM

1:20-11006 Lev Investments, LLC

Chapter 11

#5.00 Motion for relief from stay [AN]

GA&TV INC. AND COACHELLA VINEYARD LUXURY RV PARK, LLC
VS
DEBTOR

Docket 360

*** VACATED *** REASON: No chambers copy of motion provided.
Motion is not on calendar.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh
Richard P Steelman Jr

Movant(s):

GA&TV Inc

Represented By
John Burgee

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 4, 2021

Hearing Room 301

9:30 AM

1:20-11006 Lev Investments, LLC

Chapter 11

#6.00 Motion for relief from stay [AN]

COACHELLA VINEYARD LUXURY RV PARK, LLC
VS
DEBTOR

Docket 361

*** VACATED *** REASON: No chambers copy of motion provided.
Motion is not on calendar.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh
Richard P Steelman Jr

Movant(s):

COACHELLA VINEYARD

Represented By
John Burgee

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 4, 2021

Hearing Room 301

1:30 PM

1:19-12677 John Stephen Travers

Chapter 7

Adv#: 1:20-01010 Ace Industrial Supply, Inc. v. Travers

#7.00 Pre-trial conference re: complaint to determine dischargeability

fr. 3/25/20; 5/6/20; 6/10/20; 12/9/20; 2/10/21, 5/5/21

Stip to continue filed 5/3/21.

Docket 1

***** VACATED *** REASON: Continued by stipulation to 9/22/21 at 1:30 p.m.**

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
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Courtroom 301 Calendar

Wednesday, August 4, 2021

Hearing Room 301

1:30 PM

1:20-10276 Hormoz Ramy

Chapter 7

Adv#: 1:20-01077 Seror v. Ramy

#8.00 Pretrial 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)

fr. 11/4/20, 5/5/21

STIP TO CONTINUE FILED 5/24/21

Docket 1

*** VACATED *** REASON: Continued to 10/13/21 at 1:30 p.m. per order
entered on 5/26/21 doc [22]

Tentative Ruling:

- NONE LISTED -

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**

Thursday, August 5, 2021

Hearing Room 301

10:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this calendar will be conducted 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).

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Join CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1609544567>

Meeting ID: 160 954 4567

Password: 475107

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 954 4567

Password: 475107

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Thursday, August 5, 2021

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10:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Thursday, August 5, 2021

Hearing Room 301

10:30 AM

1:09-26982 Tag Entertainment Corp.

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

Levene, Neale, Bender, Yoo & Brill LLP, Attorneys for Chapter 7 Trustee

Van Dyke & associates, APLC, Special Litigation Counsel to Chapter 7 Trustee

Focus Advisory Services LLC, Special Consultant to Chapter 7 Trustee

Hahn Fife & Company, LLP, Accountants for Chapter 7 Trustee

Docket 287

Tentative Ruling:

The Court will continue this hearing to **10:30 a.m. on August 26, 2021.**

Appearances on August 5, 2021 are excused.

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
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Thursday, August 5, 2021

Hearing Room 301

10:30 AM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#2.00 Subchapter V Trustee's Application for Payment of Interim Fees and/or Expenses

Docket 140

***** VACATED *** REASON: Hearing rescheduled for 8/19/21 at 10:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, August 5, 2021

Hearing Room 301

10:30 AM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#3.00 Application for payment of Interim fees an/or expenses for
Havkin & Shrago Attorneys at Law, Debtor's Attorney

Docket 145

***** VACATED *** REASON: Notice rescheduling hearing filed 7/27/21.
[Dkt. 164]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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

Thursday, August 5, 2021

Hearing Room 301

10:30 AM

1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#4.00 Application for payment of interim fees and or expenses for Quantum Law Group, LLP, Special litigation counsel for debtor

Docket 148

***** VACATED *** REASON: Notice rescheduling hearing filed 7/27/21.
[Dkt. 164]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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

Thursday, August 5, 2021

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#5.00 Confirmation hearing re first amended chapter 11 plan of reorganization and adequacy of related disclosure statement

fr. 7/8/21(stip)

Docket 175

***** VACATED *** REASON: Order entered 8/4/21 continuing hearing to 8/26/21 at 1:00 PM. [Dkt.219]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
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San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, August 5, 2021

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#6.00 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); 12/17/20; 2/4/21;
3/25/21, 4/8/21; 5/20/21; 7/8/21(stip)

Docket 1

***** VACATED *** REASON: Order entered 8/4/21 continuing hearing to
8/26/21 at 1:00 PM. [Dkt.219]**

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, August 5, 2021

Hearing Room 301

1:00 PM

1:20-12046 Buena Park Drive LLC

Chapter 11

#7.00 Status conference re chapter 11 case

fr. 1/14/21; 2/4/21; 6/17/21

Docket 1

Tentative Ruling:

The Court will set a hearing on the adequacy of the debtor's disclosure statement [doc. 163] at **1:00 p.m. on September 23, 2021**.

No later than **August 12, 2021**, the debtor must file and serve notice of the hearing and the deadline of **September 9, 2021** for creditors and the United States Trustee to file and serve objections to the Court's approval of the disclosure statement.

Party Information

Debtor(s):

Buena Park Drive LLC

Represented By
Thomas C Corcovelos

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

Thursday, August 5, 2021

Hearing Room 301

1:30 PM

1:13-16084 Holly Elizabeth Winzenburg

Chapter 7

#8.00 Status conference re: Order to show cause why Eric B. Gans should not be held in civil contempt for violations of the automatic stay and discharge injunction

fr. 5/20/21; 6/24/21

Docket 22

Tentative Ruling:

The Court has set aside the dates of August 30 through September 3, 2021 for this evidentiary hearing.

The parties should be prepared to discuss the expected number of witnesses at the evidentiary hearing, expected time for cross-examination to be completed and any other matters related to holding the evidentiary hearing.

6/24/2021 Tentative:

If the parties have not resolved the matter prior to the continued hearing date of June 24, 2021, the Court will schedule an evidentiary hearing, with witness testimony to be provided in person, in Courtroom 301.

The parties should discuss their availability for the following dates:

June 30 and/or July 1

July 9

July 26, July 27 and/or July 30

August 30 - September 3

Furthermore, the parties should discuss the expected number of witnesses at the evidentiary hearing, expected time for cross-examination to be completed and any other matters related to holding the evidentiary hearing.

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Thursday, August 5, 2021

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1:30 PM

CONT... Holly Elizabeth Winzenburg
May 20, 2021 Tentative Ruling

Chapter 7

Having considered the motion for sanctions [doc. 20], the response of Eric B. Gans [doc. 27] and submitted declarations, it is not apparent that Mr. Gans willfully violated the automatic stay and/or violated the discharge injunction. To determine whether Mr. Gans did so, and if sanctions are appropriate, the Court may require an evidentiary hearing.

At such an evidentiary hearing, among other witnesses, the Court would expect the debtor to produce Elise Gilliam for direct testimony and cross-examination, regarding respondent's provision of the documentation at issue and what Ms. Gilliam and her associates did with any such documentation received from the respondent.

The Court also would require in person direct testimony from Mr. Bodie, Ms. Winzenberg and Mr. Gans, each of whom also would be subject to cross-examination, unless such cross-examination is waived by the opposing party.

Has the debtor's refinancing of her home closed?

Party Information

Debtor(s):

Holly Elizabeth Winzenburg

Represented By
Brett F Bodie
Ahren A Tiller

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, August 5, 2021

Hearing Room 301

1:30 PM

1:17-13138 John Orlanes Case and Lourdes Halili Case

Chapter 7

#9.00 Debtors' Motion to convert chapter 7 case back to chapter 13 (confirmed plan in 2018 with applicable modifications provided by the CARES ACT)

Docket 88

Tentative Ruling:

In light of the debtors' supplemental reply and the declaration of the debtors' counsel [docs. 104, 105], the Court will continue this hearing for the parties to discuss their options.

"The court has discretion to order a second conversion but should scrutinize the debtor's circumstances, *bona fides*, and ability to succeed with the purposes for conversion." *In re Anderson*, 354 B.R. 766, 769 (Bankr. D.S.C. 2006); *see also Matter of Johnson*, 116 B.R. 224, 227 (Bankr. D. Idaho 1990) (holding that courts have discretion to permit reconversion). "The court should weigh the interests of the debtor, the estate and all creditors and address each such motion on a case by case basis." *Anderson*, 354 B.R. at 769. Courts also consider "the likelihood of successful Chapter 13 reorganization, the debtor's good faith, and whether reconversion would cause delay prejudicial to creditors." *In re Sherman*, 600 B.R. 453, 456-67 (Bankr. D.N.M. 2019).

Here, the debtors' projected reliance on 11 U.S.C. § 1328(i) to obtain a discharge signals the debtors' anticipation that they will not be able to complete payments in a chapter 13 plan which pays 100% of unsecured claims and allowed administrative expenses.

The debtors also have not demonstrated that their monthly net income is sufficient to pay 100% of claims against the estate, including allowed administrative expenses and unsecured claims. On the other hand, the chapter 7 trustee has submitted evidence that liquidation of the debtors' residence will satisfy 100% of the claims against the estate.

In his declaration, the debtors' counsel states his willingness to pay into the debtors' chapter 13 plan (if this case were to be reconverted to chapter 13). Given counsel's willingness to fund, at least partially, the debtors' payment of allowed claims, the parties may wish to discuss the option of debtors and their counsel paying to the chapter 7 trustee, over time, an amount sufficient to pay allowed administrative expenses and unsecured claims against the

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CONT... John Orlanes Case and Lourdes Halili Case Chapter 7

estate, without requiring a sale of the debtors' residence. This also could expedite the debtors' receipt of a discharge, through chapter 7.

The parties may attend mediation through the Court's mediation program.

Party Information

Debtor(s):

John Orlanes Case

Represented By
Lawrence B Yang

Joint Debtor(s):

Lourdes Halili Case

Represented By
Lawrence B Yang

Movant(s):

John Orlanes Case

Represented By
Lawrence B Yang
Lawrence B Yang
Lawrence B Yang

Lourdes Halili Case

Represented By
Lawrence B Yang
Lawrence B Yang
Lawrence B Yang

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:17-13138 John Orlanes Case and Lourdes Halili Case

Chapter 7

#10.00 Application to employ Rodeo Realty, Inc. as real estate broker

Docket 84

Tentative Ruling:

See calendar no. 9.

Party Information

Debtor(s):

John Orlanes Case

Represented By
Lawrence B Yang

Joint Debtor(s):

Lourdes Halili Case

Represented By
Lawrence B Yang

Movant(s):

Nancy J Zamora (TR)

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:20-10276 Hormoz Ramy

Chapter 7

#11.00 Debtor's Motion for (1) Turnover of property of the estate,
and (2) Order compelling debtor to comply

Docket 79

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

Movant(s):

David Seror (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov
Tamar Terzian

Trustee(s):

David Seror (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov
Tamar Terzian

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1:21-10302 Armen Shane Minassian

Chapter 7

#12.00 Order to show cause re dismissal for failure to comply with rule 1006(B)

Docket 53

***** VACATED *** REASON: Payment of \$83.00 received on 7/19/21.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Armen Shane Minassian

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

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1:20-10678 John Michael Smith, Jr and Rebecca Phelps Smith

Chapter 11

#13.00 Debtors' Motion re Objection to Claim Number 1 filed on behalf of Creditor Department of Treasury - Internal Revenue Service

fr. 7/22/21

Docket 145

Tentative Ruling:

Overrule.

I. BACKGROUND

On March 23, 2020, John Michael Smith, Jr. and Rebecca Phelps Smith ("Debtors") filed a chapter 13 petition. On June 18, 2020, the Court entered an order converting the case to a chapter 11 case [doc. 35]. On April 13, 2020, the Internal Revenue Service (the "IRS") filed proof of claim no. 1. On January 11, 2021, the IRS amended its claim, asserting a claim in the amount of \$5,944,956.25, with \$5,575,754.94 designated as secured and \$338,783.91 designated as priority. Debtors now object to the IRS's claim.

A. Relevant Prepetition History

On January 30, 2013, the United States District Court for the District of Florida entered a judgment, in a criminal case, against Mr. Smith (the "Criminal Judgment"). Objection, Exhibit 2. [FN1]. The Criminal Judgment was based on "[f]alse and fictitious claims upon the United States" under 18 U.S.C. § 287. *Id.* In relevant part, the District Court held—

Cooperation with the IRS – The defendant shall cooperate fully with the Internal Revenue Service in determining and paying any tax liabilities. The defendant shall provide to the Internal Revenue Service all requested documents and information for purposes of any civil audits, examinations, collections, or other proceedings. It is further ordered that the defendant file accurate income tax returns and pay all

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taxes, interest, and penalties due and owing by him/her to the Internal Revenue Service.

Id.

On January 1, 2015, Mr. Smith and Bandwidth Options, Inc. ("Bandwidth") allegedly entered into a loan agreement (the "Smith Loan Agreement"). Objection, Exhibit 8. [FN2]. Through the Smith Loan Agreement, Bandwidth purportedly agreed to loan Mr. Smith a maximum amount of \$200,000 in monthly installments "to cover [Mr. Smith's] monthly living expenses." *Id.* According to the alleged Smith Loan Agreement, Bandwidth would stop paying Mr. Smith if one of the following occurred:

1. [Mr. Smith's] monthly work income exceeds the amount that [Bandwidth] is loaning to [Mr. Smith] on a monthly basis; or
2. [Mr. Smith] receives a lump sum amount of money that is sufficient to pay back [Bandwidth]; or
3. [Mr. Smith] and [Bandwidth] agree to convert the loan into income and a 1099 is issued to [Mr. Smith] from [Bandwidth]; or
4. [Bandwidth's] maximum loan amount of \$200,000.00 is reached.

In March 2015, Debtors submitted amended income tax returns for the tax years 2006 and 2007 (the "Amended Tax Returns"). Declaration of Rakesh Shah (the "Shah Declaration") [doc. 155], ¶ 7, Exhibits B-C. The IRS did not accept the Amended Tax Returns, and the Amended Tax Returns were sent to the Frivolous Filing Center of the IRS. Shah Declaration, ¶ 8.

On October 3, 2016, Debtors filed for an Offer in Compromise, attempting to settle their tax liabilities for tax years 2006-2009 and 2012. Shah Declaration, ¶ 9, Exhibit E. At the time, Debtors owed over \$5 million on their tax liabilities for those tax years. *Id.* Debtors offered \$800 to settle these liabilities. Shah Declaration, ¶ 10.

On October 25, 2017, an agent of the IRS submitted a recommendation for a rejection of the Offer in Compromise (the "Rejection Recommendation"). Shah Declaration, ¶ 11, Exhibit E. In the Rejection Recommendation, the agent first noted Mr. Smith's attempted fraudulent refund scheme and conviction for making false and fictitious claims. *Id.* The agent also provided an assessment of Debtors' employment income,

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stating—

The taxpayers attempted to use a fraudulent refund scheme[] for 2006 and 2007. In 2006 they were unsuccessful in their attempt, the Service stopped a \$930,335.00 refund from being mailed. They were successful in 2007 in their scheme and received a \$208,312.00 refund. This is the year Mr. Smith was convicted of making false and fictions claims and ordered to pay restitution.

The taxpayer's CIS shows that Mr. Smith only earns \$1,585.00 per month from his current employer Bandwidth Options Inc.... They have claimed and received EIC since 2014 the year he started with Bandwidth. A review of their bank statements from June-August 2016 and May to July 2017 showed average deposits of \$9,938.00. When this was questioned they provided a copy of a loan agreement between Mr. Smith and his employer Bandwidth Options dated January 1, 2015 where his employer has agreed to lend him a maximum of \$200,000.00 to cover monthly living expenses. Mr. Smith as agreed [sic] that once the maximum loan amount is received he will start to repay the loan of at least \$3,400.00 per month. Unless it is agreed that the loan will be converted to income. [sic] Mr. Smith has also provided a letter from Kevin Cook, President of Bandwidth, that Mr. Smith has no interest in the business or its affiliates and is not related to him. This arrangement seems questionable and has been discussed with an ATAT RO who thinks the case needs to be transferred to the field for further investigation.

Based on my financial analysis an acceptable cash offer would be \$40,100.00 however based on Mr. Smith's previous frivolous attempt to secure a large refund, the one year that they did secure a large refund and subsequent criminal conviction and his questionable current business relationship with his employer acceptance of an offer is not in the best interest of the government.

Id. As such, in January 2018, the IRS rejected the Offer in Compromise. *Id.*

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Debtors filed joint income tax returns for tax years 2016 through 2019 (the "2016-2019 Tax Returns"). Shah Declaration, ¶¶ 12-15. The 2016-2019 Tax Returns remain under examination, and the IRS has not made assessments for those tax years. Shah Declaration, ¶ 16. For the tax year 2019, the IRS received a 1099-MISC form by Bandwidth for the amount of \$296,977 (the "Bandwidth 1099"). Shah Declaration, ¶ 19.

B. Debtors' Bankruptcy Filing and the Objection to the IRS's Claim

On March 23, 2020, Debtors filed their bankruptcy petition. On June 8, 2021, Debtors filed an objection to the IRS's claim (the "Objection") [doc. 149]. In the Objection, Debtors argue that: (A) the IRS is time barred from rejecting the Amended Tax Returns; (B) because the IRS did not accept the Amended Tax Returns, which Debtors assert reflects the correct amount owed, the IRS should not be allowed a secured claim; (C) the IRS cannot assess Debtor for the Smith Loan Agreement because Debtor has not agreed to convert the loan to income; and (D) there is no evidence to support the IRS's estimated assessment of Debtors' 2018 taxes. In their prayer for relief, Debtors also request, in a conclusory fashion, the disallowance of all interest and penalties claimed by the IRS.

On July 7, 2021, the IRS filed an opposition to the Objection (the "Opposition") [doc. 155]. In the Opposition, the IRS asserts that: (A) there is no statute of limitations for assessing fraudulent or false tax returns; (B) the IRS is not required to accept amended tax returns; (C) the IRS is not obligated to accept the Offer in Compromise; (D) Debtors have not provided any basis for disallowance of interest and penalties; (E) the IRS is allowed to estimate an amount Debtors owe for tax years that are not yet assessed; and (F) the IRS may rely on the Bandwidth 1099 to assess the alleged loan as income.

On July 15, 2021, Debtors filed a reply to the Opposition (the "Reply") [doc. 156]. In the Reply, Debtors argue that the IRS did not reject the Amended Tax Returns, and that the Frivolous Filing Center approved the Amended Tax Return for processing. Debtors also contend that the District Court, via the Criminal Judgment, ordered the filing of the Amended Tax Returns and, as a result, the IRS must accept the Amended Tax Returns. Debtors also reiterate their arguments from the Objection. Concurrently with the Reply, Debtors filed evidentiary objections to the Shah Declaration [doc.

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II. ANALYSIS

A. General Objection to Claim Standard and Burdens of Proof

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in interest objects. Fed. R. Bankr. P. 3001(f) provides that a proof of claim executed 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). "If the creditor does not provide information or is unable to support its claim, then that 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." *In re Heath*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005).

"It is well established in the tax law that an assessment is entitled to a legal presumption of correctness...." *United States v. Fior D'Italia, Inc.*, 536 U.S. 238, 242, 122 S.Ct. 2117, 2122, 153 L.Ed.2d 280 (2002). "Introduction of the presumptively correct assessment shifts the burden of proof to the taxpayer." *United States v. Stonehill*, 702 F.2d 1288, 1294 (9th Cir. 1983). "To rebut the presumption of correctness, the taxpayer has the burden of proving that the assessment is 'arbitrary or erroneous.'" *Id.* (citing *Helvering v. Taylor*, 293 U.S. 507, 515, 55 S.Ct. 287, 291, 79 L.Ed. 623 (1935)).

B. The Statute of Limitations

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Pursuant to 26 U.S.C. § 6501(a), "the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed...." Debtors contend that, in light of this statute, the IRS did not timely assess the Amended Tax Returns. However, Debtors ignore the exceptions set forth in 26 U.S.C. § 6501(c), including the following—

False return.--In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, *at any time*.

26 U.S.C. § 6501(c)(1) (emphasis added). "[L]imitations statutes barring the collection of taxes otherwise due and unpaid are strictly construed in favor of the Government." *Badaracco v. Commissioner*, 464 U.S. 386, 392, 104 S.Ct. 756, 78 L.Ed.2d 549 (1984) (internal quotation omitted).

Here, the Criminal Judgment establishes that Debtors' 2006 and 2007 tax returns were false returns. Debtors do not dispute this point. Rather, Debtors appear to argue that, because the Amended Tax Returns were not found to be false or fraudulent, the three-year general assessment deadline attached to the Amended Tax Returns.

Contrary to Debtors' position, in *Badaracco*, the Supreme Court of the United States held that—

[O]nce a fraudulent return has been filed, the case remains one "of a false or fraudulent return," regardless of the taxpayer's later revised conduct, for purposes of criminal prosecution and civil fraud liability under § 6653(b). It likewise should remain such a case for purposes of the unlimited assessment period specified by § 6501(c)(1).

Badaracco, 464 U.S. at 394.

Thus, the Supreme Court has expressly rejected Debtors' position. In the Reply, Debtors attempt to distinguish *Badaracco* from their case by arguing that, in *Badaracco*, the taxpayer filed the fraudulent returns, followed by nonfraudulent returns, and was later convicted for the filing of the fraudulent returns. Debtors note

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that, here, Mr. Smith filed the fraudulent returns, was convicted for those returns, and later filed allegedly nonfraudulent Amended Tax Returns. This is a distinction without a difference. Debtors have not articulated why the timing of the conviction is relevant to the holding of *Badaracco* that, where a false return is filed, as it was here, the limitations period of 26 U.S.C. § 6501(a) does not apply.

In the Reply, Debtors also argue that the IRS has not provided any evidence that the Amended Tax Returns were fraudulent or false. However, the IRS does not contend that the Amended Tax Returns were fraudulent or false, and, under 26 U.S.C. § 6501(c) and *Badaracco*, the IRS does not need to demonstrate that the Amended Tax Returns were fraudulent or false; either way, based on the original false filing, the limitations period is inapplicable.

Debtors further contend that, unlike *Badaracco*, here, the District Court required the IRS to accept the Amended Tax Returns. The Criminal Judgment contains no such language. Debtors appear to refer to the District Court's requirement that Debtors file accurate tax returns. However, the District Court did not require the IRS to accept any amended tax return filed by Debtors.

Debtors also reference the District Court's notation that the "offense" ended on April 16, 2009, arguing that the notation triggered the three-year statute of limitation. Once again, there is no legal support for Debtors' position. The Criminal Judgment does not contain any language altering or nullifying the unlimited assessment period of 26 U.S.C. § 6501(c). In addition, the Supreme Court disagreed with a similar argument made by the taxpayer in *Badaracco*, stating that the Court was "not persuaded by [the taxpayer's] suggestion... that § 6501(c)(1) should be read merely to suspend the commencement of the limitations period while the fraud remains uncorrected." *Badaracco*, 464 at 395; see also *United States v. Shearer*, 2018 WL 3244855, at *3 (E.D. Cal. July 3, 2018) ("Filing a corrected tax return does not 'zero out' a previously filed false return and cancel out any harm."). Thus, even if the fraud ended on April 16, 2009, the Amended Tax Returns still would be covered by 26 U.S.C. § 6501(c). In light of the above, the limitations period of 26 U.S.C. § 6501(a) does not apply to the Amended Tax Returns.

C. Acceptance of The Amended Tax Returns

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Debtors also argue that the IRS was required to accept the Amended Tax Returns. Debtors do not cite any authority in support of this proposition. In fact, the Ninth Circuit Court of Appeals has held that the IRS is not statutorily required to accept amended tax returns, or to treat amended tax returns as superseding the original tax returns. *Fayeghi v. Comm'r*, 211 F.3d 504, 507 (9th Cir. 2000).

In support of their contention, Debtors state that the Criminal Judgment created a "duty to process" the Amended Tax Returns. Opposition, p. 8. Once again, Debtors reference the District Court's order for Debtors to "file accurate income tax returns and pay all taxes, interest, and penalties due and owing by him/her to the" IRS. Criminal Judgment, p. 4. However, as discussed above, the Court does not interpret this language as requiring the IRS to accept the Amended Tax Returns, and the balance of the Criminal Judgment does not include any such requirement. Although the Criminal Judgment imposed affirmative duties on Mr. Smith, the Criminal Judgment did not remove the IRS's discretion to reject amended tax returns.

In the Reply, Debtors also assert that the documents in their possession reflect that, after the IRS referred the Amended Tax Returns to its Frivolous Filing Center, agents cleared the Amended Tax Returns for processing. First, the documents referenced by Debtors are not properly authenticated by a party with personal knowledge. Debtor's counsel does not have personal knowledge about the IRS's internal review process or notations made by agents. Next, even if the Court accepts as true the fact that the IRS cleared the Amended Tax Returns for processing, Debtors have not shown that such clearance mandates acceptance of the tax return for assessment of the amounts owed by Debtors.

As such, Debtors have not cited to any requirement, imposed by law, by operation of the Criminal Judgment or by the referenced internal procedures of the IRS, that the IRS must accept the Amended Tax Returns. Consequently, this argument is not a basis to disallow part of the IRS's claim.

D. The Offer in Compromise

Debtors also assert that the IRS should have accepted Debtors' Offer in Compromise. Once again, Debtors do not cite any authority providing that the IRS is required to accept a taxpayer's Offer in Compromise. Under 26 U.S.C. § 7122(a)—

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Authorization.--The Secretary *may* compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate *may* compromise any such case after reference to the Department of Justice for prosecution or defense.

(emphases added); *see also Fargo v. Comm'r*, 447 F.3d 706, 712 (9th Cir. 2006) ("[T]he authorization provided by the statute is discretionary on its face...."). In addition, under 26 C.F.R. § 301.7122-1(c)—

Special rules for evaluating offers to compromise—(1) In general. Once a basis for compromise under paragraph (b) of this section has been identified, *the decision to accept or reject an offer to compromise, as well as the terms and conditions agreed to, is left to the discretion of the Secretary*. The determination whether to accept or reject an offer to compromise will be based upon consideration of all the facts and circumstances, including whether the circumstances of a particular case warrant acceptance of an amount that might not otherwise be acceptable under the Secretary's policies and procedures.

(emphasis added).

In light of the above, the IRS had discretion to reject the Offer in Compromise. In fact, the Rejection Recommendation sets forth multiple reasons for rejection of the Offer in Compromise. Although Debtors cite exclusively to the portion of the Rejection Recommendation where the agent notes that "an acceptable cash offer would be \$40,100.00," the remainder of the Rejection Recommendation outlines the reasons why accepting Debtors' offer would not be in the best interest of the government. Notwithstanding the fact that Debtors have not provided any authority that would require the IRS to accept their offer, under any circumstances, Debtors also have not addressed the detailed justification for rejection set forth in the Rejection Recommendation. Consequently, the Court will not disallow any portion of the IRS's claim based on the Rejection Recommendation.

E. The Bandwidth 1099 Form

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Debtors also contend that the IRS has not provided evidence that, in accordance with the purported Smith Loan Agreement, the alleged loan was converted to income. Debtors further argue that, as a result, the IRS has not demonstrated that it may rely on the Bandwidth 1099. These arguments run contrary to the applicable burden of proof. To defeat the *prima facie* validity of the IRS's claim, Debtors, as the objecting party, bear the burden of "com[ing] forward with sufficient evidence and show[ing] facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039. In addition, as noted above, assessments are "entitled to a legal presumption of correctness," which "shifts the burden of proof to the taxpayer." *Fior D'Italia*, 536 U.S. at 242; *Stonehill*, 702 F.2d at 1294. As concerns their arguments regarding the Bandwidth 1099, Debtors have failed to meet their burden.

In support of their argument, Debtors provide the alleged Smith Loan Agreement. The Smith Loan Agreement is not authenticated by an individual with personal knowledge. In addition, despite Debtors' contention that Mr. Smith did not agree, pursuant to the alleged terms of the Smith Loan Agreement, to convert the purported loan to income, Debtors have not offered a declaration from Mr. Smith. The Objection also is not supported by a declaration from a representative of Bandwidth. [FN3]. As such, Debtors' factual statements are not supported by any evidence. In the Objection, Debtors also did not raise any legal issues that would prevent the IRS from relying on the Bandwidth 1099 for assessment of Debtors' taxes.

In the Reply, Debtors reference, for the first time, the following statute—

Required reasonable verification of information returns.--In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to

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such information return.

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26 U.S.C.A. § 6201(d). Debtors highlight the last sentence of this statute, regarding the IRS's "burden of producing reasonable and probative information concerning" deficiencies assessed by the IRS. However, the language preceding this sentence makes the IRS's burden contingent on the taxpayer asserting a "reasonable dispute" and "fully cooperat[ing]" with the IRS. Because Debtors did not support their arguments regarding Bandwidth with any admissible evidence or applicable legal authority, the record before the Court does not demonstrate a *reasonable* dispute. In addition, although Debtors state, in a conclusory fashion, that they have cooperated with the IRS, Debtors have not offered any proof of such cooperation.

In light of the IRS's legal presumption of correctness, the *prima facie* validity afforded to its claim and Debtors' failure to shift the burden back to the IRS, the Court will not disallow the portion of the IRS's claim stemming from the Bandwidth 1099.

F. The Estimated Tax Liability for 2018

In the Objection, Debtors state that the IRS has not provided any evidence to support its estimated claim of \$38,103 for tax year 2018. Debtors do not contend that this amount is inaccurate, and do not provide any evidence or legal argument to disallow this portion of the claim. As such, Debtors did not meet their burden of "com[ing] forward with sufficient evidence and show[ing] facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039. Debtors also did not offer any evidence or argument to rebut the IRS's legal presumption of correctness. *Fior D'Italia*, 536 U.S. at 242.

In addition, the Supreme Court of the United States has held that the IRS has the authority to estimate an individual's tax liability—

[26 U.S.C. § 6201(a)], by granting the IRS assessment authority, must simultaneously grant the IRS power to decide *how* to make that assessment – at least within certain limits. And the courts have consistently held that those limits are not exceeded when the IRS *estimates* an individual's tax liability – as long as the method used to make the estimate is a "reasonable" one.

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Fior D'Italia, 536 U.S. at 243 (emphases in *Fior D'Italia*). As such, the IRS has authority to estimate Debtors' tax liability. Debtors have not contended, and have not provided any evidence, that the IRS's method of estimation is not reasonable. Thus, the Court will not disallow the IRS's estimated claim for Debtors' 2018 taxes.

G. The Interest and Penalties and Secured Claim

In the Objection and the Reply, Debtors request disallowance of the IRS's claims of interest and penalties on the basis that, if the Court disallows a portion of the IRS's claim, the IRS must recalculate the assessed penalties and interest. Because the Court is not disallowing any portion of the IRS's claim, the Court will disregard this argument.

Debtors also request that, if the Court requires the IRS to accept the Amended Tax Returns and disallows a portion of the IRS's claim, the IRS's claim be designated as unsecured. Once again, because the Court is not disallowing any portion of the IRS's claim, the Court will not recharacterize the IRS's claim as unsecured.

III. CONCLUSION

The Court will overrule the Objection.

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

FOOTNOTES

1. The Court may take judicial notice of the District Court's judgment.
2. The Smith Loan Agreement, attached as Exhibit 8 to the Objection, is not properly authenticated by a party with personal knowledge.
3. In fact, in their schedule A/B [doc. 13], signed under penalty of perjury, Debtors identified a claim against Bandwidth for "unpaid wages." As such, Debtors themselves have referred to funds received from Bandwidth as income.

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CONT... John Michael Smith, Jr and Rebecca Phelps Smith

Chapter 11

Tentative ruling regarding Debtors' evidentiary objections to the identified paragraphs in the Declaration of Rakesh Shah set forth below:

paras. 8, 16, 17, 18: overrule

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):

John Michael Smith Jr

Represented By
Louis J Esbin

Rebecca Phelps Smith

Represented By
Louis J Esbin
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, August 5, 2021

Hearing Room 301

1:30 PM

1:20-10678 John Michael Smith, Jr and Rebecca Phelps Smith

Chapter 11

#14.00 Status conference re chapter 11 case

fr. 7/16/20; 11/5/20; 1/21/21; 4/22/21; 6/17/21; 7/22/21

Docket 36

Tentative Ruling:

The debtors did not timely file their June 2021 monthly operating report.

Given the Court's ruling on the debtors' objection to the claim of the Internal Revenue Service [*see* calendar no. 13], how do the debtors intend to formulate and confirm a chapter 11 plan?

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, August 10, 2021

Hearing Room 301

9:30 AM

1:

Chapter

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

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, August 10, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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: 161 009 9128

Password: 740571

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Docket 0

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

Tuesday, August 10, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Tuesday, August 10, 2021

Hearing Room 301

10:30 AM

1:16-10126 Angela Cordero Britton

Chapter 13

#17.00 Trustee's motion to dismiss case due to expiration of the plan

fr. 5/11/21

Docket 109

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, August 10, 2021

Hearing Room 301

10:30 AM

1:17-10266 Cindy Park

Chapter 13

#18.00 Trustee's Motion to dismiss case for failure to make plan payments

fr. 6/8/21; 7/13/21

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cindy Park

Represented By
John W Martin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, August 10, 2021

Hearing Room 301

10:30 AM

1:17-11891 Christine Mettlen

Chapter 13

#19.00 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 37

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, August 10, 2021

Hearing Room 301

10:30 AM

1:17-12163 Cynthia Ann Donahue

Chapter 13

#20.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

fr. 4/6/21; 6/8/21; 7/13/21

Docket 60

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 10, 2021

Hearing Room 301

10:30 AM

1:18-10831 Jose Reynaldo Juarez

Chapter 13

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

fr. 7/13/21

Docket 97

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, August 10, 2021

Hearing Room 301

10:30 AM

1:18-11288 Neli Maria Negrea

Chapter 13

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

fr. 7/13/21

Docket 132

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, August 10, 2021

Hearing Room 301

10:30 AM

1:18-11408 Medina Ilagan Garcia

Chapter 13

#23.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 87

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Medina Ilagan Garcia

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, August 10, 2021

Hearing Room 301

10:30 AM

1:18-12372 Philip John Giannino and Anne Frances Giannino

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. 7/13/21

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philip John Giannino

Represented By
Maria C Hehr

Joint Debtor(s):

Anne Frances Giannino

Represented By
Maria C Hehr

Trustee(s):

Elizabeth (SV) 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 10, 2021

Hearing Room 301

10:30 AM

1:19-10022 Gus Albert Bolona and Deirdre Marie Bolona

Chapter 13

#25.00 Trustee's Motion to dismiss case for failure to make plan payments

fr. 5/11/21; 7/13/21

Docket 88

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, August 10, 2021

Hearing Room 301

10:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#26.00 Trustee's Motion to dismiss case for failure to make plan payments

fr. 5/11/21; 6/8/21

Docket 105

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 10, 2021

Hearing Room 301

10:30 AM

1:19-11917 Brenda Medina

Chapter 13

#27.00 Trustee's motion to dismiss chapter 13 case due to material default of plan: failure to submit all tax refunds

fr. 4/6/21; 7/16/21

Docket 86

Tentative Ruling:

- NONE LISTED -

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, August 10, 2021

Hearing Room 301

10:30 AM

1:19-13208 Elin Cometa Bukid

Chapter 13

#28.00 Trustee's Motion to dismiss case for failure to make plan payments

fr. 6/8/21

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elin Cometa Bukid

Represented By
Hasmik Jasmine Papian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, August 10, 2021

Hearing Room 301

10:30 AM

1:20-10269 John Goulter

Chapter 13

#29.00 Trustee's Motion to dismiss case for failure to make plan payments
fr. 6/8/21

Docket 53

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**

Tuesday, August 10, 2021

Hearing Room 301

10:30 AM

1:20-10460 Veronica E Pledger

Chapter 13

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

fr. 12/8/20; 3/9/21; 5/11/21; 7/13/21

Docket 45

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, August 10, 2021

Hearing Room 301

10:30 AM

1:20-10521 Marisol V. Perez

Chapter 13

#31.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marisol V. Perez

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 10, 2021

Hearing Room 301

10:30 AM

1:20-10546 Luis Lugo Duenez and Maria Dolores Duenez

Chapter 13

#32.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 7/13/21

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luis Lugo Duenez

Represented By
Jaime A Cuevas Jr.

Joint Debtor(s):

Maria Dolores Duenez

Represented By
Jaime A Cuevas Jr.

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, August 10, 2021

Hearing Room 303

10:30 AM

1:20-10569 Michael Henry Moretti and Heather Marie Moretti

Chapter 13

#33.00 Trustee's Motion to dismiss case for failure to make plan payments

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Henry Moretti

Represented By
Erika Luna

Joint Debtor(s):

Heather Marie Moretti

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**

Tuesday, August 10, 2021

Hearing Room 301

10:30 AM

1:20-10868 Stanley LaMont Engelson and Lola Falana Engelson-Webb Chapter 13

#34.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 5/11/21; 7/13/21

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stanley LaMont Engelson

Represented By
Michael E Clark

Joint Debtor(s):

Lola Falana Engelson-Webb

Represented By
Michael E Clark

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, August 10, 2021

Hearing Room 301

10:30 AM

1:20-11024 Frank Roy Adame

Chapter 13

#35.00 Trustee's motion to dismiss case for failure to make plan payments
fr. 7/13/21

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Roy Adame

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, August 10, 2021

Hearing Room 301

10:30 AM

1:20-11045 Joe Lopez, Jr.

Chapter 13

#36.00 Motion to dismiss case for failure to make plan payments

fr. 6/8/21; 7/13/21

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joe Lopez Jr.

Represented By
Donald E Iwuchuku

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, August 10, 2021

Hearing Room 301

11:00 AM

1:17-12163 Cynthia Ann Donahue

Chapter 13

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

fr. 7/13/21

Docket 63

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 10, 2021

Hearing Room 301

11:00 AM

1:20-10116 Ramiro Lopez Roman and Martha Roman

Chapter 13

#38.00 Mill City Mortgage Loan Trust's Motion to Terminate Loan Modification Management Program

Docket 60

***** VACATED *** REASON: Stipulation to resolve motion entered 8/6/21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramiro Lopez Roman

Represented By
Marcus G Tiggs

Joint Debtor(s):

Martha Roman

Represented By
Marcus G Tiggs

Movant(s):

Mill City Mortgage Loan Trust 2018

Represented By
Erica T Loftis Pacheco

Trustee(s):

Elizabeth (SV) 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 10, 2021

Hearing Room 301

11:00 AM

1:20-12087 Harry D Cleeland, III

Chapter 13

#39.00 Application for Compensation for Edmond Richard McGuire, Debtor's Attorney,
Period: 1/23/2021 to 4/24/2021, Fee: \$3500, Expenses: \$.

Docket 79

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):

Harry D Cleeland III

Represented By
Edmond Richard McGuire

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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

Tuesday, August 10, 2021

Hearing Room 301

11:00 AM

1:21-10438 Tristan Eric Williams

Chapter 13

#40.00 Order to show cause why debtor's counsel should not be sanctioned for failure to appear at the chapter 13 confirmation hearing

Docket 19

Tentative Ruling:

On March 15, 2021, Tristan Eric Williams ("Debtor") filed a proposed chapter 13 plan (the "Plan") [doc. 2]. On July 13, 2021, the Court held a confirmation hearing on the Plan. Contrary to Local Bankruptcy Rule 3015-1(u), Debtor's counsel did not appear at the hearing.

On July 14, 2021, the Court issued an *Order to Show Cause why Debtor's Counsel Should Not be Sanctioned for Failure to Appear at the Chapter 13 Confirmation hearing* (the "OSC") [doc. 19], on the grounds that Debtor's counsel failed to appear at the confirmation hearing on the Plan. 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 July 27, 2021. On July 21, 2021, Debtor's counsel filed a response to the OSC.

If Debtor's counsel or an appearance attorney appears at the continued confirmation hearing on August 10, 2021 at 9:30 a.m., the Court will discharge the OSC. If no appearance by Debtor's counsel is made at the continued confirmation hearing, the Court may impose sanctions on Debtor's counsel.

Party Information

Debtor(s):

Tristan Eric Williams

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**

Thursday, August 12, 2021

Hearing Room 301

1:00 PM
1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this calendar will be conducted 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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Join CACB ZoomGov Meeting

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Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

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Password: 999999

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

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

Thursday, August 12, 2021

Hearing Room 301

1:00 PM

CONT...

Chapter

Tentative Ruling:

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

Thursday, August 12, 2021

Hearing Room 301

1:00 PM

1:21-10995 All Smiles Home Health Care, Inc.

Chapter 7

#1.00 Order to show cause re: dismissal

Docket 18

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):

All Smiles Home Health Care, Inc. Pro Se

Trustee(s):

Amy L Goldman (TR) Pro Se

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

Thursday, August 12, 2021

Hearing Room 301

1:30 PM

1:21-11122 Jacob Zurnamer and Joan Diane Zurnamer

Chapter 7

#2.00 Debtors' motion to avoid lien

Docket 7

Tentative Ruling:

Grant.

I. BACKGROUND

On June 28, 2021, Jacob Zurnamer and Joan Diane Zurnamer ("Debtors") filed a voluntary chapter 7 petition. In their schedule A/B, Debtors identified an interest in real property located at 27552 Rondell Street, #39, Agoura Hills, CA 91301 (the "Property"). Debtors valued the Property at \$490,000. In their schedule C, Debtors claimed a \$600,000 homestead exemption in the Property. In their schedule D, Debtors identified two encumbrances against the Property: (A) a first priority deed of trust in favor of SBS Lien Services in the amount of \$140,000; and (B) a judgment lien in favor of NDS, LLC ("NDS") in the amount of \$87,821.51.

On June 29, 2021, Debtors filed the Motion [doc. 7]. On July 15, 2021, NDS filed an opposition to the Motion (the "Opposition") [doc. 12]. In the Opposition, NDS asserts that: (A) under California Code of Civil Procedure ("CCP") § 704.965, Debtors are limited to the exemption amount on the date of recordation of the lien in favor of NDS, as opposed to the petition date; and (B) granting the Motion would violate NDS's Fifth Amendment rights. On July 20, 2021, Debtors filed a reply to the Opposition [doc. 14].

II. ANALYSIS

A. NDS's Arguments Regarding CCP § 704.965

NDS contends that Debtors are not entitled to claim the increased homestead exemption set forth in CCP § 704.730; rather, NDS asserts that the Court should use the statutory homestead amounts applicable at the time NDS recorded its abstract of judgment. NDS references CCP § 704.965, which provides—

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

Thursday, August 12, 2021

Hearing Room 301

1:30 PM

CONT... Jacob Zurnamer and Joan Diane Zurnamer

Chapter 7

If a *homestead declaration* is recorded prior to the operative date of an amendment to Section 704.730 which increases the amount of the homestead exemption, the amount of the exemption for the purposes of subdivision (c) of Section 704.950 and Section 704.960 is the increased amount, except that, if the judgment creditor obtained a lien on the *declared homestead* prior to the operative date of the amendment to Section 704.730, the exemption *for the purposes of subdivision (c) of Section 704.950 and Section 704.960* shall be determined as if that amendment to Section 704.730 had not been enacted.

(emphases added). The plain language of CCP § 704.965 limits the applicability of the statute to declared homesteads. In addition, the statute explicitly states that judgment debtors are limited to claiming exemptions existing at the time a judgment creditor obtained a lien "for the purposes of subdivision (c) of Section 704.950 and Section 704.960...." CCP § 704.965. Sections 704.950(c) and 704.960 involve *declared* homestead exemptions.

"Two types of homestead exemptions exist in California: the declared homestead exemption governed by Article 5; and the automatic homestead exemption governed by Article 4." *In re Elliott*, 523 B.R. 188, 194 (B.A.P. 9th Cir. 2014). "The declared and automatic homestead exemptions are separate and distinct." *Id.* "[T]he filing of a bankruptcy triggers application of the *automatic* homestead exemption." *In re Johnson*, 604 B.R. 875, 881 (Bankr. S.D. Cal. 2019) (emphasis added). In their schedules, Debtors claimed an exemption under California's automatic homestead exemption statutes; there is no evidence in the record that Debtors recorded a homestead declaration.

With respect to automatic homestead exemptions, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") has held that debtors are entitled to the amount of an exemption available to the debtor *on the petition date*. *In re Mayer*, 167 B.R. 186, 188 (B.A.P. 9th Cir. 1994). In *Mayer*, judgment creditors objected to the debtor's claim of an exemption, arguing that the debtor was limited to the lesser exemption amount applicable on the date the creditors' judgment lien attached to the debtor's property. *Mayer*, 167 B.R. at 187. The bankruptcy court sustained the objection to the amount

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

Thursday, August 12, 2021

Hearing Room 301

1:30 PM

CONT... Jacob Zurnamer and Joan Diane Zurnamer

Chapter 7

of the debtor's claimed exemption. *Id.*, at 188. On appeal, the BAP reversed the bankruptcy court's holding, stating—

The [judgment creditors'] lien is not relevant in determining whether [the debtor] is entitled to the homestead exemption listed in his schedules. The filing of the petition constitutes an attempt by the trustee to levy on the property. It is this hypothetical levy the court must focus on in analyzing [the debtor's] entitlement to a homestead exemption. The existence of the [judgment creditors'] judgment lien may impact a trustee's decision to abandon or sell property of the estate, but it does not affect the exemption that [the debtor] is entitled to claim.

Id., at 189 (internal citation omitted). As a result, the BAP held that the debtor was entitled to claim the higher amount of the exemption available on the petition date. *Id.*

The BAP revisited the issue in *In re Zall*, 2006 WL 6811022 (B.A.P. 9th Cir. Sep. 5, 2006), holding that *Mayer* "is on point and mandates that [the BAP] affirm the bankruptcy court's decision to use [the debtors'] petition date to determine the amount of their exemption." *Zall*, 2006 WL 6811022 at *2. The BAP also expanded on the policy behind the holding in *Mayer*—

The holding in *In re Mayer* is not only controlling, but also sound. When a debtor files a bankruptcy petition, all legal and equitable property interests become property owned by the bankruptcy estate. 11 U.S.C. § 541. A debtor is entitled, however, to exempt certain assets from the estate. 11 U.S.C. § 522. In general, exemption rights are determined as of the petition date. Indeed, without support of legal authority, an attempt to carve out an exception to the well-established law that exemption rights are determined on the petition date must be rejected.

Creditor contends that California exemption law in effect on the petition date provides that parties should refer to prior versions of the statutes to determine whether the exemption amount of a judgment lien predates the current enactment. This procedure is not only unworkable in the bankruptcy context, but it is also inconsistent with the

**United States Bankruptcy Court
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Courtroom 301 Calendar**

Thursday, August 12, 2021

Hearing Room 301

1:30 PM

CONT...

Jacob Zurnamer and Joan Diane Zurnamer
Bankruptcy Code.

Chapter 7

First, as a practical matter, if the exemption amount is fixed as of the dates of multiple judgment liens, a debtor may have varying amounts of exemptions in the same property. How would a bankruptcy trustee, who is generally the party who objects to a debtor's exemptions, be able to determine the appropriate amount of the exemption if there are multiple judgment liens against the property?

Secondly, and more importantly, limiting the exemption to the amounts available on the dates that judgment liens attach is inconsistent with section 522(f). Under section 522(f), Debtor could simply avoid Creditor's lien as impairing his exemption and the exemption amount would be that amount available on the petition date.

Id., at *2–3 (internal citations and quotations omitted).

NDS attempts to distinguish *Mayer* and *Zall* by arguing that those cases involved objections to the debtors' claimed homestead exemptions, not requests to avoid a judgment creditor's lien. NDS has not offered any persuasive reason to value a debtor's exemption differently in the context of lien avoidance. In fact, for purposes of § 522, "value" means fair market value as of the date of the filing of the petition...." 11 U.S.C. § 522(a). In light of the explicit language in the Bankruptcy Code requiring the Court to value property as of the petition date, NDS has not explained why the Court should use a different date to value the debtor's exemption. Moreover, in *Zall*, the BAP explicitly stated that using a different date for valuation would be "inconsistent with section 522(f)." *Zall*, at *3.

Further, NDS has not provided relevant authority in support of its position. NDS references *In re Morgan*, 157 B.R. 467 (Bankr. C.D. Cal. 1993). However, *Morgan* involved *declared* homestead exemptions. As discussed above, this case involves the automatic homestead exemption. Although NDS asserts that CCP § 704.965 should apply to automatic homestead exemptions as well, NDS does not articulate why the Court should deviate from *Mayer* or the plain language of CCP § 704.965, which exclusively references declared homestead exemptions. *Morgan* also predates *Mayer*.

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CONT... **Jacob Zurnamer and Joan Diane Zurnamer**

Chapter 7

Pursuant to *Mayer* and the policy considerations discussed in *Zall*, Debtors are entitled to the exemption amount in effect on Debtors' petition date. Using the increased homestead exemption amount, the applicable calculation yields the following: \$490,000 (value of the Property) minus \$112,985.67 (amount of consensual lien against the Property) equals \$377,014.33 in equity. Debtors claimed an exemption for \$600,000, which exempts the remaining equity in the Property. As such, NDS's lien may be avoided in full.

B. NDS's Arguments Regarding the Fifth Amendment

NDS also asserts that avoiding its lien will violate its Fifth Amendment right to due process. NDS does not cite any authority holding that avoidance of a judicial lien, in a bankruptcy case, violates the Fifth Amendment. In fact, several courts have held that avoidance does *not* violate a lienholder's right to due process. *See, e.g. In re Laguna*, 114 B.R. 214, 219 (B.A.P. 9th Cir. 1990), *aff'd*, 944 F.2d 542 (9th Cir. 1991) ("[C]ourts have uniformly held that the impairment, or even the avoidance, of a secured creditors' rights by the Bankruptcy Code does not constitute an unconstitutional taking under the Fifth Amendment when the security interest arose after the enactment of the Code."). As aptly explained by the Seventh Circuit Court of Appeals—

Section 522(f) quite clearly is valid under the due process clause. In the early years of this century, Congressional legislation was closely scrutinized by the courts under the rubric of substantive due process. But that approach has long since been discarded by the courts, and it is now well established that economic regulation will be sustained against substantive due process challenges provided the regulation has a rational basis....Indeed, under the bankruptcy clause of the Constitution, Congress may prescribe any regulations concerning discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law.

The basis for Section 522(f) is both rational and compatible with fundamental law. Section 522(f) was enacted as part of a larger program to make (traditional bankruptcy protections) more effective for non-business debtors. ...

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1:30 PM

CONT...

Jacob Zurnamer and Joan Diane Zurnamer

Chapter 7

In particular, security interests in consumer property, which formerly had been difficult to establish, became widespread following adoption of Article Nine of the Uniform Commercial Code in the middle 1960's. The result was that consumer debtors often came out of the bankruptcy proceedings little better off than they were before.

Finding that there is a Federal interest in seeing that a debtor that goes through bankruptcy comes out with adequate possessions to begin his fresh start, Congress established a framework to ensure that debtors would not be left completely destitute after bankruptcy. Congress began by providing a system of federal exemptions upon which a debtor might rely as an alternative to less favorable state exemptions. Congress was aware, however, that the existence of a right to exempt certain property from the bankrupt estate was not alone sufficient to provide a fresh start for the debtor. The Report of the Commission on Bankruptcy Laws of the United States advised Congress that valid exemptions often had been lost or denied under prior law, and recommended that neither waivers of exemptions nor nonpurchase-money security interests in household goods, wearing apparel, and health aids be enforceable. Congress enacted the Commission's recommendations; Section 522(e) makes unenforceable a waiver of exemptions and, as noted above, Section 522(f)(2) allows the bankrupt to avoid a nonpossessory, nonpurchase-money lien in certain household and personal goods.

...

Section 522(f) is narrowly drawn to permit avoidance only of nonpossessory, nonpurchase-money security interests in the listed items and only to the extent that these items are exempted property under Section 522(b). Section 522(f) is thus neither an irrational nor arbitrary means of effectuating a legitimate Congressional purpose under the bankruptcy laws-giving debtors a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.

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CONT... Jacob Zurnamer and Joan Diane Zurnamer Chapter 7

Matter of Gifford, 688 F.2d 447, 453-55 (7th Cir. 1982); *see also In re Pillow*, 8 B.R. 404, 411 (Bankr. D. Utah 1981) (outlining different powers of Congress that may result in confiscation of property without violating the Fifth Amendment, such as war, taxation and commerce powers, and holding that "the bankruptcy power, which is of equal dignity with the commerce clause, justifies the avoidance of liens on property").

NDS does not address any of these authorities or discuss the interplay of Congress's bankruptcy powers, or Debtors' rights under the Bankruptcy Code, vis-à-vis NDS's due process rights. Rather, NDS merely references authorities discussing the general due process rights of entities; none of those authorities are in the context of avoidance of a lien in a bankruptcy case. In light of the pertinent and established authorities above, avoidance of NDS's lien does not violate NDS's Fifth Amendment rights.

III. CONCLUSION

The Court will grant the Motion.

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

Party Information

Debtor(s):

Jacob Zurnamer

Represented By
David S Hagen

Joint Debtor(s):

Joan Diane Zurnamer

Represented By
David S Hagen

Trustee(s):

Diane C Weil (TR)

Pro Se

United States Bankruptcy Court
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San Fernando Valley
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Courtroom 301 Calendar

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Hearing Room 301

2:00 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

#3.00 Confirmation hearing re chapter 11 subchapter V plan

STIP TO CONTINUE FILED 8/9/21 - jc

Docket 77

***** VACATED *** REASON: Order approving stip entered 8/10/21.
Hearing continued to 10/14/21 at 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton
Yi S Kim

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, August 12, 2021

Hearing Room 301

2:00 PM

1:21-10223 SteriWeb Medical LLC

Chapter 11

#4.00 Status conference re: chapter 11, subchapter V case
fr. 3/25/21; 4/8/21; 5/6/21; 6/17/21

Docket 1

Tentative Ruling:

What is an appropriate continued date for this status conference?

The Court is not inclined to continue it for more than 4-6 weeks.

Party Information

Debtor(s):

SteriWeb Medical LLC

Represented By
James R Felton

**United States Bankruptcy Court
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Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Tuesday, August 17, 2021

Hearing Room 301

8:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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).

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Password: 340003

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 592 1904

Password: 340003

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

**United States Bankruptcy Court
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Tuesday, August 17, 2021

Hearing Room 301

8:30 AM
CONT...

Chapter

**United States Bankruptcy Court
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Tuesday, August 17, 2021

Hearing Room 301

8:30 AM

1:21-10668 Sara Maribel Castillo

Chapter 7

#1.00 Reaffirmation agreement between debtor and Primera Financial Corporation

Docket 11

Party Information

Debtor(s):

Sara Maribel Castillo

Represented By
Anil Bhartia

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 17, 2021

Hearing Room 301

8:30 AM

1:21-10706 Mariedith Ashford-Fortin

Chapter 7

#2.00 Reaffirmation agreement between debtor and Hyundai Motor Finance

Docket 17

Party Information

Debtor(s):

Mariedith Ashford-Fortin	Pro Se
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Trustee(s):

Nancy J Zamora (TR)	Pro Se
---------------------	--------

**United States Bankruptcy Court
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San Fernando Valley
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Tuesday, August 17, 2021

Hearing Room 301

8:30 AM

1:21-10987 Nicole Moore

Chapter 7

#3.00 Reaffirmation agreement between debtor and Toyota Motor Credit Corporation
fr. 7/20/21

Docket 8

Party Information

Debtor(s):

Nicole Moore

Represented By
Elena Steers

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 17, 2021

Hearing Room 301

8:30 AM

1:21-11026 Ruth Crews

Chapter 7

#4.00 Reaffirmation agreement between debtor and TD Auto Finance LLC

Docket 10

Party Information

Debtor(s):

Ruth Crews

Represented By
Trang Phuong Nguyen

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, August 18, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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).

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Join CACB ZoomGov Meeting

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Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

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Password: 814226

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Docket 0

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:20-11600 Florence Estella Johnson

Chapter 13

#1.00 Motion for relief from stay [RP]

THE MONEY SOURCE INC.
VS
DEBTOR

fr. 4/7/21; 5/5/21

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Florence Estella Johnson

Represented By
R Grace Rodriguez

Movant(s):

The Money Source Inc

Represented By
Kirsten Martinez
Austin P Nagel

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
Central District of California
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Wednesday, August 18, 2021

Hearing Room 301

9:30 AM

1:21-10809 RT Development, LLC

Chapter 11

#2.00 Motion for relief from stay [RP]

VICTORIA CAPITAL TRUST
VS
DEBTOR

fr. 6/16/21

STIP TO CONTINUE FILED 8/5/21 - jc

Docket 28

***** VACATED *** REASON: Order approving stip entered 8/6/21.
Hearing continued to 9/22/21 at 9:30 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

RT Development, LLC

Represented By
Michael Jay Berger

**United States Bankruptcy Court
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Wednesday, August 18, 2021

Hearing Room 301

9:30 AM

1:21-11097 Darrel Christopher Arthur and Jennifer Srivani Arthur

Chapter 7

#3.00 Motion for relief from stay [PP]

PENTAGON FEDERAL CREDIT UNION
VS
DEBTOR

Docket 12

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Darrel Christopher Arthur

Represented By
Daniel King

Joint Debtor(s):

Jennifer Srivani Arthur

Represented By
Daniel King

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

CONT... Darrel Christopher Arthur and Jennifer Srivani Arthur

Chapter 7

Movant(s):

Pentagon Federal Credit Union

Represented By
Dane W Exnowski

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 18, 2021

Hearing Room 301

9:30 AM

1:21-10612 Amir Roshanghiace and Mona Saeedipour

Chapter 7

#4.00 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).

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 Roshanghiace

Represented By
Devin Sawdayi

Joint Debtor(s):

Mona Saeedipour

Represented By
Devin Sawdayi

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

CONT... Amir Roshanghiace and Mona Saeedipour

Chapter 7

Movant(s):

Toyota Motor Credit Corporation

Represented By
Kirsten Martinez

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 18, 2021

Hearing Room 301

9:30 AM

1:21-10217 Ela Koc Stankiewicz

Chapter 7

#5.00 Motion for relief from stay [RP]

NEWREZ LLC
VS
DEBTOR

Docket 15

Tentative Ruling:

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

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

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

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9:30 AM

CONT... Ela Koc Stankiewicz

Chapter 7

Debtor(s):

Ela Koc Stankiewicz

Represented By
Matthew D. Resnik

Movant(s):

NewRez LLC d/b/a Shellpoint

Represented By
Dane W Exnowski

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 18, 2021

Hearing Room 301

9:30 AM

1:21-11093 Susanna Shahinyan

Chapter 13

#6.00 Motion for relief from stay [PP]

NISSAN MOTOR ACCEPTANCE CORPORATION
VS
DEBTOR

Docket 21

Tentative Ruling:

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

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

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

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

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

Party Information

Debtor(s):

Susanna Shahinyan

Represented By
Thomas B Ure

Movant(s):

Nissan Motor Acceptance

Represented By
Kirsten Martinez

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9:30 AM

CONT... Susanna Shahinyan

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Wednesday, August 18, 2021

Hearing Room 301

9:30 AM

1:20-11277 Monte Verde Ranch, LLC

Chapter 11

#7.00 Motion for relief from stay [PP]

KUBOTA CREDIT CORPORATION
VS
DEBTOR

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 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):

Monte Verde Ranch, LLC

Represented By
Ian Landsberg

Movant(s):

Kubota Credit Corporation

Represented By
Kirsten Martinez

**United States Bankruptcy Court
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9:30 AM

CONT... Monte Verde Ranch, LLC

Chapter 11

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

Wednesday, August 18, 2021

Hearing Room 301

1:30 PM

1:18-11620 Antoine R Chamoun

Chapter 7

Adv#: 1:21-01013 Seror v. Chamoun

#8.00 Status conference re: complaint by David Seror
against Antoine R Chamoun

fr. 5/12/21; 7/14/21

STIP TO CONTINUE FILED 8/10/21 - jc

Docket 1

***** VACATED *** REASON: Order approvng stip entered 8/12/21.
Hearing continued to 10/20/21 at 1:30 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Defendant(s):

Antoine R Chamoun

Pro Se

Plaintiff(s):

David Seror

Represented By
Ryan Coy

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol
Ryan Coy

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

Wednesday, August 18, 2021

Hearing Room 301

1:30 PM

1:19-11696 Peter M. Seltzer

Chapter 11

Adv#: 1:19-01151 Kessler v. Seltzer

#9.00 Pretrial 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; 9/23/20; 4/21/21; 6/23/21

Docket 15

***** VACATED *** REASON: Order dismissing adversary entered 7/30/21 [doc. 103].**

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, August 18, 2021

Hearing Room 301

2:30 PM

1:19-11696 Peter M. Seltzer

Chapter 7

Adv#: 1:19-01151 Kessler v. Seltzer

#10.00 Plaintiff's Motion for Order: (1) Compelling Defendant to Respond to Plaintiffs First Set of Requests for Production of Documents and Interrogatories; (2) Compelling Defendant to Appear for Oral Examination; (3) Continuing Discovery Cutoff Deadline; and (4) Awarding Plaintiff Discovery Sanctions Against Defendant

fr. 4/21/21(stip); 5/5/21; 6/9/21(stip)

Stip to dismiss motion filed 7/29/21

Docket 65

***** VACATED *** REASON: Order of dismissal entered 7/30/21. [Dkt. 103]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter M. Seltzer

Represented By
Misty A Perry Isaacson

Defendant(s):

Peter M. Seltzer

Represented By
Rebecca J Winthrop

Plaintiff(s):

Darren Kessler

Represented By
Craig G Margulies
Noreen A Madoyan
Montserrat Morales

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

2:30 PM

CONT... Peter M. Seltzer

Chapter 7

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 18, 2021

Hearing Room 301

2:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:21-01020 Lev Investments, LLC v. Feygenberg et al

#11.00 Defendants' motion to dismiss complaint and counterclaims

fr. 7/28/21

Docket 5

Tentative Ruling:

Grant in part and deny in part.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11 petition. On May 4, 2021, Debtor filed a complaint (the "Complaint") against Sensible Consulting and Management, Inc. ("Sensible"), Ruvyn Feygenberg and Michael Leizerovitz (collectively, "Defendants"). In the Complaint, Debtor alleges—

In December 2018, Debtor was interested in purchasing a promissory note (the "Note") from The Evergreen Advantage, LLC ("Evergreen") secured by a deed of trust against real property located at 13854 Albers Street, Sherman Oaks, CA 91401 (the "Property"). The Note was in default and headed towards a Trustee's Sale. Debtor's counsel, Gina Lisitsa, introduced Debtor to Mr. Feygenberg and Mr. Leizerovitz (the "Investors"), both of whom stated that they were interested in participating in the purchase of the Note.

The purchase price for the Note was \$2,037,302.61. On December 26, 2018, Debtor and the Investors entered into an agreement for the purchase of the Note (the "Agreement"). Pursuant to the Agreement, Debtor was to contribute \$1,022,500 towards the purchase of the Note, and the Investors were to contribute \$1,257,675 towards the purchase of the Note. The Agreement further provided that, upon foreclosure of the Property, title to the Property was to be placed in Debtor's name, with the Investors receiving a secured note and deed of trust against the

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Property in the amount of \$1,257,675. The Agreement also provided that the Investors would help Debtor sell the Property as soon as possible.

On December 31, 2018, Debtor and the Investors purchased the Note. In January 2019, a Trustee's Sale of the Property was held and, on January 31, 2019, a Trustee's Deed Upon Sale was recorded (the "Deed Upon Sale"). The Deed Upon Sale purported to transfer title to the Property as follows: (A) 50% to Debtor; (B) 25% to Mr. Feygenberg; and (C) 25% to Mr. Leizerovitz. Shortly after recordation of the Deed Upon Sale, Ming Zhu, LLC ("Ming Zhu") asserted an interest in the Property based on a judgment lien against Mr. Feygenberg.

On March 22, 2019, a short form deed of trust and assignment of rents (the "Deed of Trust") was recorded against the Property in favor of Mr. Feygenberg and Sensible. The Deed of Trust referenced a "promissory note of even date;" however, a promissory note was not prepared or executed. On April 2, 2019, an assignment of the Deed of Trust was recorded, through which Mr. Feygenberg transferred his interest in the Deed of Trust to Sensible.

In March 2019, Debtor entered into an agreement to sell the Property to Landmark Land, LLC ("Landmark") for \$3,150,000, which would allow for a payoff of the loan without a prepayment penalty and stop the further accrual of interest. Initially, Defendants refused to provide a payoff statement to the escrow company. After extensive discussions, Defendants provided two payoff statements for incorrect amounts. In addition, Defendants refused to resolve the abstract of judgment recorded by Ming Zhu against the Property. As a result, the sale to Landmark was not consummated.

On December 29, 2019, Sensible charged to Debtor a loan renewal fee of \$150,921. On January 22, 2020, less than one month after the alleged renewal, Defendants recorded a Notice of Default against the Property. The recording was not permitted under the Deed of Trust. On April 23, 2020, Defendants recorded a Notice of Trustee's Sale,

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which also was not permitted under the Deed of Trust. On May 11, 2020, Debtor received documents from Ms. Lisitsa showing, for the first time, that the Investors did not contribute cash in the sum of \$1,257,675 towards the purchase of the Note, as required under the Agreement. Rather, after initially contributing \$1,257,675, the Investors caused Ms. Lisitsa, who controlled all of the funds contributed towards purchase of the Note, to return \$210,000 to them and to pay additional fees to Ms. Lisitsa. As such, the Investors actually contributed only \$1,022,500.

Postpetition, Debtor sold the Property to Landmark for \$200,000 less than the purchase price Landmark agreed to pay in April 2019. Debtor's counsel maintains the net proceeds from the sale in a segregated trust account. Pursuant to Debtor's confirmed chapter 11 plan, Debtor has paid \$722,675 to Sensible on the undisputed portion of Sensible's claim.

Complaint, pp. 3-7. To the Complaint, Debtor attached a copy of the Agreement and the Deed of Trust. Exhibits 1, 6. On these allegations, Debtor asserts seventeen claims for relief against Defendants, including claims objecting to Defendants' claims against the bankruptcy estate, fraud and breach of contract.

On June 5, 2021, Defendants filed a motion to dismiss the Complaint (the "Motion") [doc. 5]. On July 14, 2021, Debtor filed an opposition to the Motion (the "Opposition") [doc. 12]. In the Opposition, Debtor contends that it does not oppose dismissal of the seventh, tenth and twelfth claims. On July 21, 2021, Defendants filed a reply to the Opposition [doc. 16].

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

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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. 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

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(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 First Claim – Objection to Claim Based on Invalid Security Interest

Through the first claim for relief, Debtor asserts that, because the Deed of Trust referred to a promissory note "of even date herewith," and because the parties did not execute a promissory note concurrently with the Deed of Trust, the Deed of Trust does not secure any obligation to Defendants. In the Motion, Defendants argue that: (A) the Agreement qualifies as the promissory note; and (B) Debtor is equitably estopped from denying Defendants' security interest.

As to the latter argument, equitable estoppel is an affirmative defense that must be pled and proven by Defendants. Under both California and federal law, Defendants bear the burden of proving every element of an affirmative defense. *See Consumer Cause, Inc. v. SmileCare*, 91 Cal.App.4th 454, 469 (Ct. App. 2001); and *Payan v. Aramark Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1122 (9th Cir. 2007). As such, if Debtor has adequately stated a claim for relief, Defendants' as-yet-unproven affirmative defense is not cause for dismissal under Rule 12(b)(6).

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As to the dispute regarding whether the Deed of Trust is supported by a valid obligation, the Deed of Trust provides—

For the purpose of securing: 1. Performance of each agreement of Trustor incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of \$1,257,675.00 executed by Trustor in favor of Beneficiary by order. 3. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

Complaint, Exhibit 6. Debtor alleges that the Deed of Trust, which is incorporated into the Complaint, refers to a promissory note "of even date herewith." The Complaint also includes allegations that the parties did not execute any such promissory note. On the other hand, Defendants argue that the parties intended the Agreement to be the underlying obligation secured by the Deed of Trust.

In California, "[a] contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." Cal. Civ. Code § 1636. "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." Cal. Civ. Code § 1641. Pursuant to these statutes, the clause referenced by Debtor, taken as a whole, refers to a promissory note "of even date herewith," but also sets forth that the Deed of Trust secured "[p]erformance of each agreement of [Debtor] incorporated by reference." The clause also specifically provides for security of \$1,257,675, the same amount set forth in the Agreement.

As such, there is an ambiguity requiring production of extrinsic evidence. If such an ambiguity exists, a court may allow the parties "full opportunity to produce evidence of the facts, circumstances and conditions surrounding its execution as well as the conduct of the parties to the contract." *Walter E. Heller Western, Inc. v. Tecrim Corp.*, 196 Cal.App.3d 149, 158 (Ct. App. 1987). The court also may admit extrinsic evidence "to explain or interpret ambiguous language." *Rosenfeld v. Abraham Joshua Heschel Day School, Inc.*, 226 Cal.App.4th 886, 897 (Ct. App. 2014). Eventually, the issue of ambiguity will require an assessment of evidence, which is not appropriate

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under Rule 12(b)(6). At this pleading stage, taking the allegations in the light most favorable to Debtor, the first claim adequately alleges a claim to recharacterize Sensible's claim as an unsecured claim.

***C. The Second Claim – Objection to Claim Based on Obligation
Commencement Date***

Through its second claim for relief, Debtor asserts that the Agreement contemplated Debtor having a 100% interest in the Property prior to commencement of any obligation under the loan. In the Motion, Defendants argue that the Agreement provided for an earlier commencement date. The Agreement, attached and incorporated into the Complaint, notes that a Trustee's Sale of the Property was scheduled for December 26, 2018. The Agreement further provides—

1. *Payment.* [Debtor] shall pay \$1,022,500.00 towards the purchase of the Loan on or before December 28, 2018. Feygenberg and Leizerovitz shall pay \$1,257,675.00 towards the purchase of the Loan on or before December 28, 2018. Parties to deposit all funds to Lisitsa Law Trust Account on or before December 28, 2018.
...
5. *Foreclosure.* Upon foreclosure of the Real Property, title to the Real Property shall go to [Debtor] and concurrently therewith Feygenberg and Leizerovitz shall place a first position deed of trust against the Real Property in the amount of \$1,257,675.00 (the First Position Loan), with the following terms, maturity date one year after Closing Date of Escrow and pre-payment penalty of \$120,000 in the first 6 months if and only if [Debtor] pays off the First Position Loan, but not if the Real Property is sold. There is no pre-payment penalty if the Real Property is sold with [sic] the pre-payment period.
6. *Sale of Real Property.* Upon sale of the Real Property, Feygenberg and Leizerovitz shall get paid \$1,257,675.00 plus their incurred expenses first in priority, then [Debtor] gets paid the rest of the sale price. [Debtor] shall use all of its best efforts to sell the Real Property as soon as possible. Feygenberg and Leizerovitz promise and warrant to help [Debtor] sell the Real Property as soon as possible.

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Complaint, Exhibit 1. In an addendum to the Agreement, dated December 27, 2018, the parties agreed that the "[f]ull term of the loan is 12 months from funding...."

Pursuant to the terms of the Agreement, incorporated into the allegations of the Complaint, the parties agreed to the loan commencing in late December 2018, i.e., upon funding the loan and close of escrow after foreclosure. Debtor does not appear to dispute this point. Rather, Debtor appears to argue that the following language created a condition precedent to loan commencement: "Upon foreclosure of the Real Property, title to the Real Property shall go to [Debtor] and concurrently therewith [the Investors] shall place a first position deed of trust against the Real Property in the amount of \$1,257,675.00...."

Pursuant to Cal. Civ. Code § 1436, "[a] condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed." As discussed above, the Court must construe the allegations in the light most favorable to Debtor, as the nonmoving party. Reading the Complaint and the terms of the Agreement in this light, the provision that Debtor would take sole title upon foreclosure of the Property may be interpreted as a condition precedent to Debtor's performance under the Agreement. At this time, Debtor has sufficiently alleged a claim to change the commencement date of the loan.

***D. The Third Claim – Objection to Claim Based on Invalid Charges re:
Foreclosure***

In the third claim for relief, Debtor asserts that the Deed of Trust did not contain a power to record a notice of default or a power of sale and that, as a result, foreclosure and attorneys' fees requested in Sensible's proof of claim should be disallowed. This claim is undermined by the plain language of the Deed of Trust, which is attached and incorporated into the Complaint. The first page of the Deed of Trust explicitly provides that Debtor "**IRREVOCABLY GRANTS, TRANSFERS, AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE,**" the Property. Deed of Trust, p. 1 (capitalization and bold type in Deed of Trust).

Given the provisions in the Deed of Trust, Debtor has not stated a claim for relief regarding the alleged lack of power to sell the Property. The Court will dismiss this

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claim with prejudice, and will not disallow the portion of Sensible's claim for foreclosure fees, charges and attorneys' fees on the basis set forth in this claim.

E. The Fifth Claim – Breach of the Agreement

"The elements of a cause of action for breach of contract are (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." *Tribeca Companies, LLC v. First Am. Title Ins. Co.*, 239 Cal.App.4th 1088, 1109 (Ct. App. 2015) (internal quotations omitted).

In the Complaint, Debtor bases its claim for breach of contract on the following allegations: (A) the Investors agreed to contribute \$1,257,675 towards the purchase of the Note; in light of the refund, they contributed only \$1,022,500; (B) contrary to the Agreement, Debtor initially received a 50% interest instead of a 100% interest in the Property; (C) the Investors were required to help Debtor sell the Property, but delayed in providing payoff statements, later provided inaccurate payoff statements and failed to resolve the abstract of judgment in favor of Ming Zhu; and (D) the Investors were required to provide a one year loan to Debtor, but recorded a Notice of Default less than one year after loan commencement.

Debtor has adequately alleged a claim based on Defendants' alleged failure to resolve the judgment in favor of Ming Zhu. Debtor alleged that: (A) the parties agreed that the Investors would help Debtor sell the Property as soon as possible; (B) the Investors breached the promise by failing to resolve the judgment when Debtor had a sale lined up with a purchaser; and (C) Debtor was damaged because, as a result of these actions, the sale was not consummated and the Property eventually sold for \$200,000 less than the purchase price available in April 2019.

Regarding the allegations related to the purported refund, Debtor adequately alleges a contract through which Defendants promised to contribute \$1,257,675 towards the acquisition of the Property. Debtor also alleges that it performed all of its obligations under the Agreement and that Defendants breached by receiving a refund in the amount of \$235,175. However, given that Debtor admits that it obtained the Note and, eventually, a 100% interest in the Property, and Debtor has not yet paid the claim of Sensible in full, Debtor has not adequately alleged the damages it has suffered from the "secret refund."

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With respect to the allegations regarding a premature Notice of Default, Debtor also has failed to allege adequately how it was damaged by the recording of the Notice of Default. Even if the Court construes the terms of the Agreement as stating a condition precedent to commencement of the loan, as discussed above, Debtor alleges that it received a 100% interest in the Property in March 2019. As such, Defendants would have been able to record a Notice of Default, under Debtor's own interpretation of the Agreement, by March 2020, i.e., months before Debtor filed its bankruptcy petition. Given this timeline, Debtor has not adequately alleged how the recording of the Notice of Default in January 2020, rather than in March 2020, caused damages.

F. The Sixth Claim – Fraud Related to the Agreement

"The required elements for fraudulent concealment are: (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact." *Graham v. Bank of Am., N.A.*, 226 Cal.App.4th 594, 606 (Ct. App. 2014).

In the Motion, Defendants contend that Debtor did not plead its fraud claim with specificity. However, the Complaint, taken as a whole, includes allegations regarding each element. In the Complaint, Debtor alleges that: (A) the Investors concealed the fact that they would receive a refund of \$235,175 and consequently advanced less than \$1,257,675; (B) the payoff demands contained a principal balance of \$1,257,675; (C) the Investors intended to deceive Debtor; (D) Debtor did not know about the secret refund and would not have agreed to a principal loan amount of \$1,257,675 if it knew. As noted above, allegations regarding intent may be alleged generally. Rule 9(b).

The Complaint also includes adequate allegations regarding the Investors' duty to disclose.

There are four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive

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knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts.

LiMandri v. Judkins, 52 Cal.App.4th 326, 336 (Ct. App. 1997) (internal quotation omitted). "[W]here material facts are known to one party and not to the other, failure to disclose them is not actionable fraud unless there is *some relationship* between the parties which gives rise to a duty to disclose such known facts." *Id.* at 337 (internal quotations and citations omitted) (emphasis in *LiMandri*). "Thus, a duty to disclose may arise from the relationship between seller and buyer, employer and prospective employee, doctor and patient, *or parties entering into any kind of contractual agreement.*" *Id.* (emphasis added).

Because Debtor alleges that the Investors were parties to a contract with Debtor, Debtor has adequately pled a relationship giving rise to a duty to disclose material facts. As such, the Complaint includes adequate allegations regarding fraudulent concealment.

In the Motion, Defendants also argue that the allegations that Debtor did not know about the refund are contradicted by the allegation that the refund was facilitated by Ms. Lisitsa, Debtor's attorney. However, in the Complaint, Debtor expressly alleges that Ms. Lisitsa acted "without the consent or knowledge of" Debtor. Complaint, ¶ 95. Finally, Defendants contend that the addendum to the Agreement contradicts Debtor's allegations because the addendum contemplated an investment that was less than the amount initially advanced. However, the proration calculations set forth in the addendum are distinct from the alleged secret refund and, as a result, have no bearing on Debtor's claim for fraud. Debtor having adequately pled a claim for fraud, the Court will not dismiss this claim.

G. The Eighth Claim – Breach of the Deed of Trust

"The elements of a cause of action for breach of contract are (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." *Tribeca Companies, LLC v. First Am. Title Ins. Co.*, 239 Cal.App.4th 1088, 1109 (Ct. App. 2015) (internal quotations omitted).

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Through this claim, Debtor asserts that Defendants breached the Deed of Trust by recording a default and noticing a sale when the Deed of Trust did not include a power of sale. As discussed above, the Deed of Trust, attached by Debtor and incorporated into the Complaint, explicitly provides for a power of sale. Thus, the Court will dismiss this claim.

H. The Ninth Claim – Fraud Related to the Deed of Trust

Debtor's ninth claim for relief is a fraud claim based on the allegation that Defendants falsely represented that the Deed of Trust provided powers to record a Notice of Default and Notice of Trustee's Sale and to proceed with a foreclosure sale. As discussed above, the Deed of Trust, attached to and incorporated into the Complaint, does include a power of sale.

Debtor also bases its fraud claim on the allegation that the Investors "misrepresented, concealed or failed to disclose to [Debtor] that there was no underlying promissory note of even date with the Deed of Trust...." Complaint, ¶ 127. This allegation does not meet the heightened pleading requirement of Rule 9(b). Debtor does not allege specific representations or omissions made by the Investors on which Debtor justifiably relied. In addition, as discussed above, the language in the Deed of Trust which references the obligation(s) that it secures is ambiguous. As such, the allegations of fraud arising from the Deed of Trust, without more, are insufficient to meet the standard of Rule 9(b).

Moreover, Debtor's ninth claim, as alleged, is not plausible. For instance, is Debtor alleging that the Investors knew that, without "a promissory note of even date," the Deed of Trust would be invalid? Why would the Investors intentionally execute a Deed of Trust that does not legally secure the sums they advanced to acquire the Note and the Property? Given that Debtor, as the obligor, would have to be involved in the execution of a promissory note, why would Debtor rely on any representations from the Investors, rather than Debtor's own knowledge that it did not execute "a promissory note of even date?" Consequently, the Court will dismiss Debtor's ninth claim for fraud.

I. The Eleventh Claim – Cal. Civ. Code § 1113

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Pursuant to Cal. Civ. Code § 1113—

IMPLIED COVENANTS. From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee;
2. That such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor, or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

"One of the meanings of the term 'suffer to occur' is to allow, to admit, or to permit. It implies an approval of or acquiescence in an act, and more than nonresistance. And denotes knowledge and intention." *Osborne v. Winter*, 133 Cal.App. 664, 666–67 (Ct. App. 1933) (internal citations omitted). "'Suffered,' as used in the statute, implies reasonable control, and it cannot be held to apply to an incumbrance not caused by the act of the party nor within his power to prevent." *Crist v. Fife*, 41 Cal.App. 509, 511 (Ct. App. 1919).

Here, the Complaint does not allege that the judgment lien was "done, made, or suffered by" the Investors. As discussed in the authorities above, this language indicates that the Investors must have had reasonable control over and the power to prevent attachment of the lien. In the Complaint, Debtor alleges that, through the Agreement, the parties intended for Debtor to obtain a 100% interest in the Property; however, Debtor alleges that the Deed Upon Sale mistakenly transferred a 50% interest in the Property to Debtor and the remaining 50% interest in the Investors. Debtor does not allege that the Investors had any control over or power to prevent the

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flawed transfer arising from the Deed Upon Sale. There being no allegations that the Investors controlled their receipt of a 50% interest in the Property, which resulted in the judgment lien attaching to the Property, the Investors are not liable under Cal. Civ. Code § 1113.

Debtor also has not adequately alleged damages. Damages in an action under Cal. Civ. Code § 1113 are the amount "the covenantee actually expends in removing the encumbrance, not exceeding the value of the property at the time of the breach." *Evans v. Fought*, 231 Cal.App.2d 698, 712-13 (Ct. App. 1965). Debtor has not included any allegations regarding whether it incurred damages removing the judgment lien. As such, the Court will dismiss, with leave to amend, Debtor's request for damages under Cal. Civ. Code § 1113.

J. The Thirteenth Claim – Cal. Civ. Code § 2943

Pursuant to Cal. Civ. Code § 2943(a)(5)—

"Payoff demand statement" means a written statement, prepared in response to a written demand made by an entitled person or authorized agent, setting forth the amounts required as of the date of preparation by the beneficiary, to fully satisfy all obligations secured by the loan that is the subject of the payoff demand statement. The written statement shall include information reasonably necessary to calculate the payoff amount on a per diem basis for the period of time, not to exceed 30 days, during which the per diem amount is not changed by the terms of the note.

Under Cal. Civ. Code § 2943(c)—

A beneficiary, or his or her authorized agent, shall, on the written demand of an entitled person, or his or her authorized agent, prepare and deliver a payoff demand statement to the person demanding it within 21 days of the receipt of the demand. However, if the loan is subject to a recorded notice of default or a filed complaint commencing a judicial foreclosure, the beneficiary shall have no obligation to prepare and deliver this statement as prescribed unless the written

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demand is received prior to the first publication of a notice of sale or the notice of the first date of sale established by a court.

Here, Debtor alleges that Defendants delayed in the provision of a payoff statement and that the payoff statements eventually provided were "inaccurate." However, Debtor has not provided sufficient allegations regarding that delay or how Sensible's payoff statements were inaccurate.

To the extent the "inaccuracy" refers to a failure to account for an offset of the judgment lien in favor of Ming Zhu, Cal. Civ. Code § 2943 requires only that a beneficiary provide the amounts that will "fully satisfy all obligations secured by the loan" and "include information reasonably necessary to calculate the payoff amount...." Cal. Civ. Code § 2943(a)(5). Debtor's alleged claim for offset is not an "obligation[] secured by the loan" that must be accounted for in the written payoff demand. Moreover, because Debtor knew about its claim for offset prior to the payoff demand (dated April 5, 2019), the payoff demand included sufficient information "reasonably necessary" for Debtor to "calculate the payoff amount."

In any event, the Complaint does not contain adequate allegations regarding the delayed payoff demands and the purported errors in the written payoff demands. Consequently, the Court will dismiss Debtor's claim for damages under Cal. Civ. Code § 2943.

K. The Fourteenth Claim – Declaratory Relief

The Declaratory Judgment Act (the "DJA"), 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.

"The DJA's operation 'is procedural only.'" *Flores v. EMC Mortg. Co.*, 997 F.Supp.2d

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1088, 1111 (E.D. Cal. 2014) (quoting *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240, 57 S.Ct. 461, 463, 81 L.Ed. 617 (1937)). "A declaratory judgment is not a theory of recovery. The DJA "merely offers an *additional remedy* to litigants." *Id.* (internal quotation omitted) (emphasis in *Flores*). "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." *Id.* (internal quotation omitted).

"Since a declaratory judgment is not a corrective action, it should not be used to remedy past wrongs." *Clinton v. Boladian*, 2013 WL 12126107, at *3 (C.D. Cal. May 2, 2013) (citing *Marzan v. Bank of Am.*, 779 F.Supp.2d 1140, 1146 (D. Haw. 2011) ("[B]ecause Plaintiffs' claims are based on allegations regarding Defendants' past wrongs, a claim under the Declaratory Relief Act is improper and in essence duplicates Plaintiffs' other causes of action.")). The "useful purpose served by the declaratory judgment is the clarification of legal duties for the future." *Amsouth Bank v. Dale*, 386 F.3d 763, 786 (6th Cir. 2004); see also *Societe de Conditionnement en Aluminium v. Hunter Eng'g Co.*, 655 F.2d 938, 943 (9th Cir. 1981) ("[The Declaratory Judgment Act] brings to the present a litigable controversy, which otherwise might only by [sic] tried in the future.").

Debtor's declaratory relief claim is based on the following allegations: (A) a promissory note "of even date" does not exist and, as a result, any obligation owed to Defendants was not legitimately secured by the Deed of Trust; and (B) the Deed of Trust did not contain a power of sale.

As to the former issue, the Complaint alleges that, after sale of the Property through Debtor's bankruptcy case, any liens against the Property attached to the sale proceeds. As a result, a determination regarding the validity of the Deed of Trust is not merely to remedy past wrongs, but to dictate how the sale proceeds should be distributed in the future. As discussed above, Debtor has adequately alleged a claim for relief regarding whether the Deed of Trust is supported by a valid promissory note.

As to the latter issue, the Property was voluntarily sold by Debtor through the bankruptcy case. As such, a determination regarding whether the Deed of Trust contains a power of sale is unnecessary for clarification of future legal duties.

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Moreover, Debtor has not adequately stated a claim for relief related to its allegations that the Deed of Trust did not contain a power of sale; the Deed of Trust attached to the Complaint contradicts these allegations. Thus, the Court will dismiss the declaratory relief claim related to the power of sale allegations, but will not dismiss the declaratory relief claim related to whether the Deed of Trust is supported by a valid promissory note.

L. The Sixteenth Claim – Attorneys’ Fees Under Cal. Civ. Code § 1717

Defendants argue that Debtor’s claim under Cal. Civ. Code § 1717, for attorneys’ fees, is not appropriately pled as a separate claim. However, Defendants do not cite any authority that prevents parties from requesting attorneys’ fees through a claim, as opposed to in the prayer for relief. [FN1]. Defendants do not provide a substantive basis for dismissal. [FN2]. As such, the Court will not dismiss Debtor’s request for attorneys’ fees.

M. The Seventeenth Claim – Objection to Claims Under 11 U.S.C. § 502(b)

In the Motion, Defendants argue that offset is not a proper claim for relief, but an affirmative defense. However, Debtor’s claim is not for offset. Debtor’s claim is for disallowance or reduction of Defendants’ claims under 11 U.S.C. § 502(b), which may be brought as a claim. Defendants having provided no other basis for dismissal of this claim, the Court will deny Defendants’ request for dismissal of the seventeenth claim.

III. CONCLUSION

Based on Debtor’s consent to dismissal, the Court will dismiss the seventh, tenth and twelfth claims. The Court will dismiss the third, eighth and ninth claims with prejudice. The Court will dismiss the eleventh and thirteenth claims for relief with leave to amend. The Court will not dismiss the first, second, sixth, sixteenth and seventeenth claims.

Regarding the fifth claim for relief, the Court will dismiss, with leave to amend, the breach of contract claims based on the Investors' receipt of a refund and the alleged premature filing of a Notice of Default. The Court will not dismiss the remaining

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claims contained in the fifth claim for relief.

Regarding the fourteenth claim for relief, the Court will dismiss, with prejudice, the declaratory relief claim based on the Deed of Trust lacking a power of sale. The Court will not dismiss the remainder of the fourteenth claim.

If Debtor elects to amend the Complaint, Debtor must file and serve an amended complaint **no later than September 1, 2021**. If Debtor files an amended complaint by that date, Defendants must file and serve a response to the amended complaint **no later than September 15, 2021**.

If Debtor elects to proceed with the remaining claims in the Complaint, Debtor must file and serve a notice of such an election **no later than August 25, 2021**. If Debtor files a notice that it will proceed with the Complaint, Defendants must file and serve an answer **no later than September 8, 2021**.

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

FOOTNOTES

1. In fact, a prior iteration of Federal Rule of Bankruptcy Procedure 7008 *required* parties to plead attorneys' fees as claims. *See In re Luchini*, 511 B.R. 664, 679 (Bankr. E.D. Cal. 2014). This Rule was amended because the requirement "had the potential to serve as a trap for the unwary." Fed. R. Bankr. P. 7008, Advisory Committee Notes (2014).
2. It is unclear if Investors have a right to attorney's fees under the Agreement, and if Debtor has a right to attorneys' fees under Cal. Civ. Code § 1717. The Agreement states that "[e]ach of the Parties shall bear their own attorneys' fees and costs incurred in connection with the subject matter of this Agreement." Agreement, ¶ 16. On the other hand, the addendum to the Agreement provides that additional expenses "including any legal fees incurred by [the Investors]" are to be reimbursed. Addendum, ¶ 4.

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CONT... Lev Investments, LLC

Chapter 11

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh
Richard P Steelman Jr

Defendant(s):

Ruvyn Feygenberg

Represented By
John Burgee

Michael Leizerovitz

Represented By
John Burgee

Sensible Consulting and

Represented By
John Burgee

Movant(s):

Ruvyn Feygenberg

Represented By
John Burgee

Michael Leizerovitz

Represented By
John Burgee

Sensible Consulting and

Represented By
John Burgee

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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1:20-11006 Lev Investments, LLC

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Adv#: 1:21-01020 Lev Investments, LLC v. Feygenberg et al

#12.00 Status conference re complaint objecting to claim and counterclaims

fr. 7/7/21; 7/28/21

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Ruvin Feygenberg

Pro Se

Michael Leizerovitz

Pro Se

Sensible Consulting and

Pro Se

Plaintiff(s):

Lev Investments, LLC

Represented By
Juliet Y Oh
David B Golubchik

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
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1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this calendar will be conducted 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.

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Meeting ID: 160 856 0056

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Meeting ID: 160 856 0056

Password: 999999

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

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Chapter

Tentative Ruling:

- NONE LISTED -

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10:30 AM

1:18-10385 Jorge Alberto Romero II

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Keith Gottlieb, Chapter 7 Trustee

Marshack hayes LLP, Attorneys for Chapter 7 Trustee

Hahn Fife & Company, LLP, Accountants for Chapter 7 Trustee

Docket 114

Tentative Ruling:

David Gottlieb, chapter 7 trustee – approve fees of \$28,750.00 and reimbursement of expenses of \$118.10, on a final basis.

Marshack Hays LLP ("Marshack"), counsel to chapter 7 trustee – approve fees of \$39,398.00 and reimbursement of expenses of \$2,345.11, pursuant to 11 U.S.C. § 330, on a final basis.

Hahn Fife & Company, LLP ("Hahn"), accountant to chapter 7 trustee – approve fees of \$1,799.00 and reimbursement of expenses of \$253.50, 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 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):

Jorge Alberto Romero II

Represented By
Stella A Havkin

Trustee(s):

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CONT... Jorge Alberto Romero II
David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

Chapter 7

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Thursday, August 19, 2021

Hearing Room 301

10:30 AM

1:18-11243 Jeff Davani and Nadia Davani

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

David Keith Gottlieb, Chapter 7 Trustee

Marshack Hays, LLP, Attorneys for Chapter 7 Trustee

Menchaca & company, LLP, Accountants for Chapter 7 Trustee

Docket 133

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$46,205.41 and reimbursement of expenses of \$137.60, on a final basis.

Marshack Hays LLP, counsel to chapter 7 trustee – approve fees of \$44,454.00 and reimbursement of expenses of \$2,318.59, pursuant to 11 U.S.C. § 330, on a final basis.

Menchaca & Company, LLP, accountant to chapter 7 trustee – approve fees of \$3,500.00, 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):

Jeff Davani

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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CONT... Jeff Davani and Nadia Davani

Chapter 7

Joint Debtor(s):

Nadia Davani

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Trustee(s):

David Keith Gottlieb (TR)

Represented By

D Edward Hays

Laila Masud

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10:30 AM

1:18-11729 Richard Philip Dages

Chapter 7

#3.00 Trustee's Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

Docket 236

Tentative Ruling:

Diane C. Weil, chapter 7 trustee – approve fees of \$2,302.16 and reimbursement of expenses of \$151.39.

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):

Richard Philip Dages

Represented By
Jeffrey J Hagen

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:19-11556 Debra Eileen Owings

Chapter 7

#4.00 Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

Dinsmore & Shohl, LLP, Attorneys for Chapter 7 Trustee

Grobstein Teeple, LLP, Accountants for Chapter 7 Trustee

Docket 40

Tentative Ruling:

Nancy J. Zamora, chapter 7 trustee – approve fees of \$5,856.19 and reimbursement of expenses of \$860.10, on a final basis.

Dinsmore & Shohl, LLP, counsel to chapter 7 trustee – approve fees of \$13,319.00 and reimbursement of expenses of \$39.45, pursuant to 11 U.S.C. § 330, on a final basis.

Grobstein Teeple, LLP, accountant to chapter 7 trustee – approve fees of \$3,113.00 and reimbursement of expenses of \$50.48, 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):

Debra Eileen Owings

Represented By
Christopher S Reyes

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CONT... Debra Eileen Owings

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Represented By
Peter J Mastan

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10:30 AM

1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#5.00 Final application by Resnik Hayes Moradi LLP, general bankruptcy counsel for the Debtors for allowance of fees and reimbursement of costs for the period July 29, 2019 Through June 15, 2021

Docket 192

Tentative Ruling:

Resnik Hayes Moradi LLP ("Applicant"), counsel to the debtor and debtor in possession – approve fees in the amount of \$51,264.00 and reimbursement of expenses in the amount of \$1,975.73, pursuant to 11 U.S.C. § 330, for the period between July 29, 2019 through June 15, 2021, on a final basis.

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

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

Party Information

Debtor(s):

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

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CONT... Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

Jose Luis Jimenez Escobar

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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1:19-13204 Mario Luis Chizic and Jennifer Claire Peters

Chapter 7

#6.00 Trustee's Final Report and Applications for Compensation

David Keith Gottlieb, Chapter 7 Trustee

Menchaca & Company LLP, Accountants for Chapter 7 Trustee

Docket 38

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$3,250.00 and reimbursement of expenses of \$101.10, on a final basis.

Menchaca & Company, accountant to chapter 7 trustee – approve fees of \$2,932.00 and reimbursement of expenses of \$25.85, 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):

Mario Luis Chizic

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Jennifer Claire Peters

Represented By
Jeffrey J Hagen

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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10:30 AM

1:20-11137 Ruben Banderas Salas and Abigail Grande Banderas

Chapter 7

#7.00 Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

Docket 18

Tentative Ruling:

Nancy J. Zamora, chapter 7 trustee – approve fees of \$350.00 and reimbursement of expenses of \$318.00.

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

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee is 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):

Ruben Banderas Salas

Represented By
James P Doan

Joint Debtor(s):

Abigail Grande Banderas

Represented By
James P Doan

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#8.00 Application for payment of interim fees and/or expenses of
Susan K. Seflin, Subchapter V Trustee

Docket 140

Tentative Ruling:

Susan K. Seflin, chapter 11 subchapter V trustee – approve fees of \$14,092.50 for the period covering February 4, 2021 through June 30, 2021, pursuant to 11 U.S.C. § 331, on an interim basis.

With respect to, among other things, authorizing and/or mandating the estate's payment of approved fees to the attorneys and the subchapter V trustee, the Court intends to continue the hearings in this case. The Court will require that any approved fees be paid on a pro rata basis.

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):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Movant(s):

Susan K Seflin (TR)

Pro Se

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Chapter 11

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#9.00 Application for payment of Interim fees an/or expenses for
Havkin & Shrago Attorneys at Law, Debtor's Attorney

fr. 8/5/21

Docket 145

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Movant(s):

Havkin & Shrago Attorneys at Law

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#10.00 Application for payment of interim fees and or expenses for
Quantum Law Group, LLP, Special litigation counsel for debtor

fr. 8/5/21

Docket 148

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Movant(s):

Quantum Law Group

Pro Se

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10503 BAIC

Chapter 11

#11.00 Order to show cause re: dismissal

Docket 76

Tentative Ruling:

Given that the debtor and debtor in possession filed an application to employ general bankruptcy counsel [doc. 76] by the deadline of August 12, 2021, the Court will discharge its order to show cause.

Appearances for August 19, 2021 are excused.

Party Information

Debtor(s):

BAIC

Represented By
Michael E Plotkin

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1:21-10878 Scott Carl St. Peter

Chapter 11

#12.00 U.S. Trustee Motion to dismiss or convert case Under 11 U.S.C. § 1112(b)
fr. 7/8/21

Docket 19

***** VACATED *** REASON: Motion withdrawn 8/17/21 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Carl St. Peter

Represented By
Lionel E Giron

Movant(s):

United States Trustee (SV)

Represented By
Katherine Bunker

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1:21-10878 Scott Carl St. Peter

Chapter 11

#13.00 Status conference hearing re chapter 11 case

fr. 7/22/21

Docket 1

Tentative Ruling:

The parties should address the following:

What steps has the debtor and debtor in possession taken to employ an accountant?

How much is required to be paid monthly to lease the debtor's residential real property located at 590 N. Daisy Avenue, Pasadena CA 91107?

How much is debtor required to pay monthly to lease his new business location? Did the debtor provide a security deposit to that landlord? If so, how much is that security deposit?

Deadline to file proof of claim ("Bar Date"): **November 1, 2021.**

Deadline to mail notice of Bar Date: **August 30, 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: **December 1, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on December 16, 2022.**

The debtor in possession or any appointed chapter 11 trustee must file a status report, addressing the debtor's progress to 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

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CONT... **Scott Carl St. Peter**
documents.

Chapter 11

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):

Scott Carl St. Peter

Represented By
Lionel E Giron

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Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 19, 2021

Hearing Room 301

1:30 PM

1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#14.00 Motion by 5AIF Sycamore 2, LLC to reinstate dismissed chapter 11 bankruptcy case

Docket 144

Tentative Ruling:

On June 29, 2020, 1465V Donhill Drive, LLC ("Debtor") filed a voluntary chapter 11 petition. On January 14, 2021, Debtor filed a motion to approve a stipulation with secured creditor 5AIF Sycamore 2, LLC ("Sycamore") granting Sycamore relief from the automatic stay and agreeing to other terms (the "Stipulation") [doc. 101]. In the Stipulation, the parties provided that they "submit to the jurisdiction of the Bankruptcy Court and the courts of Los Angeles, California, whether state or federal." Stipulation, ¶ 17(f). On February 17, 2021, the Court entered an order approving the Stipulation (the "Order Approving Stipulation") [doc. 113].

On May 20, 2021, the U.S. Trustee filed a motion to dismiss Debtor's bankruptcy case [doc. 125]. On June 21, 2021, the Court entered an order dismissing Debtor's bankruptcy case (the "Dismissal Order") [doc. 135]. On July 19, 2021, after dismissal of its case, Debtor filed a complaint in state court against Sycamore and other defendants, initiating case no. 21SMCV01219 (the "State Court Action"). On July 30, 2021, Sycamore filed a motion to vacate the Dismissal Order and reinstate Debtor's bankruptcy case (the "Motion") [doc. 144]. In the Motion, Sycamore requests reinstatement of Debtor's bankruptcy case for Sycamore to: (A) request interpretation and enforcement of the Order Approving Stipulation; and (B) remove the State Court Action to this Court.

Federal Rule of Civil Procedure ("Rule") 60(b) sets forth grounds for relief from a final order. In the Motion, Sycamore does not discuss any applicable grounds, under Rule 60(b) warranting relief from the Dismissal Order. Sycamore also does not discuss the impact of reinstatement of Debtor's chapter 11 case. For instance, if Debtor cannot reorganize, and the Court reinstates Debtor's bankruptcy case, the Court may convert the case to a chapter 7 case. If Sycamore seeks to have Debtor's bankruptcy case "reinstated," Sycamore must file and serve a motion under Rule 60(b) and discuss these issues.

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CONT... 1465V Donhill Drive, LLC

Chapter 11

Alternatively, if Sycamore merely requests interpretation of the Stipulation and/or the Order Approving Stipulation, Sycamore may file a motion requesting such relief without reinstating Debtor's chapter 11 case. In connection with any such motion, Sycamore must discuss why this Court has subject matter jurisdiction [*see, e.g., In re Ray*, 624 F.3d 1124, 1136 (9th Cir. 2010)] and, if the Court has subject matter jurisdiction, why the Court should not abstain for the parties to resolve this dispute in state court (to which the parties consented in the Stipulation).

At this time, in light of the above, the Court will deny the Motion.

The Court will prepare the Order.

Party Information

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

**United States Bankruptcy Court
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Courtroom 301 Calendar**

Thursday, August 19, 2021

Hearing Room 301

1:30 PM

1:21-11098 John Carmen Esposito

Chapter 7

#14.10 Chapter 7 Trustee's motion for order requiring debtor to immediately turn over 1973 Porsche 911 vehicle

Docket 27

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

John Carmen Esposito

Pro Se

Movant(s):

Amy L Goldman (TR)

Represented By
Anthony A Friedman

Trustee(s):

Amy L Goldman (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
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Thursday, August 19, 2021

Hearing Room 301

2:00 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#15.00 Motion for order disallowing claim no. 15 of GA & TV, Inc.

Docket 379

Tentative Ruling:

The Court will continue this hearing to **2:00 p.m. on August 26, 2021.**

Appearances on August 19, 2021 are excused.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By

David B Golubchik

Juliet Y Oh

Richard P Steelman Jr

Movant(s):

Lev Investments, LLC

Represented By

David B Golubchik

Juliet Y Oh

Richard P Steelman Jr

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Thursday, August 19, 2021

Hearing Room 301

2:00 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#16.00 Motion for order disallowing claim no. 16 of Coachella Luxury RV Park, LLC

Docket 380

Tentative Ruling:

Grant.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition. On August 10, 2020, Coachella Vineyard Luxury RV Park, LLC ("RV Park") filed proof of claim no. 16 (the "POC"), asserting an unsecured claim for \$3,500,000 against the estate. To the POC, RV Park attached a state court complaint against Debtor, Dmitri Lioudkovski and Real Property Trustee, Inc (the "State Court Complaint"). In the State Court Complaint, RV Park alleged—

RV Park owns real property located in Coachella, California (the "Coachella Property"), which is being developed as a luxury RV park. On July 31, 2018, Debtor made a loan to RV Park in the principal amount of \$2,000,000 (the "RV Loan"). On August 7, 2018, a first-position deed of trust was recorded against the RV Property, securing the RV Loan (the "RV DOT"). On June 17, 2019, Debtor declared the RV DOT to be in default.

The Notice of Default declared the amount due on the RV Loan was \$2,450,244.2, based on a principal balance of \$2,300,000. The payoff amount included the original \$2,000,000 principal amount, but also a \$300,000 extension of the security interest in the RV Property that was pledged in connection with the guaranty of a loan on a different property. However, Debtor never funded the \$300,000 loan and, as such, the asserted amount of the default was excessive.

On September 19, 2019, Debtor recorded a Notice of Sale, scheduling a sale for October 15, 2019. RV Park demanded that Debtor reduce the

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CONT...

Lev Investments, LLC

Chapter 11

payoff demand. In response, Debtor provided an updated payoff statement showing a "Courtesy Credit" of \$336,300 (representing the \$300,000 loan plus interest thereon). On October 10, 2019, Debtor's payoff demand expired.

RV Park continued to dispute the amount demanded by Debtor. As a result, RV Park filed a complaint in state court and sought a restraining order and preliminary injunction. At a hearing on the preliminary injunction, the state court agreed that the "Courtesy Credit" should be removed, but denied RV Park's request for a preliminary injunction. The state court specifically stated that the foreclosure sale would have to be for the reduced sum reflecting the \$336,300 "Courtesy Credit."

On November 6, 2019, the temporary restraining order expired. Under Cal. Civ. Code § 2924g(d), there is an automatic seven day stay after expiration of a temporary restraining order on foreclosure sales. As such, the earliest Debtor could foreclose was on November 13, 2019. However, on November 12, 2019, RV Park was informed that Debtor conducted the foreclosure sale on November 7, 2019. Furthermore, in violation of the state court's order, the Trustee's Deed Upon Sale indicates that the foreclosure proceeded based on an unpaid debt of \$2,570,949.36. At the foreclosure, Debtor credit bid \$2,500,000, which is more than the state court determined was owed on the loan.

State Court Complaint, pp. 2-5. On these allegations, RV Park asserts claims for quiet title, cancellation of instruments, wrongful foreclosure, slander of title and declaratory relief against Debtor. In its prayer for relief, RV Park requests \$100,000 in incidental damages and \$5,000,000 in compensatory damages.

On September 4, 2020, RV Park filed a voluntary chapter 11 petition as a Single Asset Real Estate case [1:20-bk-11615-VK]. On December 23, 2020, Debtor filed a motion for relief from the automatic stay in RV Park's case to proceed with foreclosure of the Coachella Property [1:20-bk-11615-VK, doc. 43]. On January 25, 2021, the Court granted Debtor's request for relief from the automatic stay [1:20-bk-11615-VK, doc. 57]. On January 27, 2021, RV Park requested dismissal of its bankruptcy case [1:20-bk-11615-VK, doc. 58]. On February 22, 2021, the Court entered an order dismissing

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CONT... Lev Investments, LLC

Chapter 11

RV Park's bankruptcy case [1:20-bk-11615-VK, doc. 64].

On July 19, 2021, Debtor filed a motion to disallow RV Park's claim against the estate (the "Motion") [doc. 380]. In a declaration in support of the Motion, Debtor's principal states that, in May 2020, after learning about the seven-day injunction set forth in California Civil Code ("CCC") § 2924g(d), Debtor rescinded the foreclosure sale. Declaration of Dmitri Lioudkouski, ¶ 10. Debtor also asserts that, during the pendency of its bankruptcy case, RV Park did not take any action to market or refinance the Coachella Property. As such, Debtor argues that RV Park has failed to provide any facts or evidence to show damages sustained as a result of the (rescinded) foreclosure.

On August 5, 2021, RV Park filed an opposition to the Motion (the "Opposition") [doc. 402]. In the Opposition, RV Park asserts that RV Park had an investor ready to refinance the Coachella Property, but lost the business opportunity because of Debtor's wrongful foreclosure. RV Park contends that it would have received profits from development and/or sale of the Coachella Property in excess of \$3,500,000, based on RV Park's contention that, at the time, the Coachella Property was worth \$6.5 million.

As support, RV Park provides a declaration from Abraham Gottlieb, who is the manager of RV Park (the "Gottlieb Declaration"). In the Gottlieb Declaration, Mr. Gottlieb states that, in November 2019, he had "an investor that was willing to refinance the [real property] and provide funds for the development of the RV park." Gottlieb Declaration, ¶ 4. Mr. Gottlieb further contends that, with the investment funds, "RV [Park] was going to payoff [Debtor] to prevent the foreclosure or buy the [real property] at the foreclosure sale," but was unable to because of the "early foreclosure" by Debtor. *Id.*

In support of his contention that the Coachella Property was worth \$6.5 million, Mr. Gottlieb references a "broker's opinion of the value of" the Coachella Property. Gottlieb Declaration, ¶ 5. The referenced opinion of value is a Lender/Purchaser Disclosure Statement (the "Disclosure Statement") attached to an October 2019 declaration from Mr. Gottlieb submitted in connection with a state court proceeding (the "Prior Declaration"). Prior Declaration, Exhibit N.

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CONT... Lev Investments, LLC

Chapter 11

To the Prior Declaration, RV Park also attached a joint venture agreement (the "JVA"). Prior Declaration, Exhibit 2. The JVA is dated November 15, 2019 and signed by a representative of Global Finance GFM DOO, a representative of Global Finanz America, Inc (together, the "Global Finance Parties") and the president of RV Park. *Id.* Through the JVA, the parties to the JVA agreed that the Global Finance Parties would invest \$200 million to improve, over a period of seven years, the real property owned by RV Park. *Id.* The JVA is silent as to whether any of the funds would be used to pay off liens against the real property.

On August 12, 2021, Debtor filed a reply to the Opposition (the "Reply") [doc. 405]. In the Reply, Debtor challenges RV Park's evidence in support of the Opposition.

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). "If the creditor does not provide information or is unable to support its claim, then that 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." *In re Heath*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005).

Here, RV Park bases its claim on a wrongful foreclosure theory. Specifically, RV Park contends that Debtor's premature foreclosure, in violation of CCC § 2924g(d),

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Chapter 11

resulted in the Global Finance Parties rescinding the JVA, which RV Park contends would have generated profits in excess of \$3.5 million.

In the Motion, Debtor does not dispute the violation of CCC § 2924g(d). However, based on Debtor's evidence that it rescinded the wrongful foreclosure sale, Debtor contends the POC does not establish a claim for damages. The State Court Complaint, attached in support of the POC, is silent as to Debtor's subsequent rescission of the wrongful foreclosure sale. Instead, in the State Court Complaint, RV Park alleged it incurred incidental damages "from the cloud on title" in the amount of \$100,000, and damages in excess of \$5 million based on anticipated profits from developing the Coachella Property. However, given that: (A) Debtor rescinded the foreclosure, with title reverting back to RV Park; (B) RV Park subsequently failed to enter into any agreements to develop or sell the Coachella Property; and (C) RV Park was unable to reorganize during the pendency of its bankruptcy case, the Motion successfully shifted the burden of proof to RV Park to prove the validity of its claim. The Opposition does not provide sufficient evidence to meet this burden.

In the Opposition, RV Park attempts to support its claim for damages by referencing the JVA and arguing that Debtor's premature foreclosure prevented the Global Finance Parties from performing under the JVA. However, the JVA does not demonstrate that RV Park suffered damages from the wrongful foreclosure. First, the JVA is dated November 15, 2019. The seven-day stay under CCC § 2924g(d) expired on November 13, 2019, i.e., prior to execution of the JVA. As such, even if Debtor had complied with CCC § 2924g(d), Debtor could have foreclosed on the subject property before RV Park and the Global Finance Parties executed the JVA.

Even if the Court ignores this causation issue, the JVA is silent as to whether the Global Finance Parties' investment would be used to pay off the liens against the Coachella Property, such as Debtor's defaulted deed of trust. The JVA also does not establish that the Global Finance Parties would purchase the Coachella Property; instead, through the JVA, the Global Finance Parties would invest \$200 million towards improvement of the Coachella Property, such as by building a hotel, luxury RV parking facilities and a 100-unit apartment building. These terms do not indicate that the Global Finance Parties would have, for example, overbid Debtor at a foreclosure sale. Further, as noted by Debtor, the schedule attached to the JVA reflects monthly installment payments of \$2 million. Even if the first month's full \$2

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CONT... Lev Investments, LLC

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million payment would be used towards payoff of the debt owed to Debtor, the debt would not be paid in full, and Debtor would still be able to proceed with foreclosure.

In addition, Mr. Gottlieb does not contend that the Global Finance Parties decided to back out of the JVA because of the foreclosure; instead, Mr. Gottlieb merely testifies that "RV [Park] was unable to [pay off Debtor] because of the early foreclosure by [Debtor]." Gottlieb Declaration, ¶ 4. As such, the evidence does not demonstrate that the foreclosure interfered with execution of the JVA.

The Prior Declaration also does not serve to meet RV Park's burden of proof. With respect to the testimony regarding Debtor's excessive payoff demand, Mr. Gottlieb testified that the demand prevented RV Park from finding investors willing to provide financing. However, once again, there is no evidence that, but for Debtor's excessive demand, an investor would have refinanced the subject property. At most, the testimony is speculation by Mr. Gottlieb.

Finally, Mr. Gottlieb testifies that, in 2018, the Coachella Property was worth \$6.5 million. Notwithstanding the fact that Mr. Gottlieb is not the proper party to authenticate the Lender Disclosure Statement, the Lender Disclosure Statement does not qualify as competent evidence of the value of the Coachella Property. The Lender Disclosure Statement does not identify the loan broker or set forth the loan broker's qualifications to estimate the value of the Coachella Property. In addition, the Lender Disclosure Statement provides that "[a]n estimate of fair market value is to be determined by an independent appraisal," and that the broker must provide "objective data upon which the broker's estimate is based." Neither the Lender Disclosure Statement nor any other evidence provided by RV Park contains any such objective data or an independent appraisal by a qualified appraiser. [FN1]. As such, the Lender Disclosure Statement does not prove the value of the subject property.

In light of the above, RV Park has not met its burden of proving the validity of its claim. Consequently, the Court will disallow RV Park's claim against the estate.

III. CONCLUSION

The Court will grant the Motion.

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CONT... Lev Investments, LLC

Chapter 11

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

FOOTNOTES

1. Moreover, the foreclosure occurred in November 2019. Even if the Lender Disclosure Statement proved the value of the property, the statement, dated in 2018, does not relate to the relevant time period.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By

David B Golubchik

Juliet Y Oh

Richard P Steelman Jr

Movant(s):

Lev Investments, LLC

Represented By

David B Golubchik

Juliet Y Oh

Richard P Steelman Jr

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, August 19, 2021

Hearing Room 301

2:00 PM

1:21-10844 Michael Chulak

Chapter 11

#17.00 Confirmation hearing re chapter 11 subchapter V plan

Docket 16

***** VACATED *** REASON: Case converted to chapter 7 on 6/2/21. [Dkt. 30]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Chulak

Represented By
Michael R Totaro

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**

Wednesday, August 25, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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.

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Meeting ID: 161 495 4733

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Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 495 4733

Password: 902852

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Wednesday, August 25, 2021

Hearing Room 301

9:30 AM

1:20-12184 Julia Abrego

Chapter 13

#1.00 Motion for relief from stay [RP]

ROYAL PACIFIC FUNDING CORPORATION
VS
DEBTOR

fr. 6/16/21(stip); 7/14/21(stip)

Stip for adequate protection filed 8/24/21

Docket 33

*** VACATED *** REASON: Order approving stip entered 8/24/21.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julia Abrego

Represented By
Donald E Iwuchuku

Movant(s):

Royal Pacific Funding Corporation

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 25, 2021

Hearing Room 301

9:30 AM

1:18-10983 Daniele C Kenney

Chapter 13

#2.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

fr. 6/16/21; 7/14/21

Docket 73

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniele C Kenney

Represented By
David S Hagen

Movant(s):

U.S. Bank National Association

Represented By
Jamie D Hanawalt
Raymond Jereza
Jenelle C Arnold
Jennifer C Wong

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 25, 2021

Hearing Room 301

9:30 AM

1:21-11038 Geneva Placia Richardson

Chapter 13

#3.00 Motion for relief from stay [PP]

DAIMLER TRUST
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 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):

Geneva Placia Richardson

Represented By
Allan S Williams

Movant(s):

Daimler Trust

Represented By
Sheryl K Ith

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CONT... Geneva Placia Richardson

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 25, 2021

Hearing Room 301

9:30 AM

1:19-12523 John Jairo Barrios

Chapter 13

#4.00 Motion for relief from stay [RP]

SILICON PRIVATE CAPITAL LLC
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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

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9:30 AM

CONT... John Jairo Barrios

Chapter 13

Movant(s):

Silicon Private Capital LLC, et al

Represented By
Edward T Weber

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 25, 2021

Hearing Room 301

9:30 AM

1:19-12523 John Jairo Barrios

Chapter 13

#5.00 Motion for relief from stay [RP]

LOS ACEVEDOS, INC.
VS
DEBTOR

Docket 89

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.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

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Wednesday, August 25, 2021

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9:30 AM

CONT... John Jairo Barrios

Chapter 13

Movant(s):

Los Acevedos, Inc.

Represented By
Alla Tenina
Edward T Weber

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
Central District of California
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Wednesday, August 25, 2021

Hearing Room 301

9:30 AM

1:19-12879 Manuel Aguilar and Maria Graciela Martinez

Chapter 13

#6.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

Stip for adequate protection filed 8/23/21

Docket 28

*** VACATED *** REASON: Order approving stipulation entered
8/24/21. [Dkt. 35]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Aguilar

Represented By
Raj T Wadhvani

Joint Debtor(s):

Maria Graciela Martinez

Represented By
Raj T Wadhvani

Movant(s):

Nationstar Mortgage LLC d/b/a Mr.

Represented By
Katherine S Walker
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
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Wednesday, August 25, 2021

Hearing Room 301

9:30 AM

1:17-10681 Sandra Murray

Chapter 13

#7.00 Motion for relief from stay [RP]

PNC BANK, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 7/21/21(stip)

Stip to continue filed 9/22/21

Docket 71

*** VACATED *** REASON: Order approving stip entered 8/24/21.
Hearing continued to 9/22/21 at 9:30 AM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Murray

Represented By
Todd J Roberts

Movant(s):

PNC Bank, National Association

Represented By
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) 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 25, 2021

Hearing Room 301

9:30 AM

1:20-11006 Lev Investments, LLC

Chapter 11

#8.00 Motion for relief from stay [AN]

GA&TV INC
VS
DEBTOR

Docket 392

Tentative Ruling:

Grant.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition. Prepetition, on October 4, 2019, GA&TV Inc. ("GA&TV") and Coachella Vineyard Luxury RV Park, LLC ("RV Park" and, together with GA&TV, "Plaintiffs") filed a complaint in state court against Debtor, LDI Ventures, LLC ("LDI"), Real Property Trustee, Inc. ("RPT") and Dmitri Lioudkovski (the "State Court Complaint"), initiating case no. RIC 1905065 (the "State Court Action"). Declaration of John G. Burgee ("Burgee Declaration") [doc. 392], ¶ 8, Exhibit 1. In the State Court Complaint, Plaintiffs allege—

LDI made a loan to an owner of real property located in Lake Elsinore, California (the "LE Property"). LDI's loan was secured by a second position deed of trust. At the beginning of 2019, LDI declared the loan in default and proceeded with a non-judicial foreclosure of the LE Property, setting a trustee's sale for May 21, 2019. Shortly before the foreclosure sale, LDI conveyed its deed of trust to Debtor and LA Holding, LLC ("LA Holding"). Debtor and LA Holding acquired title to the LE Property as the "Foreclosing Beneficiary" of the deed of trust. Plaintiffs believe LDI, Debtor and LA Holding are affiliated and alter egos of each other.

Around the time of the foreclosure, GA&TV made a deal with LDI to

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Lev Investments, LLC

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acquire the LE Property, assuming LDI would acquire the LE Property through foreclosure. Prior to the foreclosure, the parties drafted a sale agreement. While the terms of the deal were being worked out, the defendants completed the foreclosure sale of the LE Property, transferring title to Debtor and LA Holding. Post-foreclosure, the agreement between LDI and GA&TV was memorialized by a final version of the sale agreement. GA&TV was unaware of the last-minute assignment of the deed of trust to Debtor and LA Holding, and none of the defendants informed GA&TV that LDI was not the titleholder of the LE Property at the time GA&TV and LDI executed the sale agreement. To the contrary, the sale agreement identified LDI as the seller and contained provisions requiring the seller to diligently proceed with foreclosure, make its best efforts to acquire the LE Property at foreclosure and to notify GA&TV of any change in circumstances.

The sale agreement provides that GA&TV's consideration for the purchase of the LE Property consisted of an unsecured promissory note in favor of Debtor, an affiliate of LDI, in the amount of \$300,000 (the "Debtor Note"). RV Park agreed to guaranty the Debtor Note and executed a guaranty agreement in favor of Debtor (the "RV Guaranty"). The parties agreed that the RV Guaranty would be treated as an extension of the Debtor Note and secured by a different piece of real property. Upon the execution and delivery of the sale agreement, the Debtor Note and the RV Guaranty, the defendants provided GA&TV with a grant deed executed by Mr. Lioudkovski on behalf of LDI, purporting to convey title to the LE Property from LDI to GA&TV.

GA&TV intended to complete development on the LE Property. As such, after obtaining the grant deed, GA&TV made arrangements to complete development, such as hiring contractors and looking for financing. However, during this process, GA&TV learned that LDI had not been the owner of the LE Property when it executed the grant deed and, as a result, GA&TV could not obtain financing or complete development. After learning that the grant deed was invalid, GA&TV demanded that Debtor and LA Holding execute a grant deed conveying

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title to the LE Property to GA&TV. Although the defendants agreed to replace the grant deed, the defendants claimed Mr. Lioudkovski was abroad and unavailable to sign the deed until weeks later. In September 2019, when Mr. Lioudkovski returned to California, Mr. Lioudkovski refused to execute a new grant deed.

Id. Based on these allegations, Plaintiffs assert the following causes of action: (A) breach of contract; (B) specific performance of the sale agreement; (C) breach of warranty under Cal. Civ. Code § 1113; (D) fraud and concealment; (E) negligent misrepresentation; (F) quiet title; (G) cancellation of instruments; (H) declaratory and injunctive relief; and (I) unfair business practices under Cal. Bus. & Prof. Code § 17200. *Id.*

On November 20, 2019, Debtor, LDI and Mr. Lioudkovski filed an answer to the State Court Complaint. Burgee Declaration, ¶ 8, Exhibit 2. The state court's docket reflects that the state court presided over a number of matters, including contested applications for injunctions, a motion to confirm the original foreclosure sale and orders to show cause. Burgee Declaration, ¶ 9, Exhibit 3. The state court also held multiple case management conferences. *Id.*

On August 10, 2020, GA&TV filed a claim against the estate based on the damages requested in the State Court Complaint. On August 28, 2020, Debtor filed a chapter 11 plan of reorganization (the "Plan") [doc. 156]. On January 20, 2021, the Court entered an order confirming the Plan [doc. 286]. On July 19, 2021, Debtor filed a motion for disallowance of GA&TV's claim against the estate (the "Objection to Claim") [doc. 379]. Through the Objection to Claim, Debtor argues that GA&TV has not provided evidence that Debtor is an alter ego of LDI.

On July 30, 2021, GA&TV filed a motion for relief from the automatic stay to proceed with the State Court Action before the state court (the "Motion") [doc. 392]. On August 11, 2021, Debtor filed an opposition to the Motion (the "Opposition") [doc. 403], asserting that this Court should adjudicate the parties' dispute via the Objection to Claim. On August 18, 2021, GA&TV filed a reply to the Opposition [doc. 406].

II. ANALYSIS

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Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Company, Inc.*, 47 F.3d 233, 238 (7th Cir. 1995) (emphasis added).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a non-bankruptcy forum include:

- (1) Whether the relief will result in a partial or complete resolution of the issues.
- (2) The lack of any connection with or interference with the bankruptcy case.
- (3) Whether the foreign proceeding involves the debtor as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases.
- (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation.
- (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question.
- (7) Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties.
- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c).
- (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f).
- (10) The interest of judicial economy and the expeditious and economical determination of litigation for the parties.
- (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.

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1990) (listing factors).

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Here, the *Curtis* factors weigh in favor of granting the Motion. First, denying the Motion to adjudicate the Objection to Claim will result in partial and incomplete resolution of the issues in the State Court Action. Debtor's Objection to Claim is based on Debtor's assertion that Debtor and LDI are not alter egos of each other. However, although the State Court Complaint includes allegations regarding alter ego liability, the allegations also detail Debtor's participation in the overall alleged scheme. This participation includes allegations that Debtor was the recipient of the LE Property as well as the entity to whom funds were owed pursuant to the Debtor Note and the RV Guaranty. Thus, the allegations are not limited to alter ego liability and may be construed as alleging that Debtor was an active participant. As such, resolution of the alter ego issue set forth in the Objection to Claim would not necessarily resolve all claims against Debtor.

Next, the State Court Action will not significantly impact Debtor's bankruptcy case. The Court already confirmed the Plan. Although the State Court Action may impact distribution to GA&TV, Debtor does not contend it is ready to begin distribution. In fact, the Court's docket reflects that Debtor's involvement in post-confirmation litigation may delay distribution until resolution of certain lawsuits. Nevertheless, even if Debtor is prepared to distribute to the class of unsecured creditors prior to resolution of the State Court Action, Debtor may place GA&TV's pro rata share of the funds into a reserve account pending resolution of the State Court Action.

For the same reasons, proceeding with the State Court Action will not prejudice other creditors or interested parties. Once again, at this post-confirmation stage, if Debtor seeks to distribute funds to other creditors in GA&TV's class, Debtor may place GA&TV's share in a separate account. Further, there is no indication that GA&TV's success in the State Court Action will result in an avoidable judicial lien.

Debtor also argues that proceeding before this Court will be more expeditious and economical. However, even if the Court adjudicated the Objection to Claim, the Court would not enter an order based on the briefing provided by the parties. The nature of the dispute over alter ego liability likely would require an evidentiary hearing. Moreover, in this instance, judicial economy is not served by piecemeal litigation.

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Although the parties may engage in additional discovery prior to trial, the State Court action has progressed beyond the pleading stage. Given that the parties had time to conduct discovery before Debtor filed its bankruptcy petition, it is unlikely that any pending discovery will significantly delay trial. Finally, granting relief from the automatic stay will not impose significant "hurt" on any parties. Debtor already has a confirmed Plan and, because this Court also likely would require an evidentiary hearing on the Objection to Claim, allowing the state court to preside of this matter will not result in a significant difference in the speed of resolution. The remaining factors are either neutral or inapplicable to this case. As such, the Court will grant the Motion.

III. CONCLUSION

The Court will grant the Motion.

GA&TV must submit an order within seven (7) days.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh
Richard P Steelman Jr

Movant(s):

GA&TV Inc

Represented By
John Burgee

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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1:20-11006 Lev Investments, LLC

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#9.00 Motion for relief from stay [AN]

COACHELLA VINEYARD LUXURY RV PARK, LLC
VS
DEBTOR

Docket 393

Tentative Ruling:

In light of the Court's ruling sustaining the objection to movant's claim [doc. 409], 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
Richard P Steelman Jr

Movant(s):

COACHELLA VINEYARD

Represented By
John Burgee

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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1:20-10659 Nasrin Nino

Chapter 7

Adv#: 1:21-01019 Gottlieb v. Bilal et al

#10.00 Status conference re: Complaint for interpleader

fr. 6/23/21(stlip)

Docket 1

Tentative Ruling:

Although the Court will accept the interpled funds into the Court's Registry, the Court will issue an Order to Show Cause why this Court should not abstain from adjudicating the dispute as to the proper recipient(s) of the funds. In connection with their responses to the Court's Order to Show Cause, the parties should be prepared to discuss, assuming the Court abstains from this proceeding, where to transfer the interpled funds. The parties also may stipulate to transfer of this adversary proceeding, and the funds held by the plaintiff, to a mutually agreeable forum and/or account.

Party Information

Debtor(s):

Nasrin Nino

Represented By
David S Hagen

Defendant(s):

Kamal A. Bilal

Pro Se

Jeffrey Siegel

Pro Se

Terry M. Magady

Pro Se

Jacob N. Segura

Pro Se

Hayes and Bell

Pro Se

Ingenious Asset Group, Inc.

Pro Se

Internal Revenue Service

Pro Se

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CONT... Nasrin Nino
State of California Franchise Tax

Pro Se

Chapter 7

Plaintiff(s):

David K. Gottlieb

Represented By
Carmela Pagay

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

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1:20-10855 Patricia Esmeralda Rangel

Chapter 7

Adv#: 1:20-01055 Rangel v. Navient Solutions LLC., dba Navient, Navient Solut

#11.00 Pretrial 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; 11/18/20; 5/5/21; 5/19/21

Docket 1

***** VACATED *** REASON: Order approving stip and dismissing case
entered on 7/19/21**

Tentative Ruling:

- NONE LISTED -

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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1:21-10161 Julia M. Arreygue

Chapter 7

Adv#: 1:21-01022 Arreygue v. Higher Education Loan Authority of the State of Mi

#12.00 Status conference re: complaint

fr. 7/7/21

Docket 1

***** VACATED *** REASON: Summons issued on Amended Complaint
on 7/26/21. Status conference is scheduled for 9/15/21 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julia M. Arreygue

Represented By
Michael Rice

Defendant(s):

Higher Education Loan Authority of

Pro Se

Plaintiff(s):

Julia Arreygue

Represented By
Michael Rice

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#13.00 Motion for attorney's fees of plaintiff Alexander Ermakov

Docket 88

Tentative Ruling:

Deny request for attorneys' fees and allow costs outlined in the bill of costs.

I. BACKGROUND

On January 10, 2020, Husnutkin K. Zairov ("Debtor") filed a voluntary chapter 7 petition. On March 23, 2020, Alexander Ermakov ("Plaintiff") filed a complaint against Debtor, initiating this adversary proceeding. In the operative amended complaint (the "Complaint") [doc. 15], Plaintiff requested nondischargeability of its debt pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(4).

On February 19, 2021, Plaintiff filed a motion for summary judgment (the "MSJ") [doc. 40]. Through the MSJ, Plaintiff argued that a prepetition state court judgment (the "State Court Judgment") established Plaintiff's claims under § 523(a). On July 6, 2021, after a hearing on the MSJ, the Court entered a judgment in favor of Plaintiff on Plaintiff's claim under 11 U.S.C. § 523(a)(2)(A) (the "Judgment") [doc. 73]. The Court held that the State Court Judgment did not establish a claim under § 523(a)(4). Plaintiff subsequently filed a notice of voluntary dismissal of his claim under § 523(a)(4) [doc. 75].

On July 20, 2021, Plaintiff filed a motion requesting attorneys' fees and costs incurred prosecuting this adversary proceeding (the "Motion") [doc. 78]. Plaintiff contends he is entitled to attorneys' fees and costs under Federal Rule of Bankruptcy Procedure ("FRBP") 7054, Federal Rule of Civil Procedure ("Rule") 54 and Local Bankruptcy Rule ("LBR") 7054-1. Concurrently, Plaintiff filed a bill of costs outlining the costs he incurred in connection with this adversary proceeding (the "Bill of Costs") [doc. 83].

II. ANALYSIS

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Pursuant to FRBP 7054(b)—

(1) **Costs Other Than Attorney's Fees.** The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court.

(2) **Attorney's Fees.**

(A) Rule 54(d)(2)(A)-(C) and (E) F.R.Civ.P. applies in adversary proceedings except for the reference in Rule 54(d)(2)(C) to Rule 78.

(B) By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings.

Pursuant to Rule 54(d)(2)—

(A) *Claim to Be by Motion.* A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) *Timing and Contents of the Motion.* Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) *specify the judgment and the statute, rule, or other grounds entitling the movant to the award;*

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

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CONT... Husnutkin K Zairov

Chapter 7

(emphasis added). LBR 7054-1(g) requires a party seeking an award of attorneys' fees "file and serve a motion not later than 14 days after the entry of judgment or other final order...."

Although FRBP 7054, Rule 54 and LBR 7054-1 provide a basis for a prevailing party to obtain an award of *costs*, the rules do not set forth a substantive basis for an award of *attorneys' fees*. Rather, the rules merely set forth procedural guidelines regarding the filing of a motion for attorneys' fees. Moreover, Rule 54(d)(2)(B)(ii), incorporated into FRBP 7054(b)(2), requires a party to specify its entitlement to attorneys' fees pursuant to an applicable "statute, rule, or other grounds." Here, Plaintiff does not reference any such statutes, rules or other grounds. Instead, Plaintiff relies on the procedural rules outlined above.

In general, bankruptcy courts recognize the "American Rule" that the "damages in a tort action do not ordinarily include compensation for attorney fees or other expenses of the litigation." Restatement (Second) Torts § 914(1); *Travelers Cas. and Sur. Co. of America v. Pacific Gas and Elect. Co.*, 549 U.S. 443, 448, 127 S.Ct. 1199, 1203-04, 167 L.Ed.2d 178 (2007). "[W]hile *Travelers* supports the proposition that an unsecured creditor may assert a postpetition claim against the estate for attorney's fees if governing contracts and state law permit such fees, such cases apply to claims against the estate, not to nondischargeable claims against the debtor. In nondischargeability actions, *Cohen* applies." *In re Dinan*, 448 B.R. 775, 785 (B.A.P. 9th Cir. 2011) (citing *Cohen v. de la Cruz*, 523 U.S. 213, 118 S.Ct. 1212, 140 L.Ed.2d 341 (1998)). The determinative question under *Cohen* is "whether the creditor would be able to recover the fee outside of bankruptcy under state or federal law." *Id.* Attorneys' fees may be awarded to the prevailing creditor in a nondischargeability action when "two requirements" are met: "(1) an underlying contract or nonbankruptcy law must provide a right to recover attorneys' fees, and (2) the issues litigated in the dischargeability action must fall within the scope of the contractual or statutory attorneys' fees provision." *In re Saccheri*, 2012 WL 5359512, *13 (B.A.P. 9th Cir. 2012).

Here, Plaintiff has not provided an underlying contract containing an attorneys' fees clause. In fact, in the Motion, Plaintiff admits that his oral contract with Debtor did not include an attorneys' fees provision.

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Plaintiff also has not referenced nonbankruptcy law entitling Plaintiff to an award of attorneys' fees. Plaintiff references two cases in support of his request for attorneys' fees. Both are inapposite. In *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 682, 103 S.Ct. 3274, 3276, 77 L.Ed.2d 938 (1983), the Supreme Court of the United States assessed whether it was appropriate to award a non-prevailing party attorneys' fees under the Clean Air Act. The relevant statute in *Ruckelshaus* was 42 U.S.C. § 7607, which provides that "[i]n any judicial proceeding *under this section*, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate." (Emphasis added). This nondischargeability is not a judicial proceeding under the Clean Air Act and, as a result, *Ruckelshaus* is not helpful.

Plaintiff also references *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1833, 76 L.Ed.2d 40 (1983). In *Hensley*, the Supreme Court decided whether 42 U.S.C. § 1988, which allows a prevailing party to recover attorneys' fees *in federal civil rights actions*, permits partially prevailing plaintiffs to recover attorneys' fees. *Hensley*, 461 U.S. at 426. This adversary proceeding did not involve federal civil rights claims and, like *Ruckelshaus*, *Hensley* is inapplicable to this case. Plaintiff has not set forth any other contractual or statutory bases for recovery of attorneys' fees. As such, the Court will deny Plaintiff's request for an award of attorneys' fees.

In the Motion, Plaintiff also requests an award of costs in accordance with the Bill of Costs. Under LBR 7054-1(c), "[t]he prevailing party who is awarded costs must file and serve a bill of costs not later than 14 days after entry of judgment." Pursuant to LBR 7054-1(b)(1), a plaintiff is the prevailing party "when it recovers on the entire complaint. Alternatively, "[u]pon request of one or more of the parties, the court will determine the prevailing party when there is a partial recovery or a recovery by more than one party." LBR 7054-1(b)(3).

Pursuant to LBR 7054-1(e)(1), objections to a bill of costs must be filed no later than seven days after service of a copy of the bill of costs. "If a timely objection to a bill of costs is not filed... the clerk will insert the amount of costs awarded to the prevailing party into the blank left in the judgment for that purpose and enter a similar notation on the docket." LBR 7054-1(f).

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Here, although Plaintiff prevailed on only one of the two claims asserted in the Complaint, Plaintiff obtained a judgment rendering all of the damages awarded in the State Court Judgment nondischargeable. As such, Plaintiff fully recovered on its prayer for relief. In addition, Debtor did not timely object to Plaintiff's argument, set forth in the Motion, that Plaintiff is the prevailing party. Consequently, the Court will deem Plaintiff the prevailing party for purposes of recovering costs under LBR 7054-1(b) and allow the costs requested in the Bill of Costs.

III. CONCLUSION

The Court will deny Plaintiff's request for attorneys' fees. The Court will allow the costs set forth in the Bill of Costs.

The Court will prepare the Order.

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Represented By
Elena Steers
Adam Stevens

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:20-10659 Nasrin Nino

Chapter 7

Adv#: 1:21-01019 Gottlieb v. Bilal et al

#14.00 Plaintiff's Motion for leave to deposit funds in estate into court registry

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):

Nasrin Nino

Represented By
David S Hagen

Defendant(s):

Kamal A. Bilal

Pro Se

Jeffrey Siegel

Represented By
Jacob N Segura

Terry M. Magady

Represented By
Jacob N Segura

Jacob N. Segura

Represented By
Jacob N Segura

Hayes and Bell

Represented By
Jacob N Segura

Ingenious Asset Group, Inc.

Represented By

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Chapter 7

Jacob N Segura

State of California Franchise Tax

Pro Se

Movant(s):

David K. Gottlieb

Represented By
Carmela Pagay

Plaintiff(s):

David K. Gottlieb

Represented By
Carmela Pagay

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

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1:20-11952 Michael A Di Bacco

Chapter 7

Adv#: 1:21-01010 Kline v. Di Bacco

#15.00 Plaintiff's Motion to compel responses by defendant to plaintiff's first request for production of documents, and request for attorney's fees, costs and sanctions against defendant

Docket 28

Tentative Ruling:

Grant.

I. BACKGROUND

On October 29, 2020, Michael A. Di Bacco ("Debtor") filed a voluntary chapter 7 petition. On February 4, 2021, Michael Kline ("Plaintiff") filed a complaint against Debtor, requesting nondischargeability of the debt owed to him and objecting to Debtor's discharge.

On April 24, 2021, Plaintiff propounded a request for production of documents (the "RFP"). Declaration of David B. Lally ("Lally Declaration") [doc. 28], ¶ 41. Debtor did not timely respond to the RFP. *Id.* On July 27, 2021, after Debtor obtained counsel, Plaintiff received a thumb drive with hundreds of documents. Lally Declaration, ¶ 43. The documents were not organized and did not relate to specific requests set forth in the RFP. *Id.*

On August 4, 2021, Plaintiff filed a motion to compel Debtor to respond to Plaintiff's requests for production (the "Motion") [doc. 28]. Concurrently, Plaintiff filed a unilateral discovery stipulation [doc. 27]. On August 23, 2021, Debtor belatedly filed an opposition to the Motion [doc. 32]. [FN1].

II. ANALYSIS

Pursuant to Federal Rule of Civil Procedure ("Rule") 34(b)(2)—

(A) *Time to Respond.* The party to whom the request is directed must respond in

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Michael A Di Bacco

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writing within 30 days after being served or -- if the request was delivered under Rule 26(d)(2) -- within 30 days after the parties' first Rule 26(f) conference. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

...

- (E) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:
- (i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;
 - (ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and
 - (iii) A party need not produce the same electronically stored information in more than one form.

Under Rule 37(a)(5)(A)—

If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted--or if the disclosure or requested discovery is provided after the motion was filed--the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

- (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
- (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

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Wednesday, August 25, 2021

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(iii) other circumstances make an award of expenses unjust.

Here, Plaintiff has shown that Debtor did not comply with Rule 34(b)(2)(E) because Debtor failed to organize his responses by the categories set forth in the RFP. Debtor did not timely respond to the Motion, and did not participate in drafting a joint stipulation. As such, the Court will order Debtor to comply with Rule 34(b)(2)(E)(i) and award Plaintiff reasonable attorneys' fees in accordance with Rule 37(a)(5)(A).

In the Lally Declaration, Plaintiff's counsel sets forth the itemized attorneys' fees and costs. Lally Declaration, ¶ 51. However, the following entries were not reasonably incurred and/or were not incurred in making the Motion:

- On June 22, 2021, Plaintiff's counsel billed 1.20 hours for sending emails "to and from [Debtor's] attorney regarding his discovery responses" and for "[r]eview and analysis of [Debtor's] Responses to Interrogatories." Because the Motion does not seek to compel Debtor to respond to interrogatories, the portion of this entry related to a review of such interrogatories is not subject to reimbursement under Rule 37(a)(5)(A). The Court will not award fees related to this entry.
- On July 13, 2021, Plaintiff's counsel billed 1.50 hours for reviewing state court documents related to Debtor's request to withdraw and amend the deemed admissions to Plaintiff's requests for admission. This entry does not relate to the Motion, and the Court will not award fees related to this work.
- On July 21, 2021, Plaintiff's counsel billed 1.75 hours for reviewing additional state court documents and corresponding with Debtor's attorney regarding the discovery stipulation. The state court documents being irrelevant to the Motion, and Plaintiff's counsel having improperly lumped work done reviewing such documents with work done on the stipulation, the Court will not award fees related to this entry.
- On July 25, 2021 and July 26, 2021, Plaintiff's counsel billed 0.25 and 0.20 hours, respectively, on reviewing additional state court documents. For the reasons stated above, the Court will not award these fees.

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- On August 3, 2021, Plaintiff's counsel billed 0.75 hours for completing a unilateral discovery stipulation. Prior to this entry, Plaintiff's counsel billed time for completing a joint pretrial stipulation to send to Debtor for completion. Having completed and sent a stipulation to Debtor's counsel, it is unclear why Plaintiff's counsel billed additional time to complete a unilateral "stipulation." In addition, Local Bankruptcy Rule 7026-1(c) does not require a unilateral "stipulation." Rather, where a party does not cooperate in completing a joint stipulation, the moving party must submit a declaration regarding noncooperation, not a unilateral "stipulation." As such, work done on the unilateral "stipulation" was not reasonably incurred.
- On August 4, 2021, Plaintiff's counsel billed \$216.60 in copying costs for the unilateral "stipulation" and exhibits attached thereto as well as for the motion to compel and exhibits attached thereto. The "stipulation" being unnecessary, the Court will award 50% of this request, for a total of \$108.30.
- The Court also will not award the anticipated costs for filing a reply.
- Finally, the Court will reduce the anticipated billing for appearing at the hearing on the Motion, to be held via ZoomGov, to 1 hour.

In the Lally Declaration, Plaintiff's counsel indicates he billed 12.05 hours in connection with the Motion. However, the itemized billing entries actually add up to 17.9 hours, or \$5,817.50. For the reasons set forth above, the Court will deduct a total of \$3,087.50 from this amount, for a total of \$2,730 in reasonably incurred attorneys' fees. Debtor having paid \$763.75, the Court will order Debtor to pay an additional \$1,966.25. The Court also will reduce Plaintiff's request for costs to \$108.30, resulting in a total award of attorneys' fees and costs of \$2,074.55.

III. CONCLUSION

The Court will grant the Motion and award attorneys' fees and costs to Plaintiff in the total amount of \$2,074.55.

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

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FOOTNOTES

1. In the untimely opposition, Debtor contends that the RFP contained numerous requests to which Debtor could not timely respond. In the future, if Debtor believes a discovery request is burdensome, Debtor must file and serve a motion for protective order under Rule 26(c). Debtor also must comply with the discovery conference and stipulation requirements of Local Bankruptcy Rule 7026-1.

Party Information

Debtor(s):

Michael A Di Bacco

Represented By
Leon Nazaretian

Defendant(s):

Michael A Di Bacco

Represented By
Laleh Ensafi

Plaintiff(s):

Michael Kline

Represented By
David Brian Lally

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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2:30 PM

1:20-11952 Michael A Di Bacco

Chapter 7

Adv#: 1:21-01010 Kline v. Di Bacco

#16.00 Defendant's Motion to withdraw and amend deemed admissions or in the alternative for extension of time to respond to plaintiff's first set of request for admissions

Docket 25

Tentative Ruling:

The debtor did not support the motion with a declaration. Instead, the debtor belatedly submitted declarations in connection with his untimely reply. To give the plaintiff an opportunity to respond to the belated declarations, the Court will continue this hearing to **2:30 p.m. on September 15, 2021.**

No later than **September 3, 2021**, the plaintiff may file and serve any response to the declarations submitted with the reply.

Appearances on August 25, 2021 are excused.

Party Information

Debtor(s):

Michael A Di Bacco

Represented By
Leon Nazaretian

Defendant(s):

Michael A Di Bacco

Represented By
Laleh Ensafi

Movant(s):

Michael A Di Bacco

Represented By
Laleh Ensafi

Plaintiff(s):

Michael Kline

Represented By
David Brian Lally

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CONT... Michael A Di Bacco

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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10:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this 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 CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1614946462>

Meeting ID: 161 494 6462

Password: 422071

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 161 494 6462

Password: 422071

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

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Thursday, August 26, 2021

Hearing Room 301

10:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

1:09-26982 Tag Entertainment Corp.

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

Levene, Neale, Bender, Yoo & Brill LLP, Attorneys for Chapter 7 Trustee

Van Dyke & Associates, APLC, Special Litigation Counsel to Chapter 7 Trustee

Focus Advisory Services LLC, Special Consultant to Chapter 7 Trustee

Hahn Fife & Company, LLP, Accountants for Chapter 7 Trustee

fr. 8/5/21

Docket 287

Tentative Ruling:

The Court will continue this hearing to **10:30 a.m. on September 2, 2021.**

Appearances on August 26, 2021 are excused.

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

**United States Bankruptcy Court
Central District of California
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Thursday, August 26, 2021

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10:30 AM

CONT... Tag Entertainment Corp.

Chapter 7

Edward M Wolkowitz
Anthony A Friedman
Lindsey L Smith
James A Bush
Richard S Van Dyke

1:09-26982 Tag Entertainment Corp.

Chapter 7

#1.10 Chapter 7 Trustee's Objection to Application for Payment of Final Fee and or Expenses (11 U.S.C. § 330) of Van Dyke & Associates, APLC, Special Litigation Counsel To Chapter 7 Trustee and Request to Disgorge Interim Fees and Costs Previously Paid

Docket 298

Tentative Ruling:

The Court will continue this hearing to **10:30 a.m. on September 2, 2021.**

Appearances on August 26, 2021 are excused.

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
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Thursday, August 26, 2021

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#2.00 Stipulation by Maryam Sheik and Jamshid Lavi re chapter 11 plan of reorganization treatment of unsecured claim held by Jamshid Lavi

Docket 217

Tentative Ruling:

Approve stipulation.

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

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

1:19-11648 Maryam Sheik

Chapter 11

#3.00 Confirmation hearing re first amended chapter 11 plan of reorganization and adequacy of related disclosure statement

fr. 7/8/21(stip); 8/5/21

Docket 175

Tentative Ruling:

Confirm First Amended Chapter 11 Plan [doc. 175]. No later than **January 6, 2022**, 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 **January 20, 2022 at 1:00 p.m.**

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Thursday, August 26, 2021

Hearing Room 301

1:00 PM

CONT... Maryam Sheik

Chapter 11

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

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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; 11/5/20(stip); 12/17/20; 2/4/21;
3/25/21, 4/8/21; 5/20/21; 7/8/21(stip); 8/5/21

Docket 1

Tentative Ruling:

See calendar no. 3.

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D Resnik

1:20-11237 BGS WORKS, INC.

Chapter 11

#5.00 Hearing on Debtor's Disclosure Statement Describing Chapter 11 Plan
of Reorganization

Docket 116

Tentative Ruling:

**United States Bankruptcy Court
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Thursday, August 26, 2021

Hearing Room 301

1:00 PM

CONT... BGS WORKS, INC. Chapter 11

Proposed dates and deadlines regarding "Debtor's Chapter 11 Plan of Reorganization" (the "Plan") [doc. 117]

If, pursuant to 11 U.S.C. § 1125, the Court approves the "Debtor's Disclosure Statement Describing Chapter 11 Plan or Reorganization:"

Hearing on confirmation of the Plan: **October 21, 2021 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 30, 2021.**

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 30, 2021**

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: **October 8, 2021.** Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1129 are satisfied. These materials must be served on the U.S. Trustee and any party who objects to confirmation.

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

1:20-11237 BGS WORKS, INC.

Chapter 11

#6.00 Status conference re: chapter 11 case

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1:00 PM

CONT... BGS WORKS, INC.

Chapter 11

fr. 9/10/20; 4/22/21; 6/3/21; 7/8/21

Docket 1

Tentative Ruling:

See calendar no. 5.

Party Information

Debtor(s):

BGS WORKS, INC.

Represented By
Matthew D. Resnik

1:21-11166 Margarito Guerrero

Chapter 11

#7.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **November 1, 2021.**

Deadline to mail notice of Bar Date: **September 1, 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: **December 15, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on January 20, 2022.**

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1:00 PM

CONT... Margarito Guerrero

Chapter 11

The debtor in possession or any appointed chapter 11 trustee must file a status report, addressing the debtor's progress to 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.

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):

Margarito Guerrero

Represented By
Lionel E Giron

**United States Bankruptcy Court
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Courtroom 301 Calendar**

Thursday, August 26, 2021

Hearing Room 301

1:30 PM

1:17-10673 Hermann Muennichow

Chapter 7

#8.00 Trustee's application for authority to employ Coldwell Banker Residential Brokerage and Help-U-Sell Inland Valley as real estate broker

fr. 7/15/21

Docket 106

Tentative Ruling:

The Court will continue this hearing to **1:30 p.m. on September 9, 2021**. The parties should consider whether they are willing to participate in mediation to resolve this matter, **and the Court may compel that the parties do so, before it issues a ruling on this issue.**

Appearances on August 26, 2021 are excused.

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone
Nicholas A West

Movant(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov

**United States Bankruptcy Court
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Thursday, August 26, 2021

Hearing Room 301

2:00 PM

1:20-11006 Lev Investments, LLC

Chapter 11

#9.00 Motion for order disallowing claim no. 15 of GA & TV, Inc.
fr. 8/19/21

Docket 379

Tentative Ruling:

In light of the Court having granted claimant's motion for relief from the automatic stay to proceed with state court litigation against the debtor (among other parties), the Court will stay this matter until resolution of the state court action. The Court will continue this hearing to **2:00 p.m. on February 10, 2022**. No later than **January 27, 2022**, the reorganized debtor must file and serve on the other parties to the litigation a status report, supported by evidence, updating the Court on the status of state court litigation.

Appearances on August 26, 2021 are excused.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh
Richard P Steelman Jr

Movant(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh
Richard P Steelman Jr

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Victoria Kaufman, Presiding
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Monday, August 30, 2021

Hearing Room 301

10:00 AM

1:13-16084 Holly Elizabeth Winzenburg

Chapter 7

#1.00 Evidentiary Hearing re: Order to show cause why Eric B. Gans should not be held in civil contempt for violations of the automatic stay and discharge injunction

fr. 5/20/21; 6/24/21

Docket 22

***** VACATED *** REASON: Per ruling on 8/5/21.**

Party Information

Debtor(s):

Holly Elizabeth Winzenburg

Represented By
Brett F Bodie
Ahren A Tiller

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 31, 2021

Hearing Room 301

10:00 AM

1:13-16084 Holly Elizabeth Winzenburg

Chapter 7

#1.00 Evidentiary Hearing re: Order to show cause why Eric B. Gans should not be held in civil contempt for violations of the automatic stay and discharge injunction

fr. 5/20/21; 6/24/21

Docket 22

***** VACATED *** REASON: Per ruling on 8/5/21.**

Party Information

Debtor(s):

Holly Elizabeth Winzenburg

Represented By
Brett F Bodie
Ahren A Tiller

Trustee(s):

Diane C Weil (TR)

Pro Se